မြန်မာဆောင်စုမြိုနယ်စာအုပ်

ဒုတိယ

အတွဲ ၉

# THE BURMA CODE

## VOLUME IX

Price.—K 10 |



# မြန်မာနိုင်ငံတော်

# ဥပဒေ

## အတွဲ ၉

# THE BURMA CODE

## VOLUME IX

မြန်မာနိုင်ငံတော်အစိုးရအမိန့်အရ ပုံနှိပ်ဖြန့်ချိသည်။

**Published under the Authority of the Government of the Union of Burma.**

## နိဒါန်း။

၍အတွဲတွင်ပါရှိသည့် ဥပဒေများမှာ၊ အပိုင်း ၁၀၊ လူ့ကိုယ်ကိုနစ်နာစေမှုများ။ အပိုင်း ၁၁၊ ပဋိညာဉ်ဆိုင်ရာ။ အပိုင်း ၁၂၊ အာမခံစံနှစ်ဆိုင်ရာ။ အပိုင်း ၁၃၊ ကိုယ်စားလှယ်လွှဲအပ်ရေး၊ ယုံကြည်အပ်နှံရေးနှင့် ကုသိုလ်ဖြစ်အဖွဲ့အစည်းများဆိုင်ရာ။ ၎င်းပြင် အပိုင်း ၁၄၊ အသင်းအဖွဲ့များဆိုင်ရာဟူသည့် ခေါင်းကြီးများတွင် အကျုံးဝင်သော ဥပဒေများဖြစ်ပါသည်။

ထိုဥပဒေများကို ၁၉၅၄ ခုနှစ်၊ ဒီဇင်ဘာလ ၃၁ ရက်နေ့ထိ ပြင်ဆင်သည့်အတိုင်း ပုံနှိပ်ခြင်း ဖြစ်ပါသည်။

စံညွှန့်၊
အတွင်းရေးမှူး၊
ဥပဒေပြင်ဆင်ရေးကော်မီတီ၊
တရားရေးဝန်ကြီးဌာန။

ရန်ကုန်မြို့၊ ၁၃၁၉ ခု၊ သီတင်းကျွတ်လပြည့်ကျော် ၉ ရက်။
(၁၉၅၇ ခု၊ အောက်တိုဘာလ ၁၇ ရက်။)

# TABLE OF CONTENTS.

## အက်ဥပဒေများ၏ အစီအစဉ်။

---

## PART X.—TORTS TO PERSON.

### အဓိဋ္ဌာန ၁၀။ ။လူ့ကိုယ်ကိုနှစ်နာစေမှုများ။


| | | PAGE စာမျက်နှာ |
|---|---|---|
| 1. | The Fatal Accidents Act ... ... ... | 1 |


## PART XI.—CONTRACT.

### အဓိဋ္ဌာန ၁၁။ ။ပဋိညာဉ်ဆိုင်ရာ။


| | | |
|---|---|---|
| 1. | The Contract Act ... ... ... ... | 3 |


## PART XII.—INSURANCE.

### အဓိဋ္ဌာန ၁၂။ ။အာမခံစံနှစ်ဆိုင်ရာ။


| | | | |
|---|---|---|---|
| 1. | The Insurance Companies Act ... | ... | 56 |
| 2. | The Life Assurance Companies Act ... | ... | 59 |
| 3. | The Provident Insurance Societies Act ... | ... | 88 |
| 4. | The Provident Funds Act ... ... | ... | 94 |
| 5. | The Contributory Provident Funds Act ... | ... | 98 |
| 6. | ပြည်ထောင်စုအာမခံစံနှစ်အဖွဲ့အက်ဥပဒေ .... | .... | ၁၀၀ |
| 7. | အာမခံကုမ္ပဏီများကို နိုင်ငံပိုင်ပြုလုပ်ခြင်းအက်ဥပဒေ .... | .... | ၁၀၇ |


## PART XIII.—AGENCY.

### အဓိဋ္ဌာန ၁၃။ ။ကိုယ်စားလှယ်လွှဲအပ်ရေး။


| | | | |
|---|---|---|---|
| 1. | The Powers of Attorney Act ... ... | ... | 109 |


## TRUSTS.

### ယုံကြည်အပ်နှံရေး။


| | | | | |
|---|---|---|---|---|
| 1. | The Trusts Act ... ... ... | ... | ... | 110 |
| 2. | The Official Trustees Act ... ... | ... | ... | 138 |
| 3. | The Administration of Public Funds Act .. | | ... | 147 |
| 4. | မိုလ်ချုပ်ရုံပုံငွေအက်ဥပဒေ .... | .... | .... | ၁၄၉ |
| 5. | အာဇာနည်ဗိမာန်အက်ဥပဒေ။ .... | .... | .... | ၁၅၁ |

အက်ဥပဒေများ၏အစီအစဉ်။

CHARITIES.

ကုသိုလ်ဖြစ်အဖွဲ့ အစည်းများဆိုင်ရာ။


| | | PAGE စာမျက်နှာ |
|---|---|---|
| 1. | The Religious Societies Act ... ... ... | 154 |
| 2. | The Charitable Endowments Act ... ... | 157 |
| 3. | The Charitable and Religious Trusts Act ... ... | 161 |
| 4. | The Mussalman Wakf Act ... ... ... | 164 |


PART XIV.—ASSOCIATIONS.

အဝိုင်း ၁၄။ ။အသင်းအဖွဲ့များဆိုင်ရာ။


| | | |
|---|---|---|
| 1. | The Partition Act ... ... ... ... | 169 |
| 2. | The Partnership Act ... ... ... | 171 |
| 3. | The Societies Registration Act ... ... ... | 191 |
| 4. | The Co-operatives Societies Act ... ... | 195 |
| 5. | The Burma Companies Act ... ... .. | 210 |
| 6. | The Companies Foreign Interests Act ... ... | 406 |
| 7. | The Compaines (War-Time Provisions) Act, 1945 ... | 407 |
| 8. | အထူးကုမ္ပဏီအက်ဥပဒေ.... .... .... .... | ၄၁၆ |

CORRIGENDA APPENDED

အမှားပြင်ဆင်ချက်များ နောက်ဆက်တွဲတွင် ကြည့်ပါ။

# PART X.—TORTS TO PERSON.

# အပိုင်း ၁၀။ ။လူ့ကိုယ်ကိုနစ်နာစေမှုများ။

## THE FATAL ACCIDENTS ACT.

[INDIA ACT XIII, 1855.] (27th March, 1855.)

Preamble.

WHEREAS no action or suit is now maintainable in any Court against a person who, by his wrongful act, neglect or default, may have caused the death of another person, and it is often-times right and expedient that the wrong-doer in such case should be answerable in damages for the injury so caused by him; It is enacted as follows:—

Suit for compensation to the family of a person for loss occasioned to it by his death by actionable wrong.

1. Whenever the death of a person shall be caused by wrongful act, neglect or default, and the act, neglect or default is such as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages in respect thereof, the party who would have been liable if death had not ensued shall be liable to an action or suit for damages, notwithstanding the death of the person injured, and although the death shall have been caused under such circumstances as amount in law to a crime.

Every such action or suit shall be for the benefit of the wife, husband, parent and child, if any, of the person whose death shall have been so caused, and shall be brought by and in the name of the executor, administrator or representative of the person deceased;

and in every such action the Court may give such damages as it may think proportioned to the loss resulting from such death to the parties respectively, for whom and for whose benefit such action shall be brought; and the amount so recovered, after deducting all costs and expenses, including the costs not recovered from the defendant, shall be divided amongst the beforementioned parties, or any of them, in such shares as the Court by its judgment or decree shall direct.

Not more than one suit to be brought.

2. Provided always that not more than one action or suit shall be brought for and in respect of the same subject-matter of complaint:

Claim for loss to estate may be added.

Provided that, in any such action or suit, the executor, administrator or representative of the deceased may insert a claim for and recover any pecuniary loss to the estate of the deceased occasioned by such wrongful act, neglect or default, which sum, when recovered, shall be deemed part of the assets of the estate of the deceased.

**Plaintiff shall deliver particulars, etc.**

**3.** The plaint in any such action or suit shall give a full particular of the person or persons for whom, or on whose behalf, such action or suit shall be brought, and of the nature of the claim in respect of which damages shall be sought to be recovered.

**Interpretation-clause.**

**4.** The following words and expressions are intended to have the meaning hereby assigned to them respectively, so far as such meanings are not excluded by the context or by the nature of the subject-matter; that is to say, the word "person" shall apply to bodies politic and corporate; and the word "parent" shall include father and mother and grand-father and grand-mother; and the word "child" shall include son and daughter and grand-son and grand-daughter and step-son and step-daughter.

# PART XI.—CONTRACT.

# အပိုင်း ၁၁။ ။ပဋိညာဉ်ဆိုင်ရာ။

# THE CONTRACT ACT.

## CONTENTS.


PREAMBLE.

PRELIMINARY.

*Sections.*

1. Saving.
2. Interpretation clause.

CHAPTER I.

OF THE COMMUNICATION, ACCEPTANCE AND REVOCATION OF PROPOSALS.

3. Communication, acceptance and revocation of proposals.
4. Communication when complete.
5. Revocation of proposals and acceptances.
6. Revocation how made.
7. Acceptance must be absolute.
8. Acceptance by performing conditions, or receiving consideration.
9. Promises, express and implied.

CHAPTER II.

OF CONTRACTS, VOIDABLE CONTRACTS AND VOID AGREEMENTS.

10. What agreements are contracts.
11. Who are competent to contract.
12. What is a sound mind for the purposes of contracting.
13. "Consent" defined.
14. "Free consent" defined.
15 "Coercion" defined.
16. "Undue influence" defined.
17. "Fraud" defined.
18. "Misrepresentation" defined.
19. Voidability of agreements without free consent.
19.A. Power to set aside contract induced by undue influence.
20. Agreement void where both parties are under mistake as to matter of fact.
21. Effect of mistakes as to law.

*Sections.*

22. Contract caused by mistake of one party as to matter of fact.
23. What considerations and objects are lawful, and what not.

*Void Agreements.*

24. Agreements void, if considerations and objects unlawful in part.
25. Agreement without consideration void, unless—it is in writing and registered,
or is a promise to compensate for something done,
or is a promise to pay a debt barred by limitation law.
26. Agreement in restraint of marriage void.
27. Agreement in restraint of trade void.
Saving of agreement not to carry on business of which good-will is sold.
28. Agreements in restraint of legal proceedings void.
Saving of contract to refer to arbitration dispute that may arise.
Suits barred by such contracts.
Saving of contract to refer questions that have already arisen.
29. Agreements void for uncertainty.
30. Agreements by way of wager void.
Exception in favour of certain prizes for horse-racing.
Section 294A of the Penal Code not affected.

CHAPTER III.

OF CONTINGENT CONTRACTS.

31. "Contingent contract" defined.
32. Enforcement of contracts contingent on an event happening.
33. Enforcement of contract contingent on an event not happening.
34. When event on which contract is contingent to be deemed impossible if it is the future conduct of a living person.
35. When contracts become void which are contingent on happening of specified event within fixed time.
When contracts may be enforced which are contingent on specified event not happening within fixed time.
36. Agreement contingent on impossible events void.

CHAPTER IV.

OF THE PERFORMANCE OF CONTRACTS.

*Contracts which must be performed.*

37. Obligation of parties to contracts
38. Effect of refusal to accept offer of performance.
39. Effect of refusal of party to perform promise wholly.

*Sections.*

*By whom Contracts must be performed.*

40. Person by whom promise is to be performed.
41. Effect of accepting performance from third person.
42. Devolution of joint liabilities.
43. Any one of joint promisors may be compelled to perform.
Each promisor may compel contribution.
Sharing of loss by default in contribution.
44. Effect of release of one joint promisor.
45. Devolution of joint rights.

