

The Companies Act (Bangladesh), 1994

(See section 404)

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Act No. 18 of 1994

An Act

to consolidate and amend the law relating to companies and certain other associations.

WHEREAS it is expedient to consolidate and amend the law relating to companies and certain other Associations;

It is hereby enacted as follows:

PART-I PRELIMINARY

1.Short title and commencement

(1) This Act may be called the Companies Act, 1994.

(2) It shall come into force on such date as the Government may, by notification in the Official Gazette, appoint.

2. Definitions

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

(a) "articles" means the articles of association of a company including, so far as they apply to the company, the regulations contained in Schedule I to this Act. :

Provided that the article of association of a company framed under any law relating to companies at any time in force before the commencement of this Act shall, so far as they are not inconsistent with the provisions of this Act, be deemed to be the articles of association of that company framed in accordance with the provisions of the Act:

(b) "banking company" means a bank company as defined in section 5(9) of the Act, 1991 (Act No. 14 of 1991).

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

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

(e) "debenture" includes debenture stock, bonds and any other securities of a company, whether constituting a charge on the assets of company or not;

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

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

(h) "existing company" means a company formed and registered under any law relating to companies in force at any time before the commencement of this Act, and is in operation after commencement of this Act,

(i) "financial year" means, in relation to any body corporate, the period in respect of which any profit and loss account of the body corporate laid before it in annual general meeting is made up, whether that period is a year or not;

Provided that in relation to an insurance company, "financial year" shall mean the calendar year;

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

(k) "manager" means an individual who, subject to the superintendence, control and direction of the Board of Directors, has the management of the whole, or substantially the whole, of the affairs and business 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;

(l) "managing agent" means a person, firm or company by whatever name called, who or which is entitled to the management of the whole affairs and business 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;

(m) "managing director" means a director who, by virtue of an agreement with the company or of a resolution passed by the company in its general meeting or by its directors or by virtue of its memorandum or articles of association, is entrusted with the substantial powers of management which would not otherwise be exercisable by him and includes a director occupying the position of a managing director by whatever name called;

Provided that the powers to do administrative acts of a routine nature when so authorised by the directors such as the power to affix common seal of the company to any document or to draw and endorse any cheque on the account of the company in

any bank or to draw and endorsed negotiable instrument or to sign any certificate of share or to direct registration of transfer of any shares shall not be deemed to be included within the substantial powers of management:

Provided further that a managing director of a company shall exercise his powers subject to the superintendent control and direction of the directors.

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

(o) "officer" means a director, managing agent, manager secretary or any other officer of a company and also includes--

(i) where the managing agent is a firm any partner in the firm;

(ii) where the managing agent is a body corporate, any director or manager of the body corporate;

(iii) where the secretary is a body corporate;

Provided that. except for the purpose of sections 331, 332, and 333, the form "officer" shall not include an auditor.;

(p) "prescribed" means as respects the provisions of this Act relating to the winding up of companies, prescribed by rules made by the Supreme Court and, as respect the other provisions of this Act, prescribed by the Government;

(q) "private company" means a company which by its articles--

(i) restricts the right to transfer its shares, if any;

(ii) prohibits any invitation to the public to subscribe for its shares or debenture, if any;

(iii) limits the number of its members to fifty not including persons who are in its employment;

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;

(r) "public company" means a company incorporated under this Act or under any law at any time in force before the commencement of this Act and which is not a private company;

(s) "Registrar" means a Registrar or any other officer, by whatever designation, performing under this Act the duty of registration of companies;

(f) "Schedule" means a schedule to this act;

(u) "secretary" means any individual possessing the prescribed qualifications appointed to perform the duties which may be performed by a secretary under this Act and any other ministerial or administrative duties, and

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

(2) For the purposes of this Act, a company shall subject to the provisions sub-section (4), be deemed to be a subsidiary of another, if--

(a) that other controls the composition of Board of Directors of the first mentioned company.

(b) the first mentioned company, being an existing company, has before the commencement of this Act, issued preference shares the holders of which have the same voting right in all respects as the holders of equity shares and that other company exercises or controls more than half of the total voting power of the first mentioned company; or

(c) the first mentioned company is not a subsidiary within the meaning of clause (b), but that other company holds more than half in nominal value of its equity share capital; or

(d) the first mentioned company is a subsidiary of a third company with is that other's subsidiary.

(3) For the purposes of sub-section (2), the composition of a company's Board of Directors shall be deemed to be controlled by another company if, that other company, by the exercise of some power exercisable by it at its discretion without the consent or concurrence of any other person, can appoint or remove the holders of all or a majority of the directors, and for the purposes of this sub-section that other company shall be deemed to have power to appoint to a directorship with respect to which any of the following conditions is satisfied, that is to say--

(a) that power of appointment cannot be exercised except in favour of an individual,

(b) that an individual's appointment thereto follows necessarily from his appointment as director, managing agent, secretary or manager of or to any other office of employment in, that other company; or

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

(4) In determining whether one company is a subsidiary of another the following conditions shall be applicable namely:--

(a) any shares held or power exercisable by that other company in a fiduciary capacity shall be treated as not held or exercisable by it.

(b) subject to the provisions of clauses (c) and (d) any shares held or power exercisable shall be deemed to be the shares held or power exercisable by that other company, if--

(i) the shares are held or the power is exercisable by a person as a nominee and on behalf of that other company, but this clause shall not apply to the holding of such shares or to the exercise of such powers by such person where that other company is concerned in a fiduciary capacity.

(ii) the shares are held or the power is exercisable by a subsidiary of that other company or by a nominee of such subsidiary, but this clause shall not apply to the holding of such shares or to the exercise of such powers by the subsidiary or by its nominee where the subsidiary is concerned in a fiduciary capacity;

(c) any shares held or power exercisable by any person by virtue of the provisions of any debentures of the first-mentioned company or of a trust deed for securing any issue of such debentures shall be disregarded;

(d) if any shares are held or power is exercisable, not being held or exercisable as mentioned in clause (c),--

(i) by that other company or by its subsidiary or by a nominee of that other or its subsidiary as the case may be, and

(ii) the ordinary business of that other company or as the case may be of its subsidiary includes the lending of money and such shares are held or the power is exercisable by way of security of the loan [then such power shall not be treated as being held or exercisable by such company or its nominee.]

(5) For the purposes of this Act a company shall be deemed to be the holding company of another if, and only if, that other is its subsidiary.

3. Jurisdiction of the Court.

(1) The Court having jurisdiction under this Act shall be High Court Division;

Provided that the Government may by notification in the 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 office in the district.

Explanation.--For the purposes to wind up companies the expression "registered office" means the place where the registered office of the company, during the six months immediately preceding the presentation of the petition of winding up was situated.

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

PART-II CONSTITUTION AND INCORPORATION

4. Prohibition of partnership exceeding certain number:

(1) No company, association or partnership consisting of more than ten persons shall be formed or a the purpose of carrying on the business of banking unless it is registered as a company under this Act or is formed by or under any other Act of Parliament.

(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 by or under any other Act of Parliament.

(3) This section shall not apply to joint family carrying on joint family business or trade.

Provided that for the purposes of this section, in computing the number of persons of a partnership, association or company comprising two or more joint families, 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 five thousand taka.

Memorandum of Association

5. Mode of forming incorporated company.

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

(a) a company limited by shares, that is to say, a company having the liability of its member limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them; or

(b) a company limited by guarantee, that is to say, a company having the liability of its members limited by the memorandum to such amount as the members may respectively thereby undertake to contribute to the assets of the assets of the company on the event of its being wound up; or

(c) an unlimited company, that is to say, a company having no limit on the liability of its members.

6. Memorandum of company limited by shares.

In the case of a company limited by shares.-

(a) the memorandum shall state.--

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

(ii) The address of the registered office;

(iii) the objects of the company, and, except in the case of trading companies, the territories to which they extend;

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

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

(b) each subscriber of the memorandum shall take at least one share;

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

7. Memorandum of company limited by guarantee.

In the case of a company limited by guarantee--

(a) the memorandum shall state--

(i) the name of the company, with "limited" as the last word in its name.

(ii) the address of the registered office;

(iii) the objects of the company, and, except in the case of trading companies, the territories to which they extend;

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

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

(b) if the company has a share capital--

- (i) the memorandum shall also state the amount of share capital with which the company proposes to be registered and the division thereof into shares of a fixed amount;
- (ii) each subscriber of the memorandum shall take at least one share;
- (iii) each subscriber shall write opposite to his name the number of shares he takes.

8. Memorandum of unlimited company.

In the case of an unlimited company

- (a) the memorandum shall state-
 - (i) the name of the company;
 - (ii) the address of the registered office of the company;
 - (iii) the objects of the company and, except in the case of trading companies, the territories to which they extend.
- (b) if the company has a share capital-
 - (i) each subscriber of the memorandum shall take at least one share;
 - (ii) each subscriber shall write opposite to his name the number of shares he takes.

9. Printing and signature of memorandum.

The memorandum of every company shall--

- (a) be printed;
- (b) be divided into paragraphs numbered consecutively; and
- (c) be signed by each subscriber, who shall add his address and description in the presence of at least two witnesses who shall attest the signature.

10. Restriction on alteration of memorandum.

- (1) A company shall not alter the conditions on continued in its memorandum except provisions is made in the Act.
- (2) Only those provisions which by any other specific provision contained in this Act, are required to be stated in the memorandum of the company concerned shall be deemed to be the conditions contained in its memorandum.
- (3) Other provisions contained in the memorandum, including those relating to the appointment of director, managing agent or manager may be altered in the same manner as the articles of the company, but if there is any express provision in this Act permitting the alteration of such provisions in any other manner, they may also be altered in such other manner.
- (4) All reference to the articles of a company in this Act shall be construed as including references to the other provisions contained in its memorandum as referred to in sub-section (3).

11. Name of company and change of name.

- (1) A company shall not be registered by a name identical with that by which a company in existence is already registered, or so nearly resembling the name that there is likelihood of using the name to deceive, except where the company in existence is in the course of being dissolved and signifies its written consent in such manner as the Registrar requires.
- (2) If a company, through inadvertence or otherwise, is, without the consent referred to in sub-section (1), registered by a name identical with that by which a company in existence is previously is registered, or so nearly resembling the name that there is likelihood of using the name to deceive, the first mentioned company shall, on he direction of the Registrar, change its name within a period of one hundred and twenty days.
- (3) If a company makes a default in complying with the direction made under sub-section (2), the company shall be punishable with fine of five hundred take for every day during which the default continues and every officer who is in default shall be punishable with fine of one hundred taka for every day during which the default continues.
- (4) Except with the previous consent in writing of the Government, no company shall be registered by a name which is declared by the Government by notification in the official Gazette, as undesirable:

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

- (5) No company shall be registered by a name containing in any form the name or any abbreviation of the name of the United Nations or of any subsidiary body set up by the United Nations or of the World Health Organisation unless the company has obtained the previous authorisation in writing of the Secretary General in the case of the United Nations or the subsidiary body as aforesaid or of the Director General of the World Health Organisation in the case of that Organisation.
- (6) Any company may, by special resolution and subject to the approval of the Registrar signified in writing, change it name.
- (7) Were a company changes its name, the Registrar shall enter the new name on the register in place of the former name, and shall issued a certificate of incorporation in its new name to meet the circumstances of the case and on the issue of such a certificate, the change of name shall be complete.
- (8) The change of name shall not change any rights or obligations of the company, or render defective any legal proceedings by or against the company; and any legal proceedings that might have been continued or commenced against it by its former name may be continued or commenced against it by its new name.

(9) A company may, on payment of such fee as may be prescribed, apply to the Registrar for information whether any company is registered or proposed to be registered by a name specified in the application and the Registrar shall furnish the required information within a period of thirty days from the date of receipt of the application.

12. Alternation of memorandum.

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

- (a) to carry on its business more economically or more efficiently; or
- (b) to attain its main purpose by new or improved means; or
- (c) to enlarge or change the local area of its operations; or
- (d) to carry on some business which, under the existing circumstances. may conveniently or advantageously be combined with the business of the company; or
- (e) to restrict or abandon any of the objects specified in the memorandum; or
- (f) to sell or dispose of the whole or any part of the undertaking of the company; or
- (g) to amalgamate with any other company or body of persons.

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

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

- (a) that sufficient notice has been given to every holder of debentures of the company, and to any person or class of person whose interest will, in the option of the Court, be affected by the alteration; and
- (b) that, with respect to every creditor who in the opinion of the Court is entitled to object, and who signifies his objections in manner directed by the Court, either his consent to the alteration has been obtained or his debt or claim has been discharged or has been determined, or has been secured to the satisfaction of the Court;

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

13. Power of Court when confirming alteration.

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

14. Exercises of discretion by Court.

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

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

15. Procedure on confirmation of the alternation.

A certified copy of the order confirming the alternation, together with a printed copy of the memorandum as altered, shall be filed by the company with the Registrar within ninety days from the date of the order or within such time as may be extended by the court, and he Registrar shall register the same. and shall certify the registration under his hand, and the certificate shall be conclusive evidence that all the requirements of this Act, with respect to the alteration and the confirmation thereof, have been complied with, and hence forth the memorandum so altered shall be the memorandum of the company.

16. Effect of failure to register within extended time.--No such alteration shall have any operation until registration thereof has been duly effected in accordance with the provisions of section 15, and if such registration is not effected within the period specified in that section such alteration and the order of the Court confirming the alteration, and all proceedings connected there with shall, at the expiration of the period specified under that section become absolutely null and void :

Provided that the Court may, on sufficient cause shown, revive the order on application made within a further period of thirty days after the said period.

Articles of Association,

17. Registration of articles.

(1) A company limited by guarantee and an unlimited company shall, and a company limited by shares may. have an articles of association herein provision shall be made for regulating the affairs of the company; and the article shall be signed by the subscribers of the memorandum and be registered together with the memorandum.

(2) Articles of association may adopt all or any of the regulations contained in Schedule I, and shall in any event be deemed to contain regulations identical with or to the same effect as regulation 56, 66, 71, 78, 79, 80, 81, 82, 95, 97, 105, 108, 112, 113, 114, 115, and 116 contained in that Schedule :

Provided that regulations 78, 79, 82, 81, and 82 shall not be deemed to be included in the articles of any private company except a private company which is the subsidiary company of a public company :

Provided further that regulation, 108 shall be deemed to require that a statement of the reasons why of the whole amount of any item of expenditure which may in fairness be distributed over several years, only a portion thereof is charged against the

income of the year, shall be shown in the profit and, loss account, unless the company in general meeting shall determine otherwise.

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

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

18. Application of Schedule I.

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

19. Form and signature of articles.

Articles shall

(a) be printed;

(b) be divided into paragraphs numbered consecutively;

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

20. Alteration of articles by special resolution.

Subject to the provisions of this Act and to the conditions contained in its memorandum, a company may by special resolution alter, exclude from or add to its articles: and any alteration, exclusion or addition so made shall be as valid as if originally contained in the articles, and be subject in like manner to alteration, exclusion or addition by special resolution.

21. Effect of alteration in memorandum or articles.

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

General Provisions

22. Effect of memorandum and articles.

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

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

23. Registration of memorandum and articles.

(1) The memorandum and articles if any shall be filed with the Registrar who if satisfied that the requirements of this Act have been complied with shall retain and register them within thirty days from the date of their receipt and in the event of refusal he shall communicate the grounds within ten days after that period to the company.

(2) An person on being aggrieved by a refusal of the Registrar under sub-section (1) may make an appeal to the Government within thirty days of the receipt of the refusal order.

(3) The petition of appeal shall be accompanied by a treasury challan showing of a fee of two hundred fifty taka to be credited under the head of account specified in this behalf.

(4) The decision of the Government in an appeal under this section shall be final.

24. Effect of registration.

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

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

25. Conclusiveness of certificate of incorporation.

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

(2) A declaration by an advocate entitled to appear before the High Court Division who is engaged in the formation of a company or by a person named in the articles as a director manager or secretary of the company of compliance with all or

any of the said requirements shall be filed with the Registrar and the Registrar may accept such a declaration as sufficient evidence of compliance.

26. Copies of memorandum and articles to be given to members.

(1) Every member of a company may request for a copy of the memorandum, and also for a copy of the articles, if any, and if such request is made in writing alongwith a fee of taka fifty or such less fee as may fixed by the company, the company shall, within fourteen days from the date of such request, send the copy to that member.

(2) If a company makes default in complying with the requirements of this section, it shall be liable for each offence to a fine not exceeding two hundred taka and every officer of the company who is knowingly and willfully in default shall be liable to like penalty.

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

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

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

Association not for profit

28. Power to dispense with Limited In name of charitable and other companies.

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

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

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

(4) A licence under this section may at any time be cancelled by the Government and upon cancellation the Registrar shall enter the word "Limited" at the end of the name of the association upon the register and the association shall cease to enjoy the exemptions and privileges granted by this section:

Provided that before a licence is sop cancelled the Government shall give to the association a notice in writing of its intention and the grounds their of and shall afford the association an opportunity of submitting a representation in opposition to the cancellation.

Companies Limited by Guarantee

29. Provision as to companies limited by guarantee.

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

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

PART III

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

Distribution of Share Capital

30. Nature of shares.

- (1) The shares or other interests of any member a company shall be deemed to be movable property and shall be transferable in manner provided by the articles of the company.
- (2) Each share in a company having a share capital shall be distinguished by the appropriate number.

31. Certificate of shares or stock.

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

32. Definition of Member.

- (1) Every subscriber of the memorandum of company shall be deemed to have agreed to become a member of the company and on its registration shall be entered as a member in its register of members.
- (2) Every other person who agrees to become a member of a company, and whose name is entered in its register of members shall be a member of the company.

33. Membership of holding company

- (1) Except in the cases mentioned in this section a body corporate cannot be a member of a company which is its holding company and any allotment or transfer or shares in a company to its subsidiary shall be void.
- (2) Nothing in this section shall apply; namely--
 - (a) Where the subsidiary is the legal representative of a deceased member of the holding company; or
 - (b) Where the subsidiary is concerned as trustee unless the holding company or a subsidiary thereof is beneficially interested under the trust and is not so interested only by way of security for the purposes of a transaction entered into by it in the ordinary course of business which includes the lending of money.
- (3) This section shall not prevent a subsidiary from continuing to be a member of its holding company if it was a member thereof either at the commencement of this Act or before becoming a subsidiary of the holding company; but except in the cases referred to in sub-section (2), the subsidiary shall have no right to vote at meetings of the holding company or of any class of members thereof.
- (4) Subject of sub-section (2) sub-sections (1) and (3) shall apply in relation to a nominee for a body corporate which is a subsidiary as if reference in the said sub-sections (1) and (3) to such a body corporate and a subsidiary included reference to a nominee for it.
- (5) In relation to a holding company which is either a company limited by guarantee or an unlimited company the reference in this section to shares shall, whether or not the company has a share capital be construed as including a reference to the interest of its members as such whatever be the form of that interest.

34. Register of member

- (1) Every company shall keep in one or more books of register of its members, and enter therein the following particulars:--
 - (i) the name and addresses, and the occupations, if any of the members;
 - (ii) in the case of a company having a share capital, a statement of the shares held by each member, distinguishing each share by its number, and of the amount paid or agreed to be considered as paid on the shares of each member;
 - (iii) the date at which each person was entered in the register as a member;
 - (iv) the date at which any person ceased to be a member.

(2) If a company makes default in complying with the requirements of this section. It shall be liable to as fine not exceeding one hundred taka for everyday during which the default continues and every officer of the company who knowingly and willfully authorise or permits the default shall also be liable to a like penalty.

35. Index of members of company

- (1) Every company having more than fifty member shall, unless the register of members is in such a form as to constitute in itself an index, keep an index of the names of the members of the company and shall within fourteen days after the date on which any alteration is made in the register members make any necessary alteration in the index.
- (2) The index which may be in the form of a card index shall in respect of each member contain a sufficient indication to enable the account of that member to be readily found.
- (3) If default is made in complying with the section the company shall be liable to a fine not exceeding five hundred taka and every officer of the company who is knowingly and willfully in default shall be liable to a like penalty.

36. Annual list of members and summary

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

(2) The following shall be stated in the list namely:--

(a) the names, addresses, nationality and occupation of all past and [present members;

(b) the number of shares held by each of the existing members at the date of return specifying the shares transferred since the date of last return or, in the case of first return, since the date of incorporation, by persons who are still members and by persons who have ceased to be members respectively and also the dates of registration of such transfer; and

(c) a summary distinguishing between shares issued for cash and shares issued as fully or partly paid up otherwise than in cash and specifying the following:-

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

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

(3) the amount called up on each share;

(4) the total amount of calls received;

(5) the total amount of calls unpaid;

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

(7) the total number of shares forfeited;

(8) the total amount of shares or stock for which share warrants are outstanding at the date of the last return;

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

(10) the latest date on which the general meeting should have been held and whether it was actually so held;

(11) the number of shares or amount of stock comprised in each sharewarrant;

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

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

(3) The above list and summary shall be contained in a separate part of the register of members, and shall be completed within twenty-one days after the day of the first or only ordinary general meeting in the year; and the company shall, within that period file with the Registrar a copy signed by two directors, including the managing director, or where there is no managing director, by a director, and managing agent or manager or secretary of the company together with a certificate from such persons that the list and summary state the facts as they stood on the day aforesaid.

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

(5) If a company makes default in complying with the requirements of this section, it shall be liable to a fine not exceeding two hundred taka for every day during which the default continues, and every officer of the company who knowingly and willfully authorises or permits the default shall be liable to the like penalty.

37. Trust not to be entered on register

No notice of any trust, expressed, implied or constructive, shall be entered on the register, or be receivable by the Registrar.

38. Transfer of shares

(1) An application for the registration of the transfer of shares in a company may be made either by the transferor or the transferee, provided where such application is made by the transferor no registration shall in case of partly paid shares be effected unless the company gives notice of the application to the transferee and subject to the provisions of sub-section (7) the company shall, unless objection is made by the transferee two weeks from the date of receipt of the notice, enter in its register of members the name of the transferee in the same manner and subject to the same conditions as if the application for registration was made by the transferee.

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

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

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

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

(5) If default is made in complying with sub-section (4) of this section, the company shall be liable to a fine not exceeding one hundred taka for everyday during which the default continues and every director, manager secretary other officer who is knowing by a party to the default shall, be liable to a like penalty.

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

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

39. Certification of transfer.

(1) The certification by a company of any instrument of transfer of shares in, or debentures of, the company, shall be taken as a representation by the company to any person acting on the faith of the certification that there have been produced to the company such documents as on the face of them show a prime facie title to the shares or debentures in the transfer named in the instrument of transfer, but not as a representation that transferor has complete title to the shares or debentures.

(2) Where any person acts on the faith of an erroneous certification made by a company negligently, the company shall be under the same liability to him as if the certification has been made fraudulently.

(3) For the purposes of this section-

(a) an instrument of transfer shall be deemed to have certificated if it bears the words 'certificate lodged' or words to the like effect;

(b) the certification of an instrument of transfer shall be deemed to be made by a company, if-

(i) the person issuing the certificated instrument is a person authorised to issue such instruments of transfer on the company's behalf; and

(ii) the certification is signed by any officer or servant of the company or any other person authorised to certificate transfers on the company's behalf, or if a body corporate has been so authorised by any officer or servant of that body corporate;

(c) a certification shall be deemed to be signed by any person if it purports to be authenticated by his signature, unless it is shown that the signature was placed there neither by himself nor by any person authorised to use the signature for the purpose of certificating transfers on the company's behalf.

40. Transfer by legal representative.

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

41. Inspection of register of members.

(1) The register of members commencing from the date of the registration of the company and where section 35 applies also the index of members shall be kept at the registered office of the company, and such register and index shall, except when closed under the provisions of this Act shall during business hours subject to such reasonable restrictions as the company in general meeting impose, so that not less than two hours in each day be allowed for inspection, be kept open to the inspection of any member free of cost and to the inspection of any other person on payment of one hundred taka or such less sum as the company may prescribe for each inspection, and any such member or other person may make extract therefore.

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

Explanation:

For the purpose of this sub-section in reckoning the ten working days, the non-working days and days on which the transfer books of the company remain closed shall be excluded.

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

42. Power to close register.

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

43. Power of Court to rectify register

(1) If

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

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

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

(2) The Court may either refuse the application, or may order rectification of the register and payment by the company of any damages sustained by any party aggrieved and may also make such order as costs as it may consider proper.

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

44. Notice to Registrar for rectification of register.

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

45. Register to be evidence.

The register of members shall be prima facie evidence of any matter by this Act directed authorised to be inserted therein.

46. Issue of share warrants to bearer

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

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

47. Effect of sharewarrant.

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

48. Registration of name of bearer of share warrant.

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

49. Position of bearer of Share-warrant.

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

50. Entries in register when share-warrant issued.

(1) On the issue of share-warrant, the company shall strike out of its register of members the name of the member then entered therein as holding the shares or stock specified in the warrant, as if he had ceased to be a member and shall enter in the Register the following particulars namely:-

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

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

(iii) the date of issue of the warrant.

(2) If a company makes default in complying with the requirements of this section it shall be liable to a fine not exceeding two hundred taka for every day during which the default continues and every officer of the company who knowingly and willfully continues or permits the default shall also be liable to a like penalty.

51. Surrender of Share warrant.

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

52. Power of company to arrange for different amounts being paid on shares

A company, if so authorised by its articles may do any one or more of the following things, namely--

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

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

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

53. Power of company limited by shares to alter its share capital.

(1) A company limited by shares if so authorised by its articles may alter the conditions of its memorandum, as follows that is to say it may--

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

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

(c) convert all or any of its paid-up shares into stock and reconvert that stock into paid-up shares of any denomination.

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

(e) cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the share so cancelled.

(2) the powers conferred by this section can only be exercised by the company in its general meeting.

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

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

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

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

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

55. Effect of conversion of shares into stock.

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

56. Notice of increase of share capital or of members.

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

(2) The notice under sub section (1) shall include particulars of the classes of shares, affected and the conditions, if any, subject to which the new shares are to be issued.

(3) If a company makes a default in complying with the requirements of this section, it shall be liable to a fine not exceeding two hundred taka for every day during which the default continues, and every officer of the company who knowingly and willfully authorises or permits the default shall be liable to a like penalty.

57. Application of premiums received on issue of shares.

(1) Where a company issues shares at a premium, whether for cash or otherwise, a sum equal to the aggregate amount or value of the premiums on those shares, shall be transferred to an account, to be called "the share premium account" and the provisions of this Act relating to the reduction of the share capital of a company shall, except as provided in this section, apply as if the share premium account were paid-up share capital of the company.

(2) The share premium account may be applied by the company--

(a) in paying up unissued shares of the company to be issued to member of the company as fully paid bonus shares;

(b) in writing of the preliminary expenses of the company,

(c) in writing off the expenses of, or the commission paid or discount allowed, on any issue of shares or debentures of the company; or

(d) in providing for the premium payable on the redemption of any redeemable preference shares or of any debentures of the company.

(3) Where a company has, before the commencement of this Act issued any shares at a premium this section shall apply as if the shares had been issued after the commencement of this Act:

Provided that any part of the premium which has been so applied that it does not at the commencement of this Act form an identifiable part of the company's reserves within the meaning of Schedule XI shall be disregarded in determining the sum to be included in the share premium account.

Reduction of Share Capital

58. Restriction on purchase by company or loans by Company for purchase of its own shares

(1) No company limited by shares shall have power to buy its own shares or the shares of a public company of which it is a subsidiary company, unless the consequent reduction of capital is effected and sanctioned in the manner provided by sections 59 to 70.

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

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

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

(4) Nothing in this section shall affect the right of a company to redeem any shares issued under section 154.

59. Reduction of share capital.

(1) Subject to confirmation by the Court, a company limited by shares, if so authorised by its articles, may by special resolution reduce its share capital in any way, and in particular the company may, as part of this general power--

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

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

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

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

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

60. Application to Court for confirming order

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

61. Addition to name of company of "and reduced"

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

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

62. Objections by creditors and settlement of list of objecting creditors:

(1) Where the proposed reduction of share capital involves either diminution of liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, without permission of the Court and in any other case if the Court so permits every creditor of the company, who at the date fixed by the Court is entitled to any debt or claim which if that date were the commencement of the winding up of the company would be admissible in proof against the company shall be entitled to object to the reduction.

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

63. Power to dispense with consent of creditor on security being given for his debt

Where a creditor entered on the list of creditors whose debt or claim is not discharged or determined does not consent to the reduction, the Court may, if it thinks fit dispense with the consent of the creditor on the company securing payment of his debt or claim by appropriating as the Court may direct the following amount that is to say--

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

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

64. Order confirming reduction

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

65. Registration of order minutes of reduction

(1) The Registrar shall, on production to him, register the following documents, namely:--

(a) the certified copy of the order of the Court confirming the reduction of the share capital of a company.

(b) a copy of the minutes approved by the Court, showing the following :

(i) the amount of the reduced share capital;

(ii) the number of shares into which it is to be divided;

(iii) the nominal value of each such share;

(iv) the amount, if any, at the date of registration, deemed to be paid up on each such share.

(2) On the registration under sub-section (1) and not before, the resolution for reducing share capital as confirmed by the order so registered shall take effect.

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

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

66. Minutes to form part of memorandum

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

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

67. Liability of members in respect of reduced shares

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

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

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

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

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

68. Penalty on concealment of name of creditor:

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

69. Publication of reasons for reduction:

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

70. Increase and reduction of share capital of a company limited by guarantee:

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

Variation of Shareholder's Rights

71. Rights of holders of special classes of shares:

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

(2) An application under sub-section (1) must be made within fourteen days after the date on which the consent was given or the resolution was passed, as the case may be, under that sub-section and may be made on behalf of the shareholders entitled to make the application by such one or more of their numbers as they may appoint in writing for the purpose.

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

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

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

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

Registration of Unlimited Company as Limited

72. Registration of unlimited company as limited:

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

(2) On registration in pursuance of this section, the Registrar shall close the former registration of the company, and may dispense with the delivery to him of companies of any documents with copies of which he was furnished on the occasion of the original registration of the company; but, save as aforesaid, the registration shall take place in the same manner and shall have effect as if it were the first registration of the company under this Act.

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

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

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

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

(2) the portion of the share capital increased or specified under sub-section (1) shall be called the reserved share capital.

Reserve Capital of Limited Company

74. Reserve Capital of Limited company:

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

Unlimited Liability of Directors

75. Limited company may have directors with unlimited liability

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

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

(3) If any director or proposer makes default in adding a statement as required by sub-section (1), or if any promoter or officer of the company makes default in giving a notice as required by that sub-section, the shall be liable to a fine not exceeding five thousand taka and shall also be liable for any damage which the person so elected or appointed may sustain from the default, but the liability of the person elected or appointed shall not be affected by the default.

76. Special resolution of limited company making liability of directors unlimited.

(1) A limited company if so authorised by its articles may, by special resolution, alter its memorandum so as to render unlimited the liability of its directors or of any director. (2) Upon the passing of any special resolution under sub-section (1), the provisions thereof shall be valid as if they had been originally contained in the memorandum.

PART IV

MANAGEMENT AND ADMINISTRATION

Office and Name

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

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

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

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

78. Publication of name by a limited company - Every limited company-

(a) Shall paint or affix, and keep painted or affixed, in letters easily legible and in Bengali or English characters, its name in a conspicuous position on the frontside of every office or place in which its business is carried on:

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

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

79. Penalties for non-publication of name - (1) If a limited company maines default in complying with the provisions of section 78 (a), it shall be liable to a fine not exceeding five hundred taka for everyday during which the default continues and every officer of the company, who knowingly and willfully authorises or permits the default, shall be liable to a like penalty.

(2) If any officer of a limited company, or any person on its behalf--

(a) uses or authorises the use of any seal purporting to be a seal of the company whereon its name is not engraven as required by section 78 (b); or

(b) issues or authorises the issue or any bill-head, letter paper, notice, advertisement or other official publication of the company, or signs or authorises on be signed on behalf of the company any bill of exchange hundi, promissory note, endorsement, cheque or order for money or goods, or issues or authorises to be issued any bill of parcels, invoice, receipt or letter of credit of the company, wherein its name is not mentioned as required by section 78 (b);

he shall be liable to a fine not exceeding one thousand taka, and shall further be personally liable to the holder of any such bill, hundi, promissory note, cheque or order for the amount thereof, unless the same is duly paid by the company.