*Time and Place for Performance.*

46. Time for performance of promise where no application is to be made and no time is specified.
47. Time and place for performance of promise where time is specified and no application to be made.
48. Application for performance on certain day to be at proper time and place.
49. Place for performance of promise where no application to be made and no place fixed for performance.
50. Performance in manner or at time prescribed or sanctioned by promisee.

*Performance of Reciprocal Promises.*

51. Promisor not bound to perform unless reciprocal promisee ready and willing to perform.
52. Order of performance of reciprocal promises.
53. Liability of party preventing event on which contract is to take effect.
54. Effect of default as to that promise which should be first performed, in contract consisting of reciprocal promises.
55. Effect of failure to perform at fixed time, in contract in which time is essential.
Effect of such failure when time is not essential.
Effect of acceptance of performance at time other than that agreed upon.
56. Agreement to do impossible act.
Contract to do act afterwards becoming impossible or unlawful.
Compensation for loss through non-performance of act known to be impossible or unlawful.
57. Reciprocal promise to do things legal, and also other things illegal.
58. Alternative promise, one branch being illegal.

*Appropriation of Payments.*

*Sections.*

59. Application of payment where debt to be discharged is indicated.
60. Application of payment where debt to be discharged is not indicated.
61. Application of payment where neither party appropriates.

*Contracts which need not be performed.*

62. Effect of novation, rescission and alteration of contract.
63. Promisee may dispense with or remit performance of promise.
64. Consequences of rescission of voidable contract.
65. Obligation of person who has received advantage under void agreement or contract that becomes void.
66. Mode of communicating or revoking rescission of voidable contract.
67. Effect of neglect of promisee to afford promisor reasonable facilities for performance.

## CHAPTER V.

OF CERTAIN RELATIONS RESEMBLING THOSE CREATED BY CONTRACT.

68. Claim for necessaries supplied to person incapable of contracting, or on his account.
69. Reimbursement of person paying money due by another in payment of which he is interested.
70. Obligation of person enjoying benefit of non-gratuitous act.
71. Responsibility of finder of goods.
72. Liability of person to whom money is paid, or thing delivered, by mistake or under coercion.

## CHAPTER VI.

OF THE CONSEQUENCES OF BREACH OF CONTRACT.

73. Compensation for loss or damage caused by breach of contract.
Compensation for failure to discharge obligation resembling those created by contract.
74. Compensation for breach of contract where penalty stipulated for.
75. Party rightfully rescinding contract entitled to compensation.

## CHAPTER VII.

OF THE SALE OF GOODS.

76-123. * * * *

## CHAPTER VIII.

### OF INDEMNITY AND GUARANTEE.

*Sections.*

124. "Contract of indemnity" defined.
125. Rights of indemnity-holder when sued.
126. "Contract of guarantee," "surety," "principal debtor," and "creditor."
127. Consideration for guarantee.
128. Surety's liability.
129. "Continuing guarantee."
130. Revocation of continuing guarantee.
131. Revocation of continuing guarantee by surety's death.
132. Liability of two persons, primarily liable, not affected by arrangement between them that one shall be surety on other's default.
133. Discharge of surety by variance in terms of contract.
134. Discharge of surety by release or discharge of principal debtor.
135. Discharge of surety when creditor compounds with, gives time to, or agrees not to sue, principal debtor.
136. Surety not discharged when agreement made with third person to give time to principal debtor.
137. Creditor's forbearance to sue does not discharge surety.
138. Release of one co-surety does not discharge others.
139. Discharge of surety by creditor's act or omission impairing surety's eventual remedy.
140. Rights of surety on payment or performance.
141. Surety's right to benefit of creditor's securities.
142. Guarantee obtained by misrepresentation invalid.
143. Guarantee obtained by concealment invalid.
144. Guarantee on contract that creditor shall not act on it until co-surety joins.
145. Implied promise to indemnify surety.
146. Co-sureties liable to contribute equally.
147. Liability of co-sureties bound in different sums.

## CHAPTER IX.

### OF BAILMENT.

148. "Bailment," "bailor" and "bailee" defined.
149. Delivery to bailee how made.
150. Bailor's duty to disclose faults in goods bailed.
151. Care to be taken by bailee.
152. Bailee when not liable for loss, etc., of thing bailed.

*Sections.*

153. Termination of bailment by bailee's act inconsistent with conditions.
154. Liability of bailee making unauthorized use of goods bailed.
155. Effect of mixture, with bailor's consent, of his goods with bailee's.
156. Effect of mixture, without bailor's consent, when the goods can be separated.
157. Effect of mixture, without bailor's consent, when the goods cannot be separated.
158. Re-payment by bailor of necessary expenses.
159. Restoration of goods lent gratuitously.
160. Return of goods bailed on expiration of time or accomplishment of purpose.
161. Bailee's reponsibility when goods are not duly returned.
162. Termination of gratuitous bailment by death.
163. Bailor entitled to increase or profit from goods bailed.
164. Bailor's responsibility to bailee.
165. Bailment by several joint owners.
166. Bailee not responsible on re-delivery to bailor without title.
167. Right of third person claiming goods bailed.
168. Right of finder of goods ; may sue for specific reward offered.
169. When finder of thing commonly on sale may sell it.
170. Bailee's particular lien.
171. General lien of bankers, factors, wharfingers, advocates and policy-brokers.

*Bailments of Pledges.*

172. " Pledge," " pawnor " and " pawnee " defined.
173. Pawnee's right of retainer.
174. Pawnee not to retain for debt or promise other than that for which goods pledged.
Presumption in case of subsequent advances.
175. Pawnee's right as to extraordinary expenses incurred.
176. Pawnee's right where pawnor makes default.
177. Defaulting pawnor's right to redeem.
178. Pledge by mercantile agent.
179. Pledge where pawnor has only a limited interest.

*Suits by Bailees or Bailors against Wrong-doers.*

180. Suit by bailor or bailee against wrong-doer.
181. Apportionment of relief or compensation obtained by such suits.

## CHAPTER X.

### AGENCY.

*Sections.*

*Appointment and Authority of Agents.*

182. " Agent " and " principal " defined.
183. Who may employ agent.
184. Who may be an agent.
185. Consideration not necessary.
186. Agent's authority may be expressed or implied.
187. Definitions of express and implied authority.
188. Extent of agent's authority.
189. Agent's authority in an emergency.

*Sub-agents.*

190. When agent cannot delegate.
191. " Sub-agent " defined.
192. Representation of principal by sub-agent properly appointed.
Agent's responsibility for sub-agent.
Sub-agent's responsibility.
193. Agent's reponsibility for sub-agent appointed without authority.
194. Relation between principal and person duly appointed by agent to act in business of agency.
195. Agent's duty in selecting such person.

*Ratification.*

196. Right of person as to acts done for him without his authority.
Effect of ratification.
197. Ratification may be expressed or implied.
198. Knowledge requisite for valid ratification.
199. Effect of ratifying unauthorized act forming part of a transaction.
200. Ratification of unauthorized act cannot injure third person.

*Revocation of Authority.*

201. Termination of agency.
202. Termination of agency where agent has an interest in subject-matter.
203. When principal may revoke agent's authority.
204. Revocation where authority has been partly exercised.
205. Compensation for revocation by principal, or renunciation by agent.
206. Notice of revocation or renunciation.
207. Revocation and renunciation may be expressed or implied.
208. When termination of agent's authority takes effect as to agent, and as to third persons.
209. Agent's duty on termination of agency by principal's death or insanity.
210. Termination of sub-agent's authority.

*Sections.*

*Agent's Duty to Principal.*

211. Agent's duty in conducting principal's business.
212. Skill and diligence required from agent.
213. Agent's accounts.
214. Agent's duty to communicate with principal.
215. Right of principal when agent deals, on his own account, in business of agency without principal's consent.
216. Principal's right to benefit gained by agent dealing on his own account in business of agency.
217. Agent's right of retainer out of sums received on principal's account.
218. Agent's duty to pay sums received for principal.
219. When agent's remuneration becomes due.
220. Agent not entitled to remuneration for business mis-conducted.
221. Agent's lien on principal's property.

*Principal's Duty to Agent.*

222. Agent to be indemnified against consequences of lawful acts.
223. Agent to be indemnified against consequences of acts done in good faith.
224. Non-liability of employer of agent to do a criminal act.
225. Compensation to agent for injury caused by principal's neglect.

*Effect of Agency on Contract with third Persons.*

226. Enforcement and consequences of agent's contracts.
227. Principal how far bound when agent exceeds authority.
228. Principal not bound when excess of agent's authority is not separable.
229. Consequences of notice given to agent.
230. Agent cannot personally enforce, nor be bound by, contracts on behalf of principal.
Presumption of contract to contrary.
231. Rights of parties to a contract made by agent not disclosed.
232. Performance of contract with agent supposed to be principal.
233. Right of person dealing with agent personally liable.
234. Consequence of inducing agent or principal to act on belief that principal or agent will be held exclusively liable.
235. Liability of pretended agent.
236. Person falsely contracting as agent not entitled to performance.
237. Liability of principal inducing belief that agent's unauthorized acts were authorized.
238. Effect on agreement of misrepresentation or fraud by agent.

## CHAPTER XI.

### OF PARTNERSHIP.

239—266. * * * *

# THE CONTRACT ACT.[1]

[INDIA ACT IX. 1872] (1st September, 1872.)

WHEREAS it is expedient to define and amend certain parts of the law relating to contracts; It is hereby enacted as follows: —

## PRELIMINARY.

Saving.

**1.** Nothing herein contained shall affect the provisions of any Statute, Act or Regulation not hereby expressly repealed,[2] nor any usage or custom of trade, nor any incident of any contract, not inconsistent with the provisions of this Act.

Interpretation clause.

**2.** In this Act the following words and expressions are used in the following senses, unless a contrary intention appears from the context:—

(*a*) When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal:

(*b*) When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted,[3] becomes a promise:

(*c*) The person making the proposal is called the "promisor," and the person accepting the proposal is called the "promisee":

(*d*) When, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise:

(*e*) Every promise and every set of promises, forming the consideration for each other, is an agreement:

(*f*) Promises which form the consideration or part of the consideration for each other are called reciprocal promises:

(*g*) An agreement not enforceable by law is said to be void:

(*h*) An agreement enforceable by law is a contract:

(*i*) An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others, is a voidable contract:

(*j*) A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable.

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[1] The Chapters and sections of the Transfer of Property Act which relate to contracts are, in places in which that Act is in force, to be taken as part of this Act; *see* section 4 of the Transfer of Property Act.

[2] *i.e.*, repealed by the Indian Contract Act (India Act IX, 1872).

[3] As to when communication of acceptance becomes complete, *see* section 4, *illustration* (*b*).

## CHAPTER I.

### OF THE COMMUNICATION, ACCEPTANCE AND REVOCATION OF PROPOSALS.

Communication, acceptance and revocation of proposals.

**3.** The communication of proposals, the acceptance of proposals, and the revocation of proposals and acceptances, respectively, are deemed to be made by any act or omission of the party proposing, accepting or revoking by which he intends to communicate such proposal, acceptance or revocation, or which has the effect of communicating it.

Communication when complete.

**4.** The communication of a proposal is complete when it comes to the knowledge of the person to whom it is made.

The communication of an acceptance is complete,—

as against the proposer, when it is put in a course of transmission to him, so as to be out of the power of the acceptor;

as against the acceptor, when it comes to the knowledge of the proposer.

The communication of a revocation is complete,—

as against the person who makes it, when it is put into a course of transmission to the person to whom it is made, so as to be out of the power of the person who makes it;

as against the person to whom it is made, when it comes to his knowledge.

*Illustrations.*

(*a*) *A* proposes, by letter, to sell a house to *B* at a certain price.
The communication of the proposal is complete when *B* receives the letter.

(*b*) *B* accepts *A*'s proposal by a letter sent by post.
The communication of the acceptance is complete,—

as against *A*, when the letter is posted;
as against *B*, when the letter is received by *A*.

(*c*) *A* revokes his proposal by telegram.
The revocation is complete as against *A* when the telegram is despatched. It is complete as against *B* when *B* receives it.

*B* revokes his acceptance by telegram. *B*'s revocation is complete as against *B* when the telegram is despatched, and as against *A* when it reaches him.

Revocation of proposals and acceptances.

**5.** A proposal may be revoked at any time before the communication of its acceptance is complete as against the proposer, but not afterwards.

An acceptance may be revoked at any time before the communication of the acceptance is complete as against the acceptor, but not afterwards.

*Illustrations.*

*A* proposes, by a letter sent by post, to sell his house to *B*.
*B* accepts the proposal by a letter sent by post.
*A* may revoke his proposal at any time before or at the moment when *B* posts his letter of acceptance, but not afterwards.
*B* may revoke his acceptance at any time before or at the moment when the letter communicating it reaches *A*, but not afterwards.

Revocation how made.

**6.** A proposal is revoked—

(1) by the communication of notice of revocation by the proposer to the other party;

(2) by the lapse of the time prescribed in such proposal for its acceptance, or, if no time is so prescribed, by the lapse of a reasonable time, without communication of the acceptance;

(3) by the failure of the acceptor to fulfil a condition precedent to acceptance; or

(4) by the death or insanity of the proposer, if the fact of his death or insanity comes to the knowledge of the acceptor before acceptance.

Acceptance must be absolute.

**7.** In order to convert a proposal into a promise, the acceptance must—

(1) be absolute and unqualified;

(2) be expressed in some usual and reasonable manner, unless the proposal prescribes the manner in which it is to be accepted. If the proposal prescribes the manner in which it is to be accepted, and the acceptance is not made in such manner, the proposer may, within a reasonable time after the acceptance is communicated to him, insist that his proposal shall be accepted in the prescribed manner, and not otherwise; but if he fails to do so, he accepts the acceptance.

Acceptance by performing conditions, or receiving consideration.

**8.** Performance of the conditions of a proposal, or the acceptance of any consideration for a reciprocal promise which may be offered with a proposal, is an acceptance of the proposal.

Promises, express and implied.

**9.** In so far as the proposal or acceptance of any promise is made in words, the promise is said to be express. In so far as such proposal or acceptance is made otherwise than in words, the promise is said to be implied.

## CHAPTER II.

### Of Contracts, Voidable Contracts and Void Agreements.

What agreements are contracts.

**10.** All agreements are contracts[1] if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void.

Nothing herein contained shall affect any law in force in the Union of Burma, by which any contract is required to be made in writing or in the presence of witnesses, or any law relating to the registration of documents.

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[1] *See* section 2, cl. (*h*).

Who are competent to contract.

**11.** Every person is competent to contract who is of the age of majority according to the law to which he is subject,[1] and who is of sound mind, and is not disqualified from contracting by any law to which he is subject.

What is a sound mind for the purposes of contracting.

**12.** A person is said to be of sound mind for the purpose of making a contract if, at the time when he makes it, he is capable of understanding it and of forming a rational judgment as to its effect upon his interests.

A person who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of sound mind.

A person who is usually of sound mind, but occasionally of unsound mind, may not make a contract when he is of unsound mind.

*Illustrations.*

(*a*) A patient in a lunatic asylum, who is at intervals of sound mind, may contract during those intervals.

(*b*) A sane man, who is delirious from fever or who is so drunk that he cannot understand the terms of a contract or form a rational judgment as to its effect on his interests, cannot contract whilst such delirium or drunkenness lasts.

"Consent" defined.

**13.** Two or more persons are said to consent when they agree upon the same thing in the same sense.

"Free consent" defined.

**14.** Consent is said to be free when it is not caused by—

(1) coercion, as defined in section 15, or

(2) undue influence, as defined in section 16, or

(3) fraud, as defined in section 17, or

(4) misrepresentation, as defined in section 18, or

(5) mistake, subject to the provisions of sections 20, 21 and 22.

Consent is said to be so caused when it would not have been given but for the existence of such coercion, undue influence, fraud, misrepresentation or mistake.

"Coercion" defined.

**15.** "Coercion" is the committing, or threatening to commit, any act forbidden by the Penal Code, or the unlawful detaining, or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement.

*Explanation.*—It is immaterial whether the Penal Code is or is not in force in the place where the coercion is employed.

*Illustration.*

*A*, on board an English ship on the high seas, causes *B* to enter into an agreement by an act amounting to criminal intimidation under the Penal Code.

*A* afterwards sues *B* for breach of contract at Rangoon.

*A* has employed coercion, although his act is not an offence by the law of England, and although section 506 of the Penal Code was not in force at the time when or place where the act was done.

[1] *See* the Majority Act.

"Undue influence" defined.

**16.** (*1*) A contract is said to be induced by "undue influence" where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other.

(*2*) In particular and without prejudice to the generality of the foregoing principle, a person is deemed to be in a position to dominate the will of another—

(*a*) where he holds a real or apparent authority over the other, or where he stands in a fiduciary relation to the other; or

(*b*) where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress.

(*3*) Where a person, who is in a position to dominate the will of another, enters into a contract with him, and the transaction appears, on the face of it or on the evidence adduced, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall lie upon the person in a position to dominate the will of the other.

Nothing in this sub-section shall affect the provisions of section 111 of the Evidence Act.

*Illustrations.*

(*a*) *A* having advanced money to his son, *B*, during his minority, upon *B*'s coming of age obtains, by misuse of parental influence, a bond from *B* for a greater amount than the sum due in respect of the advance. *A* employs undue influence.

(*b*) *A*, a man enfeebled by disease or age, is induced, by *B*'s influence over him as his medical attendant, to agree to pay *B* an unreasonable sum for his professional services. *B* employs undue influence.

(*c*) *A*, being in debt to *B*, the money-lender of his village, contracts a fresh loan on terms which appear to be unconscionable. It lies on *B* to prove that the contract was not induced by undue influence.

(*d*) *A* applies to a banker for a loan at a time when there is stringency in the money market. The banker declines to make the loan except at an unusually high rate of interest. *A* accepts the loan on these terms. This is a transaction in the ordinary course of business, and the contract is not induced by undue influence.

"Fraud" defined.

**17.** "Fraud" means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent,[1] with intent to deceive another party thereto or his agent, or to induce him to enter into the contract:—

(1) the suggestion, as a fact, of that which is not true, by one who does not believe it to be true;

(2) the active concealment of a fact by one having knowledge or belief of the fact;

(3) a promise made without any intention of performing it;

(4) any other act fitted to deceive;

(5) any such act or omission as the law specially declares to be fraudulent.

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[1] Compare section 238.

*Explanation.*—Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak,[1] or unless his silence is, in itself, equivalent to speech.

*Illustrations.*

(*a*) *A* sells, by auction, to *B*, a horse which *A* knows to be unsound. *A* says nothing to *B* about the horse's unsoundness. This is not fraud in *A*.

(*b*) *B* is *A*'s daughter and has just come of age. Here, the relation between the parties would make it *A*'s duty to tell *B* if the horse is unsound.

(*c*) *B* says to *A*—"If you do not deny it, I shall assume that the horse is sound." *A* says nothing. Here, *A*'s silence is equivalent to speech.

(*d*) *A* and *B*, being traders, enter upon a contract. *A* has private information of a change in prices which would affect *B*'s willingness to proceed with the contract. *A* is not bound to inform *B*.

"Misrepresentation" defined.

**18.** "Misrepresentation" means and includes—

(1) the positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true;

(2) any breach of duty which, without an intent to deceive, gains an advantage to the person committing it, or any one claiming under him, by misleading another to his prejudice or to the prejudice of any one claiming under him;

(3) causing, however innocently, a party to an agreement to make a mistake as to the substance of the thing which is the subject of the agreement.

Voidability of agreements without free consent.

**19.** When consent to an agreement is caused by coercion, fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused.

A party to a contract, whose consent was caused by fraud or misrepresentation, may, if he thinks fit, insist that the contract shall be performed, and that he shall be put in the position in which he would have been if the representations made had been true.

*Exception.*—If such consent was caused by misrepresentation or by silence, fraudulent within the meaning of section 17, the contract, nevertheless, is not voidable, if the party whose consent was so caused had the means of discovering the truth with ordinary diligence.

*Explanation.*—A fraud or misrepresentation which did not cause the consent to a contract of the party on whom such fraud was practised, or to whom such misrepresentation was made, does not render a contract voidable.

*Illustrations.*

(*a*) *A*, intending to deceive *B*, falsely represents that five hundred maunds of indigo are made annually at *A*'s factory, and thereby induces *B* to buy the factory. The contract is voidable at the option of *B*.

(*b*) *A*, by a misrepresentation, leads *B* erroneously to believe that five hundred maunds of indigo are made annually at *A*'s factory. *B* examines the accounts of the factory, which show that only four hundred maunds of indigo have been made. After this *B* buys the factory. The contract is not voidable on account of *A*'s misrepresentation.

[1] *See* section 143.

(*c*) *A* fraudulently informs *B* that *A*'s estate is free from incumbrance. *B* thereupon buys the estate. The estate is subject to a mortgage. *B* may either avoid the contract, or may insist on its being carried out and the mortgage-debt redeemed.

(*d*) *B*, having discovered a vein of ore on the estate of *A*, adopts means to conceal, and does conceal, the existence of the ore from *A*. Through *A*'s ignorance *B* is enabled to buy the estate at an under-value. The contract is voidable at the option of *A*.

(*e*) *A* is entitled to succeed to an estate at the death of *B*; *B* dies; *C*, having received intelligence of *B*'s death, prevents the intelligence reaching *A*, and thus induces *A* to sell him his interest in the estate. The sale is voidable at the option of *A*.

**19A.** When consent to an agreement is caused by undue influence, the agreement is a contract voidable at the option of the party whose consent was so caused. Power to set aside contract induced by undue influence.

Any such contract may be set aside either absolutely or, if the party who was entitled to avoid it has received any benefit thereunder, upon such terms and conditions as to the Court may seem just.

*Illustrations.*

(*a*) *A*'s son has forged *B*'s name to a promissory note. *B*, under threat of prosecuting *A*'s son, obtains a bond from *A* for the amount of the forged note. If *B* sues on this bond, the Court may set the bond aside.

(*b*) *A*, a money-lender, advances Rs. 100 to *B*, an agriculturist, and, by undue influence, induces *B* to execute a bond for Rs. 200 with interest at 6 per cent. per month. The Court may set the bond aside, ordering *B* to repay the Rs. 100 with such interest as may seem just.

**20.** Where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement, the agreement is void. Agreement void where both parties are under mistake as to matter of fact.

*Explanation.*—An erroneous opinion as to the value of the thing which forms the subject-matter of the agreement is not to be deemed a mistake as to a matter of fact.

*Illustrations.*

(*a*) *A* agrees to sell to *B* a specific cargo of goods supposed to be on its way from England to Rangoon. It turns out that, before the day of the bargain, the ship conveying the cargo had been cast away and the goods lost. Neither party was aware of the facts. The agreement is void.

(*b*) *A* agrees to buy from *B* a certain horse. It turns out that the horse was dead at the time of the bargain, though neither party was aware of the fact. The agreement is void.

(*c*) *A*, being entitled to an estate for the life of *B*, agrees to sell it to *C*. *B* was dead at the time of the agreement, but both parties were ignorant of the fact. The agreement is void.

**21.** A contract is not voidable because it was caused by a mistake as to any law in force in the Union of Burma; but a mistake as to a law not in force in the Union of Burma has the same effect as a mistake of fact. Effect of mistakes as to law.

*Illustration.*

*A* and *B* make a contract grounded on the erroneous belief that a particular debt is barred by the law of limitation: the contract is not voidable.

**22.** A contract is not voidable merely because it was caused by one of the parties to it being under a mistake as to a matter of fact. Contract caused by mistake of one party as to matter of fact.

What considerations and objects are lawful, and what not.