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

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

Meeting and Proceeding

81. Annual general meeting--(1) Every company shall in each year of the Grogorian calendar hold in addition to any other meetings a general meeting as its annual general meeting and shall specify the meeting as such in the notices calling it; and not more than fifteen months shall elapse between the date of one annual general meeting of a company and that of the next:

Provided that a company may hold its first annual general meeting within a period of not more than eighteen months from the date of its incorporation; and if such general meeting is held within that period, it shall not be necessary for the company to hold any annual general meeting in the year of its incorporation or in the following year;

Provided further that the Registrar may, on an application made by a company within thirty days from the date of expiry of the period specified for holding the annual general meeting as aforesaid, extend the time within which any annual general meeting, not being the first annual general meeting shall be held, by a period not exceeding ninety days or not exceeding the 31st December of the calendar year in relation to which the annual general meeting is required to be held, whichever is earlier.

(2) If a company defaults in complying with the provisions of sub-section (1), the Court may, on the application of any member of the company, call or direct the calling of a general meeting of the company and give such ancillary or consequential direction as the Court thinks expedient in relation to the calling holding and conducting of the meeting.

82. Penalty for default in complying with section 81--If default is made in holding a meeting of the company in accordance with sub- section (1) of section 81, or in complying with any directions of the Court under sub-section (2) thereof, the company and every officer of the company who is in default, shall be punishable with fine which may extend to ten thousand taka and in case of a continuing default, with a further fine which may extend to two hundred fifty taka for every day after the first day during which such default continues.

83. Statutory meeting and statutory report of company--(1) Every company limited by shares and every company limited by guarantee and having a share capital shall, within a period of not less than one month and not more than six months from the date at which the company is entitled to commence business, hold a general meeting of the members of the company; in this Act such meeting is referred to as "the statutory meeting".

(2) The Board of Directors shall, in accordance with the other provision of this Act, prepare a report, in this Act referred to as "statutory report" and shall at least 21 days before the day on which the statutory meeting is not to be held, forward the report to every member of the company:

Provided that if the report is forwarded later than the time as is required above, it shall notwithstanding that fact, be deemed to have been duly forwarded if any member entitled to attend and vote at the meeting does not object to such forwarding.

(3) The statutory reports shall set out the following namely--

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

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

(c) showing under separate proper headings--

(i) an abstract of receipts of the company and of the payments made thereout up to a date within seven days prior to the date of the report;

(ii) the receipts of the company from the shares and debentures and other sources, the payments made thereout and particulars of the concerning balance remaining in hand;

(iii) any commission or discount paid or to be paid on the issue or sale of shares or debentures; and

(iv) an account or estimate of the preliminary expenses of the company;

(d) the names, addresses and occupations of the directors of the company and of its auditors; and also, if there be any, of its managing agent, manager and secretary. and the change, if any which have occurred in such names addresses in and occupations since the date of the incorporation of the company;

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

(f) the extent, if any, due on calls from every director, from managing agent, every partner of the managing agent, every firm in which the managing agent is a partner, and where the managing agent is a private company, every director thereof;

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

(4) The statutory report shall be certified as correct by not less than two directors of the company, one of whom shall be the managing director where there is one.

(5) After the statutory report has been certified as required by sub-section (4), the Board of Directors the company shall, in so far as the report relates to the shares allotted by the company, the cash received in respect of such shares and the receipts and payments of the company, get it certified as correct by the auditors of the company.

(6) The Board of Director shall cause a copy of the statutory report certified as if required by this section to be delivered to the Registrar for registration forthwith, after copies thereof have been sent to the members of the company.

(7) The Board of Directors shall prepare a list showing the names, addresses and occupation of the members of the company, and the number of shares held by them respectively, to be produced at the commencement of the statutory meeting and to remain open and accessible to any member of the company during the continuance of the meeting.

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

(9) The meeting may adjourn from time to time and at any adjourned meeting, any resolution of which notice has been given in accordance with the provisions of this Act, Whether before or after the former meeting, may be passed; and the adjourned meeting shall have the same powers as an original meeting.

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

(11) If default is made in complying with the provisions of this section, every director or other officer of the company who is in default shall be punishable with fine which may extend to five thousand taka.

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

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

shall call such meeting on the requisition of such members as have, on the date of submitting the requisition, not less than one tenth of the total voting power in relation to the issues on which the meeting is called.

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

(3) If the directors do not, within twenty one days from the date of deposit of the requisition, proceed duly to call a meeting on a day not later than forty-five days from the date of the deposit of the requisition, then the requisitioned, or a majority of them in value, may themselves call the meeting, but any meeting so called shall be held before the expiration of three months from the date of the deposit of the requisition.

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

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

85. Provision as to meeting and votes---(1) The following provisions shall have effect with respect to meeting of a company notwithstanding any provisions made in the articles of association of the company in this behalf:

(a) an annual general meeting may be called by fourteen days notice in writing, and a meeting other than an annual general meeting or a meeting for the passing of a special resolution may be called by twenty one day's notice in writing: Provided that a meeting may be called by shorter notice than aforesaid, if it is so agreed in writing--

(i) in the case of an annual general meeting, by all the members entitled to attend and vote thereat; and

(ii) in the case of any other meeting by the members of the company holding, if the company has a share capital not less than 95 percent of such part of the paid-up share capital of the company as gives a right to vote at the meeting, or having if the company has no share capital, not less than 95 percent of the total voting power exercisable at the meeting;

(b) notice of the meeting of a company with the statement of the business to be transacted at the meeting shall be served on every member in the manner in which notices are required to be served by Schedule 1; but accidental omission to give notice to, or the non-receipt of notice by, any members shall not invalidate the proceedings at any meeting;

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

(d) an instrument appointing a proxy, if * the form set out i regulation 68 of Schedule I, shall not be questioned on the ground that it fails to comply with any special requirements specified for such instruments by the articles; and

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

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

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

(b) in the case of a private company whose number of members does not exceed six, two members and if such number exceeds six, three members, and in the case of any other company, five members personally present shall be a quorum;

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

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

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

(f) the instrument appointing a proxy shall be in writing under the hand or the appoint or of his attorney duly authorised in writing or if the appointer is a corporation or a company, either under seal or under the hands of an officer or an attorney duly authorised: Provided that the appointment of proxy shall not be allowed in case of companies formed under section 28 and a proxy may or may not be a member of the company.

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

86. Representation of companies at meetings of other companies of which they are members-- A company which is a member of another company may, by resolution of the directors, authorise any of its official or any other person to act as its representative at any meeting of that other company, and the person so authorised shall be entitled to exercise the same powers on behalf of the company which he represents as if he were an individual shareholder of that other company.

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

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

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

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

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

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

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

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

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

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

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

(4) If a company makes default in so filing with the registrar copy of a special or extraordinary resolution it shall be liable to a fine not exceeding one hundred taka for every day during which the default continues.

(5) If a company makes default in embodying in complying with the provisions of sub-section (2) or (3) it shall be liable to a fine not exceeding fifty taka for each copy in respect of which default is made.

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

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

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

(3) Until the contrary is proved--

(a) A general meeting of the company or a meeting of its directors, in respect of the proceedings of which minutes have been made, shall be deemed to have been duly called and held: and

(b) the proceedings of such meeting shall be deemed to have been held as described in the minutes and the appointments of directors or liquidators at such meeting shall be deemed to be valid:

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

(5) Any member shall at any time after fourteen days from the meeting, be entitled to be furnished within seven days after he has made a request in that behalf to the company with a copy of any minutes referred to in subsection (4) at a charge not exceeding ten taka for every hundred words.

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

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

Directors

90. Directors obligatory - (1) Every public company and a private company which is a subsidiary of a public company shall have at least three directors.

(2) Every private company other than a private company mentioned in sub-section (1) shall have at least two directors;

(3) Only a natural person may be appointed a director.

91. Appointment of directors: - (1) Notwithstanding anything contained in the articles of a company--

(a) the subscribers of the memorandum shall be deemed to be the directors of the company until the first director are appointed.

(b) the directors of the company shall be elected by the members from among their number in general meeting; and

(c) any casual vacancy occurring among the directors may be filled in by the other directors but the person the appointed shall be a person qualified to be elected a director under clause (b) and shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last appointed a director.

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

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

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

(b) in the case of companies having a share capital -

(i) signed the memorandum for a number of shares not less than his qualification shares; or

(ii) taken from the company and paid or agreed to pay for his qualification shares; or

(iii) signed and filed with the registrar a contract in writing to take from the company and pay for his qualification shares; or

(iv) made and filed with the Registrar any affidavit to the effect that a number of shares not less than his qualifications share are registered in his name.

(2) On the application for registration of the memorandum and article, if any, of a company, the applicant shall file with the Registrar a list of the persons who have consented to be directors of the company, and, if this list contains the name of any person who has not so consented, the applicant shall be liable to fine not exceeding two thousand taka:

Provided that nothing in this section shall apply to the appointment of the chief executive, by whatever name called, of any insurance company or a banking company as a director of that company if the article; thereof provides for such appointment.

93. Consent of candidate for directorship - (1) Every person, proposed as a candidate for the office of a director shall sign, and file with the company, his consent in writing to act as a director, if appointed.

(2) A person shall not act as a director of the company unless he has, within thirty days of his appointment, signed and filed with the Registrar his consent in writing to act as such director.

94. Disqualifications of directors - (1) A person shall not be capable of being appointed director of a company, if -

(a) he has been found to be of unsound mind by a competent court and the finding is in force; or

(b) he is an undischarged insolvent; or

(c) he has applied to be adjudicated as an insolvent and his application is pending; or

(d) he has not paid any call in respect of shares of the company held by him, whether alone or jointly with others, and six months have elapsed from the last day fixed for the payment of the call; or

(e) he is a minor.

(2) A company may in its articles provide additional grounds for disqualification of a director.

95. Notice of meetings:--Notice of every meeting of the Board of Directors of a company shall be given in writing to every director for the time being in Bangladesh and at his address in Bangladesh.

96. Meeting of Board:--In the case of every company a meeting of its Board of Directors shall be held at least once in every three and at least four such meetings shall be held in every year.

97. Qualification of Director:--(1) Without prejudice to the restrictions imposed by section 92, it shall be the duty of every director to hold qualification share to be specified in the articles and, if he is not already qualified, he shall obtain his qualification within sixty days after his appointment, or such shorter time as may be fixed by the articles.

(2) If, after the expiration of the period mentioned in sub-section (1) any unqualified person acts as a director of the company, he shall be liable to a fine not exceeding two hundred taka for every day between the expiration of the said period and the last day on which it is proved that he acted as a director (both days inclusive).

98. Validity of act of director:--The acts of a director shall be valid notwithstanding any defect that may afterwards be discovered in his appointment of qualification:

Provided that nothing in this section shall be deemed to give validity to act done by a director after the appointments of such director has been shown to be invalid.

99. Ineligibility of bankrupt to act as director:--(1) If any person being an undischarged insolvent acts as director or managing agent or manager of any company, he shall be liable to imprisonment for a term not exceeding two years or to a fine not exceeding five thousand taka or to both.

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

100. Prohibition on assignment of office by director:-- Any assignment of his office made after the commencement of this Act by any director shall void and shall be of no effect.

101. Appointment and terms and office of alternate directors:-- (1) The Board of Directors of a company may, if so authorised by its articles or by a resolution passed by the company in general meeting, appoint an alternate director, to act for a director hereinafter in this section called the original director during his absence for a continuous period of not less than three months from Bangladesh.

(2) An alternate director appointed under sub-section (1) shall not hold office as such for a period longer than that permissible to the original director in whose place he has been appointed and shall vacate the office, immediately after he receives information that the original director has returned to Bangladesh.

(3) If the term of office of the original director is determined before he so returns to Bangladesh any provision for automatic reappointment of retiring directors in default of another appointment shall apply to the original and not to the alternate director.

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

Provided that--

(a) nothing in this section shall operate to deprive any person of any exemption or right to be indemnified in respect of anything done or omitted to be done by him while the said provision was in force before the commencement of this Act; and

(b) a company may, in pursuance of the said provision indemnify any such director, manager, officer or auditor against any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgement is given in his favour or in which he is acquitted or in connection with any application under section 3 of this Act in which relief is granted to him by the Court.

103. Loan of Director:--(1) No company, hereinafter in this section referred to as the lending company, shall make any loan or give any guarantee or provide any security in connection with a loan made by a third party to--

(a) any director of the lending company

(b) any firm in which any director of the lending company is a partner;

(c) any private company of which any director of the lending company is a director or member; or

(d) any public company, the managing agent manager or director where of is accustomed to act in accordance with the directions or instruction of any director of the lending company:

Provided that nothing in this section shall apply to the making of a loan or giving of any guarantee or providing any security by a lending company. if--

(i) such company is a banking company or a private company not being a subsidiary of a public company, or if such company as a holding company makes the loan or gives the guarantee or provide the security to its subsidiary; and

(ii) the loan is sanctioned by the Board of Directors of any company and approved by the general meeting and, in the balance sheet, there is a specific mention of the loan, guarantee or security, as the case may be:

Provided further that, in no case the total amount of the loan shall exceed 50% of the paid up value of the shares held by such director in his own name

(2) In the event of any contravention of sub-section (1) every person who is a party to such contravention including in particular any person to whom a loan is made or on whose behalf a guarantee is given to or security provided shall be punishable with the fine which extend to five thousand taka or simple imprisonment for six months in lieu of fine and shall be liable jointly and severally to the lending company for the repayment of such loan or for making good any sum which the lending company may be called up to pay under the guarantee given or security provided by the lending company.

(3) this section shall apply to any transaction represented by a book debt which was from its inception in the nature of a loan or an advance.

104. Director not to hold office of profit:--No director or firm of which such director is a partner of private company of which such director is a Director shall, without the consent of the company in general meeting, hold any office of profit under the company except that of a managing director or manager or a legal or technical adviser or a banker.

Explanation:--For the purpose of this section, the office of managing agent shall not be deemed to be an office of profit under the company.

105. Sanction of Directors necessary for certain contracts:--Except with the consent of the directors, a director of the company, or the firm of which he is a partner or any partner of such firm or the private company of which he is a member or director, shall not enter into any contract for the sale, purchase or supply of goods and materials with the company.

106. Removal of directors--(1) The company may by extraordinary resolution remove any share-holder director before the expiration of his period of office and may by ordinary resolution appoint another person in his stead and the person so appointed shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected director.

(2) A director so removed shall not be re-appointed a director by the Board of Directors.

107. Restrictions on power of directors--The directors of a company or of a subsidiary company of a public company shall not, except with the consent of the company concerned in general meeting--

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

(b) remit any debt due by a director.

108. Vacation of office of director--(1) The office of a director shall be vacant, if--

(a) he fails to obtain within the time specified in section 97 (1) or at any time thereafter ceases to hold, the qualifications--haves, if any, necessary for his appointment; or

(b) he is found to be of unsound mind by a competent court; or

(c) he is adjudged an insolvent; or

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

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

(f) he absents himself from three consecutive meeting of the directors or from all meetings of the directors for a continuous period of three months, whichever is the longer, without leave of absent from the Board of Directors; or

(g) he or any firm of which he is a partner or any private company of which he is a director accepts a loan or guarantee from the company in contravention of section 103; or

(h) he acts in contravention of section 105.

(2) A company may provide by its articles that the office of director shall be vacated on grounds additional to those specified in sub-section (1).

109. Restriction on Managing Director---(1) No public company and no private company which is a subsidiary of public company shall, after the commencement of this Act, appoint any person as managing director, if he is a managing director or manager of an other company.

Provided the no appointment under this section shall be made without the consent of the company in a general meeting.

(2) Notwithstanding anything contained in sub-section (1) the government may, by order, permit any person to be appointed as a managing director of more than two companies if the government is satisfied that it is necessary that the companies should, for their proper working, function as a single unit and have a common managing director.

110. Managing director not to be appointed for more than five years at a time---(1) No company shall, after the commencement of this Act, appoint or employ any individual as its managing director for a term exceeding five years at a time.

(2) Any individual holding, at the commencement of this Act, the office of the managing director in a company shall, unless his term expires earlier, be deemed to have vacated his office immediately on the expiry of five years from the commencement of this Act.

(3) Nothing contained in sub-section (1) shall be deemed to prohibit the re-employment or the extension of the term of office of any person as managing director for a further period not exceeding five years on each occasion.

Provided that no such re-appointment, re-employment or extension of term of office shall be made without the consent of the company in general meeting.

Compensation for Loss of Office

111. Compensation for loss of office not permissible to managing or whole time directors or directors who are managers---(1) Payment may be made by a company, except in the cases specified in sub-section (3) and subject to the limit specified in sub-section (4), to a managing director, or a director holding the office of manager or in the whole time employment of the company, by way of compensation for loss of office or as consideration for retirement from office, or in connection with such loss or retirement.

(2) No payment mentioned in sub-section (1) shall be made by the company to any other director.

(3) No payment shall be made to a managing or other director in pursuance of sub-section (1) in the following cases namely:--

(a) where the director resigns his office in view of the reconstruction of the company, or of its amalgamation with any other body corporate or bodies corporate, and is appointed as the managing director, managing agent, manager or other officer of the reconstructed company or of the body corporate resulting from the amalgamation;

(b) where the director resigns his office otherwise than on the reconstruction of the company or its amalgamation as aforesaid.

(c) where the office of the director is vacated by virtue of any provision of this;

(d) where the company is being wound up, whether by or subject to the supervision of the Court or voluntarily, Provided the winding up was due to the negligence or default of the director;

(e) where the director has been guilty of fraud or breach of trust in relation to, or of gross negligence in, or gross mismanagement of, the conduct of the affairs of the company or any subsidiary or holding company thereof;

(f) where the director has instigated, or has taken part directly or indirectly in bringing about, the termination of his office.

(4) Any payment made to a managing or other director in pursuance of sub-section (1) shall not exceed the remuneration which he would have earned if he had been in office for the unexpired residue of his term or for three years, whichever is shorter, and such remuneration shall be calculate on the basis of--

(a) the average remuneration received by him during the period of three years immediately preceding the date on which he ceased to hold that office; and

(b) where he held that office for a period of less than three years, the average remuneration received by him during the period for which he held the office:

Provided that no such payment shall be made to the director in the event of the commencement of the winding up of the company, whether before, or at any time within twelve months after, the date on which he ceased to hold office, if the assets of the company on the winding up after deducting the expenses thereof, are not sufficient to repay to the share holders the share capital including the premiums, if any, contributed by them.

(5) Nothing in this section shall be deemed to prohibit the payment to a managing director, or a director holding the office of manager, of any remuneration for service rendered by him to the company in any other capacity.

112. Payment to director, etc. for loss of office, etc. in connection with transfer of undertaking or property.--(1) No Director of a company shall, in connection with the transfer of the whole or any part of any undertaking or property of the company, receive any payment, by way of compensation for loss of office, or as consideration for retirement from office, or in connection with such loss or retirement from the transferee of such undertaking or property or from any other person, unless particulars with respect to the payment proposed to be made by such transferee or person, including the amount thereof, have been disclosed to the members of the company and the proposal has been approve by the company in general meeting.

(2) Where a director of a company receives payment of any amount in contravention of sub-section (1), the amount shall be deemed to have been received by him in trust for the company.

(3) Sub-sections (1) and (2) shall not affect in any manner the operation of section 111.

113. Payment to director for loss of office etc. in connection with transfer of shares.--(1) Where in connection with the transfer to any persons of all or any of the shares in a company, being a transfer resulting from--

(i) an offer made to the general body of shareholders:

(ii) an offer by or on behalf of some other body corporate with a view to the company becoming a subsidiary of such body corporate or a subsidiary of its holding company;

(iii) an offer made by or on behalf of an individual with a view to his obtaining the right to exercise, or control the exercise, of not less than one-third of the total voting power at any general meeting of the company; or

(iv) any other offer which is conditional on acceptance to a given extent; and as a result of such transfer a director of the company loses his office or retires therefrom he shall not receive any payment by way of compensation for loss of office, or as consideration for retirement from office or in connection with such loss of retirement from the company of the transferee or from any other person.

Provided that on fulfilment of the requirements of the other provisions of this section, such director may receive such payment from the said transferee or other person.

(2) In the case referred to the proviso to sub-section (1) it shall be the duty of the director concerned to take all reasonable steps to secure that particulars with respect tot he payment proposed to be made by the transferee or other person including the amount thereof are included in or sent with the notice required to sent under section 112(2) to shareholders.

(3) If -

(a) any such director fails to take reasonable step in pursuance of sub section (2); or

(b) any person who has been properly required by any such director to include the particulars referred to in sub-section (2), in such notice or to send them with such notice.

he shall be punishable with fine which may extend to five hundred taka.

(4) For the purpose of approving any payment referred to in the proviso to sub-section (1), the company shall call a meeting of the shareholders who were such holders on the date of the offer referred to that sub-section and also of the holders of the shares of the same class, in this meeting the person making the said offer or his nominee, and if the offerer is a company the nominee of such company or of any of its subsidiary shall not be called; and if the payment is approved in the meeting the director shall be entitled to receive it.

(5) If, at a meeting called for the purpose of approving any payment as required by sub-section (4), a quorum is not present and, after the meeting has been adjourned to a later date, a quorum is again not present, the payment shall, for the purpose of that sub-section, be deemed to have been approved.

(6) If -

(a) the concerned director fails to comply with the requirements of subsection (2); or

(b) the said director receives the payment referred to in the proviso to sub-section (1). before it is approved under sub-section (4).

the payment shall be deemed to have been received by him in trust for any persons who have sold their shares as a result of the aforesaid offer, and the expenses incurred by him in distributing that sum amongst those persons shall be borne by him.

114. Provisions supplementary to section 111, 112 and 113.--(1) Where in proceedings for the recovery of any payment as having, by virtue of sub-section (2) of section 112 or sub-section (4) of section 113 been received by any person in trust, it is proved that--

(a) the payment was made in pursuance of any arrangement entered into as part of the agreement for the transfer in question. or within one year before, or within two years after, that agreement or the offer leading thereto; and

(b) the company or any person to whom the transfer was made privy to that arrangement. The payment shall be deemed, except on so far as the contrary is shown, to be on one to which that provision applies.

(2) If, in connection with any such transfer as is mentioned in section 112 or in section 113--

(a) the price to be paid to a director of the company whose office is to be abolished or who is to retire from office, for any shares in the company held by him is in excess of the price which could, at the time, have been obtained by other holders of the like shares; or

(b) any valuable consideration is given to any such director.

the excess or the money value of the consideration, as the case may be shall, for the purposes of that section, be deemed to have been a payment. made to him by way of compensation for loss of office, or as consideration for retirement from office, or in connection with such loss or retirement.

(3) References in sections 111, 112 and 113 to payments made to any director of a company by way of compensation for loss of office, or as consideration for retirement from office, or in connection with such loss or retirement do not include any bonafide payment by way of damages for breach of contract or by way of pension in respect of past services, and for the purposes of this sub-section, the expression "pension" includes any superannuation allowance, superannuation gratuity or similar payment.

(4) Nothing in section 112 and 113 shall be taken to prejudice the operation of any rule of law requiring disclosure to be made with respect to any such payments as are therein mentioned or with respect to any other like payments made or to be made to the directors of a company.

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

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

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

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

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

(a) in the case of the particulars specified in sub-section (1), within a period of fourteen days from the appointment of the first directors of the company;

(b) in the case of any change in such particulars, within a period of fourteen days from the day change takes place.

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

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

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

MANAGING AGENT

116. Duration of appointment of managing agent.--(1) No managing agent shall, after, the commencement of this Act, be appointed to hold office for a term of more than ten years at a time and no managing agent shall hold office for more than twenty years.

(2). Notwithstanding anything to the contrary contained in the articles of a company or in any agreement with the company, a managing agent of a company appointed before the commencement of this Act shall not continue to hold office after the expiry of ten years from such commencement unless than reappointed thereto.

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

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

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

117. Conditions applicable to managing agents.--Notwithstanding anything to the contrary contained in the articles of the company or in any agreement with the company.

(a) a company may, by resolution passed at a general meeting of which notice has been given to the managing agent in the same managers as to members of the company, remove a managing agent if he is convicted of an offence in relation to the affairs of the company and the offence is non-bailable within the meaning of the provisions of the code of Criminal Procedure, 1898 (Act V of 1898):

Provided that where the managing agent is a firm or company and offence committed by a member of such firm or a director or an officer holding a general power of attorney from such company shall be deemed to be an offence committed by such firm or company:

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

(b) the office of a Managing agent shall be deemed to be vacant if he is adjudged insolvent;

(c) a transfer of his office by a managing agent is a firm, a change in the partners thereof shall not be deemed to operate as a transfer of the office of managing agent, so long as one of the original partners shall continue to be a partner of the managing agent's firm;

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

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

Provided that where the Court finds that the winding up is due to the negligence or default of the managing agent himself, the managing agent shall not be entitled to receive any compensation for the premature termination of his contract of management; and

(f) the appointment of a managing agent, the removal of managing agent and variation of a managing agent's contract of management shall not be valid unless approved by the company by a resolution at a general meeting of the company notwithstanding anything to the contrary in section 104:

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

118. Investigation of managing agents, etc.--(1) If the Government has reason to believe that the managing agent of a public company--

(a) has, in connection with the conduct or management of the affairs of the company, been guilty of fraud, misfeasance or breach of trust: or

(b) has been conducting the affairs of the company for a fraudulent or unlawful purpose; or

(c) has so conducted or managed the affairs of the company as to deprive the shareholders thereof of a reasonable return on their investment;

the Government may, after giving the managing agent an opportunity of being heard, appoint an investigator to enquire into the affairs of the company and to report on the conduct of the managing agent in such manner and within such period as the Government may direct.

Explanation.---The shareholders of a company shall be deemed to have been deprived of a reasonable return on their investment if, having regard to enterprises similarly placed for a continuous period of three years.

(2) The investigator appointed under sub-section (1)--

(a) may, at any time, for the purpose of making any enquiry which he considers necessary, enter the premises of the company or the office of the managing agent and may call for and inspect the books of accounts or documents in the possession of the company or managing agent and may seal or take into custody any books of accounts or documents for so long as may be necessary;

(b) shall have the same powers as are vested in a Court when trying a suit under the Code of Civil Procedure, 1908 (Act V of 1908), in respect of the following matters, namely:--

(i) summoning and enforcing the attendance of any director or officer of the company or of the managing agent and examining him on oath or affirmation;

(ii) compelling the production of any books of accounts or documents; and

(iii) issuing commissions for the examination of witnesses;

(3) Any proceeding before the investigator shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 or the Penal Code (Act XLV of 1860).

(4) If the Government after considering the report submitted under subsection (1), is of opinion that it is necessary to do so in the interest of the efficient management of the affairs of the company, the Government may, without prejudice to any other action that may be taken under this Act or any other law, by order in writing--

(a) modify the terms of the managing agent's agreement of management with the company.

(b) require the managing agent to carry out such changes in the management or accounting procedures, within such time, as may be specified in the order; or

(c) remove from office the managing agent or the director of the company nominated by the managing agent, or both the managing agent or the director so nominated:

Provided that before taking any action under this sub-section, the managing agent shall be given an opportunity of presenting his case as to the proposed action.

(5) A managing agent or director removed from office under sub-section (4), shall not be entitled to or be paid any compensation or damages for loss or termination of office.

(6) A managing agent of a company who is removed from office under sub-section (4) shall not be appointed to such office of that company until after the expiration of a period of five years from the date of such removal.

(7) Where the managing agent removed from office under sub-section (4) is firm or a company, no partner of such firm and no director or officer holding a general power of attorney from such company shall hold the office of a director or any other office connected with the conduct or management or the affairs of the company of which it was managing agent, until after the expiration of a period of five years from the date of such removal.

(8) Where the managing agent of a company is removed from office under sub-section (4), the Government may by order in writing, appoint an Administrator, hereinafter referred to as the Administrator, to manage the affairs of the company subject to such terms and conditions as may be specified in the order.

(9) The Administrator shall receive such remuneration as the Government may determine.

(10) The management of the affairs of the company shall, on and from the date of appointment of the Administrator, vest in him.

(11) Where it appears to the Administrator that any purchase, sales or agency contract has been entered into, or any employment given to benefit the managing agent or his nominees and to the detriment of the interest of general shareholders, the Administrator may, with the previous approval in writing of the Government, terminate such contract or employment.

(12) No person shall be entitled to or be paid any compensation or damages for the termination of any contract or employment under sub-section (11).

(13) If at any time it appears to the Government that the purpose of the order appointing the Administrator has been fulfilled, it may permit the company to appoint another person to the office of managing agent, and on the appointment of new managing agent, the Administrator shall cease to hold office.

(14) Save as provided in sub-section (15), no suit, prosecution or other legal proceeding shall lie against the Administrator personally for anything which is in good faith done or intended to be done by him in pursuance of this section or of any rules made thereunder, and anything so done shall be deemed to have been done by the company.

(15) Any person aggrieved by any order of the Government under sub-section (4) or of the Administrator under sub-section (11) may, within sixty days from the date of the order, appeal against such order to the High Court Division.

(16) If any person fails, without reasonable cause, to furnish any books of accounts or documents called for under clause (a) of sub-section (2) or to comply with any order under clause (a) of clause (b) sub-section (4) or contravenes the provisions of sub-section (6) or sub-section (7) the Government may, by order in writing, direct that such person shall pay by way of penalty a sum which may extend to ten thousand taka, and in the case of continuing failure or contravention, a further sum which may extend to one thousand taka for every day after the first day during which the failure or contravention continues.

(17) The Government may, by notification in the official Gazette, direct that any power conferred upon it by this section shall, subject to such conditions, if any, as may be specified in the direction, be exercisable also by such person or authority as may be so specified.

(18) The Government may, by notification in the official Gazette, make rules to carry out the purpose of this section.

(19) The provisions of this section shall have effect notwithstanding anything contained in any other provision of this Act or any other law, contract, or the memorandum or articles of a company.

119. Remuneration of managing agent.--(1) Where a company appoints a managing agent, it shall, in the documents of appointment specify the following---

(a) the remuneration of the managing agent which shall be a sum based on fixed percentage of the net annual profits of the company; and

(b) a minimum payment, in the case of absence or inadequacy of profits, together with office allowance.

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

(3) For the purpose of this section net profits' means the profits of the company calculated after allowing for all the usual working charges, interest on loans and advances, repairs and outgoing, depreciation, bounties, depreciation, bounties or subsidies received from Government or from a public statutory body profits by way of premium of the whole or part of the undertaking of the company, but without any deduction in respect of income-tax or super-tax, or any other tax or duty on income or for expenditure by way of intersection debentures or otherwise on capital account or on account of any sum which may be set aside in each year to of the profits for reserve of any other special fund.

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

120. Loans to managing agents.--(1) No company shall make to managing agent of the company or to any partner of the firm if the managing agent is a firm or to any member of director of the private company if the managing agent is a private company any loan out of moneys of the company or guarantee any loan made to a managing agent.

(2) Nothing contained in this section shall apply to any credit held by a managing agent in current account by the company with the managing agent for the purpose of the business of the company:

Provided that the Board of Directors may specify the limit of such credit.

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

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

(5) Except with the consent of three-fourths of the directors present and entitled to vote on the resolution, a managing agent of the company, or the firm of which he is a partner, or any partner of such firm or, if the managing agent is a private company a member or director thereof, shall not enter into any contract for the sale, purchase or supply for goods and materials with the company.

121. Loans to or by companies under the same management.--(1) No company incorporated under this Act which is under the management of a managing agent shall make any loan to or guarantee any loan made the any company under management of the same managing agent:

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

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

122. Purchase by company of shares of company under same managing agent.-- A company other than an investment company, that is to say, a company whose principal business the acquisition and holding of shares, stocks, debentures or other securities, shall not purchase shares or debentures of any company under management by the same managing agent, unless the purchase as been previously approved by unanimous decision of the Board of Directors of the purchasing company.

123. Restriction on managing agent's powers of management.-- A managing agent shall not exercise, in respect of any company of which he is a managing agent, a power to issue debentures or, except with the authority of the directors and within the limits fixed by them, a power to invest the funds of the company and any delegation of any such powers by a company to a managing agent shall be void.

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

125. Limit on number of director appointed by managing agent.-- Notwithstanding anything contained in the articles of a company other than a private company, the directors appointed by the managing agent shall not exceed in number one-third of the whole number of directors.

CONTRACTS

126. Validity of written and unwritten contracts.--(1) Contracts on behalf of a company may be made as follows, that is to say--

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

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

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

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

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

(2) A company having such an official seal may, by writing under its common seal, authorise any person appointed for the purpose in any territory, district or place not situated in Bangladesh to affix the same to any deed or other document to which the company is party in that territory, district or place and such person shall be the agent for purpose of using the said seal.