**23.** The consideration or object of an agreement is lawful, unless—

it is forbidden by law [1]; or

is of such a nature that, if permitted, it would defeat the provisions of any law; or

is fraudulent; or

involves or implies injury to the person or property of another; or

the Court regards it as immoral, or opposed to public policy.

In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void.

*Illustrations.*

(*a*) *A* agrees to sell his house to *B* for 10,000 rupees. Here *B*'s promise to pay he sum of 10,000 rupees is the consideration for *A*'s promise to sell the house, and *A*'s promise to sell the house is the consideration for *B*'s promise to pay the 10,000 rupees. These are lawful considerations.

(*b*) *A* promises to pay *B* 1,000 rupees at the end of six months, if *C*, who owes that sum to *B*, fails to pay it. *B* promises to grant time to *C* accordingly. Here the promise of each party is the consideration for the promise of the other p rty and they are lawful considerations

(*c*) *A* promises, for a certain sum paid to him by *B*, to make good to *B* the value of his ship if it is wrecked on a certain voyage. Here *A*'s promise is the consideration for *B*'s payment and *B*'s payment is the considera'ion for *A*'s promise and these are lawful considerations.

(*d*) *A* promises to maintain *B*'s child and *B* promises to pay *A* 1,000 rupees yearly for the purpose. Here the promise of each party is the consideration for the promise of the other party. They are lawful considerations.

(*e*) *A*, *B* and *C* enter into an agreement for the division among them of gains acquired, or to be acquired, by them by fraud. The agreement is void, as its object is unlawful.

(*f*) *A* promises to obtain for *B* an employment in the public service, and *B* promises to pay 1,000 rupees to *A*. The agreement is void, as the consideration for it is unlawful

(*g*) *A*, being agent for a landed proprietor, agrees for money, without the knowledge of his principal, to obtain for *B* a lease of land belonging to his principal. The agreement between *A* and *B* is void, as it implies a fraud, by concealment by *A*, on his principal.

(*h*) *A* promises *B* to drop a prosecution which he has instituted against *B* for robbery, and *B* promises to restore the value of the things t.ken. The agreement is void, as its object is unlawful.

(*i*) *A*'s estate is sold for arrears of revenue under the provisions of an Act of the Legislature, by which the defaulter is prohibited from purchasing the estate. *B*, upon an understanding with *A*, becomes the purchaser, and agrees to convey the estate to *A* upon receiving from him the price which *B* has paid. The agreement is void, as it renders the transaction, in effect, a purchase by the defaulter, and would so defeat the object of the law.

(*j*) *A*, who is *B*'s pleader, promises to exercise his influence, as such, with *B* in favour of *C*, and *C* promises to pay 1,000 rupees to *A*. The agreement is void, because it is immoral.

(*k*) *A* agrees to let her daughter to hire to *B* for concubinage. The agreement is void, because it is immoral, though the letting may not be punishable under the Penal Code.

## *Void Agreements.*

Agreements void, if considerations and objects unlawful in part

**24.** If any part of a single consideration for one or more objects, or any one or any part of any one of several considerations for a single object, is unlawful, the agreement is void.

*Illustration.*

*A* promises to superintend, on behalf of *B*, a legal manufacture of indigo, and an illegal traffic in other articles. *B* promises to pay to *A* a salary of 10,000 rupees a year. The agreement is void, the object of *A*'s promise and the consideration for *B*'s promise being in part unlawful.

[1] *See* sections 26, 27, 28 and 30.

**25.** An agreement made without consideration is void, unless—

Agreement without consideration void, unless it is in writing and registered, or is a promise to compensate for something done, or is a promise to pay a debt barred by limitation law.

(1) it is expressed in writing and registered under the law for the time being in force for the registration of documents, and is made on account of natural love and affection between parties standing in a near relation to each other ; or unless

(2) it is a promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, or something which the promisor was legally compellable to do, or unless

(3) it is a promise, made in writing and signed by the person to be charged therewith, or by his agent generally or specially authorized in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits.

In any of these cases, such an agreement is a contract.

*Explanation 1.*—Nothing in this section shall affect the validity, as between the donor and donee, of any gift actually made.

*Explanation 2.*—An agreement to which the consent of the promisor is freely given is not void merely because the consideration is inadequate ; but the inadequacy of the consideration may be taken into account by the Court in determining the question whether the consent of the promisor was freely given.

*Illustrations.*

(*a*) *A* promises, for no consideration, to give to *B* Rs. 1,000. This is a void agreement.

(*b*) *A*, for natural love and affection, promises to give his son, *B*, Rs. 1,000. *A* puts his promise to *B* into writing and registers it. This is a contract.

(*c*) *A* finds *B*'s purse and gives it to him. *B* promises to give *A* Rs. 50. This is a contract.

(*d*) *A* supports *B*'s infant son. *B* promises to pay *A*'s expenses in so doing. This is a contract.

(*e*) *A* owes *B* Rs. 1000, but the debt is barred by the Limitation Act. *A* signs a written promise to pay *B* Rs. 500 on account of the debt. This is a contract.

(*f*) *A* agrees to sell a horse worth Rs. 1,000 for Rs. 10. *A*'s consent to the agreement was freely given. The agreement is a contract notwithstanding the inadequacy of the consideration.

(*g*) *A* agrees to sell a horse worth Rs. 1,000 for Rs. 10. *A* denies that his consent to the agreement was freely given. The inadequacy of the consideration is a fact which the Court should take into account in considering whether or not *A*'s consent was freely given.

**26.** Every agreement in restraint of the marriage of any person, other than a minor, is void.

Agreement in restraint of marriage void.

**27.** Every agreement by which any one is restrained from exercising a lawful profession, trade or business of any kind is to that extent void.

Agreement in restraint of trade void.

*Exception 1.*—One who sells the good-will of a business may agree with the buyer to refrain from carrying on a similar business, within specified local limits, so long as the buyer, or any person deriving title to the good-will from him, carries on a like business therein : Provided that such limits appear to the Court reasonable, regard being had to the nature of the business.

Saving of agreement not to carry on business of which good-will is sold.

*Exceptions 2 & 3.*—* * * *

Agreements in restraint of legal proceedings void.

**28.** Every agreement by which any party thereto is restricted absolutely from enforcing his rights under or in respect of any contract, by the usual legal proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights, is void to that extent.

Saving of contract to refer to arbitration dispute that may arise.

*Exception 1.*—This section shall not render illegal a contract by which two or more persons agree that any dispute which may arise between them in respect of any subject or class of subject shall be referred to arbitration, and that only the amount awarded in such arbitration shall be recoverable in respect of the dispute so referred.

*Suits barred by such contracts.*

[1] *When such a contract has been made, a suit may be brought for its specific performance, and if a suit, other than for such specific performance, or for the recovery of the amount so awarded, is brought by one party to such contract against any other such party in respect of any subject which they have so agreed to refer, the existence of such contract shall be a bar to the suit.*

Saving of contract to refer questions that have already arisen.

*Exception 2.*—Nor shall this section render illegal any contract in writing by which two or more persons agree to refer to arbitration any question between them which has already arisen, or affect any provision of any law in force for the time being as to references to arbitration.

Agreements void for uncertainty.

**29.** Agreements the meaning of which is not certain, or capable of being made certain, are void.

*Illustrations.*

(*a*) *A* agrees to sell to *B* "a hundred tons of oil." There is nothing whatever to show what kind of oil was intended. The agreement is void for uncertainty.

(*b*) *A* agrees to sell to *B* one hundred tons of oil of a specified description, known as an article of commerce. There is no uncertainty here to make the agreement void

(*c*) *A*, who is a dealer in cocoanut-oil only, agrees to sell to *B* "one hundred tons of oil." The nature of *A*'s trade affords an indication of the meaning of the words, and *A* has entered into a contract for the sale of one hundred tons of cocoanut-oil.

(*d*) *A* agrees to sell *B* "all the grain in my granary at Prome." There is no uncertainty here to make the agreement void.

(*e*) *A* agrees to sell to *B* "one thousand maunds of rice at a price to be fixed by *C*." As the price is capable of being made certain, there is no uncertainty here to make the agreement void.

(*f*) *A* agrees to sell to *B* "my white horse for rupees five hundred or rupees one thousand." There is nothing to show which of the two prices was to be given. The agreement is void.

Agreements by way of wager void.

**30.** Agreements by way of wager are void ; and no suit shall be brought for recovering anything alleged to be won on any wager, or entrusted to any person to abide the result of any game or other uncertain event on which any wager is made.

Exception in favour of certain prizes for horse-racing.

This section shall not be deemed to render unlawful a subscription or contribution, or agreement to subscribe or contribute, made or entered into for or toward any plate, prize or sum of money, of the value or amount of

[1] This clause was repealed by the Specific Relief Act, 1877 (India Act I, 1877), throughout India or Pakistan including the Union of Burma. The clause is, however, printed here in italics, because it is operative in areas, if any, where the Contract Act is in force and to which the Specific Relief Act has not been applied.

five hundred rupees or upwards, to be awarded to the winner or winners of any horse race.[1]

Nothing in this section shall be deemed to legalize any transaction connected with horse-racing to which the provisions of section 294A of the Penal Code apply. Section 294A of the Penal Code not affected.

## CHAPTER III.

### OF CONTINGENT CONTRACTS.

**31.** A "contingent contract" is a contract to do or not to do something if some event, collateral to such contract, does or does not happen. "Contingent contract" defined.

*Illustration.*

*A* contracts to pay *B* Rs. 10,000 if *B*'s house is burnt. This is a contingent contract.

**32.** Contingent contracts to do or not to do anything if an uncertain future event happens cannot be enforced by law unless and until that event has happened. Enforcement of contracts contingent on an event happening.

If the event becomes impossible, such contracts become void.

*Illustrations.*

(*a*) *A* makes a contract with *B* to buy *B*'s horse if *A* survives *C*. This contract cannot be enforced by law unless and until *C* dies in *A*'s lifetime.

(*b*) *A* makes a contract with *B* to sell a horse to *B* at a specified price, if *C*, to whom the horse has been offered, refuses to buy him. The contract cannot be enforced by law unless and until *C* refuses to buy the horse.

(*c*) *A* contracts to pay *B* a sum of money when *B* marries *C*. *C* dies without being married to *B*. The contract becomes void.

**33.** Contingent contracts to do or not to do anything if an uncertain future event does not happen can be enforced when the happening of that event becomes impossible, and not before. Enforcement of contracts contingent on an event not happening.

*Illustration.*

*A* agrees to pay *B* a sum of money if a certain ship does not return. The ship is sunk. The contract can be enforced when the ship sinks.

**34.** If the future event on which a contract is contingent is the way in which a person will act at an unspecified time, the event shall be considered to become impossible when such person does anything which renders it impossible that he should so act within any definite time, or otherwise than under further contingencies. When event on which contract is contingent to be deemed impossible, if it is the future conduct of a living person.

*Illustration.*

*A* agrees to pay *B* a sum of money if *B* marries *C*.

*C* marries *D*. The marriage of *B* to *C* must now be considered impossible, although it is possible that *D* may die and that *C* may afterwards marry *B*.

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[1] *Cf.* the Gaming Act, 1845 (8 and 9 Vict. c. 109), section 108.

When contracts become void which are contingent on happening of specified event within fixed time.

**35.** Contingent contracts to do or not to do anything if a specified uncertain event happens within a fixed time become void if, at the expiration of the time fixed, such event has not happened, or if, before the time fixed, such event becomes impossible.

When contracts may be enforced which are contingent on specified event not happening within fixed time.

Contingent contracts to do or not to do anything if a specified uncertain event does not happen within a fixed time may be enforced by law when the time fixed has expired and such event has not happened or, before the time fixed has expired, if it becomes certain that such event will not happen.

*Illustrations.*

(*a*) *A* promises to pay *B* a sum of money if a certain ship returns within a year. The contract may be enforced if the ship returns within the year, and becomes void if the ship is burnt within the year.

(*b*) *A* promises to pay *B* a sum of money if a certain ship does not return within a year. The contract may be enforced if the ship does not return within the year, or is burnt within the year.

Agreement contingent on impossible events void

**36.** Contingent agreements to do or not to do anything, if an impossible event happens, are void, whether the impossibility of the event is known or not to the parties to the agreement at the time when it is made.

*Illustrations.*

(*a*) *A* agrees to pay *B* 1,000 rupees if two straight lines should enclose a space. The agreement is void.

(*b*) *A* agrees to pay *B* 1,000 rupees if *B* will marry *A*'s daughter *C*. *C* was dead at the time of the agreement. The agreement is void.

## CHAPTER IV.

### OF THE PERFORMANCE OF CONTRACTS.

*Contracts which must be performed.*

Obligation of parties to contracts.

**37.** The parties to a contract must either perform, or offer to perform, their respective promises, unless such performance is dispensed with or excused under the provisions of this Act, or of any other law.

Promises bind the representatives of the promisors in case of the death of such promisors before performance, unless a contrary intention appears from the contract.

*Illustrations.*

(*a*) *A* promises to deliver goods to *B* on a certain day on payment of Rs. 1,000. *A* dies before that day. *A*'s representatives are bound to deliver the goods to *B*, and *B* is bound to pay the Rs. 1,000 to *A*'s representatives.

(*b*) *A* promises to paint a picture for *B* by a certain day, at a certain price. *A* dies before the day. The contract cannot be enforced either by *A*'s representatives or by *B*.

**38.** Where a promisor has made an offer of performance to the promisee, and the offer has not been accepted, the promisor is not responsible for non-performance, nor does he thereby lose his rights under the contract. Effect of refusal to accept offer of performance.

Every such offer must fulfil the following conditions :—

(1) it must be unconditional;

(2) it must be made at a proper time and place, and under such circumstances, that the person to whom it is made may have a reasonable opportunity of ascertaining that the person by whom it is made is able and willing there and then to do the whole of what he is bound by his promise to do;

(3) if the offer is an offer to deliver anything to the promisee, the promisee must have a reasonable opportunity of seeing that the thing offered is the thing which the promisor is bound by his promise to deliver.

An offer to one of several joint promisees has the same legal consequences as an offer to all of them.

*Illustration.*

*A* contracts to deliver to *B* at his warehouse, on the first of March, 100 bales of cotton of a particular quality. In order to make an offer of a performance with the effect stated in this section, *A* must bring the cotton to *B*'s warehouse on the appointed day, under such circumstances that *B* may have a reasonable opportunity of satisfying himself that the thing offered is cotton of the quality contracted for, and that there are 100 bales.

**39.** When a party to a contract has refused to perform, or disabled himself from performing, his promise in its entirety, the promisee may put an end to the contract, unless he has signified, by words or conduct, his acquiescence in its continuance. Effect of refusal of party to perform promise wholly.

*Illustrations.*

(*a*) *A*, a singer, enters into a contract with *B*, the manager of a theatre, to sing at his theatre two nights in every week during the next two months, and *B* engages to pay her 100 rupees for each night's performance. On the sixth night *A* wilfully absents herself from the theatre. *B* is at liberty to put an end to the contract.

(*b*) *A*, a singer, enters into a contract with *B*, the manager of a theatre, to sing at his theatre two nights in every week during the next two months, and *B* engages to pay her at the rate of 100 rupees for each night. On the sixth night *A* wilfully absents herself. With the assent of *B*, *A* sings on the seventh night. *B* has signified his acquiescence in the continuance of the contract, and cannot now put an end to it, but is entitled to compensation for the damage sustained by him through *A*'s failure to sing on the sixth night.

### *By whom Contracts must be performed.*

**40.** If it appears from the nature of the case that it was the intention of the parties to any contract that any promise contained in it should be performed by the promisor himself, such promise must be performed by the promisor. In other cases, the promisor or his representatives may employ a competent person to perform it. Person by whom promise is to be performed.

*Illustrations.*

(*a*) *A* promises to pay *B* a sum of money. *A* may perform this promise either by personally paying the money to *B* or by causing it to be paid to *B* by another ; and, if *A* dies before the time appointed for payment, his representatives must perform the promise, or employ some proper person to do so.

(*b*) *A* promises to paint a picture for *B*. *A* must perform this promise personally.

Effect of accepting performance from third person.

**41.** When a promisee accepts performance of the promise from a third person, he cannot afterwards enforce it against the promisor.

Devolution of joint liabilities.

**42.** When two or more persons have made a joint promise, then, unless a contrary intention appears by the contract, all such persons during their joint lives, and after the death of any of them his representative jointly with the survivor or survivors, and after the death of the last survivor the representatives of all jointly, must fulfil the promise.

Any one of joint promisors may be compelled to perform.

**43.** When two or more persons make a joint promise, the promisee may, in the absence of express agreement to the contrary, compel any one or more of such joint promisors to perform the whole of the promise.

Each promisor may compel contribution.

Each of two or more joint promisors may compel every other joint promisor to contribute equally with himself to the performance of the promise, unless a contrary intention appears from the contract.

Sharing of loss by default in contribution.

If any one of two or more joint promisors makes default in such contribution, the remaining joint promisors must bear the loss arising from such default in equal shares.

*Explanation.*—Nothing in this section shall prevent a surety from recovering from his principal payments made by the surety on behalf of the principal, or entitle the principal to recover anything from the surety on account of payments made by the principal.

*Illustrations.*

(*a*) *A*, *B* and *C* jointly promise to pay *D* 3,000 rupees. *D* may compel either *A* or *B* or *C* to pay him 3,000 rupees.

(*b*) *A*, *B* and *C* jointly promise to pay *D* the sum of 3,000 rupees. *C* is compelled to pay the whole. *A* is insolvent, but his assets are sufficient to pay one-half of his debts. *C* is entitled to receive 500 rupees from *A*'s estate, and 1,250 rupees from *B*.

(*c*) *A*, *B* and *C* are under a joint promise to pay *D* 3,000 rupees. *C* is unable to pay anything, and *A* is compelled to pay the whole. *A* is entitled to receive 1,500 rupees from *B*.

(*d*) *A*, *B* and *C* are under a joint promise to pay *D* 3,000 rupees, *A* and *B* being only sureties for *C*. *C* fails to pay. *A* and *B* are compelled to pay the whole sum. They are entitled to recover it from *C*.

Effect of release of one joint promisor.

**44.** Where two or more persons have made a joint promise, a release of one of such joint promisors by the promisee does not discharge the other joint promisor or joint promisors; neither does it free the joint promisors so released from responsibility to the other joint promisor or joint promisors.[1]

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[1] *See* section 138.

Devolution of joint rights.

**45.** When a person has made a promise to two or more persons jointly, then, unless a contrary intention appears from the contract, the right to claim performance rests, as between him and them, with them during their joint lives, and after the death of any of them with the representative of such deceased person jointly with the survivor or survivors, and after the death of the last survivor with the representatives of all jointly.[1]

*Illustration.*

*A*, in consideration of 5,000 rupees lent to him by *B* and *C*, promises *B* and *C* jointly to repay them that sum with interest on a day specified. *B* dies. The right to claim performance rests with *B*'s representative jointly with *C* during *C*'s life, and after the death of *C* with the representatives of *B* and *C* jointly.

### *Time and Place for Performance.*

Time for performance of promise where no application is to be made and no time is specified.

**46.** Where, by the contract, a promisor is to perform his promise without application by the promisee, and no time for performance is specified, the engagement must be performed within a reasonable time.

*Explanation.*—The question "what is a reasonable time" is, in each particular case, a question of fact.

Time and place for performance of promise where time is specified and no application to be made.

**47.** When a promise is to be performed on a certain day, and the promisor has undertaken to perform it without application by the promisee, the promisor may perform it at any time during the usual hours of business on such day and at the place at which the promise ought to be performed.

*Illustration.*

*A* promises to deliver goods at *B*'s warehouse on the first of January. On that day *A* brings the goods to *B*'s warehouse, but after the usual hour for closing it, and they are not received. *A* has not performed his promise.

Application for performance on certain day to be at proper time and place.

**48.** When a promise is to be performed on a certain day, and the promisor has not undertaken to perform it without application by the promisee, it is the duty of the promisee to apply for performance at a proper place and within the usual hours of business.

*Explanation.*—The question "what is a proper time and place" is, in each particular case, a question of fact.

Place for performance of promise where no application to be made and no place fixed for performance.

**49.** When a promise is to be performed without application by the promisee, and no place is fixed for the performance of it, it is the duty of the promisor to apply to the promisee to appoint a reasonable place for the performance of the promise, and to perform it at such place.

*Illustration.*

*A* undertakes to deliver a thousand maunds of jute to *B* on a fixed day. *A* must apply to *B* to appoint a reasonable place for the purpose of receiving it, and must deliver it to him at such place.

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[1] For an exception to section 45 in the case of Government securities, *see* section 4 of the Government Securities Act.

Performance in manner or at time prescribed or sanctioned by promisee.

**50.** The performance of any promise may be made in any manner, or at any time, which the promisee prescribes or sanctions.

*Illustrations.*

(*a*) *B* owes *A* 2,000 rupees. *A* desires *B* to pay the amount to *A*'s account with *C*, a banker. *B*, who also banks with *C*, orders the amount to be transferred from his account to *A*'s credit, and this is done by *C*. Afterwards, and before *A* knows of the transfer, *C* fails. There has been a good payment by *B*.

(*b*) *A* and *B* are mutually indebted. *A* and *B* settle an account by setting off one item against another, and *B* pays *A* the balance found to be due from him upon such settlement. This amounts to a payment by *A* and *B*, respectively, of the sums which they owed to each other.

(*c*) *A* owes *B* 2,000 rupees. *B* accepts some of *A*'s goods in reduction of the debt. The delivery of the goods operates as a part payment.

(*d*) *A* desires *B*, who owes him Rs. 100, to send him a note for Rs. 100 by post. The debt is discharged as soon as *B* puts into the post a letter containing the note duly addressed to *A*.

### *Performance of Reciprocal Promises.*

Promisor not bound to perform unless reciprocal promisee ready and willing to perform.

**51.** When a contract consists of reciprocal promises to be simultaneously performed, no promisor need perform his promise unless the promisee is ready and willing to perform his reciprocal promise.

*Illustrations.*

(*a*) *A* and *B* contract that *A* shall deliver goods to *B* to be paid for by *B* on delivery.

*A* need not deliver the goods unless *B* is ready and willing to pay for the goods on delivery.

*B* need not pay for the goods unless *A* is ready and willing to deliver them on payment.

(*b*) *A* and *B* contract that *A* shall deliver goods to *B* at a price to be paid by instalments, the first instalment to be paid on delivery.

*A* need not deliver unless *B* is ready and willing to pay the first instalment on delivery.

*B* need not pay the first instalment unless *A* is ready and willing to deliver the goods on payment of the first instalment.

Order of performance of reciprocal promises.

**52.** Where the order in which reciprocal promises are to be performed is expressly fixed by the contract, they shall be performed in that order; and, where the order is not expressly fixed by the contract, they shall be performed in that order which the nature of the transaction requires.

*Illustrations.*

(*a*) *A* and *B* contract that *A* shall build a house for *B* at a fixed price. *A*'s promise to build the house must be performed before *B*'s promise to pay for it.

(*b*) *A* and *B* contract that *A* shall make over his stock-in-trade to *B* at a fixed price, and *B* promises to give security for the payment of the money. *A*'s promise need not be performed until the security is given, for the nature of the transaction requires that *A* should have security before he delivers up his stock.

Liability of party preventing event on which the contract is to take effect.

**53.** When a contract contains reciprocal promises, and one party to the contract prevents the other from performing his promise, the contract becomes voidable at the option of the party so prevented; and he is entitled to compensation[1] from the other party for any loss which he may sustain in consequence of the non-performance of the contract.