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

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

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

130. Disclosure of interest by director in respect of contract etc.-- (1) Every director who is directly or indirectly concerned or interested in any contract or arrangement entered into by or on behalf of the company shall disclose the nature of his interest at the meeting of the directors at which the contract or arrangement is determined on, of his interest then exists, or, in any other case, at the first meeting of the directors after the acquisition of his interest or the making of the contract or arrangement:

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

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

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

(4) Every officer of the company who knowingly and willfully acts in contravention of the provisions of sub-section (2) shall be liable to a fine not exceeding one thousand taka.

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

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

(2) Every director who contravenes the provision of sub-section (1) shall be liable to a fine not exceeding five thousand taka.

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

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

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

(2) If a company makes default in complying with the requirements of sub-section (1), it shall be liable to a fine not exceeding five thousand taka; and every officer of the company, who is knowingly and willfully in default, shall be liable to the like penalty.

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

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

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

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

(b) such manager or other agent shall be liable to a fine not exceeding five hundred taka.

Prospectus

134. Dating of prospectus.---A prospectus issued by or on behalf of a company or in relation to an intended company shall be dated, and that date shall, unless the contrary is proved, be taken as the date of publication of the prospectus.

135. Matters to be stated and reports to be set out in prospectus.---(1) Every prospectus issued by or on behalf of a company, or by or on behalf of any person who is or has been engaged or interested in the formation of a company shall state the matters and set out the reports specified in parts I and II respectively of schedule III; and the said Parts I and II shall have effect subject to the provisions contained in Part III of the said Schedule.

(2) Where an applicant for shares or debentures of a company is required to accept a condition which has the effect of waiving the compliance with any of the requirements of this section, or which purports to effect him with notice of any contract document of matter not specifically referred to in the prospectus, such condition shall be void.

(3) No person shall issue any form of application for shares in or debentures of a company, unless the form is accompanied by a prospectus which complies with the requirements of this section:

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

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

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

(4) If any person acts in contravention of the provision of sub-section (3) he shall be punishable with fine which may extend to five thousand taka.

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

(a) as regards any matter not disclosed, he proves that he had no knowledge thereof; or

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

(c) the non-compliance or contravention in respect of matters which in the opinion of the court dealing with the case, were immaterial or was 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 no director or other person shall incur any liability in respect of the failure to include in a prospectus a statement with respect to the matters specified in clause 18 of Part I of Schedule III, unless it is proved that he had knowledge of the matters not disclosed.

(6) This section shall not apply--

(a) to the issue to existing members or debentures 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 debenture will or will not have the right to renounce in favour of other persons :

(b) to the issue of a prospectus or form of application relating to shares or debentures which are, or are to be, in all respects uniform with shares or debentures previously issued and for the time being dealt in or quoted on a recognised stock exchange;

but subject as aforesaid, this section shall apply to a prospectus or a form of application, whether issued on or with reference to the formation of a company or subsequently.

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

136. Expert to be unconnected with formation or management of company.--- A prospectus inviting persons to subscribe for shares in or debentures of a company shall not include a statement purporting to be made by an expert, unless the expert is a person who is not, and has not been, engaged or interested in the formation or promotion or management of the company.

137 Expert's consent to issue of prospectus containing statement by him.---A prospectus inviting persons to subscribe for shares in or debentures of a company and including a statement purporting to be made by an expert may be issued, if--

(a) he has given his written consent to the issue thereof, with the statement included in the form and context in which it is included, and has not withdrawn such consent before the delivery of a copy of the prospectus for registration; and

(b) another statement that he has given and has not withdrawn his consent as aforesaid appears in the prospectus.

138. Registration of prospectus.---(1) No prospectus shall be issued by or on behalf of a company or in relation to an intended company unless, on or before the date of its publication, there has been delivered to the Registrar for registration a copy thereof signed by every person who is named there in as a director or proposed director of the company, or by his agent authorised in writing.

(2) The copy of the prospectus delivered to the Registrar for registration under sub-section (1) shall have endorsed thereon or attached thereto--

(a) any consent of the issue of the prospectus required by section 137 from any person as an expert; and

(b) in the case of a prospectus issued generally, also--

- (i) a copy of every contract specified in clause 16 of part of a Schedule III or in the case of a contract not reduced into writing a memorandum giving full particulars thereof; and
- (ii) where the persons making any report required by Part II of that Schedule Have made therein, or have, without giving the reasons, indicated therein, any such adjustments as are mentioned in clause persons setting out the adjustments and giving the reasons therefor.
- (3) Every prospectus to which sub-section (1) applies shall, on the face of it--
- (a) state that a copy has been delivered for registration as required by this section;
 - (b) specify any document required by this section to be endorsed on or attached to the copy so delivered; and
 - (c) a list of statements included in the prospectus.

(4) The Registrar shall not register a prospectus unless the requirements of section 134, 135, 136 and 137 and sub-section (1), (2) and (3) of this section have been complied with and the prospectus is accompanied by the consent in writing of the person, if any, named therein as the auditor, legal adviser, attorney, solicitor, banker or broker of the company or intended company, to act in that capacity.

(5) No Prospectus shall be issued more than ninety days after the date on which a copy thereof is delivered for registration, and if a prospectus is so issued, it shall be deemed to be a prospectus a copy of which has not been delivered under this section to the Registrar.

(6) If a prospectus is issued without a copy thereof being delivered under this section to the Registrar or without the copy so delivered having been endorsed thereon or attached thereto the required consent or documents, the company, and every person who is knowingly and willingly a party to the issue of the prospectus, shall be punishable with the fine which may extend to five thousand taka.

139. Penalty for contravention of section 136 and 137.--(1) If any prospectus is issued in contravention of sections 136 or 137, the company and every person. who is knowingly a party to the issue thereof, shall be punishable with fine which may extend to five thousand taka.

(2) For the purposes of this section and section 136 and 137, the expression "expert" includes an engineer, a valuer, an accountant and any other person whose profession gives authority to a statement made by him.

140. Allotment of shares and debentures to be dealt in on stock exchange---Where a prospectus, whether issued generally or not, states that an application has been or will be made for permission for the shares or debentures offered thereby to be dealt in one or more recognised stock exchanges, such prospectus shall state the name of the stock exchange or, as the case may be, each such stock exchange. and any allotment made on an application in pursuance of the prospectus shall be void, if the permission has not been applied for before the tenth day after the first issue of the prospectus, or where such permission has been applied for before issue of prospectus, if the permission has not been granted by the first issue of the prospectus, or where such permission has been applied for before issue of prospectus, if the permission has not been granted by the stock exchange or each such stock exchange, as the case may be, within six weeks after the date of the closing of the subscription.

(2) Where the permission referred to in sub-section (1) has not been applied for or, such permission having been applied for, has not been granted as specified in that sub-section, the company shall repay without interest all moneys received from applicants in pursuance of the prospectus, and if any such money is not repaid within thirty days after the tenth day or as the case may be, the six weeks as specified in that sub-section, the directors of the company shall be jointly and severally liable to repay that money with interest at the rate of five percent above the bank rate :

Provided that a director shall not be liable if he proves that the default in the payment of the money was not due to any misconduct or negligence on his part.

(3) All moneys received as subscription for the allotment of shares or debentures shall be kept in a separate bank account and shall be repaid within the time and the manner specified in sub-section (2) and if default is made in complying with this sub-section the company and every officer of the company who is knowingly and willfully in default shall be punishable with fine not exceeding five thousand taka,

(4) Where an applicant for shares or debentures is required to accept a condition which has the effect of waiving compliance with any requirement of this section shall be void.

(5) For the purposes of this section, permission shall not be deemed to be refused if it is intimated that the application for it will be given further consideration.

(6) The other provisions of this section shall have effect---

(a) in relation to any shares or debentures agreed to be taken by a person underwriting an offer thereof by a prospectus, as if he had applied thereof in pursuance of the prospectus;

(b)74 in relation to prospectus offering shares for sale, with the following modifications, namely :---

(i) references in the said other provisions to sale shall be substituted for references to allotment;

(ii) the persons by whom the offer is made, and not the company, shall be liable under sub-section (2), to repay money received from applicants, and references to the company's liability under that sub-section shall be construed accordingly; and

(iii) for the reference in sub-section (3) to "the company" and "every officer of the company who is knowingly and willfully in default," there shall be substituted a reference to "any person by or through whom the offer is made" and who is knowingly and willfully guilty or, willfully, authorises or permits, the defaults" respectively.

(7) No prospectus shall state that application has been made for permission for the shares or debentures offered there by for being dealt an stock exchange, unless it is a recognised stock exchange.

141. Obligations of companies where o prospectus issued.---(1) A company having a share capital which does not issue a prospectus on or with reference to its formation, on which has issued such a prospectus but has not proceeded to allot any of its shares or debentures offered to the public for subscription shall not allot any of its shares or debentures unless within three days after the first allotment of either shares or debentures, there has been delivered to the Registrar for registration a statement in lieu of prospectus, signed by every person who is named therein as director or proposed director of the company or his agent authorised in writing in the form and containing the particulars set out in part I of Schedule IV and, in the cases mentioned in Part II of that Schedule, setting out the reports specified therein, and the said Part I and II shall have effect subject to the provisions contained in Part III of that Schedule.

(2) Every statement in lieu of prospectus delivered under sub-section (1) shall, where the persons making many such report as specified that sub-section have made therein, or have without giving the reasons indicated therein, any such adjustments as are mentioned in Part III of the Schedule IV have endorsed thereon or attached thereto a written statement signed by those person, setting out the adjustment and giving the reasons thereof.

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

(4) If a company acts in contravention of sub-section (1) or (2) the company and every director of the company and every director of the company who knowingly and willfully authorise; or permits the contravention, shall be punishable with fine which may extend to two thousand taka.

(5) Where a statement in lieu of prosperous delivered to the Registrar under sub-section (1) includes any untrue statement, any person who authorised or permitted the delivery of the statement in lieu of prospectus for registration shall be punishable with imprisonment for a ten years or with fine which may extend to two years or with fine which may extend five thousand taka or with both, unless he proves either that the statement was immaterial or that he had reasonable ground to believe, and did up to the time of the delivery for registration of the statement lieu of prospectus believe, that the statement was true

(6) for the purposes of this section---

(a) a statement included in a statement in lieu of prospectus shall be deemed to be untrue, if it is misleading in the form and context in which it is included; and

(b) where the omission from a statement in lieu of prospectus of any matter is calculated to mislead, the statement in lieu of prospectus shall be deemed, in respect to such omission, to be a statement in lieu of prospectus containing an untrue statement.

(7) For the purposes of sub-section (5) and clause (a) of sub-section (6) the expression "included", when used with reference to a statement in lieu of prospectus, means included in the statement in lieu of prospectus itself of contained in any report or memorandum appearing on the face thereof or by reference incorporated therein, or issued therewith.

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

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

(a) that an offer of the shares or debentures or of any of them for sale to the public was made within one hundred and eighty days, after the allotment or agreement to allot; or

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

(3) In case of the document, mentioned in sub-section (1), section 135 shall have effect as if it required a prospectus to state, in addition to the matters required by that section to be stated, in a prospectus---

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

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

(4) Section 138 shall apply to the person of persons making the offer mentioned in sub-section (1) as though they were person named in a prospectus as directors or proposed directors of a company.

(5) Where the persons making an offer mentioned in sub-section (1) is a company or firm, it shall be sufficient if the document referred in sub-section(1) is signed on behalf of the company or firm by two directors of the company or by not less than one-half of the partners in the firm, as the case may be, and any such director or partner may sigh by his agent authorised in writing.

143. Interpretation of provisions relation to prospectus.---(1) For the purposes of the provisions relating to prospectus---

(a) a statement included in a prospectus shall be deemed to be untrue, if the statement is misleading in the form and context in which it is included; and

(b) where the omission from a prospectus of any matter is calculated to mislead, the prospectus shall be deemed in respect of such omission to be a prospectus containing untrue statement.

(2) For the purposes of section 145, 146 and clause (a) of sub-section (1) of this section, the expression "included" when used with reference to a prospectus, means included in the prospectus itself or contained in any report of memorandum appearing on the face thereof or by reference incorporated therein or issued therewith.

144. Restriction on alteration of terms of prospectus or statement in lieu of prospectus.--- A company shall not, at any time, vary the terms of a contract referred to in the prospectus or statement in lieu of prospectus, except with the approval of, or except under an authority given by, the company in general meeting.

145. Civil liability for misstatement in prospectus.---(1) Subject to the provisions of this section, where a prospectus invites members of the public to subscribe for shares in or debentures of a company, the following persons shall be liable to pay compensation to every person who subscribes for any shares or debentures on the faith of the prospectus for any loss or damage he may have sustained by reason of any untrue statement included therein, that is to say---

(a) every person who is a director of the company at the time of the issue of prospectus;

(b) every person who has authorised himself to be named and is named in the prospectus either as a director, or as having agreed to become a director, either immediately or after an interval of some time;

(c) every person who is a promoter of the company; and

(d) every person who has authorised the issue of the prospectus :

Provided that where, under section 138, the consent of a person is required to the issue of a prospectus and he has given that consent, or where the consent of a person named in a prospectus is required and he has given that consent, he shall not, by reason of having given such consent, be liable under this sub-section as a person who has, as referred to in clause (d), authorised the issue of the prospectus, except in respect of an untrue statement, if any, which is included in accordance with section 137 with the consent or under the authority of a person purporting to be an expert. (2) No person shall be liable under sub-section (1), if he proves---

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

(b) that the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue he forthwith gave reasonable public notice that it was issued without his knowledge or consent; or

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

(d) that---

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

(ii) as regards every untrue statement purporting to be a statement by an expert or contained in what purports to be a copy of or an extract from a report or valuation of an expert, it was a correct and fair presentation of the statement, or a correct copy of or a correct and fair extract from, the report and valuation; and he had reasonable ground to believe, and did up to the time of the issue of the prospectus believe, that the person making the statement was competent to make it and that person had given the consent required by section 137 to the issue of the prospectus and had not withdrawn that consent before delivery of a copy of the prospectus for registration or, to the defendant's knowledge, before allotment thereunder: and

(iii) as regards every untrue statement purporting to be a statement made purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, it was a correct and fair representation of that statement, or correct copy of or a correct and fair extract from, the document :

Provided that this sub-section shall not apply in the case of a person liable by reason of his having given a consent required of him by section 137 as a person who has authorised the issue of the prospectus in respect of an untrue statement purporting to be made by him as an expert.

(3) A person who, would, under sub-section (1) be liable by reason of his having given a consent required of him by section 137 as a person who has authorised the issue of a prospectus in respect of an untrue statement purporting to be made by him as an expert, shall not be so liable, if he proves---

(a) that having given his consent under section 137 to the issue of the prospectus, he withdrew it in writing before delivery of a copy of the prospectus for registration; or

(b) that, after delivery of a copy of the prospectus for registration and before allotment thereunder, he, on becoming aware of the untrue statement, withdrew his consent in writing and gave reasonable public notice of the withdrawal and of the reason therefor; or

(c) that he was competent to make the statement and that he had reasonable ground to believe, and did up to the time of the allotment of the shares or debentures, believe, that the statement was true.

(4) Where--

(a) the prospectus specifies the name of a person as a director of the company, or as having agreed to become a director thereof, and he has not consented to become a director, or has withdrawn his consent before the issue of the prospectus, and has not authorised or consented to the issue thereof; or

(b) the consent of a person is required under section 137 to the issue of the prospectus and he either has not given that consent or has withdrawn it before issue of the prospectus.

the directors of the company excluding those without whose knowledge or consent the prospectus was issued and every other person who authorised the issue thereof, shall be liable to indemnify the person referred to in clause (a) or clause (b), as the case may be, against all damages, costs and expenses to which he may be made liable by reason of his name having been interested in the prospectus or of the inclusion therein of a statement purporting to be made by him as an expert, as the case may be, or in defending himself in any suit or legal proceeding brought against him in respect thereof:

Provided that a person shall not for the purposes of this sub-section be deemed to have authorised the issue of a prospectus by reason only of his having given the consent required by section 137.

(5) Every person who, becomes liable to make any payment by virtue of this section may recover contribution, as in cases of contract, from any other person who, if issued separately, would have been liable to make the same payment, unless the former person was, and the latter person was not, guilty of fraudulent misrepresentation.

(6) For the purposes of this section---

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

(b) the expression "expert" has the same meaning as in section 139.

146. Penalty for untrue statement in prospectus.--- (1) Where a prospectus issued after the commencement of this Act includes any untrue-statement every person who authorised the issue of the prospectus shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to five thousand taka or with both, unless he proves either that the statement was immaterial or that he had reasonable ground to believe, and did, up to the time of the issue of the prospectus, believe the statement was true.

(2) A person shall not be deemed for the purposes of this section to have authorised the issue of a prospectus by reason only of his having given---

(a) the consent required by section 137 to the inclusion therein of statement purporting to be made by him as an expert ; or

(b) the consent required by sub-section (4) of section 138.

147. Penalty for fraudulently inducing persons to invest money : Any person who either by knowingly or recklessly making any statement, promise or forecast which is false, deceptive or misleading, or by induce another person to enter into, or to offer into---

(a) any agreement for, or with a view to acquiring, disposing of, subscribing for, or underwriting shares or debentures; or

(b) any agreement, the purpose or pretended purpose of which is to secure a profit to any of the parties from the yield of shares or debentures, or by reference to fluctuation in the value of shares or debenture.

shall be punishable with imprisonment for a term which may extend to five years or with fine which may extend to fifteen thousand taka or with both.

148. Restriction as to allotment.--- (1) No allotment shall be made of any share capital of a company offered to the public for subscription, unless the following amount and at least 5% of that amount have been paid in cash to the company, namely---

(a) the amount stated in prospectus as the minimum amount which in the opinion of the directors, must be raised by the issue of share capital in order to provide for the matters specified in sub-section (2);

(b) if any part of the minimum amount is to be defrayed in any other manner, the balance of the minimum amount after deduction the amount required to be so defrayed.

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

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

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

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

(d) working capital.

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

(4) All moneys received from applicants for shares shall be deposited and kept in a scheduled bank as defined in the Bangladesh bank Order, 1972 (PO No. 127 of 1972), until returned in accordance with the provisions of sub-section (7) or until the certificate to commence business is obtained under section 150(2).

(5) In the event of any contravention of the provisions of sub-section (4) every promoter, director or other person knowingly responsible for such contravention shall be liable to a fine not exceeding five thousand taka.

(6) The amount payable on application on each share shall not be less than five percent of the nominal amount of the share.

(7) If the conditions aforesaid have not been complied with within a period not exceeding one hundred and eighty days the first issue of the prospectus, or within forty days from the closing date of subscription-list as specified in the prospectus, whichever is earlier, all moneys received from applicants of shares or debentures shall be forthwith repaid to them without interest, and if any which money is not so repaid within the aforesaid period, the directors of the company, shall be jointly and severally liable to repay that money with interest at the rate of five percent above the bank after expiry of the aforesaid period.

(8) No allotment shall be made of any shares in, or debentures of, a company in pursuance of a prospectus issued and no proceedings shall be taken on applications made in pursuance of a prospectus so issued, until the beginning of the eight day after that on which the prospectus is first so issued or such later time, if any as may be specified in the prospectus.

Provided that where, after a prospectus is first issued, a public notice is given by some person responsible under section 145 for the prospectus which has the effect of excluding, limiting or diminishing his responsibility, no allotment shall be made until the beginning of the eighth day after that on which such public notice is first given.

(9) An application for shares in, or debentures of, a company, which is made in pursuance of a prospectus issued shall not be revocable until after the expiration of the eighth day after the time of the opening of the subscription list, or the giving, before the expiry of the said eighth day by some person responsible under section 145 for the prospectus, of a public notice having the effect under that section of excluding, limiting or diminishing the responsibility of the person giving it.

(10) Where an applicant for shares or debentures is required to accept condition which has the effect of waiving compliance with any requirement of this section shall be void.

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

(12) In the case of the first allotment of share capital payable in cash of any company which does not issue any invitation to the public to subscribe for its shares, on allotment shall be made unless the minimum subscription, that is to say---

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

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

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

(13) Sub-section (12) shall not apply to a private company or to a company which has allotted any shares or debentures before the commencement of this Act.

149. Effect of irregular allotment. --- (1) An allotment made by a company to an applicant in contravention of the provision of section 141 or section 148 shall be voidable at the instance of the applicant within one month after the holding of the statutory meeting of the company and not later or, in any case where the company is not required to hold a statutory meeting or where the allotment is made after the holding of the statutory meeting, within one month after the date of the allotment and not later, and shall be so voidable notwithstanding that the company is in the course of being wound up.

(2) If any director of a company knowingly contravenes or permits or authorises the contravention of any of the provisions of section 141 or section 148 with respect to allotment, he shall be liable to compensate the company and the allottee for any loss, damages or costs which the company or the allottee may have sustained or incurred thereby :

Provided that Proceedings to recover any such loss, damages or costs shall not be commenced after the expiration of two years from the date of the allotment.

150. Restrictions or commencement of Business.--- (1) A company shall not commence any business or exercise any borrowing powers unless---

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

(b) every director of the company has, out of the shares taken or contracted to be taken by him, paid in cash on each of the shares.

(i) where the shares are offered for public subscription, an amount equal to the amount to be paid on application for shares by the members of the public; or

(ii) where the shares are not offered, and amount payable in cash by the director on such share :

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

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

(2) The Registrar shall, on the filing of a duly verified declaration, in accordance with the provisions of sub-section (1) certify that the company is entitled to commence business, and that certificate shall be conclusive evidence that the company is so entitled :

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

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

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

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

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

PART IV

MANAGEMENT AND ADMINISTRATION

Office and Name (Continued)

151. Return as to allotment.-(1) Where a company having a share capital makes any allotment of its shares, the company shall within sixty days thereafter, file with Registrar the following documents, namely :--

(a) a return of the allotments, stating the number and nominal amount of the shares comprised in the allotment, the name address nationality and other descriptions of the allottees, and the amount, if any, paid or due and payable on each share, and

(b) in the case of shares allotted as fully or partly paid up otherwise than in cash, the copies of the following agreements duly stamped and verified in the prescribed manner namely :-

(i) vendor's agreement, that is the agreement which constitutes the title of the allottee to the allotment; and

(ii) the contract of sale or service or to other consideration in respect of which the allotment was made;

(c) the number and nominal value of the allotted shares referred to in clause (b); and

(d) the deed of sale of any immovable property, if the consideration for allotment of shares referred to in clause (b) is sought to be paid by the allottee by way of transfer of such property.

(2) Where a contract mentioned in sub-section (1) is not reduced to writing, the company shall, within one month after the allotment, file with the Registrar the prescribed particulars of the contract stamped with the same stamp duty as would have been payable if the contract had been reduced to writing, and these particulars shall be deemed to be an instrument within the meaning of the Stamp Act, 1899 (II of 1899) and the Registrar may, as a condition of filing the particulars, require that the stamp duty payable thereon be adjudicated under section 31 of that Act.

(3) If the Registrar is satisfied that in the circumstances of any particular case the period of sixty days specified in sub-section (1) and (2) for compliance with the requirements of these section is inadequate, he may, on an application made by the company before expiry of the sixty days, extend that period as he thinks fit, and if he does so, the provisions of sub-section (1) and (2) shall have effect in that particular case as if for the extended period allowed by Registrar specified in those sub-sections.

(4) If a company defaults in complying with the requirements of this section, every officer of the company who is knowingly a party to the default shall be liable to a fine not exceeding one thousand taka for every day during which the default continues :

Provided that, in case of default in filing with the Registrar within the time specified in sub-section (1) and (2) any document required to be filed by this section, the company or any person liable for the default may apply to the Court for relief, and the Court, if satisfied that the commission to file the document was accidental or due to inadvertence or that on other grounds it is just and equitable to grant relief, may make an order extending the time for the filing of the document for such a period as the Court may think proper.

Commissions and Discounts

152. Restrictions on payment of commissions, discounts, etc.- (1) It shall be lawful for a company to pay a commission to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares in the company, for procuring or agreeing to procure subscription, whether absolutely or conditionally for any shares in the company, if--

(a) the payment of the commission is authorised by the articles and the commission paid or agreed to be paid does not exceed the amount or rate so authorised; and

(b) if the amount or rate of percentage of the commission paid or agreed to be paid is---

(i) in the case of shares offered to the public for subscription, in the prospectus; and

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

(2) Save as provided in sub-section (1) and section 153, no company shall allot any of its shares or apply any its moneys either directly or indirectly in payment of any commission, discount or allowances, to any person in confederation of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares of the company or procuring or agreeing to procure subscriptions, whether absolutely or conditionally, for any shares in the company, and the shares shall not be so allotted or the money shall not be so applied by adding to the purchase-money of any property acquired by the company or the contract price of any work to be executed for the company or the money to be paid out of the nominal purchase money or contract price, or otherwise.

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

153. Power to issues share at a discount. - (1) Subject to the provisions of this section, it shall be lawful for a company to issue at a discount shares in the company of a class already issued :

Provided that -

- (a) the issued of the shares at a discount must be authorised by resolution passed in general meeting of the company and must be sanctioned by the Court;
- (b) the resolution must specify the maximum rate of discount, not exceeding ten percent in any case, at which shares are to be issued;
- (c) not less than one year must at the date of issued have elapsed since the date on which the company was entitled to commence business;
- (d) the shares to be issued at a discount must be issued within six months after the date on which the issue is sanctioned by the Court or within such extended time as the Court may allow.

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

(3) If accompany defaults in complying with sub-section (2) the company and also every officer of the company who is in default shall be liable to a fine not exceeding five hundred taka.

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

Provided that -

- (a) no such shares shall be redeemed except out of profits of the company which should otherwise be available for dividend or out of the proceeds of a fresh issue of shares made for the purposes of the redemption or out of sale proceeds of any property of the company.
- (b) no such shares shall be redeemed unless they are fully paid;
- (c) where any such shares are redeemed otherwise than out of the proceeds of a fresh issue, there shall, out of profits which would otherwise have been available for dividend, be transferred to a reserve fund, to be called "the capital redemption reserve fund" a sum equal to the amount applied in redeeming the shares, and the provisions of this relating to the reduction of the shares capital of a company shall, except as provided in this section, apply if the capital redemption reserve fund were paid up share capital of the company;
- (d) where any such share are redeemed out of the proceeds of a fresh issue, the premium, if payable on redemption, must be provided for out of the profits of the company before the shares are redeemed.

(2) In every balance-sheet of a company which has issued redeemable preference shares the following shall be included, namely : ---

- (a) a statement specifying what part of the issued capital of the company consists of such shares; and
- (b) the date on or before which those shares are, or are to be, liable to be, redeemed or where no definite date is fixed for redemption, the period of notice to be given for redemption.

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

(4) Where in pursuance of this section a company has redeemed or is about to redeem any preference shares, it shall have power to issue shares up to the nominal amount of the shares redeemed or to be redeemed, as if those had never been issued, and accordingly the share capital of the company shall not, for the purpose of calculating the fees payable under section 384, be deemed to be increased by the issue, of shares in pursuance of this sub-section :

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

(5) Notwithstanding anything in the other provisions of this section, where redeemable preference shares deemed, under sub-section (4), to have never been issued are, or are to be, redeemed for the purpose of allotting them as fully paid up bonus shares to the members of the company, the redemption reserve fund may be applied by the company up to the nominal value of the new shares referred to in sub-section (1) (c) for such redemption.

(6) If a company defaults in complying with any of the provisions of this section, the company and also every officer of the company who is in default shall be liable to a fine not exceeding two thousand taka.

155. Further issue of capital. - (1) Where the directors decided to increase the subscribed capital of the company by issue of further shares within the limit of the authorised capital -

- (a) such further shares shall be offered to the members in proportion, as nearly as circumstances admit, to the capital paid up on the existing share held by such member, irrespective of class, at the date of the offer;
- (b) such offer shall be made by notice specifying the number of shares offered and specifying the time limit. not being less than fifteen days from the date of the offer, within which the offer if not accepted, will be deemed to have been declined;
- (c) after the expiry of the time specified in the notice aforesaid, or on receipt of earlier intimation from the members to whom such notice is given that he declines to accept the shares offered, the directors may dispose of the same in such manner as they may think most beneficial to the company.

(2) Notwithstanding anything contained in sub-section (1) the further shares aforesaid may be offered to any person whether or not those person include its person referred to in clause (a) of that sub-section in manner whatsoever.

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

Payment of Interest out of Capital

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

Provided that -

- (a) no such payment shall be made unless the same is authorised by the articles or by special resolution;
- (b) no such payment whether authorised by the articles or by special resolution, shall be made without the previous sanction of the government; and such sanction shall be conclusive evidence for the purposes of this section that the shares of the company in respect of which such sanction is given have been issued for a purpose specified in this section;
- (c) before sanctioning any such payment the government may, at the expense of the company, appoint a person to inquire and report to the Government as to the circumstances of the case, and may, before making the appointment, require the company to give security for the payment of the costs of the inquiry;
- (d) the payment shall be made only for such period and may be determined by the Government, and such period shall in no case extend beyond the close of the half-year next after the half-year during which the works or buildings have been actually completed or the plant provided;
- (e) the rate of interest shall in no case exceed four percent per annum or such lower rate as the Government, may, by notification in the official Gazette, prescribe;
- (f) the payment of the interest shall not operate as a reduction of the amount paid up on the shares in respect of which it is paid;
- (g) the accounts of the company shall show the share capital on which, and the rate at which, interest has been paid out of capital during the period to which the accounts relate.

Certificates of Shares, etc.

158. Limitation of time for issue of certificates. - (1) Every company shall, within ninety days after the allotment of any of its shares, debentures or debenture-stock, and within ninety days after the registration of transfer of any such shares, debentures or debenture-stock complete and have ready for delivery the certificates of all shares, debentures, and the debenture-stock allotted or transferred unless the conditions of issue of the shares, debentures or debenture-stock otherwise provide.

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

Information as to Mortgages, Charges, etc.

159. Certain mortgages and charges to be void if not registered - (1) Every mortgage or charge created after the commencement of this Act by a company and being either -

- (a) a mortgage or charge for the purpose of securing any issue of debentures; or
- (b) a mortgage or charge on uncalled share capital of the company, or
- (c) a mortgage or charge on any immovable property wherever situated or any interest therein, or
- (d) a mortgage or charge on any book debts of the company, or
- (e) a mortgage or charge, not being a pledge on any moveable property of the company except stock-in-trade, or
- (f) a floating charge on the undertaking or shall so far as any property of the company, security on the company's property or undertaking is thereby conferred, be void against the liquidator and any creditor of the company, unless the prescribed particulars of the mortgage or charge, together with the instrument, if any, by which the mortgage or charge is created or evidenced or a copy thereof verified in the prescribed manner are filed with the Registrar for registration in manner required by this Act within twenty-one days after the date of its creation ; put any contract or obligation for repayment of the money thereby secured shall not be prejudiced; and when a mortgage or charge becomes void under this section, the money secured thereby shall immediately become payable.

Provided that -

- (i) in the case a mortgage or charge created out of Bangladesh comprising solely property situate outside Bangladesh the said twenty one days shall be counted by excluding the period which would be necessary to receive the instrument in Bangladesh in due course had it been posted with due diligence; and
- (ii) where the mortgage or charge is created in Bangladesh comprises property outside Bangladesh the instrument creating or purporting to create the mortgage or charge or a copy thereof verified in the prescribed manner may be filed for registration notwithstanding that further proceedings may be necessary to make the mortgage or charge valid or effectual according to the law of the country in which the property is situate; and

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

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

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

160. Registration of charge on properties acquired subject to charge. - (1) Where a company registered in Bangladesh acquires any property which is subject to a charge on any such kind as would, if it had been created by the company, after the acquisition of the property, have been required to be registered under this Part, the company shall cause the prescribed particulars of the charge together with a copy certified in the prescribed manner to be a correct copy of the instrument, if any, by which the charge was created or its evidenced, to be delivered to the Registrar for registration in manner required by this Act within twenty-one days after the date on which the acquisition completed

Provided that if the Property is situated and the charge was created outside Bangladesh the said twenty-one days shall be counted by excluding the period which would be necessary to receive the instrument in Bangladesh in due course of post had it been despatched with due diligence.

(2) If a company defaults in complying with the provisions of this section the company and also every officer of the company, who is knowingly and willfully in default, shall be liable to a fine not exceeding one thousand taka.