*Illustration.*

*A* and *B* contract that *B* shall execute certain work for *A* for a thousand rupees. *B* is ready and willing to execute the work accordingly, but *A* prevents him from doing so. The contract is voidable at the option of *B*; and, if he elects to rescind it, he is entitled to recover from *A* compensation for any loss which he has incurred by its non-performance.

[1] *See* section 73.

**54.** When a contract consists of reciprocal promises, such that one of them cannot be performed or that its performance cannot be claimed till the other has been performed and the promisor of the promise last mentioned fails to perform it, such promisor cannot claim the performance of the reciprocal promise, and must make compensation to the other party to the contract for any loss which such other party may sustain by the non-performance of the contract.

Effect of default as to that promise which should be first performed, in contract consisting of reciprocal promises.

*Illustrations.*

(*a*) *A* hires *B*'s ship to take in and convey, from Rangoon to Calcutta, a cargo to be provided by A, *B* receiving a certain freight for its conveyance *A* does not provide any cargo for the ship *A* cannot claim the performance of *B*'s promise, and must make compensation to *B* for the loss which *B* sustains by the non-performance of the contract.

(*b*) *A* contracts with *B* to execute certain builder's work for a fixed price, *B* supplying the scaffolding and timber necessary for the work. *B* refuses to furnish any scaffolding or timber, and the work cannot be executed. *A* need not execute the work, and *B* is bound to make compensation to *A* for any loss caused to him by the non-performance of the contract.

(*c*) *A* contracts with *B* to deliver to him, at a specified price, certain merchandise on board a ship which cannot arrive for a month, and *B* engages to pay for the merchandise within a week from the date of the contract. *B* does not pay within the week. *A*'s promise to deliver need not be performed, and *B* must make compensation.

(*d*) *A* promises *B* to sell him one hundred bales of merchandise, to be delivered next day, and *B* promises *A* to pay for them within a month. *A* does not deliver according to his promise. *B*'s promise to pay need not be performed, and *A* must make compensation.

**55.** When a party to a contract promises to do a certain thing at or before a specified time, or certain things at or before specified times, and fails to do any such thing at or before the specified time, the contract, or so much of it as has not been performed, becomes voidable at the option of the promisee, if the intention of the parties was that time should be of the essence of the contract.

Effect of failure to perform at fixed time in contract in which time is essential.

If it was not the intention of the parties that time should be of the essence of the contract, the contract does not become voidable by the failure to do such thing at or before the specified time; but the promisee is entitled to compensation from the promisor for any loss occasioned to him by such failure.

Effect of such failure when time is not essential.

If, in case of a contract voidable on account of the promisor's failure to perform his promise at the time agreed, the promisee accepts performance of such promise at any time other than that agreed, the promisee cannot claim compensation for any loss occasioned by the non-performance of the promise at the time agreed, unless, at the time of such acceptance he gives notice to the promisor of his intention to do so.[1]

Effect of acceptance of performance at time other than that agreed upon.

**56.** An agreement to do an act impossible in itself is void.

Agreement to do impossible act.

A contract to do an act which, after the contract is made, becomes impossible, or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful.[2]

Contract to do act afterwards becoming impossible or unlawful.

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[1] Compare sections 62 and 63.

[2] *See* section 65 of this Act and section 13 of the Specific Relief Act.

Compensation for loss through non-performance of act known to be impossible or unlawful.

Where one person has promised to do something which he knew, or, with reasonable diligence, might have known, and which the promisee did not know, to be impossible or unlawful, such promisor must make compensation to such promisee for any loss which such promisee sustains through the non-performance of the promise.

*Illustrations.*

(*a*) *A* agrees with *B* to discover treasure by magic. The agreement is void.

(*b*) *A* and *B* contract to marry each other. Before the time fixed for the marriage, *A* goes mad. The contract becomes void.

(*c*) *A* contracts to marry *B*, being already married to *C*, and being forbidden by the law to which he is subject to practise polygamy. *A* must make compensation to *B* for the loss caused to her by the non-performance of his promise.

(*d*) *A* contracts to take in cargo for *B* at a foreign port. *A*'s Government afterwards declares war against the country in which the port is situated. The contract becomes void when war is declared.

(*e*) *A* contracts to act at a theatre for six months in consideration of a sum paid in advance by *B*. On several occasions *A* is too ill to act. The contract to act on those occasions becomes void.

Reciprocal promise to do things legal, and also other things illegal.

**57.** Where persons reciprocally promise, firstly, to do certain things which are legal, and, secondly, under specified circumstances, to do certain other things which are illegal, the first set of promises is a contract, but the second is a void agreement.

*Illustration.*

*A* and *B* agree that *A* shall sell *B* a house for 10,000 rupees, but that, if *B* uses it as a gambling house, he shall pay *A* 50,000 rupees for it.

The first set of reciprocal promises, namely, to sell the house and to pay 10,000 rupees for it, is a contract.

The second set is for an unlawful object, namely, that *B* may use the house as a gambling house, and is a void agreement.

Alternative promise, one branch being illegal.

**58.** In the case of an alternative promise, one branch of which is legal and the other illegal, the legal branch alone can be enforced.

*Illustration.*

*A* and *B* agree that *A* shall pay *B* 1,000 rupees for which *B* shall afterwards deliver to *A* either rice or smuggled opium.

This is a valid contract to deliver rice, and a void agreement as to the opium.

## *Appropriation of Payments.*

Application of payment where debt to be discharged is indicated.

**59.** Where a debtor, owing several distinct debts to one person, makes a payment to him, either with express intimation or under circumstances implying that the payment is to be applied to the discharge of some particular debt, the payment, if accepted, must be applied accordingly.

*Illustrations.*

(*a*) *A* owes *B*, among other debts, 1,000 rupees upon a promissory note which falls due on the first of June. He owes *B* no other debt of that amount. On the first of June *A* pays to *B* 1,000 rupees. The payment is to be applied to the discharge of the promissory note.

(*b*) *A* owes to *B*, among other debts, the sum of 567 rupees. *B* writes to *A* and demands payment of this sum. *A* sends to *B* 567 rupees. This payment is to be applied to the discharge of the debt of which *B* had demanded payment.

**60.** Where the debtor has omitted to intimate and there are no other circumstances indicating to which debt the payment is to be applied, the creditor may apply it at his discretion to any lawful debt actually due and payable to him from the debtor, whether its recovery is or is not barred by the law in force for the time being as to the limitation of suits. Application of payment where debt to be discharged is not indicated.

**61.** Where neither party makes any appropriation the payment shall be applied in discharge of the debts in order of time, whether they are or are not barred by the law in force for the time being as to the limitation of suits. If the debts are of equal standing, the payment shall be applied in discharge of each proportionably. Application of payment where neither party appropriates.

### *Contracts which need not be performed.*

**62.** If the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract need not be performed. Effect of novation, rescission and alteration of contract.

*Illustrations.*

(*a*) *A* owes money to *B* under a contract. It is agreed between *A*, *B* and *C* that *B* shall thenceforth accept *C* as his debtor, instead of *A*. The old debt of *A* to *B* is at an end and a new debt from *C* to *B* has been contracted.

(*b*) *A* owes *B* 10,000 rupees. *A* enters into an arrangement with *B*, and gives *B* a mortgage of his (*A*'s) estate for 5,000 rupees in place of the debt of 10,000 rupees. This is a new contract and extinguishes the old.

(*c*) *A* owes *B* 1,000 rupees under a contract. *B* owes *C* 1,000 rupees. *B* orders *A* to credit *C* with 1,000 rupees in his books, but *C* does not assent to the arrangement. *B* still owes *C* 1,000 rupees, and no new contract has been entered into.

**63.** Every promisee may dispense with or remit, wholly or in part, the performance of the promise made to him, or may extend the time for such performance,[1] or may accept instead of it any satisfaction which he thinks fit. Promisee may dispense with or remit performance of promise.

*Illustrations.*

(*a*) *A* promises to paint a picture for *B*. *B* afterwards forbids him to do so. *A* is no longer bound to perform the promise.

(*b*) *A* owes *B* 5,000 rupees. *A* pays to *B*, and *B* accepts, in satisfaction of the whole debt, 2,000 rupees paid at the time and place at which the 5,000 rupees were payable. The whole debt is discharged.

(*c*) *A* owes *B* 5,000 rupees. *C* pays to *B* 1,000 rupees, and *B* accepts them in satisfaction of his claim on *A*. This payment is a discharge of the whole claim.

(*d*) *A* owes *B*, under a contract, a sum of money, the amount of which has not been ascertained. *A* without ascertaining the amount gives to *B*, and *B* in satisfaction thereof accepts, the sum of 2,000 rupees. This is a discharge of the whole debt, whatever may be its amount.

(*e*) *A* owes *B* 2,000 rupees, and is also indebted to other creditors. *A* makes an arrangement with his creditors, including *B*, to pay them a composition of eight annas in the rupee upon their respective demands. Payment to *B* of 1,000 rupees is a discharge of *B*'s demand.

**64.** When a person at whose option a contract is voidable rescinds it, the other party thereto need not perform any promise therein contained in which he is promisor. The party rescinding a voidable contract shall, if he has received any benefit thereunder from another party to such contract, restore such benefit, so far as may be, to the person from whom it was received.[2] Consequences of rescission of voidable contract.

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[1] But *see* section 135.

[2] *See* section 75.

Obligation of person who has received advantage under void agreement or contract that becomes void.

**65.** When an agreement is discovered to be void, or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it, to the person from whom he received it.

*Illustrations.*

(*a*) *A* pays *B* 1,000 rupees in consideration of *B*'s promising to marry *C*, *A*'s daughter. *C* is dead at the time of the promise. The agreement is void, but *B* must repay *A* the 1,000 rupees.

(*b*) *A* contracts with *B* to deliver to him 250 maunds of rice before the first of May. *A* delivers 130 maunds only before that day, and none after. *B* retains the 130 maunds after the first of May. He is bound to pay *A* for them.

(*c*) *A*, a singer, contracts with *B*, the manager of a theatre, to sing at his theatre for two nights in every week during the next two months, and *B* engages to pay her a hundred rupees for each night's performance. On the sixth night *A* wilfully absents herself from the theatre, and *B*, in consequence, rescinds the contract. *B* must pay *A* for the five nights on which she had sung.

(*d*) *A* contracts to sing for *B* at a concert for 1,000 rupees, which are paid in advance. *A* is too ill to sing. *A* is not bound to make compensation to *B* for the loss of the profits which *B* would have made if *A* had been able to sing, but must refund to *B* the 1,000 rupees paid in advance.

Mode of communicating or revoking rescission of voidable contract.

**66.** The rescission of a voidable contract may be communicated or revoked in the same manner, and subject to the same rules, as apply to the communication or revocation of a proposal.

Effect of neglect of promisee to afford promisor reasonable facilities for performance.

**67.** If any promisee neglects or refuses to afford the promisor reasonable facilities for the performance of his promise, the promisor is excused by such neglect or refusal as to any non-performance caused thereby.

*Illustration.*

*A* contracts with *B* to repair *B*'s house.

*B* neglects or refuses to point out to *A* the places in which his house requires repair.

*A* is excused for the non-performance of the contract if it is caused by such neglect or refusal.

## CHAPTER V.

### OF CERTAIN RELATIONS RESEMBLING THOSE CREATED BY CONTRACT.

Claim for necessaries supplied to person incapable of contracting, or on his account.

**68.** If a person, incapable of entering into a contract, or any one whom he is legally bound to support, is supplied by another person with necessaries suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person.

*Illustrations.*

(*a*) *A* supplies *B*, a lunatic, with necessaries suitable to his condition in life. *A* is entitled to be reimbursed from *B*'s property.

(*b*) *A* supplies the wife and children of *B*, a lunatic, with necessaries suitable to their condition in life. *A* is entitled to be reimbursed from *B*'s property.

**69.** A person who is interested in the payment of money which another is bound by law to pay, and who therefore pays it, is entitled to be reimbursed by the other. Reimbursement of person paying money due by another in payment of which he is interested.

*Illustration.*

*B* holds land on a lease granted by *A*. The revenue payable by *A* to the Government being in arrear, his land is advertised for sale by the Government. Under the revenue law, the consequence of such sale will be the annulment of *B*'s lease. *B*, to prevent the sale and the consequent annulment of his own lease, pays to the Government the sum due from *A*. *A* is bound to make good to *B* the amount so paid.

**70.** Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered. Obligation of person enjoying benefit of non-gratuitous act.

*Illustrations.*

(*a*) *A*, a tradesman, leaves goods at *B*'s house by mistake. *B* treats the goods as his own. He is bound to pay *A* for them.

(*b*) *A* saves *B*'s property from fire. *A* is not entitled to compensation from *B*, if the circumstances show that he intended to act gratuitously.

**71.** A person who finds goods belonging to another, and takes them into his custody, is subject to the same responsibility as a bailee.[1] Responsibility of finder of goods.

**72.** A person to whom money has been paid, or anything delivered, by mistake or under coercion[2] must repay or return it. Liability of person to whom money is paid, or thing delivered, by mistake or under coercion.

*Illustrations.*

(*a*) *A* and *B* jointly owe 100 rupees to *C*. *A* alone pays the amount to *C*, and *B*, not knowing this fact, pays 100 rupees over again to *C*. *C* is bound to repay the amount to *B*.

(*b*) A railway company refuses to deliver up certain goods to the consignee except upon the payment of an illegal charge for carriage. The consignee pays the sum charged in order to obtain the goods. He is entitled to recover so much of the charge as was illegally excessive.

## CHAPTER VI.

### OF THE CONSEQUENCES OF BREACH OF CONTRACT.

**73.** When a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it. Compensation for loss or damage caused by breach of contract.

Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach.

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[1] *See* sections 151 and 152.

[2] For definition of "coercion" *see* section 15.

Compensation for failure to discharge obligation resembling those created by contract.

When an obligation resembling those created by contract has been incurred and has not been discharged, any person injured by the failure to discharge it is entitled to receive the same compensation from the party in default as if such person had contracted to discharge it and had broken his contract.

*Explanation.*—In estimating the loss or damage arising from a breach of contract, the means which existed of remedying the inconvenience caused by the non-performance of the contract must be taken into account.

*Illustrations.*

(*a*) *A* contracts to sell and deliver 50 maunds of saltpetre to *B*, at a certain price to be paid on delivery. *A* breaks his promise. *B* is entitled to receive from *A*, by way of compensation, the sum, if any, by which the contract price falls short of the price for which *B* might have obtained 50 maunds of saltpetre of like quality at the time when the saltpetre ought to have been delivered.

(*b*) *A* hires *B*'s ship to go to Bombay, and there take on board, on the first of January a cargo which *A* is to provide and to bring it to Rangoon, the freight to be paid when earned. *B*'s ship does not go to Bombay, but *A* has opportunities of procuring suitable conveyance for the cargo upon terms as advantageous as those on which he had chartered the ship. *A* avails himself of those opportunities, but is put to trouble and expense in doing so. *A* is entitled to receive compensation from *B* in respect of such trouble and expense.

(*c*) *A* contracts to buy of *B*, at a stated price, 50 maunds of rice, no time being fixed for delivery. *A* afterwards informs *B* that he will not accept the rice if tendered to him. *B* is entitled to receive from *A*, by way of compensation, the amount, if any, by which the contract price exceeds that which *B* can obtain for the rice at the time when *A* informs *B* that he will not accept it.

(*d*) *A* contracts to buy *B*'s ship for 60,000 rupees, but breaks his promise. *A* must pay to *B*, by way of compensation, the excess, if any, of the contract price over the price which *B* can obtain for the ship at the time of the breach of promise.

(*e*) *A*, the owner of a boat, contracts with *B* to take a cargo of paddy to Rangoon, for sale at that place, starting on a specified day. The boat, owing to some avoidable cause, does not start at the time appointed, whereby the arrival of the cargo at Rangoon is delayed beyond the time when it would have arrived if the boat had sailed according to the contract. After that date, and before the arrival of the cargo, the price of paddy falls. The measure of the compensation payable to *B* by *A* is the difference between the price which *B* could have obtained for the cargo at Rangoon at the time when it would have arrived if forwarded in due course, and its market price at the time when it actually arrived.

(*f*) *A* contracts to repair *B*'s house in a certain manner, and receives payment in advance. *A* repairs the house, but not according to contract. *B* is entitled to recover from *A* the cost of making the repairs conform to the contract.

(*g*) *A* contracts to let his ship to *B* for a year, from the first of January, for a certain price. Freights rise, and on the first of January the hire obtainable for the ship is higher than the contract price. *A* breaks his promise. He must pay to *B*, by way of compensation, a sum equal to the difference between the contract price and the price for which *B* could hire a similar ship for a year on and from the first of January.

(*h*) *A* contracts to supply *B* with a certain quantity of iron at a fixed price, being a higher price than that for which *A* could procure and deliver the iron. *B* wrongfully refuses to receive the iron. *B* must pay to *A*, by way of compensation, the difference between the contract price of the iron and the sum for which *A* could have obtained and delivered it.

(*i*) *A* delivers to *B*, a common carrier, a machine, to be conveyed without delay to *A*'s mill, informing *B* that his mill is stopped for want of the machine. *B* unreasonably delays the delivery of the machine, and *A* in consequence loses a profitable contract with the Government. *A* is entitled to receive from *B* by way of compensation the average amount of profit which would have been made by the working of the mill during the time that delivery of it was delayed, but not the loss sustained through the loss of the Government contract.

(*j*) *A*, having contracted with *B* to supply *B* with 1,000 tons of iron at 100 rupees a ton, to be delivered at a stated time, contracts with *C* for the purchase of 1,000 tons of iron at 80 rupees a ton, telling *C* that he does so for the purpose of performing his contract with *B*. *C* fails to perform his contract with *A*, who cannot procure other iron, and *B*, in consequence, rescinds the contract. *C* must pay to *A* 20,000 rupees, being the profit which *A* would have made by the performance of his contract with *B*.

(*k*) *A* contracts with *B* to make and deliver to *B*, by a fixed day, for a specified price, a certain piece of machinery. *A* does not deliver the piece of machinery at the time specified, and in consequence of this *B* is obliged to procure another at a higher price than that which he was to have paid to *A*, and is prevented from performing a contract which *B* had made with a third person at the time of his contract with *A* (but which had not been then communicated to *A*), and is compelled to make compensation for breach of that contract. *A* must pay to *B*, by way of compensation, the difference between the contract price of the piece of machinery and the sum paid by *B* for another, but not the sum paid by *B* to the third person by way of compensation.

(*l*) *A*, a builder, contracts to erect and finish a house by the first of January, in order that *B* may give possession of it at that time to *C*, to whom *B* has contracted to let it. *A* is informed of the contract between *B* and *C*. *A* builds the house so badly that, before the first of January, it falls down and has to be re-built by *B*, who in consequence loses the rent which he was to have received from *C*, and is obliged to make compensation to *C* for the breach of his contract. *A* must make compensation to *B* for the cost of rebuilding the house, for the rent lost, and for the compensation made to *C*.

(*m*) *A* sells certain merchandise to *B*, warranting it to be of a particular quality, and *B*, in reliance upon this warranty, sells it to *C* with a similar warranty. The goods prove to be not according to the warranty, and *B* becomes liable to pay *C* a sum of money by way of compensation. *B* is entitled to be reimbursed this sum by *A*.

(*n*) *A* contracts to pay a sum of money to *B* on a day specified. *A* does not pay the money on that day. *B* in consequence of not receiving the money on that day is unable to pay his debts, and is totally ruined. *A* is not liable to make good to *B* anything except the principal sum he contracted to pay, together with interest up to the day of payment.

(*o*) *A* contracts to deliver 50 maunds of saltpetre to *B* on the first of January, at a certain price. *B* afterwards, before the first of January, contracts to sell the saltpetre to *C* at a price higher than the market price of the first of January. *A* breaks his promise. In estimating the compensation payable by *A* to *B*, the market price of the first of January, and not the profit which would have arisen to *B* from the sale to *C*, is to be taken into account.

(*p*) *A* contracts to sell and deliver 500 bales of cotton to *B* on a fixed day. *A* knows nothing of *B*'s mode of conducting his business. *A* breaks his promise, and *B*, having no cotton, is obliged to close his mill. *A* is not responsible to *B* for the loss caused to *B* by the closing of the mill.

(*q*) *A* contracts to sell and deliver to *B*, on the first of January, certain cloth which *B* intends to manufacture into caps of a particular kind, for which there is no demand except at that season. The cloth is not delivered till after the appointed time, and too late to be used that year in making caps. *B* is entitled to receive from *A*, by way of compensation, the difference between the contract price of the cloth and its market price at the time of delivery, but not the profits which he expected to obtain by making caps, nor the expenses which he has been put to in making preparation for the manufacture.

(*r*) *A*, a ship-owner, contracts with *B* to convey him from Rangoon to Sydney in *A*'s ship, sailing on the first of January, and *B* pays to *A*, by way of deposit, one-half of his passage-money. The ship does not sail on the first of January, and *B*, after being in consequence detained in Rangoon for some time and thereby put to some expense, proceeds to Sydney in another vessel, and in consequence, arriving too late in Sydney, loses a sum of money. *A* is liable to repay to *B* his deposit, with interest, and the expense to which he is put by his detention in Rangoon, and the excess, if any, of the passage-money paid for the second ship over that agreed upon for the first, but not the sum of money which *B* lost by arriving in Sydney too late.

Compensation for breach of contract where penalty stipulated for.

**74.** When a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named or, as the case may be, the penalty stipulated for.

*Explanation.*—A stipulation for increased interest from the date of default may be a stipulation by way of penalty.

*Exception.*—When any person enters into any bail-bond, recognizance or other instrument of the same nature, or, under the provisions of any law or

under the orders of the Government, gives any bond for the performance of any public duty or act in which the public are interested, he shall be liable, upon breach of the condition of any such instrument, to pay the whole sum mentioned therein.

*Explanation.*—A person who enters into a contract with Government does not necessarily thereby undertake any public duty, or promise to do an act in which the public are interested.

*Illustrations.*

(*a*) *A* contracts with *B* to pay *B* Rs. 1,000 if he fails to pay *B* Rs. 500 on a given day *A* fails to pay *B* Rs. 500 on that day. *B* is entitled to recover from *A* such compensation, not exceeding Rs. 1,000, as the Court considers reasonable.

(*b*) *A* contracts with *B* that if *A* practises as a surgeon within Rangoon he will pay *B* Rs. 5,000. *A* practises as a surgeon in Rangoon. *B* is entitled to such compensation, not exceeding Rs. 5,000, as the Court considers reasonable.

(*c*) *A* gives a recognizance binding him in a penalty of Rs. 500 to appear in Court on a certain day. He forfeits his recognizance. He is liable to pay the whole penalty.

(*d*) *A* gives *B* a bond for the repayment of Rs. 1,000 with interest at 12 per cent. at the end of six months, with a stipulation that in case of default interest shall be payable at the rate of 75 per cent. from the date of default. This is a stipulation by way of penalty, and *B* is only entitled to recover from *A* such compensation as the Court considers reasonable.

(*e*) *A*, who owes money to *B*, a money-lender, undertakes to repay him by delivering to him 10 maunds of grain on a certain date, and stipulates that, in the event of his not delivering the stipulated amount by the stipulated date, he shall be liable to deliver 20 maunds. This is a stipulation by way of penalty, and *B* is only entitled to reasonable compensation in case of breach.

(*f*) *A* undertakes to repay *B* a loan of Rs. 1,000 by five equal monthly instalments with a stipulation that, in default of payment of any instalment, the whole shall become due. This stipulation is not by way of penalty, and the contract may be enforced according to its terms.