161. Particulars in case of series of debentures entitling holders pari passu. - (1) Where a series of debentures containing, or giving by reference to any other instrument, any charge to the benefit of which the debentures holders of that series are entitled pari passu is created by a company, it shall be sufficient for the compliance of section 159 if there are filed with the Registrar with twenty-one days after the execution of the deed containing the charge or, if there is no such deed, after the execution of any debentures of the series, the following :-

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

(b) the dates of the resolutions authorising the issue of the series and the date of the covering deed, if any, by which the security is created or defined;

(c) a general description of the property charged;

(d) the names of the trustees, if any, from the debenture-holders; and

(e) the deed or a copy thereof verified in the prescribed manner containing the charge or if there is no such deed one of the debentures of the series ;

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

(2) The Registrar shall register the particulars and the deeds filed under sub section (1).

162. Particulars in case of commission, etc. on debentures--- Where any commission, allowance or discount has been paid or made either directly or indirectly by the company to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any debentures of the company, or for procuring or agreeing to procure subscriptions, whether absolutely or conditionally for any such debentures, the particulars required to be filed for registration under section 159 and 161 shall include particulars as to the amount or rate percent of the commission, discount or allowance so paid or made, but an omission to do this shall not affect the validity of the debentures issued :

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

163. Registers of mortgages and charges.---(1) The registrar shall keep, with respect to each company, a register in the prescribed form of all mortgages and charges created by the company after the commencement of this Act and requiring registration under section 159 and shall, on payment of the prescribed fee, enter in the register, with respect to every such mortgage or charge, the date of creation, the amount secured by it, short particulars of the property mortgaged or charged and the names of the mortgages or the persons entitled to the charge.

(2) After making the entry required by sub-section (1) the Registrar shall return the instrument, if any, or the verified copy thereof, as the case may be, filed in accordance with the provisions of section 159 or 161 to the person filling the same.

(3) The register kept in pursuance of this section shall be open to inspection by any person on payment of the fee, as specified in Schedule II.

164. Index to register of mortgages and charges.---The Registrar shall keep a chronological index, in the prescribed form and with the prescribed particulars of the mortgages and charges registered with him under this Act.

165. Certificate of registration.---The Registrar shall give a certificate under his hand of the registration of any mortgage or charge registered in pursuance of section 159, stating the amount thereby secured, and the certificate shall be conclusive evidence that the requirement of sections 159 to 163 as to registration have been complied with.

166. Endorsement of certificate of registration on debentures or certificate of debenture-stock.-- The company shall cause a copy of every certificate of registration, given under section 165 to be endorsed on every debenture or certificate of debenture-stock which is issued by the company, and the payment of which is secured by the mortgage or charge so registered :

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

167. Duty of company and right of interested party as regards registration --- (1) Every company to file with the Registrar for registration the prescribed particulars of every mortgage or charge created by the company and of the issues of debentures of a series, requiring registration under section 159, and registration of any such mortgage or charge may be also effected on the application of any person interested therein.

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

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

168. Copy of instrument creating mortgage or charge to be kept at registered office.--Every company shall cause a copy of every instrument creating any mortgage or charge requiring registration under section 159 to be kept at the registered office of the company;

Provided that, in the case of a series of uniform debentures, a copy of one such debenture shall be sufficient.

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

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

170. Filing of accounts of Receivers--(1) A receiver referred to in section 169 of any property who had taken possession shall for every financial year during such possession and also on ceasing to act as receiver, file with the Registrar an abstract in the prescribed form of his receipts and payment during the period to which the abstract relates and shall also, on ceasing to act as receiver, file with the Registrar, notice to that effect and the Registrar shall enter the notice in the register of mortgages and charges.

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

(3) For every default in complying with the requirements of this section, the company, and also every officer of receiver as the case may be of the company, who knowingly and willfully authorises or permits the default, shall be liable to a fine not exceeding five hundred taka.

171. Rectification of register of mortgages - (1) If the Court satisfied that-

(a) the omission to register a mortgage or charge within the time required by section 159, or the omission or mis-statement of any particular with respect to any such mortgage or charge, or the omission to give intimation to the Registrar of the payment or satisfaction of a debt from which the mortgage or charge was created, was accidental or due to inadvertence or to some other sufficient cause, or

(b) the omission is not of a nature to prejudice the position of creditors or share-holders of the company, or

(c) on other grounds it is just and equitable to grant to relief the court may, on the application of the company or any person interested and on such terms and conditions as seem to the court just and expedient, order that the time for registration be extended or, as the case may be, that the omission or mis-statement be rectified, and may make such order as to the costs to be paid to the applicant as it thinks fit.

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

172. Registration of Satisfaction of mortgages and charges--(1) The company shall give intimation to the Registrar of the payment or satisfaction of any mortgage or charge required to be registered under section 159 within twenty-one days from the date of the payment or satisfaction thereof.

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

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

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

173. Penalties--(1) If any company makes default in filing with the Registrar for registration the particulars-

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

(b) of the payment or satisfaction of a debt in respect of which a mortgage or charge had been registered under section 159 or section 160, or

(c) of the issue of debentures of a series; requiring registration with the Registrar under the foregoing provision of this Act, then unless the registration had been effected on the application of some other person, the company, and also every officer of the company or other person who is knowingly a party to the default, shall, on conviction be liable to a fine not exceeding one thousand taka for everyday during which the default continues.

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

(3) If any person knowingly and willfully authorises or permits the delivery of any debenture or certificate of debenture-stock requiring registration with the Registrar under the foregoing provisions of this Act the certificate of registration being endorsed upon it as required by section 166, he shall, without prejudice to any other liability, be liable of conviction to a fine not exceeding two thousand taka.

174. Company's register of mortgages:--(1) Every company shall keep register of mortgages and enter therein all mortgage and charges specifically affecting property of the company and all floating charge on the under taking or on any property of the company, giving in each case a short description of the property mortgaged or charged the amount of the mortgage or charge and, except in the case of securities to bearer, the name of the mortgages of persons entitled thereto.

(2) If any director, manager or other officer of the company knowingly and willfully authorises or permits the omission of any entry required to be made in pursuance of this section, he shall be liable to a fine not exceeding two thousand taka.

175. Right to inspect copies of instruments creating mortgages and charges and company's register of mortgages :- (1) The copies kept at the registered office of the company in pursuance of section 168 or instruments creating any mortgage or charge requiring registration under this Act with the Registrar and register of mortgages kept in pursuance of section 174, shall kept be open at all reasonable times to the inspections of any creditor or member of the company without fee, and the register of mortgages shall also be kept open to the inspection of any other person on payment of such fee, not exceeding ten taka for each inspection, as the company may prescribe.

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

176. Right to inspect register of debenture-holders and to have copies of trust deeds:--(1) A company shall keep open every register of the debenture holders for he inspection its debenture-holders and share- holders and every such holder may require a copy of the register or part thereof on payment of fees specified in Schedule II:

Provided that-

(a) the register shall not be inspected during such period or periods not exceeding in the whole thirty days in any year, as may be specified in the articles; and

(b) subject to such reasonable restrictions as may be imposed by the general meeting, the register shall be kept open for inspection for at least two hours in a day during the permissible period.

(2) A copy of any trust-deed for securing any issue of debentures shall be forwarded to every holder of any such debentures at his request on payment, in the case of a printed trust deed, of the sum of ten taka or such less sum as may be fixed by the company, or where the trust-deed is not printed, the fees specified in schedule-II.

(3) If inspection is refused or a copy is refused or not forwarded, the company shall be liable to a fine not exceeding one hundred taka for the first and to a further fine not exceeding fifty taka for every day subsequently during which the refusal continues, and every officer of the company who knowingly authorises or permits the refusal shall incur the like penalty; and the Court may be order compel an immediate inspection of the register.

Debenture and Floating Charges

177. Perpetual debentures:-- A conditions contained in any debenture or in any deed for securing any debentures, whether issued or executed before or after the passing of this Act shall not be invalid by reason only that thereby the debentures are made irredeemable or redeemable only on the happening of a contingency, however, remote, or on the expiration of a period however long.

178. Power to re-issue redeemed debentures in certain cases:-- (1) Where either before or after the commencement of this Act, a company has redeemed any debenture previously issued, the company shall have right, and shall be deemed to have had the right, to keep the debentures alive for the purposes of re-issue, unless-

(a) the articles of the conditions of issue expressly otherwise provides; or

(b) the debentures have ben redeemed in pursuance of any obligation on the company so to do, not being an obligation enforceable only by the person to whom the redeemed debentures were issued or his assigns.

(2) In the exercise of the right under sub-section (1), the company shall have power, and shall be deemed always to have power, to re-issue the debentures either by re-issuing the same debentures or by issuing other debentures in their place.

(3) Upon such re-issue, the person entitled to the debentures shall have, and shall be deemed always to have had, the same rights and priorities as if the debentures had not previously been issued.

(4) Where with the object of keeping debentures alive for the purpose of re-issue they have, either before or after the commencement of this Act, been transferred to a nominee of the company, a transfer from that nominee shall be deemed to be a re-issue for the purposes of this section.

(5) Where a company has, either before or after the commencement of this Act, deposited any of its debentures to secure advances from time to time on current account or otherwise, the debentures shall not be deemed to have been redeemed by reason only of the account of the company having ceased to be in debt whilst the debentures remained so deposited.

(6) The re-issue of a debenture or the issue of another debenture in its place under the power by this section given to, or deemed to have been possessed by a company, whether the re-issue or issue was made before or after the commencement of this Act, shall be treated as the issue of a new debenture for the purposes of stamp duty, but it shall not be so treated for the purposes of any provision limiting the amount or number of debentures to be issued:

Provided that any person leading money on the security of a debenture re-issued under this section which appears to be duly stamped may give the debenture in evidence in any proceedings for enforcing his security without payment of the stamp-duty or any penalty in respect thereof, unless he had notice or, but for his negligence, might have discovered that the debenture was not duly stamped, but in any such case the company shall be liable to pay the proper stamp-duty and penalty.

(7) Nothing in this section shall prejudice any power to issue debenture in place of any debentures paid off or otherwise satisfied or extinguished, reserved to a company by its debentures or the securities for the same.

179. Specific performance of contract to subscribe for debentures:- A contract with a company to take up and pay for any debentures of the company may be enforced by a decree for specific performance.

180. Payment of certain debts out of assets subject to floating charge in priority to claims under the Charge :-

(1) Where either a receiver is appointed on behalf of the holders of any debentures of a company secured by a floating charge, or possession is taken by or on behalf of those debenture-holder of any property comprised on or subject to the charge, then if the company is not the time in course of being wound up, the debt, which in every winding up are under the provisions of Part-V relating to preferential payments are to be paid in priority to all other debts, shall be paid forthwith out of any assets coming to the hands of the receiver or the other person taking possession as aforesaid in priority to any claim for principal or interest in respect of the debentures.

(2) The periods of time mentioned in the said provisions of Part-V shall be reckoned from the date of the appointment of the receiver of possession being taken as aforesaid, as the case may be.

(3) Any payments made under this section shall be recouped, as far as may be, out of the assets of the company available for payment of general creditors.

BALANCE-SHEET, STATEMENTS, BOOKS ETC.

181. Books to be kept by company and penalty for not keeping them:-

(1) Every company shall keep proper books of account with respect to-

- (a) all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure take place;
- (b) all sales and purchases of goods by the company;
- (c) the assets and liabilities of the company; and
- (d) in the case of a company engaged in production, distribution, marketing, transportation, processing, manufacturing, milling extraction and mining activities, such particulars relating to utilisation of material, labour and other items of overhead cost.

(2) For the purpose of sub-section (1), proper books of account shall not be deemed to be kept with respect to the matters specified therein if there are not kept such books as are necessary to give a true and fair view of the state of the affairs of the company and to explain its transactions.

(3) The books of account shall be kept at the registered office of the company and shall at all times be open to inspection by directors during business hours:

Provided that all or any of the books of account may, for a period not exceeding six months, be kept at such other place in Bangladesh as the board of Directors may decide and when the board of Directors so decides, the company shall within seven days of the decision, file with the Registrar a notice in writing giving the full address of that other place.

(4) where a company has a branch office, whether in or outside Bangladesh, the company shall be deemed to have complied with the provisions of sub-section (1), if proper books of account relating to the transactions effected at the branch office are kept at that office and proper summarised returns, made upto date at intervals of not more than three months, are sent by the branch office to the company at its registered office or the other place referred to in sub-section (3).

(5) The books of account of every company relating to a period of not less than twelve years immediately preceding the current year together with vouchers relevant to any entry in such books of account shall be preserved in good order;

Provided that in the case of a company incorporated less than twelve years before the current year, the books of account for the entire period preceding the current year together with the vouchers relevant to any entry in such books of account shall be so preserved.

(6) If any of the persons referred to in sub-section (7) fails to take all reasonable steps to secure compliance by the company with the requirements of this section, or has, by his own wilful act, been the cause of any default by the company thereunder, he shall, in respect of each offence, be punishable with imprisonment for a term which may extend to six months or with which may extend to five thousand taka or with both.

(7) The persons referred to in sub-section (6) are the following, namely:-

- (a) where the company has a managing agent, managing director executive director, general manager or manager, such managing agent, managing director, executive director, general manager or manager and all officers but excluding the bankers, auditors and legal advisers;

- (b) where such managing agent is a firm, every partner in the firm;
- (c) where such managing agent is a body corporate, every director of such body corporate;
- (d) where the company has neither a managing agent nor managing director nor executive director nor general manager nor manager, every director of the company.

182. Inspection of books of account, etc. of companies :-

(1) The books of account and other books and papers of every company shall be open to inspection during business hours by the Registrar or by such other Government officer as may be authorised by the Government in this behalf.

(2) It shall be the duty of every director or other officer of the company to produce to the person making inspection under sub-section (1), in this section referred to the inspecting person, all such books of account and other books and other papers of the company in his custody or control and to furnish him with any statement, information or explanation relating to the affairs of the company as the inspecting person may require of him within such time and at such place as he may specify.

(3) it shall also be the duty of every director and other officer of the company to give to the inspecting person all assistance in connection with the inspection which the company may be reasonable expected to give.

(4) The inspecting person may, during the course of inspection-

- (i) make or cause to be made copies of books of account and other books; and
- (ii) place or cause to be placed any marks of identification thereon in token of the inspection having been made.

(5) Notwithstanding anything contained in any other law for the time being in force or any contract to the contrary, inspecting person shall have the same powers as are Vested in a civil court under the Code of Civil Procedure, 1908 (Act V of 1908), While trying a suit, in respect of the following matters, namely:-

- (i) the discovery and production of books of account and other documents, at such place and such time as may be specified by such person;
- (ii) summoning and enforcing the attendance of persons and examining them on oath:
- (iii) inspection of any books, registers and other documents of the company at any place.

(6) Where an inspection of the books of account and other books and papers of the company has been made under this section, the inspecting person shall make a report to the Government.

(7) The inspecting person under this section shall have all the powers that a Registrar has under his Act in relation to the making inquiries.

(8) If default is made in complying with the provisions of this section every officer of the company who is in default shall be punishable with imprisonment for a term not exceeding one year and also with a fine not exceeding ten thousand taka.

(9) Where a director or any other officer of a company has been convicted of any offence under this section, he shall, and from the date on which he is so convicted, be deemed to have vacated his office as such and on such vacation of office he shall be disqualified for holding such office in any company for a period of five years from such date.

183. Annual balance sheet:- (1) The Board of Directors of every company shall, at every annual general meeting held in pursuance of section 81, lay before the company a balance sheet together with the profit and loss account or in the case of a company not trading for profit. an income and expenditure account for the period specified in sub- section (2) of this section.

(2) The said profit and loss account or the income and expenditure account shall be prepared for the following period, namely:-

(a) in the case of the first annual general meeting for the period beginning with the date of incorporation of the company and ending on a date which is within nine months preceding the date of the meeting; and

(b) in the case of any subsequent annual general meeting, for the period beginning with the date immediately after last account and ending on a date which is-

- (i) a date within nine months preceding such meeting; or
- (ii) in the case of a company carrying on business or having interest outside Bangladesh, a date within twelve months preceding the date of such meeting; or
- (iii) in a case where an extension of time has been granted for holding the meeting under section 81, a date within the said nine or twelve months, as the case may be, preceding the date of holding such meeting under that section.

Provided that the Registrar may, on an application being made to him before the expiry of the said nine or twelve months, extend the period by a period not exceeding three months.

(3) The balance sheet and the profit and loss account or income and account shall be caused to be audited by the auditor of the company as in this Act provided and the auditor's report shall be attached thereto or there shall be inserted at the foot thereof a reference to the report and the report shall be read before the company in general meeting and shall be open to inspection by any member of the company.

(4) The period to which the account aforesaid relates is referred to in this Act as a "financial year" and it may be less or more than a calendar year, but shall not exceed fifteen months:

Provided that it may extend to eighteen months where special permission had been granted in that behalf by the Registrar.

(5) If any person, being a director of a company, defaults in taking all reasonable steps to comply with the provision of this section, then he shall, in respect of each such offence, be punishable with fine which may extend to five thousand taka.

(6) There shall be kept at the registered office of the company a copy of the balance sheet including profit and loss account or income and expenditure, as the case may be, and the director's report for inspection of the members and other categories of persons as are entitled thereto for a period of at least fourteen days before the general meeting of the company.

184. Boards report :-(1) There shall be attached to every balance sheet laid before a company in general meeting a report by its Board of Directors, with respect to-

- (a) the state of the company's affairs;
- (b) the amount, if any, which the Board proposes to carry to any reserve in such balance sheet;
- (c) the amount, if any, which the Board recommends should be paid by way of dividend;
- (d) material changes and commitments, if any, affecting the financial position of the company which have occurred between the end of the financial year of the company to which the balance sheet related and the date of the report.

(2) The Board's report shall, so far as is material for the appreciation of the state of company's affairs by its members, deal with any changes which have occurred during the financial years :-

- (a) in the nature of the company's business;
- (b) in the company's subsidiaries or in the nature of the business carried on by them; and
- (c) generally in the classes of business in which the company has an interest.

(3) The Board shall also be bound to give the fullest information and explanations in its report aforesaid on every reservation, qualification or adverse remark contained in the auditor's report.

(4) The Board report and any addendum thereto shall be signed by its Chairman if he is authorised in that behalf by the Board, and where he is not so authorised &, shall be signed by such number of director as are required to sign the balance sheet and the profit and loss account or the income and expenditure account, of the company by virtue of sub-section (1) and (2) of section 189.

(5) If any person, being a director of a company, fails to take all reasonable steps to comply with the provision of sub-section (1) to (3) or being the chairman, signs the Boards report otherwise than in conformity with the provisions of sub-section (4), he shall, in respect of each offence, be liable to fine which may extend to five thousand aka.

185. Form and contents of balance sheet and profit and loss accounts :- (1) The balance sheet of a company shall contain a summary of the property and assets and of the capital and liabilities of the company. giving a true and fair view of affairs as at the end of the financial year, and it shall, subject to the provisions of this section be in the forms set out in Part-I of Schedule I. or as near thereto as circumstance admit or in such other form as may be approved by the Government either generally or in any particular case; and in preparing the balance sheet due regard shall be had, as far as may be, to the general instructions for preparation of balance sheet under the heading "Notes" at the end of the Part:

Provide that nothing contained in this sub-section shall apply to any insurance or banking company or any company engaged in the generation or supply of electricity or to any other class of company for which a form of balance sheet has been specified in or under the law governing such class of company.

(2) Every profit and loss account of a company shall give a true and fair view of the profit and or loss of the company for the financial year and shall, subject as aforesaid, comply with the requirements of Part II of Schedule XI so far as applicable thereto:

Provided that nothing contained in this sub-section shall apply to any insurance or banking company or any company engaged in the generation or supply of electricity or to any other class of company for which a form of profit and loss account had been specified in or under the law governing such class of company.

(3) The Government may, by notification in the official Gazette, exempt any class of companies from the requirements of Schedule XI if, in its opinion, it is necessary to grant the exemption in the public interest; and any such exemption may be granted either unconditionally or subject of such conditions as may be specified in the notification.

(4) The Government may, on the application or with the consent of the Board of Directors of the company, by order, modify in relation to that company of the requirement of this Act as to the matters to be stated in the balance-sheet or profit and loss account for the purpose of adapting them to the circumstances of the company;

(5) The balance sheet and the profit and loss account of a company shall not be treated as not disclosing a true and fair view of the state of affairs of the company merely because of the fact that they do not disclose-

- (i) in the case of an insurance company, any matters which are not required to be disclosed by the Insurance Act, 1938 (IV of 1938);
- (ii) in the case of a banking company, any matters which are not required to be disclosed by the
- (iii) in the case of a company engaged in the generation or supply of electricity, any matters which are not required to be disclosed by the Electricity Act, 1910 (IX of 1910);
- (iv) in the case of a company governed by any other law for the time being in force, any matters which are not required to be disclosed by such law;
- (v) in the case of any company, any matters which are not required to be disclosed by virtue of the provisions contained in Schedule XI or by virtue of the notification issued under sub-section (3) or an order issued under sub-section (4).

(6) For the purposes of this section, except where the context otherwise requires any reference to balance-sheet or to profit and loss account shall include any notes hereon or documents annexed thereto, giving information required by this Act and allowed by this Act to be given in the form of such notes or documents.

(7) If any such person as is referred to in sub-section (7) of section 181 fails to take all reasonable steps to secure compliance by the company, as regards any accounts laid before the company in general meeting, with this section and with the other requirements of this Act as to in the accounts, he shall, in respect of each offence, be punishable with imprisonment for a term which may extend to six months or with fine which may extend to five thousand taka or with both:

Provided that no person shall be sentenced to imprisonment for any such offence unless it was committed willfully.

186. Balance sheet of holding company to include certain particulars as to its subsidiaries :-(1) There shall be attached to the balance sheet of a holding company having a subsidiary or subsidiaries as the end of the financial year as at which the holding company's balance sheet is made out, the following documents in respect of such subsidiary or each such subsidiary, as the case may be-

- (a) a copy of the balance sheet of the subsidiary;
- (b) a copy of the its profit and loss account;
- (c) a copy of the report of its Board of Directors;
- (d) a copy of the report of its auditors;
- (e) a statement of the holding company's interest in the subsidiary as specified in sub-section (6);
- (f) the statement referred to in sub-section (80), if any; and
- (g) the report referred to in sub-section (9), if any.

(2) The balance sheet referred to in clause (a) of sub-section (1) shall be made out in accordance with the requirement of this Act as at the end of the financial year of the subsidiary next before the day as at which the holding company's balance sheet is made out.

(3) The profit and loss account and the reports of the Board of directors and of the auditors referred to in clause (b), (c) and (d) of subsection (1) shall be made out in accordance with the requirements of this Act for the financial year of the subsidiary referred to in sub-section (2).

(4) the financial year aforesaid of the subsidiary shall not end on a day which the holding company's financial year ends by more than six months.

(5) Where the financial year of subsidiary is shorter in duration than that of its holding company, reference to the financial year of the subsidiary in sub-sections (2), (3) and (4) shall be construed as reference to two or more financial years of the subsidiary the duration of which, in the aggregate is not less than the duration of the holding company's financial year.

(6) The statement referred to in clause (e) of sub-section (1) shall specify-

(a) The extent of the holding company's interest in the subsidiary at the end of the financial year or at the end of the last of the financial years of the subsidiary;

(b) the net aggregate amount, so far as it concerns members of the holding company and is not dealt with in the company's accounts, of the subsidiary profits after deducting its losses or vice-versa-

- (i) for the financial year or years of the subsidiary as aforesaid; and
- (ii) for the previous financial years of he subsidiary since it became the holding company's subsidiary;

(c) the nest aggregate amount of the profits of the subsidiary after deducting its losses or vice-versa-

- (i) for the financial year or years of the subsidiary as aforesaid; and
- (ii) for the previous financial years of the subsidiary since it become the holding company's subsidiary;

so far as those profits are dealt with, or provision is made for those losses, in the company's accounts.

(7) Clauses (b) and (c) of sub-section (6) shall apply only to profits and losses of the subsidiary which may properly be treated in the holding company's accounts as revenue profits or losses; and profits or losses attributable to any other of its subsidiaries shall not, for that or any other purpose, be treated as aforesaid so far as they are profits or losses for the period before the date of or as from which the shares were acquired by the company or any of its subsidiaries, except that they may in a proper case be so treated where-

- (a) the holding company is itself he subsidiary of another body corporate; and
- (b) the shares were acquires from that body corporate or a subsidiary of this.

Explanation:- For the purpose of determining whether any profits or losses are to be treated as profits or losses for the said period, the profits or loss for any financial year of the subsidiary may, if it isn't practicable to apportion it with reasonable accuracy by reference to the facts, be treated as accruing from day to day during that year and be apportioned accordingly.

(8) Where the financial year or years of a subsidiary referred to insub-section (5)) do not coincide with the financial year of the holding company, a statement containing information on the followingmatters had also to be attached to the balance sheet of the holding company:-

(a) whether there had been any changes and, if so what change took place in the holding company's interest in the subsidiary between the end of the financial year or of the last of the financial years of the subsidiary and the end of the holding company's financial year;

(b) details of any material change, which have occurred between the end of the financial year or of the last of the financial years of the subsidiary and the end of the holding company's financial year in respect of-

- (i) the subsidiary's fixed asset;
- (ii) its investments;
- (iii) the moneys borrowed by its for nay purpose other than that of meeting cured liabilities.

(9) If, for any reason, the Board of Directors of the holding company is unable to obtain information of any of the matters requires to be specified by sub-section (7), a report in writing to that effect shall be attached to the balance sheet of the holding company.

(10) The document referred to in clause (e), (f) and (g) of sub- section (1) shall be signed by the persons by whom the balance sheet of the holding company is required to be signed.

(11) The Government may on the application or with the consent of the Board of Directors of the Company, direct that in relation to any subsidiary, the provisions of this section shall not apply, or shall apply only to such extent as may be specified in the direction.

(12) If nay such person as is referred to in sub-section (70 of section 181 fails to take all reasonable steps to comply with the provisions of this section, he shall, in respect of each offence, be punishable with imprisonment for a terms which may extend to six months, or with fine which may extent to one thousand taka, or with both:

Provided that in any proceedings against any person in respect of an offence under this section, it shall be a defence to prove that a competent and reliable person was charged with the duty of seeing that the provisions of this section were complied with and that he was in a position to discharge that duty:

Provided further that no person shall be sentenced to imprisonment for any such offence unless it was committed willfully.

187. Financial year of holding company and subsidiary:-(1) Where it appears to the Government that it is desirable for a holding company or a holding company's subsidiary to extent its financial year so that the subsidiary's financial year many end with that of the holding company, and for that purpose to postpone the submission of the relevant account to a general meeting, the Government may, on the application or with the consort of the Board of Directors of the company whose financial year is to be extended, director that in the case of that company, the submission of accounts to a general meeting, the holding of a general meeting or the making of an annual return, shall not be required to be submitted or made earlier than the dates specified in the direction not with standing anything to the contrary in this Act or in any other law for the time being in force.

(2) The Government shall, on the application of the Board of directors of a holding company or a holding company's subsidiary, exercise the powers conferred on its by sub-section (1), if it is necessary to doin order to secure that the end of the financial year of the subsidiary does not precede the end of holding company's financial year by more than six months, where that is not the case at he commencement of his Act or at the date on which the relationship of holding company and subsidiary comes into existence where that date is later than the commencement of this Act.

188. Right of holding company's representatives and member:- (1) A holding company may, by resolution authorise its representatives named in the resolution to inspect the books of account of any such subsidiary shall be open to open to inspection by those representatives at any time during business hours.

(2) The rights conferred by section 195 upon members of a company may be exercised, in respect of any subsidiary, by such representative of the holding company as if they alone were members of the subsidiary.

189. Authentication of balance sheet, profit and loss account, etc:- (1) Save as provided by sub-section (2), every balance sheet, and every profit and loss account or income and expenditure account shall be signed on behalf of the Board of Directors-

(i) in the case of banking company, by the manager, or managing agent, if nay, and, where there are more than three directors of the company, by at least three of those directors or, where there are not more than three directors, by all the directors;

(ii) in the case of any other company, by its managing agent, manager or secretary, if any, and by not less than two directors of the company one of whom shall be the managing director where there is one.

(2) When the total number of directors of the company for the time being in Bangladesh is less than the number of directors whose signatures are required by sub-section (1), then the balance sheet and profit and loss account or the income and expenditure account shall be signed by all the directors for the time being in Bangladesh, or if there is only one director for the time being in Bangladesh, by such director but in such case, there shall be attached to the balance sheet, and the profit and loss account or the income and expenditure account a statement signed by such director or directors explaining the reason for non-compliance with the provisions of sub-section (1).

(3) The balance sheet and the profit and loss account or income and expenditure account shall be approved by the Board of Directors before they are signed on behalf of the Board in accordance with the provisions of this section and before they are submitted to the auditors for their report thereon.

(4) If any copy of a balance sheet or profit and loss account or income and expenditure account, which had not been signed as required by sub-section (1) and (2), it issued, circulated or published or if any copy of a balance sheet it issued, circulated or published with there being annexed or attached hereto, as the case may be, a copy of that account, any accounts, reports or statements which, by virtue of section 186 are required to be attached to the balance sheet, the auditors, report, and the Board's report referred to in section 185 or if any default is made in complying with other requirement of this section the company and every office of the company who is in default, shall be punishable with imprisonment for a term which may extend to six months of with fine which may extend to two thousand taka or with both.

190. Copy of balance-sheet, etc. to be filed with Registrar: (1) After the balance sheet and profit and loss account or the income and expenditure account, as the case may be, have been laid before a company at an annual general meeting as aforesaid, there shall be filed with the Registrar, within thirty days from the date on which the balance sheet and the profit

and loss accounts were so laid, or where the annual general meeting of a company for any year has not been held, there shall be filed with the Registrar within thirty days from the last day on which that meeting should have been held in accordance with the provisions of this Act three copies of the balance-sheet, and of the profit and loss account or the income and expenditure account, as the case may be signed by the managing director, managing agent, a manager or secretary of the company or if there be none of these, by a director of the company, together with three copies of all documents which are required by this Act to be annexed or attached to such balance-sheet or profit and loss account or income and expenditure account:

Provided that in the case of a private company, which is not an subsidiary of a public company, no person other than a member of the company shall be entitled to inspect or to obtain copies of the profit and loss account of that company.

(2) If the annual general meeting of a company before which a balance sheet is laid as aforesaid does not adopt the balance-sheet or, if the annual general meeting of a company for any year has not been held, a statement of that fact and of the reasons therefor shall be annexed to the balance-sheet and to the copies thereof required to be filed with the Registrar.

(3) If a company makes default in complying with the requirements of this section, it shall be liable to a fine not exceeding one hundred taka for every day during which the default continues, and every officer of the company who knowingly and willfully authorises or permits the default shall be liable to the like penalty.

191. Right of members to copies of account and report:- (1) A copy of every balance sheet, including the profit and loss account, the auditors report or the income and expenditure account and every other document required by law to be annexed or attached, as the case may be, to the balance sheet which is to be laid before a company in general meeting shall, not less than fourteen days before the date of the meeting, be sent free of charge, to every member of the company, to every holder of debentures issued by the company, not being debentures which ex-facie are payable to the bearer thereof, to every trustee for the holders of any debentures issued by the company, whether such member, holder or trustee is or is not entitled to have notices of the general meeting of the company sent to him, and to all persons other than such members, holders or trustees being persons so entitled:

Provide that :-

(a) in the case of a company not having a share capital, this subsection shall not require the sending of a copy of the document aforesaid to a member, or holder of debentures, of the company who is not entitled to have notices of general meetings of the company sent to him;

(b) this sub-section shall not require a copy of the document aforesaid to be sent-

(i) to a member, or holder of debentures, of the company who is not entitled to have notices of general meetings of the company sent to him and of whose address the company is unaware;

(ii) to more than one of the joint holders of any shares or debentures none of whom is entitled to have such notices sent to him; or

(iii) in the case of joint holders of any shares or debentures some of whom are and some of whom are not entitled, to have such notices sent to them, to those who are not entitled; and

(c) if the copies of the documents aforesaid are sent less than fourteen days before the date of the meeting, they shall notwithstanding that fact, be deemed to have been duly sent to the members entitled to vote at the meeting if they do not raise any objection to such sending.

(2) Any member or holder of debentures of a company whether he is or is not entitled to have copies of the company's balance sheet sent to him, shall, on demand, be entitled to be furnished without charge, and any person from whom the company has accepted a sum of money by way of deposit shall, on demand accompanied by the payment of fee of ten taka, be entitled to be furnished with a copy of the last balance sheet of the company and of every document required, by law to be annexed or attached thereto, including the profit and loss account and the auditor's report and such documents shall be delivered to him within seven days from such demand.

(3) If default is made in complying with sub-section (1) and (2), the company, and, also every officer of the company who is in default, shall be punishable with fine which may extend to five hundred taka.

(4) If, when a person makes a demand for a copy or any document with which he is entitled to be furnished by virtue of sub-section (2) default is made in complying with the demand within seven days after the making thereof, the company, and also every officer of the company who is in default, shall be punishable with fine which may extend to five hundred taka, unless it is proved that the person had already made a demand for and been furnished with copy of the document; and in case of such default, the Court, apart from imposing the penalty, may also, by order, direct that the copy demanded shall forthwith be furnished to the person concerned.

(5) Sub-section (1) to (4) shall not apply in relation to a balance sheet of a private company laid before it before the commencement of this Act and in such a case the right of any person to have sent to him or to be furnished with a copy of the balance sheet, and the liability of the company in respect of a failure to satisfy that right, shall be the same as they would have been if this Act had not been passed.

Statement to be published by Banking and certain other companies:-

192. Certain companies to publish statement in schedule:-(1) Every company being a limited Banking company or an insurance company for a deposit, provident or benefit society shall, before, it commences business, and also on the first Monday in February and the First Monday in August in every year during which it carries on business make a statement herein after referred to as the said statement in the form as in Schedule XII, or as near thereto as circumstances will admit.

(2) A copy of the said statement together with a copy of the last audited balance sheet laid before the members of the company shall be displayed and, until the display of the next following statement, kept displayed in a conspicuous place in the registered office of the company, and in every branch office or place where the business of the company is carried on.

(3) Every member and every creditor of the company shall be entitled to a copy of the sum statement on payment of a sum not exceeding five taka.

(4) If a company makes default in complying with the requirements of this section, it shall be liable to a fine not exceeding one hundred taka for everyday during which the default continues; and, also every officer of the company who knowingly and willfully authorises or permits the default shall be liable to the like penalty.

(5) This section shall not apply to a life insurance company or provident insurance society, to which the provisions of the Insurance Act, 1938 (IV of 1938), or any other insurance law for the time being in force as to the annual statement to be made by such company or society apply with or without modification, if the company or society complies with those provisions.

Investigation by the Registrar

193. Power of Registrar to call for information or explanation: - (1) Where the Registrar, on perusal of any document which a company is required to submit to him under the provision of this Act, or on receipt of a written objection against an such documents from any member of the company, is of opinion that any information explanation is necessary in order that such document may afford full particulars of the matter to which it purports to relate, he may, by a written order, call on the company to furnish in writing such information or explanation or to produce such books or papers, as may be required by him within such time as he may specify in his order.

(2) On the receipt of an order under sub-Section (1), it shall be the duty of all persons who are or have been officer of the company to furnish such information or explanation (1) to the best of their power.

(3) If an such person refuse or neglects to furnish any such information or explanation, he shall be liable to a fine not exceeding five hundred take in respect of each offence and the Court may, on the application of the Registrar and upon notice to the company, make an order on the company for production of such document as in its opinion may reasonable be Required by the registrar for his investigation and allow the Registrar inspection thereof on such terms and conditions as it thinks fit.

(4) On receipt of such information or explanation, the Registrar may annex the same to the original document submitted to him and any additional document so annexed by the Registrar shall be subject to the like provisions as to inspection and the taking of copies as the original documents are subject.

(5) If such information or explanation or additional document is not furnished within the time specified by the Court or the Registrar, or if after per*sual of such information or explanation or additional document; the Registrar is of opinion that the document in question discloses an unsatisfactory state of affairs, or that it does not discloses an unsatisfactory state of affairs, or that it does not disclose a full, fair, and true, statement of the matters to which it purports to relate, the Registrar may direct the company to correct the documents in the manner directed by him or may report in writing the circumstances of the case to the government.

(6) If it is represented to the Registrar on materials placed before him by any member contributory, creditor or any other person interested that the business of a company is being carried on in fraud of its member, creditors or persons dealing with the company or for a fraudulent purpose that the affairs of the company are not being managed in accordance with the provisions of this Act, he may after giving the company an opportunity of being hear, by a written order, call on the company for information or explanation on matters specified in the order or required the company to produce any document with such time as he may specify in the order and the provision of sub-section (2), (3) and (5) of this section shall apply to such order.

(7) If upon investigation, the Registrar is satisfied that any representation on which he had taken action under sub-section (6) is false, frivolous or vexatious, he shall disclose the identify of the informant to the company.

(8) The provisions of this section shall apply mutatis mutatis to documents which a liquidator is require to file under this Act.

194. Seizure of document by Registrar :- (1) Where upon any information, the Registrar has reasonable ground to believe that books and papers of or relating to and company or other body corporate or any managing agent or managing director or manager of such company or other body corporate, or any associate of such managing agent or managing director or manager may be destroyed, mutilated, falsified or secreted the Registrar may make an application to the Magistrate of the first class have jurisdiction for an order for the seizure of such books and papers.

(2) After considering the application and hearing the Register. if necessary, the Magistrate may, be order, authorise the Registrar-

(a) to enter, with such assistance as may be required, the place or places where such books and papers are kept;

(b) to search that places or those place in the manner specified the order;

(c) to seize such books and papers as he considers necessary.

(3) The Registrar shall return the books and papers seized under this cection as soon as may be, and in any case not later than the thirtieth day, after such seizure, to the company, or the other body corporate, or as the case may be, to the managing agent or the associate of such managing agent or managing director or the manager or the associate of such managing agent or managing director or manager or any other person, from whose custody or power they were seized, and shall inform the Magistrate of such return:

Provided that the Registrar may, before returning such books and papers as aforesaid, take copies of, or extracts from, them or place indemnification marks on them or any part thereof or ideal with them in such other manner as he considers necessary.

(4) Save as otherwise provided in this section, every search or seizure made under this section shall be carried out in accordance with the provision of the Code of Criminal Procedure, 1898 (Act V of 1898) relating to search or seizure, made under that Code.

Inspection and Audit

195. Investigation of affairs of company by inspectors:- The Government may appoint one or more competent inspectors to investigate the affairs of any company and to report thereon in such manner as the Government may direct-

(a) in the case of a company having a share capital, on the application of members holding not less than one-tenth of the shares issues;

(b) in the case of a company not having a share capital, on the application of not less than one-fifty in number of the person on the company is register of members;

(c) in the case of any other company, on a report by the Registrar under section 193(5).

196. Application for inspection to be supported by evidence :- An application by members of a company under section 195 shall be supported by such evidence as the Government may require for the purpose of showing that the applicants have good requiring for requiring the investigation; and the Government may also, before appointing an inspector, require the applicants to give security for payment of the costs of the inquiry.

197. Inspection of books and examination of officers:- Without prejudice to its powers under section 195, the Government-

(a) shall appoint one or more competent persons as inspectors to investigate the affairs of a company and to report thereon in such manner as the Government may direct, if the company, by a special resolution or, the Court, by an order, declares that the affairs of the company ought to be investigated by an inspector-appointed by the Government; and

(b) may do so if, in the opinion of the Government, there are circumstances suggesting-

(i) that the business of the company is being conducted with intent to defraud its creditors, members any other persons, or otherwise for a fraudulent or unlawful purpose, or in a manner oppressive of any of its members, or that the company was formed for any fraudulent or unlawful purpose; or

(ii) that persons concerned in the formation of the company or the management of its affairs have in connection therewith been guilty of fraud, misfeasance or other misconduct toward the company or towards any of its members; or

(iii) that the members of the company have not been given all the informations with respect to its affairs which they might reasonable expect.

198. Firm, body corporate or association not to be appointed inspect :- No firm, body corporate or other association shall be appointed an inspector under section 195 or section 197.

199. Powers of inspectors to carry investigation into affairs of related companies or of managing agent or associate :- (1) If any inspector appointed under section 195 or 197 to investigate the affairs of a company thinks it necessary, for the purposes of his investigation, to investigate also the affairs of-

(a) any other body corporate which is, or was at any relevant time the company's subsidiary or holding company's or a subsidiary of its holding company, of a holding company, of its subsidiary.

(b) an other body corporate which is to has at any relevant time been managed-

(i) by any person as managing agent, or as managing director or as manager, who is, or was at the relevant time, either the managing agent or the managing director or the manager of the company; or

(ii) by any person who is or was at the relevant time as associate of the managing agent; or

(iii) by any person of whom the managing agent is, or was at the relevant time, as associate; or

(c) any other body corporate which is, or was at any relevant time, managed by the company or whose Board of Director comprises of nominees of the company or is accustomed to act in accordance with the direction of-

(i) the company, or

(ii) any of the directors of the company, or

(iii) any company whose directorship is held by the employee of nominees of those having the control and management of the first mentioned company; or

(d) any person, who is, or was at any relevant time, the company's managing agent, managing director or manager of an associate of such managing agent,

then the inspector shall, subject to the provision of sub-section (2), have power to investigate and shall report on the affairs of the other body copperplate, the managing agent, managing director, manager or associate of the managing agent, as for as he thinks that the result of his investigating thereof are relevant to the investigation of the affairs of the first-mentioned company.

(2) In the case of any body corporate or person referred to in clause (b) (ii) (iii), (c) or (d) of sub-section (1), the inspector shall not exercise his affairs without first having obtained the prior approval of the government thereto:

Provided that before according approval under this sub-section, the Government shall give the body corporate or persons a reasonable opportunity to show cause as to why such approval shall not be accorded.

200. Production documents and evidence :- (1) It shall be the duty of all officers and employees and agents of the company, and where the company is or was managed by a managing agent, and where the affairs of any other body corporate or of a managing agent or of an associate of a managing agent are investigated by virtue of section 199, of all officers and employees and agents of such body corporate, managing agent or associate, and where such managing gent or associate is or was a firm of all partners in the firm-

(a) to preserve and to produce to the inspector or any person authorised by him in this behalf with the previous approval of the government, all books and papers of, or relating to, the company or, as the case may be, of or relating to the other body corporate, managing agent or associate which are in their custody or powers; and

(b) otherwise to give to the inspector all assistance in connection with the investigation which they are reasonably able to give.

(2) The inspector may, with the previous approval of the Government, require anybody corporate other than a body corporate referred to in sub-section (1) to furnish such information, or produce such book, and papers before, him or any person authorised by him in this behalf with the previous approval of the Government as he may consider necessary, if the furnishing of such information or the production of such books and papers is relevant or necessary for the purposes of his investigation.

(3) The inspector may keep in his custody any books and papers produced under sub-section (1) or (2) for six months and thereafter shall return the same to the company, body corporate, firm or individual by whom or on whose behalf the books and papers are produced:

Provided that the inspector may again call for the books and papers if they are needed again:

Provided further that if certified copies of the books and papers produced under sub-section (2), are furnished to the inspector, he shall return those books; and papers to the body corporate concerned.

(4) An inspector may examine on oath any of the persons referred to in sub-section (1) or with the previous approval of the Government, any other person, in relation to the affairs of the company, other body corporate, managing agent or associate, as the case may be, and may administration oath accordingly and for that purpose may require any of those persons to appear before him personally.

(5) If any person fails without reasonable cause or refuses-

(a) to produce to an inspector or an person authorise by him in this behalf with the previous approval of the Government any books or paper which it is his duty under sub-section (1)) or (2) to produce; or

(b) to furnish any information which it is duty under sub-section (2) to furnish; or

(c) to appear before the inspector personally when required to do so under sub-section (4) or to answer any question which is put to him by the inspector in pursuance of that sub-section ; or

(d) to sign the notes of any examination referred to in sub-section (6), he shall be punishable white imprisonment for a terms which may extend to six months, or with fine which may extend to five thousand take, or with both, and also with a further fine which may extend to five hundred take for every day after the first during which the failure or refusal continues.

(6) Notes of any examination under sub-section (4) shall be taken down in writing and shall be read ever to, or by, and signed by, the person examined, and may thereafter be used in evidence against him.

(7) In this section-

(a) the expression "officers" in relation to any company or other body corporate, included any trustee for the debenture holders such of company or body corporate;

(b) the expression "agent" in relation to any company, other body corporate or person, means, any one acting or purporting to act for or on behalf of such company, body corporate or person, and includes the bankers, and legal advisers of, and persons employed as auditors by such company, body corporate or person; and

(c) any reference to officers and employees, agent or partners shall be construed as a reference to past as well as present officers and other employees, agent or partners, as the case may be.

201. Seizure of document by inspectors:- (1) Where in the course of investigation under section 195 or section 197, the inspector has reasonable ground to believe that the books and papers of, or relating to, any company or other body corporate or any managing agent or managing director or manager of such managing agent may be distorted, mutilated, altered, falsified or secreted the inspector may make an application to the Magistrate of the First Class having jurisdiction for an order for the seizure of such books and papers.

(2) After considering the application and hearing the inspector, if necessary, the Magistrate may be order authorise the inspector-

(a) to enter, with such assistance as may be required, the place or places where such books and papers are kept;

(b) to search that place or those places in the manager specified in the order; and

(c) to seize books and papers he considers necessary for purposes of his investigation.

(3) The inspector may keep in his custody the books and papers seized under this section for such period not later than the conclusion of the investigation as he considers necessary and thereafter shall return the same to the company or the other body corporate or, as the case may be, to the managing agent or the associate of such managing agent or the managing director or the manager or any other person from whose custody or power they were sized and shall inform the Magistrate of such return:

Provided the the inspector may, before returning such books and papers as aforesaid, place identification makes on them or any part thereof.

(4) Save as otherwise provided in this section, every search or seize made under this section shall be carried out in accordance with the provision of the Code of Criminal Procedure, 1898 Act, (V of 1898) relating to search of seizure made under the Code.

202. Inspector's report :- (1) Inspectors may, and if so directed by the Government shall, make interim reports to the Government, and on the conclusion of the investigation, shall make a final report to the Government; and any such report shall be written or printed, of the Government may direct.

(2) The Government-

(a) shall forward a copy of the final report to the company at its registered office, and also to any other body, corporate, managing agent, or associate if dealt with in the report by virtue of section 199;

(b) may, if it thinks, fit furnish a copy thereof, on request and on payment of the prescribed fee, to any person

(i) who is a member of the company or other body corporate including a managing agent or associate of a managing agent where such managing agent or associate is a body corporate dealt with in the report by virtue of section 199;

(ii) who is a partner in the firm where such managing agent or associate is a firm;

(iii) whose interest as a creditor of the company, other body corporate, managing agent or associate aforesaid appears to the Government to be affected;

(c) shall, where the inspectors are appointed under clause (a) or (b) of section 195, furnish at the request of the applicants for the investigation a copy of the report of them;

(d) shall, where the inspectors are appointed under clause (a) of section 197 in pursuance of an order of the Court, furnish a copy of the report to the Court; and

(e) may also cause the report to be published.

203. Prosecution- (1) If, from any report made under section 202 it appears to the Government that any person has, in relation to the company or in relation to any other body corporate, managing agent, or associate of other body corporate, managing agent, or associate of a managing agent whose affairs have been investigated by virtue of section 199, been guilty of any offence for which he is criminally liable, the Government may prosecute such person for the offence; and

It shall be the duty of all officers and employees and agents of the company, body corporate, managing agent or associate, as the case may be, other than the accused in the proceedings, to give the Government all assistance in connection with the prosecution which they are reasonably able to give.

(2) Subsection (7) of section 200 shall apply for the purpose of this section as it applies for the purposes of that section.

204. Application for winding up of company or an order in that behalf- if any such company or other body corporate or any such managing agent, or associate, being body corporate, as is mentioned in section 199, is liable to be wound up under this Act, and it appears to the Government from any such report as aforesaid that it is expedient so to do by reason of any circumstances as are referred to in sub-clause (i) or (ii) of clause (b) of section 197, the Government may, unless the company, body corporate, managing agent or associate is already being wound up by the Court, cause to be presented to the Court by the Registrar;

(a) a petition for the winding up of the company, body corporate, managing agent, or associate on the ground that it is just and equitable that it should be wound up;

(b) an application for an order under section 233;

(c) both a petition and an application as aforesaid.

205. Proceedings for recovery of damages or property-(1) If from any report made under section 201 it appears to the Government that proceedings ought, in the public interest, to be brought by the company or any body corporate whose affairs have been investigated in pursuance of clause (a), (b) or (c) of section 199.

(a) for the recovery of damages in respect of any fraud, misfeasance or other misconduct in connection with the promotion or formation, or the management of the affairs, or such company of body corporate; or

(b) for the recovery of any property of such company, or body corporate, which has been misapplied or wrongfully retained;

the Government may itself bring proceedings for such purpose in the name of such company or body corporate.

(2) The Government shall indemnify such company or body corporate against any costs or expenses incurred by it in, or in connection with any proceedings brought by virtue of sub-section (1), if such proceedings are found to be frivolous.

206. Expenses of investigation -(1) The expenses of and incidental to an investigation by an inspector appointed by the Government under section 195 or 197 shall be defrayed in the first instance by the Government; but the following persons shall, to the extent mentioned below, be liable to reimburse the Government in respect of expenses of such investigation :-

(a) any person who is convicted on a prosecution instituted in pursuance of section 203, and who is ordered to pay damages or restore any property in the proceedings brought by virtue of section 205, may, in the same proceedings be ordered to pay the said expenses to such extent as may be specified by the court convicting such person, or ordering him to pay such damages or restore such property, as the case may be;

(b) in any company or body corporate in whose name proceedings are brought under section 205 (1) shall be liable to pay the cost of the investigation but not exceeding the amount or value of any property recovered by it as a result of the proceedings; and

(c) unless, as a result of the investigation, a prosecution is instituted in pursuance of section 203-

(i) any company, body corporate, managing agent, associate, managing director or manager dealt with by report of the inspector shall be liable to reimburse the Government in respect of the whole expenses, unless and except in so far as the Government otherwise directs; and

(ii) the application for the investigation, where the inspector was appointed under clause (b) of sub-section (i) shall be a first charge on the sums or property mentioned in that clause.

(3) The amount of expenses in respect of which any company, body corporate, managing agent, associate, managing director or manager is liable under sub-clause (i) of clause (c) of sub-section (1) to reimburse the Government, shall be recoverable from that company, body corporate, managing agent, associate, managing director or manager, as an arrear of land revenue.

(4) for the purposes of this section, any costs or expenses incurred by the Government in or in connection with proceedings brought by virtue of section 205 including expenses incurred by virtue of sub-section (2) thereof shall be treated as expenses of the investigation giving rise to the proceedings.

(5) Any liability to reimburse the Government imposed by clause (a) and (b) of sub-section (1) shall, subject to satisfaction of the right of the Government to reimbursement, be a liability also to indemnify all persons against liability under clause (c) of that sub-section.

(6) Any such liability imposed by clause (a) of sub-section (1) shall, subject to the right of the Government as to reimbursement, be a liability also to indemnify all persons against liability under clause (b) of the said sub-section.

(7) Any person liable under the clause (a) or (b) or (c) of sub-section (1) shall be entitled to contribution from any other persons liable under the same clause or clauses as the case may be, according to the amount of their respective liabilities thereunder.

(8) In so far as the expenses to be defrayed by the Government under this section are not recovered thereunder, they shall be paid out of moneys provided by Parliament.

207. Power of company to appoint inspectors-(1) A company may, by a special resolution, appoint inspectors to investigate its affairs.

(2) Inspectors so appointed shall have the same powers and duties as inspectors appointed by the Government, except that, instead of reporting to the government, they shall report in such manner and to such persons as the company in general meeting may direct.

(3) All persons who are or were officers of the company shall incur the penalties in case of refusal to produce any book or document required to be produced to inspectors so appointed, or to answer any question, as they would have incurred if the inspectors had been appointed by the Government.

208. Report of the inspectors to be evidence.- a copy of the report of any inspector appointed under this Act authenticated by the seal of a company whose affairs they have investigated, shall be admissible in any legal proceeding as evidence of the opinion of the inspector in relation to any matter contained in the report.

209. Saving for legal adviser and bankers-Nothing in section 193 to 206 shall require the disclosure to the Registrar or to the Government or to any inspector appointed by the Government-

(a) by a legal adviser, of any privileged communication made to him in that capacity, except as respect the name and address of his client; or

(b) by the bankers of any company, other body corporate, managing agents, or associate of the managing agent or managing director or manager referred to in the sections aforesaid, as such bankers of any information as to the affairs of any of their customers.

210. Appointment and remuneration of auditors-(1) Every company shall, at each annual general meeting appoint an auditor or auditors to hold office from the conclusion of that meeting until the next annual general meeting and shall within seven days of the appointment, give intimation thereof to every auditor so appointed:

Provided that no person can be appointed auditor of any company unless his written consent has been obtained prior to such appointment or re-appointment.

(2) Every auditor appointed under sub-section (1) shall, within thirty days of the receipt from the company of the intimation of his appointment, inform the Registrar in writing that he has accepted, or refused to accept, the appointment.

(3) At any annual general meeting a retiring auditor, by whatsoever authority appointed, shall be reappointed, unless-

(a) he is not qualified for re-appointment; or

(b) he has given the company notice in writing of his unwillingness to be re-appointed; or

(c) a resolution has been passed at that meeting appointing somebody else instead of him or providing expressly that he shall not be re-appointed:

Provided that for the purpose of passing a resolution under clause (c), a notice thereof shall in accordance with section 211 be issued prior to the meeting, and such resolution cannot be passed except on the ground of death, incapacity or dishonesty of disqualification of the retiring auditor,

(4) if an appointment of an auditor is not made at an annual general meeting, the Government may appoint a person to fill the vacancy.

(5) The company shall, within seven days of the Government's power under sub-section (4) becoming exercisable, give notice of that fact to the Government; and, if a company fails to give such notice, the company, and also every officer of the company who is in default, shall be punishable with fine which may extend to one thousand take.

(6) The first auditor or auditors of a company shall be appointed by the Board of Directors within one month of the date of registration of the company, and the auditor or auditors so appointed shall hold office until the conclusion of the first annual general meeting:

Provided that-

(a) the company may, at a general meeting remove any such auditor or all or any of such auditors and appoint in his or their place any other persons or persons who have been nominated for appointment by any member of the company, and or whose nomination notice has been given to the members of the company not less than fourteen days before the date of the meeting: and

(b) if the Board of Directors fails to exercise its powers under this sub-section, the company in a general meeting, may appoint the first auditor or auditors.

(7) The Board may fill any casual vacancy in the office of any auditor, but while any such vacancy continues, the remaining auditor or auditors, if any, may act:

(8) Any auditor appointed in a casual vacancy shall hold office until the conclusion of the next annual general meeting.

(9) Except as provided in the process pursuant to sub-section (7), any auditor appointed under this section may be removed from office before the expiry of his term only by a special resolution of the company in the general meeting.

(10) the remuneration of the auditors of a company-

(a) in the case of an auditor appointed by the Board or the Government, shall be fixed by the Board or the Government respectively : and

(b) subject to clause (a), shall be fixed by the company in the general meeting or in such manner as the company in the general meeting may determine.

(11) for the purposes of sub-section (10), any sums paid by the company in respect of the auditors expenses shall be deemed to be included in the expression "remuneration".

211. Provisions as to resolutions for appointing or removing auditors:-(1) Special notice shall be required for a resolution at an annual general meeting appointing as auditor a person other than a retiring auditor, or providing expressly that a retiring auditor shall not be re-appointed.

(2) On receipt of such notice the company shall forthwith send a copy thereof to the retiring auditor,

(3) Where such notice is given and the retiring auditor makes with respect thereto representation in writing to the company and requests their notification to members of the company, the company shall, unless the representation are received by it too late for it to do so-

(a) in any notice of the resolution given to members of the company, state the fact of the representation having been made; and

(b) send a copy of the representation to every member of the company to whom notice of the meeting is sent, whether before or after the receipt of the representation by the company, and if a copy of the representation, is not sent as aforesaid because the were received too late or because of the company default, the auditor may, without prejudice to his right to be heard orally, require that the representation shall be read out at the meeting.

Provided that copies of the representation need not be sent out and the representations need not be read out at the meeting if, on the application either of the company or of any other person who claims to be aggrieved, the court is satisfied that the rights conferred by this sub-section are being abused to secure needless publicity for defamatory matter; and the Court may order the company's costs on such an application to be paid whole or in part by the auditor, notwithstanding that he is not a party to the application.

(4) sub-section (2) and (3) shall apply to a resolution to remove the first auditors or any of them under sub-section (6) of section 210 or to the removal or any auditor or auditors under sub-section (8) of that section, as they apply in relation to a resolution that a retiring auditor shall not be re-appointed.

212. Qualification and disqualification of auditors:-(1) No persons shall be appointed an auditor of any company unless he is a "chartered accountant" within the meaning of the Bangladesh Chartered Accountants Order, 1973, (P.O. No. 2 of 1973):

Provided that a firm whereof all the partners practising in Bangladesh are qualified for appointment as aforesaid may be appointed by its firm name to be auditor of company in which case any of the auditors so practising may act in the name of the firm.

(2) None of the following persons shall be qualified for appointment as auditor of a company namely-

(a) an officer or employee of the company;

(b) a person who is partner, or who is in the employment of an officer or employee of the company;

(c) a person who is indebted to the company for an amount exceeding one thousand taka, or who had given any guarantee or provided any security in connection with the indebtedness of any third person to the company for an amount exceeding one thousand taka:

(d) a person who is director or member of a partner company, or a partner of a firm, which is the managing agent of the company;

(e) a person who is a director, or the holder of shares exceeding five percent in nominal value of the subscribed capital, of any body corporate which is the managing agent of the company.

Provided that where any shares held by a person as nominee or trustee for any third person and in which the holder has no beneficial interest such shares shall be excluded in computing the extent of the subscribed capital for the purpose of this clause.

Explanation :- For the purposes of this sub-section the word "officer" or "employee" shall not include an auditor.

(3) A person shall not be qualified for appointment as an auditor of a company, if-

(a) he, according to sub-section (2)0, is disqualified for appointment as auditor of any other body corporate which is that company's subsidiary or holding company or a subsidiary of that company's holding company's;

(b) he would be disqualified for such appointment, had the said body corporate been a company.

(4) If an auditor becomes subject, after his appointment to any of the disqualification's specified in sub-section (2) and (3), he shall be deemed to have vacated his office as such.

213. Power and duties of auditors:- (1) Every auditor of a company shall have a right of access at all times to the books and accounts and vouchers of the company, whether kept at the head office of the company or elsewhere and shall be entitled to require from the officers of the company such information and explanation as the auditor may think necessary for the performance of his duties as auditor.

(2) Without prejudice to the provisions of sub-section (1), the auditor shall, in particular inquire into following namely:-

(a) Whether loans and advances made by the company on the basis of security have been properly secured and whether the terms on which they have been made are not prejudicial to the interests of the company or its members;

(b) Whether transactions of the company which are represented merely as book-entries are prejudicial to the interests of the company;

(c) where the company is not an investment company or a banking company, whether so much of the assets of the company as consist of shares, debentures and other securities, have been sold at a price less than at which they were purchased by the company;

(d) whether loans and advances made by the company have been shown as deposits;

(e) whether personal expenses have been charged to revenue account;

(f) where it is stated in the books and paper of the company that any shares have been allotted for cash, whether cash has actually been received in respect of such allotment, and if no cash has actually been so received, whether the position as stated in the account books and the balance sheet is correct, regular and not misleading.

(3) The auditor shall make a report to be presented in the annual general meeting of the company on the accounts, examined by him, and on every balance sheet and profit and loss account and on every other document declared by this Act to be part of or annexed to the balance sheet or profit and loss accounts which are laid before the company in general meeting during his tenure of office and the report shall state whether, in his opinion and to the best of his information and according to the explanation given to him, the said accounts give the information required by this Act in the manner so required and give a true and fair view-

(a) in the case of the balance sheet, of the state of the company's affairs as at the end of its financial year;

(b) in the case of the profit and loss account, of the profit or loss for its financial year.

(4) The auditors report shall also state-

(a) whether he has obtained all the information and explanation which to the best of his knowledge and belief were necessary for the purposes of his audit;

(b) whether, in his opinion, proper books of account as required by law have been kept by the company so far as appears from his examination of those books and proper returns adequate for the purposes of his audit have been received from branches not visited by him;

(c) whether the company's balance sheet and profit and loss account dealt with by the report are in agreement with the books of account and returns.

(5) Where any of the matters referred to in clauses (a) and (b) of sub-section (3) or in clauses (a), (b) and (c) of sub-section (4) are answered in the negative or with a qualification, the auditor's report shall state the reason for the answer.

(6) The Government may, by general or special order, direct that in the case of such class or description of companies as may be specified in the order, the auditors report shall also include a statement on such matters as may be specified therein.

(7) The accounts of a company shall not be deemed as not having been audited and the auditors report shall not state that those accounts have not been properly drawn up on the ground merely that the company has not disclosed certain matters, of-

(a) those matters are such as the company is not required to disclose by virtue of any provision contained in this Act or any other law for the time being in force; and

(b) those provisions are specified in the balance sheet and loss account of the company.

214. Audit of accounts of branch office of company:-(1) Where a company has a branch office, the accounts of that office shall, be audited by the company's auditors at their option, or where the branch office is situated in a country outside Bangladesh, the accounts of the office shall be audited either by the company's auditor or by a person duly qualified to act as an auditor of the accounts of the branch office in accordance with the laws of that country, if so decided by the shareholders in a general meeting.

(2) Where the accounts of any branch office are audited by a person other than the company's auditor, the company's auditor-

(a) shall be entitled to visit the branch office, if he deems it necessary to do so for the performance of his duties as auditor; and

(b) shall have a right of access at all times to be books and accounts and vouchers of the company maintained at the branch office;

Provided that in the case of a banking company having a branch office outside Bangladesh, it shall be sufficient if the auditor is allowed access to such copies of, and extracts from the books and accounts of the branch as have been transmitted to the principal office of the company in Bangladesh.

215. Signature of audit report, etc:- Only the person appointed as auditor of the company, or where a firm is so appointed in pursuance of the proviso to sub-section (1) of section 212, only a partner in the firm practising in Bangladesh shall put his signature on the auditor's report, or any other document required of the company by law to be signed or authenticated by the auditor.

216. Reading and inspection of auditor's report:- The auditor's report shall be read before the company in general meeting and shall be open to inspection by any member of the company.

217. Right of auditor to attend general meeting-All notices of an other communications relating to any general meeting of a company which any member of the company is entitled to have sent to him shall also be forwarded to the auditor of the company, and the auditor shall be entitled to attend any general meeting and to be heard at any general meeting which he attends on any part of the business which concerns him as auditor.

218. Penalty for non-compliance with section 211 to 217- If default is made by a company in complying with any of the provisions contained in section 211 to 217, the company, and also every officer of the company who is in default, shall be punishable with fine which may extend to one thousand taka.

219. Penalty for non-compliance by auditor with section 213 and 215.- If any auditor's report is made or any document of the company is signed or authenticated otherwise than in conformity with the requirement of sections 213 and 215, the auditor concerned, and any other person, who signs the report or signs or authenticates the document, shall if the default is wilful, be punishable with fine which may extend to one thousand taka.

220. Audit of certain matters by Cost and Management Accountants.- (1) where in the opinion of the Government, it is necessary to do in relation to any company required under clause-(d) of sub-section (1) of section 181 to include in its books of accounts the particular referred to therein the Government may, by order, direct that an audit of cost accounts of the company shall be conducted in such manner as may be specified in the order by an auditor who shall be a Cost and management accountant" within the meaning of the Cost and Management Accounts Ordinance, 1977 (L III of 1977).

(2) An audit conducted by an auditor under this section shall be in addition to an audit conducted by an auditor appointed under section 210.

(3) The provisions relating to audit of a company specified in this Act mutatis mutandis, and so far as they are applicable, apply to an audit conducted under this section.

221. Right of preference shareholders and debenture holders as to receipts and inspection of reports, etc:- (1) Holders of preference shares debenture holders of a company shall have the same right to receive and inspect the balance sheets and profit and loss account of the company and the reports of the auditors and other reports as is possessed by the holders of ordinary shares in the company.

(2) This section shall not apply to a private company, nor to a company registered before the commencement of this Act:-

Provided that in the case of any public company whether registered before or after the commencement of this Act, the trustees for holders of debentures shall have the right conferred sub-section(1).

Carrying on business with less than the legal minimum of members.

222. Liability for carrying on business with fewer than seven or, in the case of a private company, two members:- If at any time the number of members of a company is reduced, in the case of a private company, below two or, in the case of any other company, below seven and it carries on business for more than six months, while the number is so reduced every person who is a member of the company during the time that it so carries on business during that period and is cognisant of the fact that it is carrying on business with fewer than two members or seven members, as the case may be, shall be individually liable for the payment of the whole debts of the company contracted during that time and may be used for the same without joinder in the suit of any other member. **Service and Authentication of Documents**

223. Service of documents on company:- A document may be served on a company by leaving it at, or sending it by post to, the registered office of the company.

224. Service of documents of Registrar:- A document may be served on the Registrar by sending it to him by post, or delivering it to him, or by leaving it for him, at his office.

225. Authentication of documents:- A document or proceeding requiring authentication by a company may be signed by a director, secretary or other authorised officer of the company, and need not be under its common seal.

Schedules and Rules as to prescribed matters

226. Application and alteration of schedules and power to make rules as to prescribed matters:-(1) The forms specified in Schedules VI to XII or forms as near thereto as circumstances admit shall be used in all matters to which those forms refer.

(2) The Government may alter any of the Schedules except Schedule II

(3) Any alteration made under sub-section (2) shall be published in the official Gazette and on such publication the Schedules so altered shall have effect as if enacted in this Act, but no alteration made by the Government in Schedule I, shall affect any company registered before the alteration as respects that company or any portion of that Schedule.

(4) In addition to the powers herein before conferred by this section, the Government may make rules providing for all or any matters which by this Act are to be prescribed by its authority.

(5) Every such rule shall be published in the official Gazette, and on such publication shall have effect as if enacted in this Act.

Arbitration and Compromise

227. Power of companies to refer matters to arbitration.-(1) A company may by written agreement, refer to arbitration, in accordance with the arbitration act, 1940 (X of 1940), on existing or future difference between itself and any other company or person.

(2) Companies may delegate to the arbitrator power to settle any terms or to determine any matter capable of being lawfully settled or determined by the companies themselves, or by their director or other managing body.

(3) The provision of the Arbitration Act, 1940 (X of 1940), shall apply to all arbitrations between companies and persons in pursuance of this Act.

228. Power to compromise with creditors and members.-(1) Where a compromise or arrangement is proposed between the company and its members or any class of them, the Court may, on the application in summary way of the company or of any creditor or member of the company or, in the case of a company being wound up, of the liquidator, order a meeting of the creditors or class of creditors, or the members of the company or class of members, as the case may be, to be called, held and conducted in such manner as the Court directs.

(2) If a majority in number representing three-fourths in value of creditors, or of members as the case may be, present either in person or by proxy at the meeting, agree to any compromise or arrangement, the compromise or arrangement shall if sanctioned by the Court be binding on all the creditors or the class of creditors, on or all the members or class of members, as the case may be, and also on the company, in the case of a company in the course of being wound up, on the liquidator and contributories of the company.

(3) An order made under sub-section (2) shall have no effect until a certified copy of the order has been filed with the Registrar, and copy of every such order shall be annexed to every copy of the memorandum of the company issued after the order has been made, or in the case of a company not having a memorandum, of every copy so issued of the instrument constituting or defining the constitution of the company.

(4) If a company makes default in complying with sub-section(3), the company and also every officer of the company, who is knowingly and willfully in default, shall be liable to a fine not exceeding fifty take for each copy in respect of which the default is made.

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

(6) In this section, her expression "company" means any company liable to be wound up under this Act and the expression "arrangement" includes a reorganisation of the share capital of the company by the consolidation of shares of different classes or by the division of shares into shares of different classes or by both, those methods and, for the purposes of this section unsecured creditors who may have filed suits or obtained decrees shall be deemed to be of the same class as other unsecured creditors.

(7) An appeal shall lie from any order made by the Court exercising original jurisdiction under this section to the authority authorised to hear appeals from the decision of the Court.

229. Provisions for facilitating arrangements and compromises.-(1) Where an application is made to the Court under section 228 for the sanctioning of a compromise or arrangement proposes between a company and any such persons as are mentioned in that section, and it is shown to the court that the compromise or arrangement has been proposed for the purposes of, or in connection with, a scheme for the reconstruction of any company or companies to the amalgamation of any two or more companies, and that under the scheme the whole or any part of the undertaking and the property of any company concerned in the scheme, in this section referred to as a transferor company, is to be transferred to another company in this section referred to as the transferee company, the Court may, either by the order sanctioning the compromise or arrangement or by any sub-sequent order, make provision for all or any of the following matters :-

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

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

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

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

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

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

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

(3) Where an order is made under this section, every company in relation to which the order is made shall cause a certified copy thereof to be delivered to the Registrar for registration within fourteen days after the completion of the order, and if default is made in complying with the sub-section, the company and also every officer of the company who is knowingly and wilfully in default, shall be liable to a fine not exceeding two hundred taka.

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

(5) Notwithstanding the provisions of sub-section (6) of section 228, the expression "company" in this section does not include any company other than a company within the meaning of this Act.

230. Power to acquire shares of shareholders dissenting from schemes of contract approved by majority:-

(1) Where-

(a) a scheme or contract involves the transfer of shares or any class of shares in a company, in this section referred to as the transferor company, to another company, whether a company within the meaning of this Act or not, in this section referred to as the transferee company; and

(b) within one hundred and twenty days after the making of the offer in that behalf by the transferee company, the offer has been approved by the holders of not less than three-fourths in value of the shares affected, the transferee company may, at anytime within sixty days after the expiration of the said one hundred and twenty days, give notice in the prescribed manner to any dissenting shareholder that it desires to acquire his shares.

(2) Where such a notice is given under sub-section(1), the transferee company shall unless on an application made by the dissenting shareholder within thirty days from the date on which the notice was given the Court thinks fit to order otherwise; be entitled and bound to acquire those shares on the terms on which under the scheme or contract the shares of the approving share holders are to be transferred to the transferee company.

(3) Where a notice has been given by the transferee company under sub- section (1) and the Court has not, on an application made by the dissenting shareholder, ordered to the contrary, the transferee company shall, on the expiration of one month from the date on which the notice has been given, or, if an application to the Court by the dissenting shareholder is then pending, after that application has been disposed of transmit a copy of the notice to the transferor company and pay or transfer to the transferors company the amount or other consideration representing the price payable by the transferee company for the shares which by virtue of this section that company is entitled to acquire, and the transferor company shall thereupon register the transferee company as the holder of those shares.

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

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

Conversion of private company into public company and vice-versa

231. Conversion of private company into public company.--(1) If a company being a private company having at least seven members alters its articles in such manner that they no longer include the provisions which, under clause of sub-section (1) of section 2 of this Act, are required to be included in the articles of a company in order to constitute it a private company, the company-

(a) shall as on the date of the alteration cease to be a private company; and

(b) shall within a period of thirty days after the said date file with the Registrar either a prospectus or a statement in lieu of prospectus containing the particulars set out in Part 1 and the reports specified in Part II of Schedule IV and the said Parts I and II shall have effect subject to the provisions contained in Part III of that Schedule.

(2) If default is made in complying with sub-section (1) the company, and also every officer of the company who is in default, shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to five thousand taka or with both.

(3) Where any prospectus or statement in lieu of prospectus filed under this section includes an untrue statement, any person who authorised the filing of such prospectus or statement shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to five thousand taka, or with both, unless he proves either that the statement was immaterial or that he had reasonable ground to believe, and did up to the time of the filing of the prospectus or statement believe that the statement was true.

(4) for the purposes of this section-

(a) a statement included in a prospectus or a statement in lieu of prospectus shall be deemed to be untrue if it is misleading in the form and context in which it is included; or

(b) where the omission from prospectus or a statement in lieu of prospectus of any matter is calculated to mislead, the prospectus or statement in lieu of prospectus shall be deemed, in respect of such omission, to be a prospectus or a statement in lieu of prospectus in which an untrue statement is included.

(5) For the purposes of sub-section (3) and clause (a) of sub-section (4) the expression "included" when used with reference to a prospectus or statement in lieu of prospectus, means included in the prospectus or statement in lieu of prospectus itself or contained in any report or memorandum appearing on the face thereof, or by reference incorporated therein.

232. Amendment of articles for conversion of a public company into private company.-(1) A public company, having not more than fifty members at the time of conversion, may be converted into a private one by passing a special resolution altering its articles so as to exclude provisions, if any, in the articles of association applicable to public company and include therein provisions applicable to a private company.

(2) If the company has secured creditors, their written consent shall have to be obtained before passing a resolution as per provision of subsection (1) and the shares enlisted with the stock Exchange shall have to be delisted.

Protection of minority interest

233. Power of Court to give direction for protection of interest of the minority.-(1) Subject to fulfilment of the conditions of the required minimum as specified in section 195 (a) and (b) any member or debentureholder of a company may either individually or jointly bring to the notice of the court by application that-

(a) the affairs of the company are being conducted or the powers of the directors are being exercised in a manner prejudicial to one or more of its members or debenture holders or in disregard of his or their interest; or

(b) the company is acting or is likely to act in a manner which discriminates or is likely to discriminate the interest of any member or debenture holder;

(c) a resolution of the members, debenture holders or any class of them has been passed or is likely to be passed which discriminates or is likely to discriminate the interest of one or more of the members or likely to debenture holder:

and pray for such order, as in his or their opinion, would be necessary for safeguarding his or their interest and also the interest of any other member or debenture holder.

(2) The Court shall, on receipt of an application under sub-section(1) send a copy thereof to the Board and fix a date for hearing the application

(3) If after hearing the parties present on the date so fixed, the Court is of opinion that the interest of the applicant or applicants has been or is being or is likely to be prejudicially affected for reasons specified in the application, it may make such order as prayed for or such other order as it deems fit including a direction-

(a) to cancel or modify any resolution or transaction ; or

(b) to regulate the conduct of the company's affairs in future in such manner as is specified therein.

(c) to amend any provision of the memorandum and articles of the company.

(4) Where by an order of the Court, any amendment is made in the memorandum or articles of the company, the company shall not, without leave of the Court, make any amendment therein or take any action which is inconsistent with the direction contained in the order.

(5) A company shall, within fourteen days from the making of an order under this section, inform the Registrar in writing of such order and send him a copy thereof, and if the company makes default in complying with this sub-section the company, and also every officer of the company who is in default, shall be liable to a fine not exceeding one thousand taka.

PART V WINDING UP

Preliminary

234. Mode of winding up.--(1) The winding up of a company may be either.

- (i) by the Court; or
- (ii) voluntary; or
- (iii) subject to the supervision of the Court.

(2) The provisions of this Act with respect to winding up shall apply, to the winding up of a company in any of these modes, unless any thing contrary appears.

Contributories

235. Liability as Contributories of present and past members.-- (1) In the event of a company being wound up every present and past members shall, subject to the provisions of this section, be liable to contribute to the assets of the company to an amount sufficient for payment of its debts and liabilities and the costs, charges and expenses of the winding up, and for the adjustment of the rights of the Contributories among themselves, with the qualifications following, that is to say:--

- (i) a past member shall not be liable to contribute if he has ceased to be a member for one year or upwards before the commencement of the winding up;
- (ii) a past member shall not be liable to contribute in respect of any debt or liability of the company contracted after he ceased to be a member;
- (iii) a past member shall not be liable to contribute unless it appears to the Court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this Act;
- (iv) in the case of a company limited by shares, no contribution shall be required from any member exceeding the amount, if any, unpaid on the shares in respect to which he is liable as a present or past member;
- (v) in case of a company limited by guarantee, no contribution shall be required from any member exceeding the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up;
- (vi) nothing in this Act shall invalidate any provision contained in any policy of insurance or other contract where by the liability of individual members on the policy or contract is restricted or whereby the funds of the company are alone made liable in respect of the policy or contract;
- (vii) a sum due to any member of a company in his character of a member, by way of dividends, profits or otherwise, shall not be deemed to be a debt of the company payable to that member in a case of competition between himself and any other creditor who is not a member of the company.

(2) In the winding up of a company limited by guarantee which has a share capital, every member thereof shall be liable to pay the following amounts namely:--

- (a) the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up; and
- (b) an amount to the extent of any sums unpaid on any shares held by him.

236. Liability of directors whose liability is unlimited.-- In the winding up of a limited company, any director whether past or present, whose liability is, in pursuance of this Act, unlimited, shall, in addition to his own liability (if any) to contribute as an ordinary member, be liable to make a further contribution, as if he were at the commencement of the winding up a member of an unlimited company;

Provided that--

- (i) a past director shall not be liable to make such further contribution if he has ceased to hold office for a year or upwards before the commencement of the winding up;
- (ii) a past director shall not be liable to make such further contribution in respect of any debt or liability of the company contracted after he ceased to hold office;
- (iii) subject to the articles, a director shall not be liable to make such further contribution unless the Court deems it necessary to require contribution in order to satisfy the debts and liabilities of the company and the costs, charges and expense of the winding up.

237. Meaning of "contributory".-- The term "contributory" means every person liable to contribute to the assets of a company in the event of its being wound up, and, in all proceedings for determining and in all proceedings prior to the final determination of the persons who are to be deemed contributories, includes any person alleged to be a contributory.

238. Nature of liability of contributory.-- (1) The liability of the contributory shall create a debt payable at the time specified in the calls made on him by the liquidator.

(2) No claim founded on the liability of a contributory shall be cognizable by any Court of Small Causes,

239. Contributories in case of death of member.--(1) If a contributory dies either before or after he has been placed on the list of Contributories, his, legal representatives and his heirs shall be liable in the due course, of administration to contribute to the assets of the company in discharge of his liability and shall be Contributories accordingly.

(2) If the legal representatives or heirs make default in paying any money ordered to be paid by them, proceedings may be taken for administering the property of the deceased contributory, whether movable or immovable, or both, and for compelling payment there out of the money due.

(3) For the purpose of this section, the surviving coparceners of a contributory who is a member of a Hindu Joint Family governed by the Mitakshara School of Hindu Law shall be deemed to be his legal representatives and heirs.

240. Contributories in case of insolvency of member.-- If a contributory is adjudged insolvent either before or after he has been placed on the list of contributors, then--

(a) his assignees shall represent him for all the purposes of the winding up, and shall be contributories accordingly, and may be called on to admit to prove against the estate of the insolvent, or otherwise to allow to be paid out of his assets in due course of law, any money due from the insolvent in respect of his liability to contribute to the assets of the company; and

(b) there may be proved against the estate of the insolvent the estimated value of his liability to future calls as well as already made.

Winding up by Court

241. Circumstances in which company may be wound up by Court.-- A company may be wound up by the Court; if--

(i) if the company has by special resolution resolved that the company be wound up by the Court; or

(ii) if default is made in filing the statutory report or in holding the statutory meeting; or;

(iii) if the company does not commence its business within a year from its incorporation, or suspends its business for a whole year; or

(iv) if the number of members is reduced, in the case of a private company below two, or, in the case of any other company, below seven; or

(v) if the company is unable to pay its debts; or

(vi) if the Court is of opinion that it is just and equitable that the company should be wound up.

242. Company when deemed unable to pay its debts.--(1) A company shall be deemed to be unable to pay its debts--

(i) if a creditor, by assignment or otherwise, to whom the company is indebted for a sum exceeding five hundred rupees then due, has served on the company, by causing the same to be delivered by registered post or otherwise at its registered office, a demand under his hand requiring the company to pay the sum so due and the company has for three weeks thereafter neglected to pay the sum or to secure or compound for it to the reasonable satisfaction of the creditor; or

(ii) if execution or other process issued on a decree or order of any court in favour of a creditor of the company is returned unsatisfied in whole or in part; or

(iii) if it is proved to the satisfaction of the Court that the company is unable to pay its debts, the Court shall take into account the contingent and prospective liabilities of the company.

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

243. Winding up may be referred to District Court.-- Where the High Court Division makes an order for winding up of a company under this Act it may, if it thinks fit, direct all subsequent proceedings to be had in a District Court, and thereupon such District Court shall for the purpose of winding up the company, be deemed to be "the Court" within the meaning of this Act and shall have, for the purposes of such winding up, all the jurisdiction and powers of the High Court Division.

244. Transfer of winding up from one District Court to another.-- If during the progress of a winding up in a District Court it is made to appear to the High Court Division that the same may be more conveniently prosecuted in any other District Court, the High Court Division may transfer the same to such other District Court, and thereupon the winding up shall proceed in such other District Court, and at any stage of such proceedings, that Division may withdraw the proceedings from any of such District Courts and dispose of it.

245. Provisions as to applications for winding up.-- An application to the Court for the winding up of a company shall be by petition presented, subject to the provisions of this section, either by the company, or by any creditor or creditors, including any contingent or prospective creditor or creditors, contributory or contributors, or by all or any of those parties, together or separately or by the Registrar:

Provided that--

(a) a contributory shall not be entitled to present a petition for winding up a company, unless--

(i) either the number of members is reduced in the case of a private company, below two, or, in the case of any other company, below seven; or

(ii) the shares in respect of which he is a contributory or some of them either were originally allotted to him or have been held by him, and registered in his name for at least six months during the eighteen months before the commencement of the winding up, or have devolved on him through the death of a former holder;

(b) the Registrar shall not be entitled to present a petition for winding up a company--

(i) except on the ground from the financial condition of the company as disclosed in its balance sheet or from the report of an inspector appointed under section 195 or, in a case falling within section 204, it appears that the company is unable to pay its debts; and

(ii) unless the previous sanction of the Government has been obtained to the presentation of the petition:

Provided that no such sanction shall be given unless the company has first been afforded an opportunity of being heard.

(c) a petition for winding up of a company on the ground of default in filing the statutory report or in holding the statutory meeting shall not be presented by any person except by a shareholder, nor before the expiration of fourteen days after the last day on which the meeting ought to have been held;

(d) the Court shall not give a hearing to a petition for winding up of a company by a contingent or prospective creditor until such security for costs has been given as the Court thinks reasonable and until a prima facie case for winding up has been established to the satisfaction of the Court.

246. Effect of winding up order.-- An order for winding up of a company shall operate in favour of all the creditors and of all the contributories of the company as if made on the joint petition of a creditor and of a contributory.

247. Commencement of winding up by Court.-- A winding up of a company by the Court shall be deemed to commence at the time of the presentation of the petition for the winding up.

248. Court may grant injunction.-- The Court may, at any time after the presentation of the petition for winding up of a company under this Act and before making an order for winding up the company, upon the application of the company or of any creditor or contributory of the company, restrain further proceedings in any suit or proceedings against the company and may also pass other similar order upon such terms as the Court thinks fit.

249. Powers of Court on hearing petition.--(1) On hearing the petition, the Court may dismiss it with or without costs, or adjourn the hearing conditionally or unconditionally, or make any interim order or any other order which, it deems just, but the Court shall not refuse to make a winding up order on the ground only that the assets of the company have been mortgaged to an amount equal to, or in excess of, those assets or that the company has no assets.

(2) Where the petition is presented on the ground of default in filing the statutory report or in holding the statutory meeting the Court may order the costs to be paid by any persons who, in the opinion of the Court, are responsible for the default.

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

250. Suits stayed on winding up order.-- When a winding up order has been made or a provisional liquidator has been appointed, no suit or other legal proceedings shall be proceeded with or commenced against the company except by leave of the Court and subject to such terms as the Court may impose.

251. Vacancy in the office of liquidator.--(1) For the purposes of this Act, so far as it relates to the winding up of companies by the Court, or, if there is no such official receiver, then such person as the Government may, by notification in the official Gazette, appoint for the purpose.

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

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

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

252. Copy of winding up order to be filed with the Registrar.--(1) On the making of a winding up order, it shall be the duty of the petitioner in the winding up proceedings and of the company to file with the Registrar a copy of the order within thirty days from the date of the making of the order.

(2) On the filing of a copy of a winding up order, the Registrar shall register a summary thereof in his books relating to the company, and shall notify in the official Gazette that such an order has been made.

(3) Such order shall be deemed to be notice of discharge to the servants of the company except when the business of the company is continued.

253. Power of Court to stay winding up.-- The Court may, at any time after an order for winding up, on the application of any creditor or contributor, and on proof to the satisfaction of the Court that all proceedings in relation to the winding up ought to be stayed, make an order staying the proceedings, either altogether or for a limited time, on such terms and conditions as the Court thinks fit.

254. Court may have regard to wishes of creditors or contributories-- The Court may, as to all matters relating to a winding up, have regard to the wishes of the creditors or contributories as proved to it by any sufficient evidence.

Official Liquidator

255. Appointment of official liquidator.--(1) For the purpose of conducting the proceedings in winding up a company and performing such duties in reference thereto as the Court may impose, the Court may appoint a person or persons, other than the official receiver, to be called an official liquidator or official liquidators.

(2) The Court may make such an appointment provisionally at any time after the presentation of a petition and before the making of an order for winding up, but shall, before making any such appointment, give notice to the company unless for reasons to be recorded it thinks fit to dispense with such notice.

(3) If more persons than one are appointed to the office of official liquidator, the Court shall declare whether any act, by this Act required or authorised, to be done by the official liquidator is to be done by all or any one or more of such persons.

(4) The Court may determine whether any and what security is to be given by any official liquidator on his appointment.

(5) The acts of an official liquidator shall be valid notwithstanding any defect that may afterwards be discovered in his appointment.

Provided that nothing in this sub-section shall be deemed to give validity to acts done by an official liquidator after his appointment has been shown to be invalid.

(6) A receiver shall not be appointment of assets in the hands of an official liquidator.

256. Resignations, removals, filling up vacancies and compensation.-- (1) Any official liquidator may resign, or may be removed by the Court on due cause shown.

(2) Any vacancy in the office of an official liquidator appointed by the Court shall be filled up by the Court and until the vacancy is so filled up the official receiver shall be and act as the official liquidator.

(3) There shall be paid to the official liquidator such salary or remuneration by way of percentage or otherwise, as the Court may direct and if more liquidators that one are appointed, such remuneration shall be distributed amongst them in such proportions as the Court directs.

257. Official liquidator.-- The official liquidator shall be described by the style of the official liquidator of the particular company in respect of which he is appointed, and not by his individual name.

258. Statement of affairs to be made to the liquidator.--(1) Where the Court has made a winding up order or appointment an official liquidator provisionally, there shall, unless the Court thinks fit to order otherwise and so orders, be made out and submitted to the official liquidator a statements as to the affairs of the company verified by an affidavit and containing the following particulars, namely:--

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

(b) the debts and other liabilities;

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

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

(2) The said statement shall be submitted and verified by one or more of the following persons.--

(a) the persons who were at the relevant date the directors and the person who was at that date the secretary, manager or other chief officer of the company, or.

(b) such other person as the official liquidator may, subject to he direction or Court, require to submit and verify the statement, and the said other persons are the persons--

(i) who are or had been directors or officers of the company;

(ii) who have taken part in the formation of the company at anytime within one year before the relevant date;

(iii) who are in the employment of the company or had been in the employment of the company within the said year referred to in sub-- section (ii) above, and are, in the opinion of the official liquidator, capable of giving the information required;

(iv) who are or had been within the said year to which the statement relates officers of or in the employment of a company.

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

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

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

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

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

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

259. Statement by liquidator.--(1) In a case where a winding up order is made, the official liquidator shall, as on as practicable after receipt of the statement to be submitted under section 258, and not later than one hundred and twenty days or with the leave of the Court one hundred and sixty days from the date of the order, or in a case where the Court orders that no statement shall be submitted, as soon as practicable after the date of the order, submit a preliminarily report to the Court--

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

(i) cash and negotiable securities;

(ii) debts due from contributories;

- (iii) debts due to and securities, if any, available to the company,
- (iv) movable and immovable properties belonging to the company;
- (v) unpaid calls, and

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

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

(2) The official liquidator may also, if he thinks fit, make a further report or further reports, stating the manner in which the company was formed and whether in his opinion any fraud has been committed by any person in its promotion or formation or by any director or other officer of the company in relation to the company since the formation thereof, and any other matter which in his opinion it is desirable to bring to the notice of the Court.

260. Custody of company's property.--(1) The official liquidator, whether appointed provisionally or not, shall take into his custody, or under his control all the property, effects and actionable claims to which the company is or appears to be entitled.

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

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

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

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

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

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

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

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

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

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

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

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

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

262. Powers of official liquidator.-- The official liquidator shall have power with the sanction of the Court, to do the following things--

(a) to institute or defend any suit or prosecution, or other legal proceeding, civil or criminal, in the name and on behalf of the company;

(b) to carry on the business of the company so far as may be necessary, for the beneficial winding up of the same,

(c) to sell the immovable and movable property of the company by public auction or private contract, with power to transfer the whole thereof to any person or organisation or company, or to sell the same in parcels.

(d) to do all acts and to execute, in the name and on behalf of the company, all deeds, receipts, and other documents, and for that purpose to use, when necessary the company's common seal;

(e) to prove, rank and claim in the insolvency of any contributory, for any balance against his estate, and to receive dividends in the insolvency, in respect of that balance, as a separate debt due from the insolvent, and rateably with the other separate creditors;

(f) to draw, accept, make and endorse any bill of exchange, hundi or promissory note in the name and on behalf of the company, with the same effect with respect to the liability of the company as if the bill, hundi or note had been drawn, accepted, made or endorsed by or on behalf of the company in the course of its business;

(g) to raise on the security of the assets of the company any more requisite;

(h) to take out in his official name letters of administration relating to the estate of any deceased contributory or his estate which cannot be conveniently done in the name of the company, and in all such cases the money due shall, for the purpose of enabling the liquidator to take out the letters of administration or recover the money be deemed to be due to the liquidator or himself;

Provided that nothing in clause (h) shall be deemed to affect the rights, duties and privileges of the Administrator General appointed under the Administrator General's Act, 1913(III of 1913);

(i) to do all such other things as may be necessary for winding up the affairs of the company and distributing its assets.

263. Limit of Discretion of official liquidator.-- The Court may provide by any order that the official liquidator may exercise any of the above powers without the sanction or intervention of the Court, and, where an official liquidator is provisionally appointed, may limit and restrict his powers by the order appointing him.

264. Provision for legal assistance to official liquidator.-- The Official liquidator may, with the sanction of the Court, appoint an advocate or attorney entitled to appear before the Court to assist him in the performance of his duties;

Provided that, where the official liquidator is an advocate or attorney, he shall not appoint his partner, unless the latter consents to act without remuneration.

265. Liquidator to keep books containing proceeding of meetings and to submit account of his receipts to Court.-

(1) The official liquidator of a company which is being wound up by the Court shall keep, in the manner prescribed, proper books in which he shall cause to be made entries or minutes of proceedings at meetings and of such other matters as may be prescribed, and any creditor or contributory may, subject to the control of the Court, personally or by his agent, inspect any such books.

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

(3) The liquidator shall prepare the account in the prescribed form in duplicate, and shall verify it by a declaration in the prescribed form.

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

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

266. Exercise and control of liquidator's powers--(1) Subject to the provisions of this Act, the official liquidator of a company which is being wound up by the Court shall, in the administration of the assets of the company and in the distribution thereof among its creditors, have regard to any directions that may be given by resolution of the creditors or contributories at any general meeting shall, in case of conflict be deemed to over ride any directions given by the committee of inspection.

(2) The official liquidator may summon general meeting of the creditors or contributories for the purpose of ascertaining their wishes, and it shall be his duty to summon meeting at such times as the creditors or contributories by resolution, may direct, or whenever requested in writing to do so by one tenth in value of the creditors or contributories, as the case may be.

(3) The official liquidator may apply to the Court in the manner prescribed for directions in relation to any particulars matter arising in the winding up.

(4) Subject to the provision of this Act, the official liquidator shall use his own discretion in the administration of the assets of the company and in the distribution thereof among the creditors.

(5) If any person is aggrieved by any act or decision of the official liquidator, that person may apply to the Court, and the Court may confirm, reverse or modify the act or decision complained of, make such order as it thinks just in the he circumstances.

Ordinary Powers of Court

267. Settlement of list of contributories and application of assets.-- (1) As soon as may be after making a winding up order, the Court, shall settle a list of contributories, shall have power to register of members in all cases where rectification is required in pursuance of this Act, and shall cause the assets of the company to be collected and applied in discharge of its liabilities.

(2) In settling the list of contributories, the Court shall distinguish between persons who are contributories in their own right and persons who are contributories as being representatives of or liable for the debts of others.

268. Power to require transfer, delivery etc of property.-- The Court may at any time after making a winding up order, require any contributory for the time being settled on the list of contributories and any trustee, receiver, banker, agent, or officer of the company to pay, deliver surrender or transfer forthwith, or within such time as the Court directs, to the official liquidator any money property or documents in his hands to which the company is prima facie entitled.

269. Power to order payment of debts by contributory.-- (1) The Court may, at any time after making a winding up order, make an order any contributory for the time being settled on the list of contributories to pay, in the manner directed by the order, any money due from him or from the estate of the person whom he represents to the company exclusive of any money payable by him or the estate by virtue of any call in pursuance of this Act.

(2) The Court in making such an order may, in the case of an unlimited company, allow to the contributory by way of set-off any money due to him or to the estate which he represents from the company, on any independent dealing or contract with

the company, but not any money due to him as a member of the company in respect of any dividend or profit, and may, in the case of a limited company, made to any director whose liability is unlimited or to his estate the like allowance:

Provided that, the case of any company, whether limited or unlimited, when all the creditors are paid in full any money due on any account whatever to a contributory from the company may be allowed to him by way of set-off against any subsequent call.

270. Power of Court to make calls.--(1) The Court may, at any time after making a winding up order, and that is either before or after it has ascertained the sufficiency of the assets of the company, make calls on and order payment thereof by all or any of the contributories for the time being settled on the list of the contributories to the extent of their liability, for payment of any money which the Court considers necessary to satisfy the debts and liabilities of the company, and the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves.

(2) In making the call the Court may take into consideration the probability that some of the contributories may partly or wholly fail to pay the call.

271. Power to order payment into bank.-- The Court may order any contributory, purchaser or other person from whom money is due to the company to pay the same into the account of the official liquidator in any scheduled banks as defined in the Bangladesh Bank Order, 1972 (P.O. No. 127), instead of to the official liquidator and any such order may be enforced in the same manner as if it had made direct payment to the official liquidator.

272. Regulation of account with Court.-- All moneys, bills, hundis, notes and other securities paid and delivered into the bank where the liquidators of the company may have his account, in the event of a company being wound up by the Court, shall be subject in all respect to the orders of the Court.

273. order on contributory conclusive evidence:-- (1) An order made by the Court on a contributory shall, subject to any right of appeal, be conclusive evidence that the money, if any, thereby appearing to be due or ordered to be paid is due.

(2) All other pertinent matters stated in the order shall be taken to be truly stated as against all persons, and in all proceedings whatsoever.

274. Power to exclude creditors not providing in time :-- The Court may fix a time or times within which creditors are to prove their debts or claims, or to be excluded from the benefit of any distribution made before those debts are proved.

275. Adjustment of right of contributories:-- The Court shall adjust the right of the contributories among themselves, and distribute any surplus among the persons entitled thereto.

276. Power to order cost:- The Court may, in the event of the companys assets being insufficient to satisfy the liabilities, make an order as to the payment, out of the assets, of the costs, charges and expenses, incurred in the winding up in such order of priority as the Court thinks just.

277. Dissolution of company--(1) When the affairs of a company have been completely wound up, the Court shall make an order that the company be dissolved from the date of the order, and the company shall be dissolved accordingly.

(2) The order shall be reported within fifteen days of the making thereof by the official liquidator to the Registrar, who shall record in his make books a minute of the dissolution of the company.

(3) If the official liquidator makes default in complying with the requirements of this section, he shall be liable to a fine not exceeding one hundred taka for everyday during which he is in default.

Extraordinary Powers of Court

278. Power to summon persons suspected of having property of company:--(1) The Court may, after it has made a winding up order, summon before it any officer of the company or person known or suspected to have in his possession any property of the company, or supposed to be indebted to the company, or any person whom the Court deems capable of giving information concerning the trade, dealing, affairs or property of the company.

(2) The Court may examine him on oath concerning the same, either by word of mouth or on written interrogatories, and may reduce his answers to writing and require him to sign them.

(3) The Court may require him to produce any documents in his custody or power relating to the company; but, where he claims any lien on documents produced by him, the production shall be without prejudice to that lien, and the Court shall have jurisdiction in the winding up to determine all questions relating to that lien.

(4) If any person so summoned, after being tendered a reasonable sum for his expens, refuses to come before the Court at the time appointed, not haveing a lawful impediment made known to the Court at the time of its sitting and allowed by it, the Court may cause him to be apprehended and brought before the Court for examination.

279. Power to order public examination of promoters, etc:--(1) When an order has been made for winding up a company by the Court, and the official liquidator has applied to the Court stating that in his opinion, a fraud has been committed by any person in the promotion or formation of the company or by any director or other officer of the company, in relation to the company since its formation, the Court may, after consideration of the application, direct that any person who has taken any part in the promotion or formation of the company or has been a director manager or other officer of the company shall attend before the Court on a day appointed by the Court for that purpose attend before the Court on a day appointed by the Court for that purpose, and be publicly examined as to the promotion or formation or the conduct of the business of the company, or as to his conduct and dealings as director manager or other officer thereof.

(2) The official liquidator shall take part in the examination and for that purpose may, if specially authorised by the Court in that behalf, employ such legal assistance as may be sanctioned by the Court.

(3) Any creditor or contributory may also take part in the examination either personally or by any person entitled to appear before the ourt.

(4) The Court may put such questions to the person examined as the Court thinks fit.

(5) The person examined shall be examined on oath, and shall answer all such questions as the Court may put or allow to be put to him.

(6) A person ordered to be examined under this section may at his own cost employ any person entitled to appear before the Court, who shall be at liberty to put to him such questions as the Court may deem just for the purpose of enabling him to explain or qualify any answers given by him;

Provided that if he is, in the opinion of the Court, exculpated from any charges made or suggested against him such costs as, in its discretion, it may think fit.

(7) Notes of the examination shall be taken down in writing, and shall be read over to or by, and signed by, the person examined, and may thereafter be used in evidence against him in civil proceedings, and shall be open to the inspection of any creditor or contributory at all reasonable times.

(8) The Court may, if it thinks fit, adjourn the examination from time to time.

(9) An examination under this section may, if the Court so directs, and subject to any rules in this behalf, be held before any District Judge or before any officer of the High Court Division being an official referee, master, Registrar or Deputy Registrar and the powers of the Courts under this section as to the conduct of the examination, but not as to costs, may be exercised by the person before whom the examination is held.

280. Power to arrest absconding contributory:-- The Court, at any time either before or after making a winding up order and on proof of probable cause for believing that a contributory is or about to quit Bangladesh or otherwise to abscond, or to remove or conceal any of his property, for the purpose of evading payment of calls or of avoiding examination respecting the affairs of the company, may cause the contributory to be arrested and his books and papers and movable property to be seized, and him and them to be safe custody until such times as the Court may order.

281. Saving of other proceedings:-- Any powers by this Act conferred on the Court shall be in addition to and not in restriction of, any existing powers of instituting proceedings against any contributory or debtor of the company, or the estate of any contributory or debtor for the recovery of any call or other sums.

Enforcement of and appeal from Orders

282. Power to enforce orders:-- All orders made by the Court under this Act may be enforced in the same manner in which decrees of such Court made in any suit pending therein may be enforced.

283. Order made in any Court to be enforced by other Courts:-- Any order made by the Court for or in the course of the winding up of a company shall be enforced in any place in Bangladesh by any other court that would have had jurisdiction in respect of such company if the registered office of the company had been situated at such place and in the same manner in all respects as if such order had been made by the court that is hereby required to enforce the same, but in relation to the place where the registered office of the company is situated, only the court having jurisdiction over such place shall enforce such order.

284. Mode of dealing with order to be enforced by other Courts:-- Where any order made by one Court is to be enforced by another Court, a certified copy of the order so made shall be produced to the proper officer of the Court required to enforce the same, and the production of such certified copy shall be sufficient evidence of such order having been made; and thereupon the last mentioned Court shall take the requisite steps in the matter for enforcing the order, in the same manner as if it were the order of the Court enforcing the same.

285. Appeal from orders:-- Re-hearing of, and appeals from order or decision made or given in the matter of the winding up of a company by the Court may be had in the same manner and subject to the same conditions in and subject to which appeals may be had from any order or decision of the same Court in cases within its ordinary jurisdiction. **Voluntary Winding Up**

286. Circumstances in which company may be wound up voluntarily:--(1) A company may be wound up voluntarily--

(a) when the period, if any, fixed for the duration of the company by the articles expires, or the even, if any occurs, on the occurrence of which articles provide that the company is to be dissolved and the company in general meeting has passed a resolution requiring the company to be wound up voluntarily;

(b) if the company resolves by special resolution that the company be wound up voluntarily;

(c) if the company resolves by extraordinary resolution to the effect that it cannot by reason of its liabilities continue its business, and that it is advisable to wind up.

(2) The expression "resolution for voluntarily winding up" when used hereafter in this Part means a resolution passed under clause (a), clause (b), or clause (c) of this section.

287. Commencement of voluntary winding up:-- A voluntary winding up shall be deemed to commence at the time of the passing of the resolution for voluntary winding up.

288. Effect of voluntary winding up on status of company:--When a company is wound up voluntarily, the company shall, from the commencement of the winding up, cease to carry on its business, except so far as may be required for the beneficial winding up thereof:

Provided that the corporate state and corporate powers of the company shall, notwithstanding anything to the contrary in its articles, continue until it is dissolved.

289. Notice of resolution to wind up voluntarily:--(1) Notice of any special resolution or extraordinary resolution for winding up a company voluntarily shall be given by the company within ten days of the passing of the same by

advertisement in the official Gazette, and also in some news paper, if any circulating in the district where the registered office of the company is situate.

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

290. Declaration of solvency.--(1) Where it is proposed to wind up a company voluntarily, the directors of the company or, in the case of a company having more than two directors, the majority of the directors shall at a meeting of the directors held before the date on which the notice of the meeting at which the resolution of the winding up the company is to be proposed are sent out, make a declaration verified by an affidavit to the effect that they have made a full inquiry into the affairs of the company and that, having so done, they formed the opinion that the company will be able to pay its debts in full within a period, not exceeding three years, from three commencement of the winding up.

(2) Such declaration shall be supported by a report of the company's auditors on the company's affairs, and shall have no effect for the purposes of this Act unless it is delivered to the Registrar for registration before the date mentioned in sub-section(1).

(3) A winding up, in the case or which a declaration has been made and delivered in accordance with sub--sections (1) and (2), is in this Act referred to as "members voluntars winding up", and, where a declaration has not been made and delivered as aforesaid, is in this Act referred to as "creditors voluntary winding up."

Members' Voluntary Winding up

291. Provisions applicable to a members' voluntary winding up.-- The provisions contained in section 292 to 296 (both inclusive), shall apply in relation to a members voluntary winding up.

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

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

293. Power to fill vacancy in the office of liquidator.--(1) If a vacancy occurs by death, resignation or otherwise in the office of liquidator appointed by the company, the company in general meeting may, subject to any agreement with its creditors, fill vacancy.

(2) For the purpose of filling in the said vacancy, a general meeting may be convened by any contributory or, if there were more liquidators than one, by the continuing liquidator.

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

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

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

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

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

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

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

(6) The provisions of the Arbitration Act, 1940(X of 1940), other that those restricting the application of the Act in respect of the subject matter of the arbitration, shall apply to all arbitrations in pursuance of this section.

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

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

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

(2) The meeting shall be called by advertisement specifying the time, place and object thereof and published one month at least before the meeting in the manner specified in sub-section (1) of section 289 for publication of a notice under that sub-section;

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

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

(4) The Registrar on receiving the account and either of the returns mentioned in sub-section (3) shall forthwith register them and on the expiration of three months from the registration of the return the company shall be deemed to be dissolved:

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

(5) It shall be the duty of the person on whose application an order of the Court under sub-section (4) is made, within twenty-one after the making of the order, to deliver to the Registrar a certified copy of the order for registration and if that person fails so to do he shall be liable to a fine not exceeding one hundred taka for every day during which the default continues.

Creditor's voluntary winding up

297. Provision applicable to a voluntary winding up:-- The provisions contained in sections 298 to 305, both inclusive, shall apply in relation to a creditors voluntary winding up.

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

(2) The company shall also cause notice of the meeting of the creditors to be advertised in the manner specified in sub-section (1) of section 289 for the publication of a notice under that sub-section.

(3) The directors of the company shall--

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

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

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

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

(6) If default is made--

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

(b) by the board of directors of the company in complying with sub-section(3);

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

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

299. Appointment of liquidator.-- The creditors and the company at their respective meetings mentioned in section 298 may nominate a person to be liquidator for the purpose of winding up the affairs and distributing the assets of the company, and if the creditors and the company nominate different persons, the person nominated by the creditors shall be the liquidator, and if no person is nominated by the creditors the person, if any, nominated by the company shall be liquidator.

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

300. Appointment of committee of inspection.-- The creditors at the meeting to be held in pursuance of section 298 or at any subsequent meeting may, if they think fit, appoint a committee of inspection consisting of not more than five persons and if such a committee is appointed the company may, either at the meeting at which the resolution for voluntary winding

up is passed or at anytime subsequently in general meeting, appoint such number of persons as they think fit to act as members of the committee not exceeding five in number:

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

301. Fixing of liquidators remuneration and cessation of directors powers.-- The committee of inspection, or if there is no such committee, the creditors may fix the remuneration to be paid to the liquidator or liquidators, and where the remuneration is not so fixed, it shall be determined by the Court.

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

302. Power to fill vacancy in the office of liquidator.-- If a vacancy occurs by death, resignation or otherwise, in the office of a liquidator then the vacancy may be filled in by the Court when the liquidator was appointed by the Court or by the creditors where the liquidator was appointed by creditors.

303. Application of section 294 to a creditors voluntary winding up.-- The provisions of section 294 shall apply the case of a creditors voluntary winding up as in the case of a members voluntary winding up with the modification that the powers of the liquidator under the said section shall not be exercised with the sanction either of the Court or of the committee of inspection.

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

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

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

(2) Each such meeting under sub-section (II) shall be called by advertisement specifying the time, place and object thereof and published one month at least before the meeting in the manner specified in sub-section (1) of section 289 for the publication of a notice under that sub-section.

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

Provided that, if a quorum, which for the purpose of this section shall be two persons, is not present at either of such meetings the liquidator shall, in lieu of such return, make a return that the meeting was duly summoned and that no quorum was present thereat, and upon such a return being made the provisions of this sub-section as to the making of the return shall, in respect of that meeting be deemed to have been complied with (4) The Registrar, on receiving the account and in respect of each such meeting.

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

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

(5) It shall be the duty of the person on whose application an order of the Court under sub-section (4) is made, within twenty one days after the making of the order, to deliver to the Registrar a certified copy of the order for registration, and if that person fails to do so, he shall be liable to a fine not exceeding one hundred taka for every day during which the default continues.

General provision for voluntary winding up

306. Provisions applicable to every voluntary winding up.-- The provisions contained in section 307 to 314, both inclusive, shall apply to every voluntary winding up whether a members or a creditors winding up.

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

308. Powers and duties of liquidator in voluntary winding up.--(1) The liquidator may--

(a) in the case of a members voluntary winding up with the sanction of an extraordinary resolution of the company, and in the case of a creditors' voluntary winding up, with the sanction of either the court or the committee of inspection, exercise any of the powers given by clauses (d), (e), (f) and (h) of section 262 to a liquidator in a winding up; but the exercise by the liquidator of the powers given by this clause shall be subject to the control of the Court

and any creditor or contributory may apply to the Court with respect to any exercise or proposed exercise of any of these powers;

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

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

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

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

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

309. Power of Court to appoint and remove liquidator in voluntary winding up--(1) If, from any cause whatever, , there is no liquidator acting, the Court may appoint a liquidator.

(2) The Court may, on cause shown, remove a liquidator and appoint another liquidator, and, in case of such removal shall immediately send a copy of the removal order to the removed liquidator.

310. Notice by liquidator of his appointment.--(1) The liquidator shall, with--in twenty one days after his appointment, deliver to the Registrar for registration a notice of his appointment in the form prescribed.

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

311. Arrangement when bindings on creditors.- Any arrangement entered into between a company about to be, or in the course of being, wound up and its creditors shall, subject to the right of appeal under sub-section (2) be binding on the company if sanctioned by an extraordinary resolution, and also on the creditors if acceded to by there--fourths in number and value of the creditors.

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

312 Power to apply to Court to have questions determined of powers exercised.--(1) The liquidator or any contributory or creditor may apply to the Court to determine any question arising in the winding up of a company, or to exercise, as respects the enforcing of alls, staying of proceedings or any other matter all or any of the powers which the court might exercise if the company were being wound up by the Court.

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

(3) The application under sub-section (2) shall be made--

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

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

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

313. Cost of voluntary winding up.-- All costs, charges and other expenditure properly incurred in the winding put including the remuneration of the liquidator, shall subject to the rights of secured creditors, if any, be payable out of the assets of the company in priority to all other claims.

314. Saving for rights of creditors and contributory.-- The winding up of a company shall not bar the right of any creditor or contributory to apply for a winding up by the Court, but in the case of an application by a contributory the Court must be satisfied that the rights of the contributories will be prejudiced by a voluntary winding up.

315. Power of Court to adopt proceeding of voluntary winding up.-- Where a company is being wound up voluntary and an order is made for winding up by the Court, the Court may, if it think fit, by the same or subsequent order, provide for the adoption of all or any of the proceedings in the voluntary winding up and also for any incidental on consequent situation.

Winding up subject to supervision of Court

316. Power to order winding up subject to supervision.-- when a company has by special or extraordinary resolution, resolved to wind up voluntarily the Court may make an order that the voluntary winding up shall continue, but subject to such supervision of the Court, and with such liberty for creditors, contributories; or other to apply to the court and generally on such terms and conditions as the court thinks just.

317 Effect of petition for winding up subject to supervision.--A petition for continuance of voluntary winding up subject to the supervision of the Court shall, for the purpose of giving jurisdiction to the court over suits, be deemed to be petition for winding up by the court.

318. Court may have regard to wishes of creditors and contributories.--The Court may, in deciding between a winding up by the Court and winding up subject to supervision, in the appointment of liquidators, and all other matter relating to the winding up subject to supervision have regard to the wishes of the creditors or contributories; as proved to it by any sufficient evidence.

319. Power of Court to appoint and remove liquidators.--(1) Where an order is made for a winding up subject to supervision, the Court may by the same or any subsequent order appoint any additional liquidator.

(2) A liquidator appointed by the Court under this section shall have the same powers, be subject to the same obligations and in all respects stand the same position as if he had been appointed by the company.

(3) The Court may remove any liquidator so appointed by the Court or any liquidator continued under the supervision order and fill any vacancy occasioned by the removal or by death or resignation.

320. Effect of supervision order.--(1) Where an order is made for a winding up subject to supervision, the liquidator may, subject to any restrictions imposed by the Court, exercise all these powers, without the sanction or intervention of the Court, in the same manner as if the company were being wound up altogether voluntarily.

(2) Except as provided in sub-section (1), and save for the purposes of section 279, any order made by the Court for a winding up subject to the supervision of the Court shall for all purposes, including the staying of suits and other proceedings, be deemed to be an order of the court for winding up of the company by the Court and shall confer full authority on the Court to make calls or to enforce calls made by the liquidators, and to exercise all other powers which it might have exercised if an order had been made for winding up the company altogether by the Court.

(3) In the construction of the provision whereby the Court is empowered to direct any act or thing to be done to or in favour of the official liquidator, the expression "official liquidator" shall be deemed to mean the liquidator conducting the winding up subject to the supervision of the Court.

321. Appointment of liquidators subject to supervision to the office of official liquidators-- Where an order has been made for the winding up of a company subject to supervision, and an order is afterwards made for winding up by the Court, the Court may, by the last-mentioned order or by any subsequent order, appoint the liquidators for the first-mentioned winding up or any of them either provisionally or permanently, and with or without the addition of any other person, to be official liquidator in the winding up by the Court.

Supplemental Provisions

322. Avoidance of transfers, etc. after commencement of winding up.-- (1) In the case of voluntary winding up, every transfer of shares, except transfers made to or with the sanction of the liquidator, and every alteration in the status of the member of the company made after the commencement of the winding up shall be void.

(2) In the case of a winding up by or subject to the supervision of the Court, every disposition of the property, including actionable claims of the company, and every transfer of shares, alteration in the status of its members, made after the commencement of the winding up shall be void unless otherwise ordered by the Court.

323. Debts of all descriptions to be proved.--In every winding up, subject in the case of insolvent companies to the application in accordance with the provisions of this Act or the law of insolvency, all debts payable on a contingency, and all claims against the company, present or future, certain or contingent, be admissible to proof against the company, a just estimate being made, so far as possible, of value of such debts or claims as may be subject to any contingency or for some other reason do not bear a certain value.

324. Application of insolvency rules in winding up of insolvent companies.-- In the winding up of an insolvent company, all debts payable on a contingency, and all claims against the company, present or future, certain or contingent, shall be admissible to proof against the company, a just estimate being made, so far as possible, of value of such debts or claims as may be subject to any contingency or for some other reason do not bear a certain value.

324. Application of insolvency rules in winding up of insolvent companies.-- In the winding up of an insolvent company the same rules shall prevail and be observed with regard to the respective rights of secured and unsecured creditors and to debts provable and the valuation of annuities and future and contingent liabilities as are in force for the time being under the law of insolvents with respect to the estate of persons adjudged insolvent; and all persons who in any such case would be entitled to prove for and receive dividends out of the assets of the company may come in under the winding up, and make such claims against the company as they respectively are entitled to by virtue of this section.

325. Preferential payments.--(1) In a winding up there shall be paid in priority to all other debts--

(a) all revenue, taxes, cesses and rates, whether payable to the Government or to a local authority due from the company at the date, specified in sub-section(5), hereinafter referred to in this section as the said date and having become due and payable within the twelve months next before the said date;

(b) all wages or salary of any clerk and other servant in respect of service rendered to the company within the two months next before the said date, not exceeding one thousand taka for each clerk or servant;

(c) all wages of any labourer or workman, not exceeding five hundred for each, whether payable for the time or piece-work, in respect of services rendered to the company within the two months next before the said date;

(d) compensation payable under the Workmen's Compensation Act, 1923 (VIII of 1923), in respect of the death or disablement of any officer or employee of the company; and

(f) the expenses of any investigation held in pursuance of clause (c) of section 195 of this Act.

(2) The debts mentioned in sub-section(1) shall--

(a) rank equally among themselves and be paid in full, unless the assets are insufficient to meet them, in case they shall abate in equal proportion; and

(b) so far as the assets of the company available for payment of general creditors are insufficient to meet them, have priority over the claims of holders of debentures under any floating charge created by the company and be paid accordingly out of any property comprised in or subject to that charge.

(3) Subject to the retention of such sums as may be necessary for the costs and expenses of the winding up, the foregoing debts shall be discharged forth with so far as the assets are sufficient to meet them.

(4) In the event of any person distraining or having distrained on any goods or effects of the company within three months next before the date of a winding up order, the debts to which priority is given by this section shall be a first charge on the goods or effects so distrained on the proceeds of the sale thereof:

Provided that in respect of any money paid under any such charge these said persons shall have the same rights or priority as the person to whom the pay

(5) The date referred to in sub-section (1) (a) is--

(a) in the case of a company ordered to be wound up compulsorily which had not previously commenced to be wound up voluntarily the date of the winding up order; and

(b) in any other case, the date of the commencement of the winding up.

326. disclaimer of property.--(1) Where any part of the property of company which is being wound up consists of land of any tenure burdened with onerous covenants, of shares, or stock in other companies, of unprofitable contracts or of any other property that is unsalable, or not readily saleable, by reason of its binding the possessor thereof to the performance of any onerous act, or to the payment of any sum of money, the liquidator of the company, notwithstanding that he had endeavored to sell or has taken possession of the property, or had exercised any act of ownership in relation thereto, may with the leave of the Court and subject to the provisions of this the commencement of the winding up or such extended period as may be allowed by the Court disclaim the property:

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

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

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

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

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

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

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

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

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

and in either, if the case so requires, as if the lease had comprised only the property comprised in vesting order, and any mortgagee or under lease declining to accept a vesting order up on such terms shall be excluded all interest in and security upon the property, and if there is not person claiming under the company who is willing to accept and order upon such terms, the Court shall have power to vest the estate and interest of the company in the property in any person liable, either personally or in representative, and either alone or jointly with company, to perform the lessee's covenants in the lease, freed and discharged from all estates, incumbrances and interests created therein by the company.

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

327 Fraudulent preference.--(1) Any transfer, delivery of goods, payment, execution or other act relating to property which would, if made or done by or against an individual be deemed in his insolvency a fraudulent preference, shall be made or done by or against a company, be deemed and invalid accordingly.

(2) For the purpose of this section, the presentation of a petition for winding up in the case of winding up by or subject to the supervision of the Court, and a resolution for winding up in the case of a voluntary winding up, shall be deemed to correspond with the act of insolvency in the case of an individual.

(3) Any transfer or assignment by a company of all its property to trustees for the benefit of all its creditors shall be void.

328. Avoidance of certain attachments, executions, etc.--(1) Where any company is being wound up by or subject to the supervision of the Court, any attachment, distress or execution put in force without leave of the Court against the estate or effects or any sale held without leave of the Court of any properties of the company after the commencement of the winding up shall be void.

(2) Nothing in this section applies to proceedings by the Government.

329. Effect of charge created after commencement of winding up--A floating charge on the undertaking or property of the company created within ninety days of commencement of the winding up shall unless it is proved that the company immediately immediately after the creation of the charge was solvent, be invalid except to the amount of any cash paid to the company at the time of or subsequently to the creation of, and in consideration for the charge, together with interest on the amount at the rate of five per cent, per annum.

330 General scheme of liquidation may be sanctioned. --(1) The liquidator may with the sanction of the Court when the Court or subject to the supervision of the Court, and with the sanction of an extraordinary resolution of the company in the case of a voluntary winding up, do the following things or any of them:--

(i) pay to any classes of creditor in full;

(ii) make any compromise or arrangement with creditors or persons claiming to be creditors or alleging themselves to have any claim, present or future, whereby the company may be rendered liable;

(iii) compromise all calls and liabilities to calls, debts and liabilities, capable of resulting in debts, and all claims, present or future, certain or contingent, subsisting or supposed to subsist between the company and a contributory or alleged contributory or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets or the winding up of the company, on such terms as may be agreed, and take any security for the discharge of any such call debt, liability or claim, and give a complete discharge in respect thereof.

(2) The exercise by the liquidator of the powers under this section shall be subject to the control of the Court and any creditor or contributory may apply to the Court with respect to any exercise or proposed exercise of any these powers.

331. Power of Court to assess damages against delinquent director, etc.--(1) Where, in the course of winding up a company it appears that any person who has taken part in the formation or promotion of the company or any past or present director, manager or liquidator, or any officer of the company properly of the company, or been guilty of misfeasance or breach of trust in relation to the company the Court may, on the application of the liquidator or of any creditor or contributory made within three years from the date of the first appointment of a liquidator in the winding up or of the misapplication, retainer of liquidator in the winding up or of the misapplication, retained misfeasance or breach of trust, as the case may be whichever is longer examine of the conduct of the promoter, director manager liquidator or office and may compel him to repay or restore the money or property or any part thereof with interest at such rate as the Court thinks just, or to contribute such sum to the assets of the company by way of compensation in respect of the misapplication, retainer, misfeasance or breach or trust, as the Court thinks just.

(2) This section shall apply notwithstanding that offence is one for which the offender may be criminally prosecuted.

332. Penalty for falsification of book.--In any director, manager, officer or contributory of any company being wound up destroys, mutilates, alters or falsifies or fraudulently secretes any books papers or securities or makes or is privy to the making of any false or fraudulent entry in any register book of account or document belonging to the company with intent to defraud or deceive any person, he shall be liable to imprisonment for a term which may extend to seven years, and shall also be liable to fine.

333 Prosecution of delinquent directors.--(1) If it appears to the Court in the course of a winding up by, or subject to the supervision of the Court that an past or present director, manager or other officer, or any member of the company has been guilty of any offence in relation to the company for which he is criminally liable the Court may either on the application of any person intrusted in the winding up of its own motion, direct the liquidator to prosecute the offender or to refer the matter to the Registrar.

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

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

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

(5) If it appears to the Court in the course of a voluntary winding up that any past or present director, manager or other officer or any member of the company has been guilty as aforesaid, and that no report with respect to the matter has been made by the liquidator to the Registrar, the Court may, on the application of any person interested in the winding up or of its

won motion, direct the liquidator to make such a report, and on a report being made accordingly, the provision of this action shall have effect as though the report as been made in pursuance of the provision of sub-section(2).

(6) If a matter is reported or referred to the Registrar under this section and considers that prosecution ought to be instituted there on, he shall place the papers before the Attorney General or the public prosecutor and shall if advised to do so, institute proceedings :

Provided that no prosecution shall be undertake without first giving the accused person an opportunity of making a statement in writing to the Registered and of being headed thereon.

(7) Notwithstanding anything contained in the Evidence Act, 1872(1 of 1872), when any proceedings are instituted under this section it shall be duty of the liquidator and of every officer and agent of the company past and present other than the defendant in the proceedings, to give all assistance in connection with the prosecution which he is reasonably able to give, and for the purposes of this sub--section the expression "agent" in relation to a company shall be deemed to include any banker or legal adviser if the company and any person employed by the company as auditor, whether that person is or is not an officer of the company.

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

334. Penalty for false evidence:-- If any person, upon any examination authorised under this Act, or in any affidavit, depositing or solemn affirmation, in or about the winding up of any company under this Act, or otherwise in or about any matter arising under this Act intentionally give false evidence, he shall be liable to imprisonment for a term which may extend to seven years, and shall also be liable to find.

335. Penal provisions--(1) If any person, being a past or present director, managing agent manager or other officer of a company which at the time of the commission of the alleged offence is being wound up in any manner.--

(a) does not to the best of his knowledge and belief fully and truly discover to the liquidator all the property, moveable and immovable of the company, and how and to whom and for what consideration part as has been disposed of in the ordinary way of the business of the company, or

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

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

(d) with in twelve months next before the commencement of the winding up or at any time thereafter, conceals any part of the property of the company to the value of one hundred taka or up wards or conceals any debt to or from the company, or

(e) within twelve months nest before the commenment of the winding up or at any time thereafter fraudulently remove any part of the property of the company to the value of one hundred taka or upwards, or

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

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

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

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

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

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

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

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

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

(o) within twelve months next before the commencement of the winding up or at any time thereafter pawns, pledges, or disposes of any property of the company which such pawning pledging or disporting is in the ordinary way of the biasness of the company, or

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

he shall be punishable, in the case of the offence mentioned in clauses (m) (n) and (o) with imprisonment for a term not exceeding seven years,, and in the case of any offence, mentioned in other clauses with imprisonment for a term not exceeding two years:

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

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

336. Meeting to ascertain wishes of creditors or contributors.(1) where by this Act the Court is authorized in relation to winding up have regard to the wishes of creditors or contributors,, as proved to it by any sufficient evidence, the Court may if it thinks for the purpose of ascertaining those wishes, direct meetings of the creditors or contributors to be called, held and conducted in such manner as the court direct and may appoint a person to act as Chairman of any such meeting and to report the result therefor to the Court.

(2) In the case of creditors, regard shall be had to the value of each creditor's debt.

(3) In the case of contributories regard shall be had to number of votes conferred on each contributory by the articles.

337. Evidential value of documents of company-- Where any company is being wound up, all documents of the company and of the liquidator shall as between the contributors of the company, be prima-facie evidence of the truth of all matters purporting to be therein recorded.

338. Inspection documents.-- After and order for a winding up by or subject to the supervision of the Court the Court may make such order for inspection of documents of the company of its documents as the Court thinks just, and any documents in the possession of the company may be inspected by creditors or contributors accordingly but not , further or otherwise.

339. Disposal of documents of company:--(1) when a company has been wound up and is about to be dissolved the documents of the company and of the liquidator may be disposed of as follows, that is to say:--

(a) in the case of a winding up by or subject to the supervision of the Court, in such way as the Court directs;

(b) in the case of voluntary winding up, in such way as the company by extraordinary resolution directs.

(2) After three years from the dissolution of the company no responsibility shall rest on the company or the liquidators, or any person to whom the custody of the documents has been committed, by reason of the same not being forthcoming to any person claiming to be interested therein.

340 Power of Court to declare dissolution of company void: --(1) Where a company has been dissolved, the Court may, at any time within two years of the date of the dissolution on an application being made for the purpose by liquidator of the company or by any other person who appears to the Court to be interested make an order upon such terms as the Court to the Court to be interested, make an order upon such terms as the Court thinks fit, declaring the dissolution to have been void, and thereupon such proceedings may be taken as might have been taken if the company had not been dissolved.

(2) It shall be the duty of the person on whose application the order was made, within twenty-one days after making of the order, to file with the Registrar a certified copy of the order, and if that person fails so to do, he shall be liable to a fine not exceeding one hundred taka for every day during which he default continues.

341 Information as to pending liquidations : (1) where a company is being wound up, if the winding up is not concluded--one year after its commencement the liquidator, shall, once a year and at intervals of not more than twelve months until the winding up is concluded, file in the Court or with the Registrar, as the case may be statement in the prescribed form and containing the prescribed particulars with respect to the proceeding in and the position of the liquidation.

(2) Any person stating himself in writing to be a creditor or contributory of the company shall be entitled, by himself or by his agent, at all reasonable time, on payment of the prescribed fee, to inspect the statement and to receive a copy thereof or extract therefrom; but any person untruthfully so stating himself to be a creditor or contributory shall be deemed to be guilty of an offence under section 182 of the Penal Code (XLV of 1860) , and shall be punishable accordingly on the application of the liquidator.

(3) If a liquidator fails to comply with the requirements of this section, he shall be liable to a fine not exceeding one thousand taka for each day during which the default continues.

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

342. Payment of liquidator into bank:-- (1) Every liquidator of a company which is being wound up by the Court shall in such manner and at such times as may be prescribed, pay the money received by him into a scheduled bank as defined in the Bangladesh Bank Order, 1972 (P.O. No. 127 of 1972):

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

(2) If any liquidator at any time retains for more than 10 days a sum exceeding five hundred taka or such other amount as the Court may in any particular case authorize him to retain unless he explains the retention in excess of the rate of

twenty per cent annum and shall be liable to disallowance of all or such part of his remuneration as the Court may think just and to be removed from his office by the Court and shall be liable to pay any expenses occasioned by reason of his default.

(3) A liquidator of a company which is being wound up shall open a special banking account and pay all sums received by him a liquidator into such account.

343. Unclaimed dividend and undistributed assets to be paid to Combines Liquidation Account:

(1) Where any company is being wound up, if the liquidator has in his hands or under his control any money of the company presenting unclaimed dividends payable to any creditor or undistributed asset refundable to any contributory which have remained unclaimed for one hundred and eighty days after the date on which they become payable or refundable that liquidation shall forthwith pay the said money into the Bangladesh Bank to the credit of the Government in an account to be called the Companies Liquidation Account" and the liquidator shall on the dissolution of the company, similarly pay into the said account any money representing unclaimed divided or undistributed assets in his hand at the date of dissolution.

(2) the liquidator shall, when making any payment referred to in sub section (1) furnish to such officer as the Government may appoint in this behalf a statement in prescribed form setting forth in respect of all sum included in such payment the nature of the sums, the names and last know addressed of the persons entitled to participate therein, the amount to which each is entitled and the nature of his claim thereto, and such other particulars as may be prescribed.

(3) the receipt of the Bangladesh Bank for any money paid to it under sub-section(1) shall be an effectual discharge of the liquidator in respect thereof.

(4) where the company is being wound by the Court the liquidator shall make the payment referred to in sub-section(1) by transfer from the special banking account referred to in sub-section(3) of section 342, and where the company is being in wound up voluntarily or subject OT the supervision of the Court the liquidator shall when filing a statement it pursuant of sub-section (1) of section 341, indicate the sum to money which is payable to the Bangladesh Bank under subsection (1) of this section which he has had in his the dat to which the said statement is brought down, and shall, within fourteen days of the date of filing the said statement, pay that sum into the Companies Liquidation Account.

(5) Any person claiming to be entitled to any money paid into the Companies Liquidation Account in pursuance of this section may apply to the court for an order for payment thereof, and the Court, if satisfied that the person claiming is entitled may make an order for the payment OT that person of the sum or the asset due to him;

Provided that before making such order the Court shall cause a notice to be served on such officer as the Government any appoint in this behalf calling on the officer to show cause within thirty days from the dat of the service of the notice why the order should not be made.

(6) Any money paid into the Companies Liquidation Account is pursuant of this section, which remains unclaimed thereafter for a period of fifteen years, shall be transferred to the general revenue account of the Government; but any claim preferred under sub-section (5) any money or asset to transferred shall be allowable as if such transfer had not been made, the order for payment on such claim being treated as an order for refund of revenue.

(7) Any liquidator retaining any money or asset which should have been deposited by him into the Combines Liquidation Account under this section shall pay interest on the amount retained at the rate of twenty percent annum and shall also be liable to pay any expense occasioned by reason of his default and where the winding up is by or under the supervision of the Court, he shall also be liable to disallowance of all or such part of his remuneration as the Court may think just and to be removed from this office by the court.

(8) For the purposes of this section, the liquidator may with the sanction of the Court or as the case may be, of the Government, sellout the undistributed asset referred to in sub-section(1) and deposit the sale proceed in the company's Liquidation Account and it may be accordingly be disposed under this section.

344. Court or person before whom affidavit may be sworn:--(1) Any affidavit required to be sworn in Bangladesh before any Court, Judge or person lawfully authorized to take and receive affidavit or in any place outside Bangladesh before a Bangladesh Consul or Vic-Consul.

(2) All Court Judges, Justices, Commissioners, and persons acting judicially in Bangladesh shall take judicial notice of the seal or stamp or signature as the case, may be, of any such Court Judge, person, Consul or Vice-Consul, Consul attached, appended or subscribed to any such affidavit or to any other document to be used for the purposes of this part.

RULES

345. Power of Supreme Court to make rules:--(1) The Superme Court may from time to time, make rule consistent with the Code of Civil procedure 1908 (Act of 1908) concerning the following matters namely:--

(a) the mode of proceedings to be held for winding up of company in the High Court Division and in a court subordinate thereto.

(b) in the case of voluntary winding up by members or creditors, for the holding of meetings of creditors and members in connection with proceedings under section 228 of this Act;

(c) giving effect to the provision of this Act for the purpose of reduction of share capital and sub-division of the shares of a company;

(d) all applications to be made to the Court under the proving of this Act.

(2) The Court shall make rules providing for all matters which by this Act, are required to be prescribed.

(3) without prejudice to the generality of the foregoing power the Supreme Court may such rules enable or require all or any of the powered and duties conferred and imposed on the Court by this Act in respect of the matter following to exercised or performed by the say the powers and duties of the Control in respect of-

- (a) holding and conducting meetings to ascertain the wishes of creditors and contributories ;
- (b) Settling list of contributors and rectifying the register of members where required, and collecting and applying the assets of the company
- (c) requiring delivery of property or documents to the liquidator;
- (d) making calls;
- (e) fixing a time within which debts and claims must be proved.

Provided that the official liquidator shall not without the special leave of the Court, rectify the register of members, and shall not make any call without the special leave of the Court.

Removal of defunct Companies from Register.

346. Registrar may strike defunct company off Register:-- (1) where the Registrar has reasonable cause to believe that a company is not carrying on business or in operation, he shall send to the company by post a letter inquiring whether the company is carrying on business or in operation;

(2) If the Registrar does not within thirty days of sending the letter receive any answer thereto, he shall within fourteen days, after the expiration of the said thirty days send to the company by post a registered letter referring to the first letter and stating that no answer thereto has been received and that if an answer is not received to the second letter with thirty days from the date, thereof, a notice will be published in the official Gazette with a view to striking the name of the company off the register;

(3) If the Registrar either receives an answer from the company to the effect that it is not carrying on business or in operation, or not within thirty days after sending the second letter receive any answer, he may publish in the Official Gazette and send to the company by post a notice that at the expiration of ninety days from the date of that notice, the name of the company mentioned therein will, unless cause is shown to the contrary, be struck off the register and the company will be dissolved and in such a case the Registrar may send a copy of the notice to the company while in sending it to the concerned authority for its publication official Gazette;

(4) If, in any case where a company is being wound up, the Registrar has reasonable cause to believe either that no liquidator is acting or that the affairs of the company are fully wound up and the returns required to be made by the liquidator have not been made for a period of six consecutive months after notice by the Registrar demanding the returns, has been sent by post to the company or to the liquidator at his last known place of business, the Registrars may publish in the official Gazette and sent to the company a like notice as is provided in the sub-section (3);

(5) At the expiration of the time mentioned in the notice the Registrar may unless cause to the contrary is previously shown by the company, strike its name on the register and on the he publication in the official Gazette of a notice to the effect the company shall be dissolved:

Provided that the liability, if any, of every director and member of the company shall continue and may be enforced as if the company had not been dissolved.

(6) If a company or any member or creditor thereof feels aggrieved by the company having been struck off the register, the Court on the application of the company or member or creditor, may if satisfied that the company was at the time of the striking off carrying on business or in operation or other wise that it is just that the company be restored, to the register, and thereupon the company shall be deemed to have continued in existence as its name had not been struck off; and the Court may by order give such directions and make such provisions as seem just for placing the company and all other persons in the same positions as nearly as may be as if the name of the company has not been struck off;

(7) A letter or notice under this section may be addressed to the company at its registered office, or if no office has been registered, to the care of some director, manger or other officer of the company or, if there is no director, manger or other officer of the company whose named and address are known to the registrar such letter or notice may be sent to each of the persons who subscribed the memorandum, at the address mentioned in the memorandum.

PART VI

REGISTRATION OFFICE AND FEES

347. Registration office--(1) For the purposes of the registration of Companies under this Act, there shall be central office and original office at such places as the Government think, fit and company shall be registered except at an office within the territorial jurisdiction in which by the memorandum, the registered office of the company is declared to be established.

(2) The Government may appoint such Registrar, Additional Registrar, and Assistant Registrar as it thinks necessary for the registration of companies under this Act and may make regulation rule with respect of their duties.

(3) The Salaries of the persons appointed under this section shall be fixed by the Government.

(4) the Government may direct as seal or seals to be prepared for the authentication of documents required for or connected with the registration companies.

(5) any person may inspect the documents kept by the Registrar on payment of such fees as may be specified by the Government not exceeding the fees specified in Schedule III for each inspection; and any person may require of any company or a copy or extract of any other document or any part of other document,, to be certified by the Registrar on payment for the certificate certified copy or extract of such fees as the Government may specify not exceeding the fee specified in the said Schedule.

(6) Whenever any act is by this Act directed to be done to or by the Registrar it shall until the Government otherwise direct be done to or by the case of the central office the existing Registrar or in his absence OT or by such person as the Government may for the time being authoress and in the Joint Registrar or Deputy Registrar or Assistant Registrar as is appointed as the Chef Officer of that office.

348. Fees.--(1) There shall be paid to the Registrar in repect of the several matters mentioned in Schedule II the several fees therein specified, or such smaller fees as the Government may direct.

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

349. 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 dos so, the Court may on an application made to the Court by member or creditor of the company or by Registrar, make an order directing the company and 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 the concerned officer in respect of any such default as aforesaid.

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

350. Filing or registration of documents, etc, after the time specified: - Any documents or return by this Act required or authorized to be file or registered or any fact by this Act required or authorized to be registered with the Register on payment of fees specified therefore in Schedule II any without prejudice to any other labilities be filed or registered after the time if any pacifier in this Act for its filing or registration on payment of late fee specified in the said Schedule II.

PART VII

APPLICATION OF ACT TO COMPANIES FORMED AND REGISTERED

UNDER FORMER COMPANIES ACT

351. Application of Act to Combines formed under former Companies Act:- In the application of this Act to existing companies it shall apply in the same manner in the case of limited company other shares; in the cases of a company limited by guarantee company limited by shares; in the cases 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 and registered under this Act as an unlimited company;

Provided that--

(a) nothing in Schedule I shall APPLY to a company formed and registered under any law in force at any time before commencement of this Act;

(b) reference express or implied to the date of registration shall be constructed as a reference to the date at which the company was registered under any law in force at any time before the commencement of this Act.

352. Application Act of companies registered but not formed under former Combines Act:-- This Act shall apply to every company registered but not formed under any law in force at any time before the commencement of this Act in the same manner as it is herein after in this Act. declared to apply to Combines 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 laws or any of them.

353. Mode of transferring : A Company registered under any law in force at any time before the commencement of this Act may cause its shares to be transferred in the manner hitherto in use or in such other manner as the company may direct.

PART VIII

COMPANIES AUTHORIZED TO BE REGISTERED

354. companies capable of being registered.--(1) With the exception and subject to the provisions mentioned and contained in this section, any company formed whether before or after the commencement of this Act in pursuance of any Act of Parliament other than this Act or being otherwise duly constituted according to law and consisting of seven or more members, s many at time register under this Act as an unlimited company or as a company[by shares or as a company limited by guarantee; and the registration not be invalid by reason that it has taken place with a view to the company being wound up

Provided that -

(a) a company having the liability of its members limited by Act of Parliament and not being a joint-stock company as in section 355, defined, shall not register in pursuance of this section;

(b) a company having the liability of its members limited by Act of Parliament shall not register in pursuance of this section as an unlimited company not register on pursuance of this section as a company limited by guarantee;

(c) a company that is not a joint-stock company as in section 355 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, on 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 is about to register as a limited company, the majority required to assent as mentioned in clause (d) 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 of its being so registered shall be accompanied by a resolution declaring that each member undertake to contribute to the assets of the company in the event of its being wound up while he is member, or within one year afterwards, for payment of the debts and liability of the company contracted of winding up and for the adjustment of the right of the contributors among themselves such amount as may be required not exceeding a specified amount.

(2) 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.

355. Definition of joint stock company.-- (1) For the purposes of this part, so far as it relates to registration of companies limited by shares, a joint-stock company means--

(a) a company having a permanent paid up or nominal share capital of fixed amount divided into shares, also fixed amount, or held of and transferable as stock or divided and held partly in one way and partly in the other; and

(b) formed on the principle or having only for its members as the holders of those shares or that stock and for no other person.

(2) Such a company, when registered with limited liability under this Act, shall be deemed to be a company limited by shares.

356. Requirements for registration of joint stock companies.-- Before the registration in pursuance of this part of joint stock company, there shall be delivered to the Registrar the following documents that is to say--

(a) a list showing the names address occupation 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 the case where the shares are numbered, each share by its number;

(b) a copy of deed of settlement contract of copartner or other instrument constituting or regulating the company; and

(c) if the company is intended to be registered as a limited company, a statement specifying the following particulars, that is to say--

(i) 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;

(ii) the number of shares taken and the amount paid on each share;

(iii) the name of the company with the addition of the word "Limited" as the last word thereof; and

(IV) in the case of a company intended to be registered as a company limited by guarantee, the resolution declaring the amount of the guarantee.

357. Requirements for registration of companies 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.--

(a) a list showing the names, addresses and occupations of the directors of the company; and

(b) a copy of deed of settlement, contract of copartner or other instrument constituting or regulating the company; and

(c) 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.

358. 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.

359. 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 defined in section 355.

360 On registration of banking company with limited liability, notice to be given to customer.--(1) Where a banking company, which was in existence on the commencement of this Act, 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 by delivery of the notice to him by posting at or 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 respect 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.

361. 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.

362. Addition of "Limited" to name .-- When a company registration in pursuance of this part with limited liability the word "Limited" shall form and be registered as part of its name.

363. 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 Schedule II, the Registrar shall issue a certificate under his hand that the company applying for registration is incorporated as a company under this Act and in the certificate of a limited company that it is limited, and thereupon the company shall be incorporated and shall have perpetual succession and a common seal.

364. Vesting of property on registration.-- All property movable and immovable, including all interest and rights in and out of property, mobile and immovable and including obligations and actionable claims as may belong to or be vested in a company at the date of its registration shall vest in the company as incorporated under this Act for all the estate and interest of the company therein.

365. Saving of existing liabilities.-- Registration of a company in pursuance of this Part shall not affect the rights or liabilities of the company in whatever manner such right or liability accrued or arose.

366. Continuation of 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 an officer or member thereof may be continued in the same manner as if the registration had not taken place nevertheless execution shall not issue against the effects of any individual member of the company on any decree or order obtained in any such suit or proceeding but in the event of the property and effects of the company being insufficient to satisfy the decree or order, and order may be obtained for winding up the company.

367 Effect of registration under this Act:-- When a company is registered in pursuance of this Part-

(a) all provision continued in any Act of Parliament deed of settlement contract of copartner or other instrument constituting or regulating the company or, 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 it--

(i) 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

(ii) the residue thereof were contained in a registered article;

(b) all the provisions of this Act shall apply to the company and the members, contributors 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--

(i) the provisions in Schedule I shall not apply, unless adopted by the special resolution:

(ii) the provisions of this Act relating to the numbering of shares shall not apply to any joint stock company whose shares are not numbered:

(iii) subject to the Provisions of this section the company shall not have power to alter any provision contained in any Act of Parliament relating to the company;

(IV) in the event of the company being wound up every person shall be a contributory, in respect of the debts and liability of the company contract before winding up who is liable to pay or contribute to the payment of any such debt or liability or to pay or contribute to the payment of any sum or the adjustment of the rights of the members among themselves in respect of any such debt or liability; or to pay or contribute in or towards the payment of the costs and expenses of winding up the company so far as relates to such debts or liability as aforesaid of the company, in the course of the winding up all sum-due from him in respect of any such liability as aforesaid; and in the event of the death or insolvency of the contributor; the provisions of this Act with respect of the legal representative and heirs of deceased contributors, and with reference to the assignees of insolvent contributors, shall apply;

(c) the provisions of this Act with respect to--

(i) the registration of an unlimited company as limited;

(ii) the powers of an unlimited company on registration as a limited company to increase the nominal amount of its shares capital and to provide that a portion of this share capital and to provide that a portion of the share capital shall not be capable of being called up except in the event of winding up;

(iii) the power of a limited company to determine that a prosing of its share capital shall not be capable of being called up except in the event of winding up;

shall apply withnotsanding any provisions contained in any Act or Parliament , deed of settlement, contract of copartner or other instrument constitution or regulating the company.,

(d) nothing in this section shall authoress the company to alter any such provisions continued in any Act or Parliament, deed of settlement contract of copartner or other instrument constitution or regulating the company, as would., if the company had originally been formed under this Act have been required to be continued in the memorandum and are not autopsied to be altered by this Act.

(e) nothing in this Act shall derogate from any lawful power of altering its continuation or regulating the company which may by virtue of any Act of Parliament, deed of settlement contract of copartner or other instrument constituting or regulating the company, be bested in the company.

368. Power to substitute memorandum and articles for deed of settlement.--(1) Subject OT the provisions of this section, as company registered in pursuance of this part many by special resolution, alter the form of its connotation by substituting a memorandum and article for a deed of settled;

(2) the provision of this Act with respect OT confirmation by the Court and registration of an alteration under this section with the following modifications, namely;--

(a) there shall be subsisted for the printed copy of the lathered memorandum required to be filed with Registrar a printed copy of the subsisted memorandum and articles; and

(b) on the respiration of the laceration being certified by the Registrar, the subsisted memorandum and article 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' 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 copartner or other instrument constituting or regulating the company not being an Act of Parliament.

369. Power of Court OT stay or restrain proceedings.-- The provisions of this Act with respect OT to and restraining skittish 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, were the application to say or restrain is by creditor, extend to skittish and legal proceedings against any contributory of the company.

370 suits stayed on winding up order-- when 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 contributor of the company in respect of any debt of the company , except by leave of the Court and subject to such terms ad the court may impose.

PART IX

WINDING UP OF UNREGISTERED COMPANIES

371. Meaning of "unregarded company" -- For the purposes of this Part, the expression "unregistered company" shall not include a company registered under this Act or under any company law in force at any time consisting of more than seven members and not registered under this Act or the said company with the following exceptions and additions, namely:--

- (a) no unregistered company shall be wound up under this Act voluntarily or subject to supervision of the Court;
- (b) the circumstance in which an unregistered company may be wound up are as follows namely:--
 - (i) 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;
 - (ii) if the company is unable to pay its debts;
 - (iii) if the Court is of opinion that it is just and equitable that the company should be wound up.
- (c) an unregarded company shall for the purposes of this section be deemed to be unable to pay its debts.

(i) if a creditor, by assignment or otherwise to whom the company is indebted in a sum exceeding five hundred taka then due has served on the company, by leaving at its principal place of business, or by delivering to the secretary, or some other person, in such manner as the Court may approve or direct a demand under his hand REQUIRING the company to pay the sum or to secure or compound for it to the satisfaction of the creditor;

(ii) if any suit or other legal proceeding has been instituted against any member or 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 other person, or manager or principal office 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, procured an order for the suit or other legal proceeding to be stayed, or indemnified the said member or defendant to his reasonable satisfaction against the suit or other legal proceeding to his reasonable satisfaction against all costs, damages and expense to be incurred by him by reason of the same; or

(iii) if execution or other process issued on a decree or order obtained in any Court in favour of a creditor against the company, or any member thereof as such, or any person authorized to be used as nominal defendant on behalf of the company, is returned unsatisfied; or

(IV) 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 unregistered company, under any enactment repealed by this Act, except that reference in any such any enactment repealed enactment shall be read as reference to the corresponding provision, if any, of this Act.

(3) Where a company incorporated outside Bangladesh which has been carrying on business in Bangladesh, it may be wound up as an unregistered company otherwise ceased to exist as a company under or by virtue of the laws of the country under which it was incorporated.

373. Contributors 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 deemed 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 contributory.

374. Power 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 an unregistered company, where the application for stay or restraint is by a creditor, extend to suits and legal proceedings against any contributory of the company.

375. Restrictions on commencing etc. of suit after winding up order.--Where an order has been made for winding up of a company under this Part, no suit or other legal proceedings shall be proceeded with or commenced against except by leave of the Court, and subject to such terms as the Court may impose.

376. Courts directions as to property in certain cases.-- 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 and immovable, and including obligations and actionable claims as may belong to the company or shall vest in the official liquidator by his official name and thereupon the property or the part thereof specified in the order shall best 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 purposes of effectually winding up the company and recovering its property.

377. 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 provision herein before in this Act contained with respect to winding up companies by the Court and the Court official liquidator may exercise any powers or do any act in the case of unregistered companies which might be exercised or done by or him in the winding up of Companies formed and registered under this Act; but an unregistered company shall not except in the event of its being wound up, be deemed to be a company under this Act, and then only to the extent provided by this Part.

PART X

FOREIGN COMBINES' REGISTRATION, ETC.

378. application of sections 376 to 387 to foreign companies.--Sections 379 to 387 shall apply to all foreign Combines, that is to say, companies falling under the following two classes, namely:--

- (a) Combines incorporated outside Bangladesh which, after commencement of this Act establish a place of business within Bangladesh; and
- (b) combines incorporated outside Bangladesh which have before the commencement of this Act, established a place of business within Bangladesh and continued to have an established place of business with Bangladesh, at the commencement of this Act.

379. Documents, etc. to be delivered to Registrar by foreign Combines carrying on business in Bangladesh--(1) Foreign Combines, which after the commencement of this Act, establish a place of business with Bangladesh shall, within one month of the establishment of the place of business,, deliver to the Registrar for registration--

- (a) a certified copy of the charter or 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 Bengali or English Language, a certified Bengali or English translation thereof;
 - (b) the full address of the registered or principal office of the company;
 - (c) a list of the directors and secretary, if any, of the company;
 - (d) the name and address or the names and addresses of one or more persons resident in Bangladesh, authorized to accept on behalf of the company service of process and any notice or other document required to be served on the company;
 - (e) the full address of the office of the company in Bangladesh which to be deemed its principal place of business in Bangladesh.
- (2) foreign Combines other than those mentioned in sub-section(1), shall if they have not delivered to the Registrar before the commencement of this Act the Documents and particulars specified in the sub-section (1) and section continue to be subject to the obligation to deliver those documents and particulars in accordance with this Act.

(3) If any alteration is made or occurs in--

- (a) the charter, statutes, or memorandum and articles of foreign company or other instrument constituting or defining the constitution of a foreign company, or
- (b) the registered or principal office of a foreign company or
- (d) the names and addresses of the persons authorized to accept service on behalf of a foreign company, or
- (e) the principal place of business of a foreign company in Bangladesh, the Company shall, within the prescribed time, file with the Registrar a return containing the prescribed particulars of the alteration.

380 Accounts of foreign company.--(1) Every foreign company shall, in every calendar year.--

- (a) make out a balance sheet and profit and loss account or in the case of a company not trading for profit, and income and expenditure account if the company is trading company, group accounts in such form and containing such particulars and including such documents, and under the provision of this Act it would, if it had been accompanied within the meaning of this Act, have been required to make out and lay before the company in general meeting; and
- (d) deliver three copies of those documents to the Registrar:

Provided that the Government may by notification in the official Gazette direct that in the case of a foreign company or class of foreign Combines the requirements of clause (a) shall not apply, or shall apply subject to such exceptions and modification as may be specified in the notification.

(2) If any such document as is mentioned in sub-section (1) is not written in Bengali or English language, there shall be annexed to it a certified translating thereof.

- (a) in every prospectus inviting subscription in Bangladesh for its shares or debentures, state the country in which the company is incorporated;
 - (b) conspicuously exhibit on the outside of every office or place where it carries on business in Bangladesh, the name of the company and the country in which it is incorporated, in the letters easily legible in Bengali or English character,
 - (c) cause the name of the company and of the country in which the company is incorporated, to be stated in legible Bengali or English characters in all bill heads and letter paper, and in all notices and other official publications of the company; and
 - (d) if the liability of the members of the company is limited, cause a notice of that fact--
- (i) to be stated in every prospectus as aforesaid and in all bill heads, letter paper, notices, advertisements and other official publications of the company, in legible Bengali, in legible Bengali or English characters.

382. Service on foreign company.-- Any process notice, or other document required to be served on a foreign company shall be deemed to be sufficiently served, if addressed to any person mentioned in section 379(1) (d) and left at, or sent by post to the address which has been so delivered under that section to the Registrar.

Provided that--

- (a) where any such company makes default in delivering to the Registrar in pursuance of that section the name and address of a person, or

(b) if at any time all the persons whose names and address have been delivered to the Registrar are dead, or ceased or have ceased so to reside at those addresses, or refused to accept on behalf of the company any process, notice or other document, or, those cannot be served or sent for any other reason, such document may be served on the company by leaving it at, or sending it by post to, any place of business established by the company in Bangladesh.

383. Notice of ceasing place of business of a company.-- If any foreign company ceases to have a place of business in Bangladesh, it shall forthwith give notice of the fact to the Registrar, and as from the date on which notice is so given, the obligation of the company to deliver any document to the Registrar shall cease, provided it has no other place of business in Bangladesh.

384. Penalties.-- If any foreign company fails to comply with any of the foregoing provisions of this Part, the company shall be punishable with fine which may extend to one thousand taka, or, in the case of a continuing offence, with an additional fine of five hundred taka for every day after the first day during which the default continues; and every officer or agent of the company who is knowingly willfully, makes such default, shall be punishable with the same fine.

385. Company's failure to comply with this Part not to affect its liability under contracts.-- Any failure by a foreign company to comply with any of the foregoing provisions of this Part shall not affect the validity of any contract dealing or transaction entered into by the company or its liability to be sued in respect thereof; but the company shall not be entitled to bring any suit, claim any set off, make any counter claim or institute any legal proceeding in respect of any such contract, dealing or transaction until it has complied with the provisions of this Part.

386. Fees for registration of documents under this Part.-- There shall be paid to the Registrar for registering any document required by the foregoing provisions of this Part such fees as specified in Schedule II.

387. Interpretation.-- For the purposes of the foregoing provisions of this Part--

- (a) the expression "director" includes any person occupying the position of director by whatever name called.
- (b) the expression "prospectus" has the same meaning as when used in relation to a company incorporated under this Act;
- (c) the expression "place of business" includes a share transfer or share registration office;
- (d) the expression "secretary" includes any person occupying the position of secretary, by whatever name called and
- (e) the expression "certified" means certified in the prescribed manner to be a true copy or a correct translation.

388. Restriction on sale and offer for sale of shares.--(1) It shall not be lawful for any person--

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

(i) before the issue, circulation or distribution of the prospectus in Bangladesh 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 state on the face of it that the copy has been so delivered;

(iii) the prospectus is dated; and

(iv) the prospectus other wise complies with this Part; or

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

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

(2) This section shall not apply to the issue to existing members or debentures 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 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 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 Bangladesh 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 142 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 share or debentures for subscription or sale to any person whose ordinary business or part of whose ordinary business 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) A 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 ten thousand taka.

(6) In this section and in section 389, the expression "prospectus" "shares" and "debentures" have the same meaning as and when used in relation to a company incorporated under this Act.

389. Requirements as to prospectus.-- 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 388, must--

(a) Contain particulars with respect to the following matters, namely--

(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 Bangladesh where the said instrument, enactments or provisions, or copies thereof, and if the same are in a foreign language other than English a translation thereof in the Bengali or English certified in the prescribe 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 Bangladesh:

Provided that the provisions of sub-clause (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 (1) of section 135 and set out the reports specified in that section :

Provided that--

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

(ii) in section 135 of this Act, a reference to the article 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 debenture shall be void, if the acceptance thereof has the effect of--

(a) waiving compliance with any requirements of this section; or

(b) serving him with notice of any contract, document or matter not specifically referred to in the prospectus.

(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 matter 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 18 of the Part-I of Schedule-III or in pursuance of sub-section (1) of section 135, 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 limit or diminish any liability which any person may incur under the general law or this Act, apart from this section.

390. Restriction on canvassing for sale of shares.--(1) It shall be an offence of any person goes from house to house of the public or any member of public offering shares of a company incorporated outside Bangladesh for subscription to or sale of such shares.

(2) In this sub-section the expression "house" shall not include an office used for business purposes.

(3) Any person acting in contraventions of this section shall be liable to a fine not exceeding five hundred taka.

391. Provisions regarding charges.-- The provisions of section 159 to 168- both inclusive, and 171 to 176, both inclusive, shall extend to charge on properties in Bangladesh which are created and to charges on property in Bangladesh which are acquired, by a company incorporated outside Bangladesh which has an established place of business in Bangladesh :

Provided that, where a charge is created outside Bangladesh or the completion of the acquisition of property takes place outside Bangladesh, sub-clause (i) of the proviso to sub-section (1) of section 159 and the proviso to sub-section (1) of section 160 shall apply as if the property wherever situated were situated inside Bangladesh.

392. Notice of appointment of receiver etc.--(1) The provisions of section 169 and 170 shall apply to the case of all companies incorporated outside Bangladesh but having an established place of business in Bangladesh.

(2) The provisions of section 181 shall apply to such companies to the extent of requiring them to keep at their principal place of business in Bangladesh 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 Bangladesh.

PART XI

SUPPLEMENTAL

Legal proceedings, offence, etc.

393. Cognizance of offence.--(1) No Court inferior to that of a Magistrate of the first class shall try any offence under this Act.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (V of 1898),--

(a) every offence under this Act shall, for the purpose of the said Code, be deemed to be non-cognizable.

(b) where the complainant is the Registrar, the personal attendance of the complainant before the Court trying the offence shall not be necessary unless the Court, for reasons to be recorded in writing, requires his personal attendance for the purpose of taking cognizance or holding trial.

394. Application of fines.-- The court imposing any fine under this Act may direct that the whole or any part thereof be applied in or towards payment of the cost of the proceedings, or in or towards the rewarding of the person on whose information the fine is recovered.

395. Power to require limited company to give security for costs.-- Where a limited company is plaintiff or petitioner in any suit or other legal proceeding, any Court having jurisdiction in the matter may, if it appears that there is reason to believe that the company will be unable to pay the cost of the defendant if successful in his defense, require sufficient security to be given for those costs, and may stay all proceedings until the security is given.

396. Power of Court to grant relief in certain cases.--(1) If in any proceeding for negligence, default, breach of duty or breach of trust against a person specified in sub-section (3), it appears to the Court hearing the case that persons is or may be liable in respect of the negligence, default, breach of duty or breach of trust, but that he has acted honestly and reasonably, and that having regard to all the circumstances of the case, including those connected with his appointment, he ought fairly to be excused for the negligence, default, breach of duty or breach of trust, that Court may relieve him, either wholly or partly, from his liability on such terms as the Court may think fit.

(2) Where any person specified in sub-section (3) has reason to apprehend that any claim will or might be made against him in respect of any negligence, default, breach of duty or breach of trust, he may apply to the Court for relief, and the Court on any such application shall have the same power to relieve him under this sub-section of it would have under sub-section (1).

(3) The persons to whom this section applies are the following:-

(a) directors of a company;

(b) managers and managing agents of a company;

(c) officers of a company;

(d) persons employed by a company as auditors, whether they are or are not officers of the company.

397. Penalty for false statement.-- Whoever in any return, report, certificate balance-sheet or other documents, required by or for the purposes of any of the provisions of this Act, willfully makes a statement false in any material particular, knowing it to be false, shall be punishable with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

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

399. Penalty for misapplication of securities by employers.--(1) All moneys of securities deposited with a company by its employees in pursuance of their contracts of service, with the company shall be kept or deposited by the company in a special account to be opened by the company for this purpose in a scheduled bank as defined in the Bangladesh Bank Order, 1972 (P.O.No. 127 of 1972) and no portion thereof shall be utilised by the company except for the purposes agreed to in the contract of service.

(2) Where a provident fund has been constituted by a company for its employees or any class of its employees, all moneys contributed to such fund whether by the company or, by the employees or accruing by way interest or otherwise to such fund shall be either deposited in a Post Office Saving Bank account or invested in securities mentioned or referred to in clauses (a) to (e) of section 20 of the Trusts Act, 1882 (II of 1882) : and all moneys belonging to such fund which are so deposited or invested shall be so deposited or invested in such securities by annual instalments not exceeding ten in number and not less in amount in any year than one tenth of the whole amount of such moneys.

Provided that where the said one-tenth part of the whole amount of the moneys belonging to such fund exceeds the maximum amount which may be deposited in a Post Office Savings Bank account under the rules regulating such deposits for the time being in force, the excess amount may be kept or deposited in a special account to be opened for the purpose in such scheduled bank.

(3) Notwithstanding anything to the contrary in the rules of any fund to which sub-section (2) applies or in any contract between a company and its employees, no employee shall be entitled to receive in respect of such portion of the amount to his credit in such fund as is invested in accordance with the provisions of sub-section (2) interest at a rate exceeding the rate of interest yielded by such investment.

(4) An employee shall be entitled on request made in this behalf to the company to see the bank receipt for any money on security such as is referred to in sub-sections (1) and (2).

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

(6) Nothing in sub-section (2) shall affect any right of any employee under the rules of a provident fund to obtain advance from or to withdraw money standing to his credit in the fund where the fund is a recognised provident fund within the meaning of clause (52) of section 2 of the Income Tax Ordinance, 1984 (XXXVI of 1984), or the rules of the fund containing provisions corresponding to rules 4,5,6,7,8 and 9 and 9 of the Income Tax (Provident fund Rule, 1984) or similar provisions of a similar Rules.

400. Penalty for improper use of the word "Limited" If any person or persons trade or carry on business under any name or title of which "Limited" is the last word, that person or those persons shall be liable to a fine not exceeding five hundred taka every day upon which that name or title has been used.

401. Construction of "Registrar of Joint Stock Companies" in Act XXI of 1860.-- In sections I and 18 of the Societies Registration Act, 1860 (XXI of 1860), for the registration of Literary, Scientific and Charitable Societies, the words "Registrar of Joint Stock Companies" shall be construed to mean the Registrar under this Act.

402. Repeal and savings.--(1) The Companies Act 1913 (VII of 1913,) hereinafter referred to as the said Act, is hereby repealed.

(2) Notwithstanding the repeal of the said Act--

(a) any order, rule, regulation, appointment, mortgage or other transfer deed, document or agreement made, fee directed, resolution passed, direction given, proceeding taken, instrument executed or issued, or thing done under or in pursuance of the said Act shall, if in force at the commencement of this Act, continue to be in force and shall have effect as if made, directed, passed, given, taken, executed, issued or done under or in pursuance of this Act;

(b) any person appointed to any office under or by virtue of the said Act shall be deemed to have been appointed to that office under or by virtue of this Act;

(c) the offices existing at the commencement of this Act for the registration of companies shall be continued as if they had been established under this Act;

(d) any register or other kept or made under the provisions of the said Act shall be deemed to be part of the register or other document to be kept or made under the corresponding provisions of this Act;

(e) all funds constituted and accounts kept under this said Act shall be deemed to be in continuation of the funds constituted and accounts kept under the corresponding provisions of this Act.

(3) Nothing in this Act shall affect the incorporation of any company registered under the said Act or the operation of the provisions of the Insurance Act 1938 (IV of 1938).

403. Section 6 of the General Clauses Act, 1897 to apply.-- The mention of particular matters in section 402 or in any other provision of this Act shall not prejudice the general application of section 6 of the General Clauses Act, 1897 (X of 1897).

404. Publication of Authentic English Text.-- After the commencement of this Act, the Government shall, by notification in the official gazette publish a Text of this Act translated in English, and this Text shall be called the Authentic English Text of the Act :

Provided that in the event of conflict between the Act (Bangali Text) and the said English Text, the Act shall prevail.