(*g*) *A* borrows Rs. 100 from *B* and gives him a bond for Rs. 200 payable by five yearly instalments of Rs. 40, with a stipulation that, in default of payment of any instalment, the whole shall become due. This is a stipulation by way of penalty.

Party rightfully rescinding contract entitled to compensation.

**75.** A person who rightly rescinds a contract is entitled to compensation for any damage which he has sustained through the non-fulfilment of the contract.

*Illustration.*

*A*, a singer, contracts with *B*, the manager of a theatre, to sing at his theatre for two nights in every week during the next two months, and *B* engages to pay her 100 rupees for each night's performance. On the sixth night *A* wilfully absents herself from the theatre, and *B*, in consequence, rescinds the contract. *B* is entitled to claim compensation for the damage which he has sustained through the non-fulfilment of the contract.

## CHAPTER VII.

### OF THE SALE OF GOODS.[1]

**76—123.** * * * *

[1] *See* now the Sale of Goods Act.

## CHAPTER VIII.

### OF INDEMNITY AND GUARANTEE.

"Contract of indemnity" defined.

**124.** A contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself, or by the conduct of any other person, is called a "contract of indemnity."

*Illustration.*

*A* contracts to indemnify *B* against the consequences of any proceedings which *C* may take against *B* in respect of a certain sum of 200 rupees. This is a contract of indemnity.

Rights of indemnity-holder when sued.

**125.** The promisee in a contract of indemnity, acting within the scope of his authority, is entitled to recover from the promisor—

(1) all damages which he may be compelled to pay in any suit in respect of any matter to which the promise to indemnify applies ;

(2) all costs which he may be compelled to pay in any such suit if, in bringing or defending it, he did not contravene the orders of the promisor, and acted as it would have been prudent for him to act in the absence of any contract of indemnity, or if the promisor authorized him to bring or defend the suit ;

(3) all sums which he may have paid under the terms of any compromise of any such suit, if the compromise was not contrary to the orders of the promisor, and was one which it would have been prudent for the promisee to make in the absence of any contract of indemnity, or if the promisor authorized him to compromise the suit.

"Contract of guarantee," "surety," "principal debtor" and "creditor."

**126.** A "contract of guarantee" is a contract to perform the promise, or discharge the liability, of a third person in case of his default. The person who gives the guarantee is called the "surety," the person in respect of whose default the guarantee is given is called the "principal debtor," and the person to whom the guarantee is given is called the "creditor." A guarantee may be either oral or written.

Consideration for guarantee

**127.** Anything done, or any promise made, for the benefit of the principal debtor may be a sufficient consideration to the surety for giving the guarantee.

*Illustrations.*

(*a*) *B* requests *A* to sell and deliver to him goods on credit. *A* agrees to do so, provided *C* will guarantee the payment of the price of the goods. *C* promises to guarantee the payment in consideration of *A*'s promise to deliver the goods. This is a sufficient consideration for *C*'s promise.

(*b*) *A* sells and delivers goods to *B*. *C* afterwards requests *A* to forbear to sue *B* for the debt for a year, and promises that if he does so *C* will pay for them in default of payment by *B*. *A* agrees to forbear as requested. This is a sufficient consideration for *C*'s promise.

(*c*) *A* sells and delivers goods to *B*. *C* afterwards, without consideration, agrees to pay for them in default of *B*. The agreement is void.

Surety's liability.

**128.** The liability of the surety is co-extensive with that of the principal debtor, unless it is otherwise provided by the contract.

*Illustration.*

*A* guarantees to *B* the payment of a bill of exchange by *C*, the acceptor. The bill is dishonoured by *C*. *A* is liable not only for the amount of the bill but also for any interest and charges which may have become due on it.

"Continuing guarantee."

**129.** A guarantee which extends to a series of transactions is called a "continuing guarantee."

*Illustrations.*

(*a*) *A*, in consideration that *B* will employ *C* in collecting the rent of *B*'s estate, promises *B* to be responsible, to the amount of 5,000 rupees, for the due collection and payment by *C* of those rents. This is a continuing guarantee.

(*b*) *A* guarantees payment to *B*, a tea-dealer, to the amount of £100, for any tea he may from time to time supply to *C*. *B* supplies *C* with tea to above the value of £100, and *C* pays *B* for it. Afterwards *B* supplies *C* with tea to the value of £200. *C* fails to pay. The guarantee given by *A* was a continuing guarantee, and he is accordingly liable to *B* to the extent of £100.

(*c*) *A* guarantees payment to *B* of the price of five sacks of flour to be delivered by *B* to *C* and to be paid for in a month. *B* delivers five sacks to *C*. *C* pays for them. Afterwards *B* delivers four sacks to *C*, which *C* does not pay for. The guarantee given by *A* was not a continuing guarantee, and accordingly he is not liable for the price of the four sacks.

Revocation of continuing guarantee.

**130.** A continuing guarantee may at any time be revoked by the surety, as to future transactions, by notice to the creditor.

*Illustrations.*

(*a*) *A*, in consideration of *B*'s discounting, at *A*'s request, bills of exchange for *C*, guarantees to *B*, for twelve months, the due payment of all such bills to the extent of 5,000 rupees. *B* discounts bills for *C* to the extent of 2,000 rupees. Afterwards, at the end of three months, *A* revokes the guarantee. This revocation discharges *A* from all liability to *B* for any subsequent discount. But *A* is liable to *B* for the 2,000 rupees on default of *C*.

(*b*) *A* guarantees to *B*, to the extent of 10,000 rupees, that *C* shall pay all the bills that *B* shall draw upon him. *B* draws upon *C*. *C* accepts the bill. *A* gives notice of revocation. *C* dishonours the bill at maturity. *A* is liable upon his guarantee.

Revocation of continuing guarantee by surety's death.

**131.** The death of the surety operates, in the absence of any contract to the contrary, as a revocation of a continuing guarantee, so far as regards future transactions.

Liability of two persons primarily liable not affected by arrangement between them that one shall be surety on other's default.

**132.** Where two persons contract with a third person to undertake a certain liability, and also contract with each other that one of them shall be liable only on the default of the other, the third person not being a party to such contract, the liability of each of such two persons to the third person under the first contract is not affected by the existence of the second contract, although such third person may have been aware of its existence.

*Illustration.*

*A* and *B* make a joint and several promissory note to *C*. *A* makes it, in fact, as surety for *B*, and *C* knows this at the time when the note is made. The fact that *A*, to the knowledge of *C*, made the note as surety for *B*, is no answer to a suit by *C* against *A* upon the note.

Discharge of surety by variance in terms of contract.

**133.** Any variance, made without the surety's consent, in the terms of the contract between the principal debtor and the creditor discharges the surety as to transactions subsequent to the variance.

*Illustrations.*

(*a*) *A* becomes surety to *C* for *B*'s conduct as a manager in *C*'s bank. Afterwards *B* and *C* contract, without *A*'s consent, that *B*'s salary shall be raised, and that he shall become liable for one-fourth of the losses on overdrafts. *B* allows a customer to overdraw, and the bank loses a sum of money. *A* is discharged from his suretyship by the variance made without his consent, and is not liable to make good this loss.

(*b*) *A* guarantees *C* against the misconduct of *B* in an office to which *B* is appointed by *C*, and of which the duties are defined by an Act of the Legislature. By a subsequent Act the nature of the office is materially altered. Afterwards *B* misconducts himself. *A* is discharged by the change from future liability under his guarantee, though the misconduct of *B* is in respect of a duty not affected by the later Act.

(*c*) *C* agrees to appoint *B* as his clerk to sell goods at a yearly salary, upon *A*'s becoming surety to *C* for *B*'s duly accounting for moneys received by him as such clerk. Afterwards, without *A*'s knowledge or consent, *C* and *B* agree that *B* should be paid by a commission on the goods sold by him and not by a fixed salary. *A* is not liable for subsequent misconduct of *B*.

(*d*) *A* gives to *C* a continuing guarantee to the extent of 3,000 rupees for any oil supplied by *C* to *B* on credit. Afterwards *B* becomes embarrassed, and, without the knowledge of *A*, *B*, and *C* contract that *C* shall continue to supply *B* with oil for ready money, and that the payments shall be applied to the then existing debts between *B* and *C*. *A* is not liable on his guarantee for any goods supplied after this new arrangement.

(*e*) *C* contracts to lend *B* 5,000 rupees on the first of March. *A* guarantees repayment. *C* pays the 5,000 rupees to *B* on the first of January. *A* is discharged from his liability, as the contract has been varied inasmuch as *C* might sue *B* for the money before the first of March.

Discharge of surety by release or discharge principal of debtor.

**134.** The surety is discharged by any contract between the creditor and the principal debtor by which the principal debtor is released, or by any act or omission of the creditor the legal consequence of which is the discharge of the principal debtor.

*Illustrations.*

(*a*) *A* gives a guarantee to *C* for goods to be supplied by *C* to *B*. *C* supplies goods to *B* and afterwards *B* becomes embarrassed and contracts with his creditors (including *C*) to assign to them his property in consideration of their releasing him from their demands. Here *B* is released from his debt by the contract with *C*, and *A* is discharged from his suretyship.

(*b*) *A* contracts with *B* to grow a crop of indigo on *A*'s land and to deliver it to *B* at a fixed rate, and *C* guarantees *A*'s performance of this contract. *B* diverts a stream of water which is necessary for irrigation of *A*'s land and thereby prevents him from raising the indigo. *C* is no longer liable on his guarantee.

(*c*) *A* contracts with *B* for a fixed price to build a house for *B* within a stipulated time, *B* supplying the necessary timber. *C* guarantees *A*'s performance of the contract. *B* omits to supply the timber. *C* is discharged from his suretyship.

Discharge of surety when creditor compounds with, gives time to, or agrees not to sue, principal debtor.

**135.** A contract between the creditor and the principal debtor, by which the creditor makes a composition with, or promises to give time to, or not to sue, the principal debtor discharges the surety, unless the surety assents to such contract.

Surety not discharged when agreement made with third person to give time to principal debtor.

**136.** Where a contract to give time to the principal debtor is made by the creditor with a third person, and not with the principal debtor, the surety is not discharged.

*Illustration.*

*C*, the holder of an overdue bill of exchange drawn by *A*, as surety for *B*, and accepted by *B*, contracts with *M* to give time to *B*. *A* is not discharged.

Creditor's forbearance to sue does not discharge surety.

**137.** Mere forbearance on the part of the creditor to sue the principal debtor or to enforce any other remedy against him does not, in the absence of any provision in the guarantee to the contrary, discharge the surety.

*Illustration.*

*B* owes to *C* a debt guaranteed by *A*. The debt becomes payable. *C* does not sue *B* for a year after the debt has become payable. *A* is not discharged from his suretyship.

Release of one co-surety does not discharge others.

**138.** Where there are co-sureties, a release by the creditor of one of them does not discharge the others; neither does it free the surety so released from his responsibility to the other sureties.[1]

Discharge of surety by creditor's act or omission impairing surety's eventual remedy.

**139.** If the creditor does any act which is inconsistent with the rights of the surety, or omits to do any act which his duty to the surety requires him to do, and the eventual remedy of the surety himself against the principal debtor is thereby impaired, the surety is discharged.

*Illustrations.*

(*a*) *B* contracts to build a ship for *C* for a given sum, to be paid by instalments as the work reaches certain stages. *A* becomes surety to *C* for *B*'s due performance of the contract. *C*, without the knowledge of *A*, prepays to *B* the last two instalments. *A* is discharged by this prepayment.

(*b*) *C* lends money to *B* on the security of a joint and several promissory note made in *C*'s favour by *B*, and by *A* as surety for *B*, together with a bill of sale of *B*'s furniture, which gives power to *C* to sell the furniture and apply the proceeds in discharge of the note. Subsequently *C* sells the furniture, but, owing to his misconduct and wilful negligence, only a small price is realized. *A* is discharged from liability on the note.

(*c*) *A* puts *M* as apprentice to *B*, and gives a guarantee to *B* for *M*'s fidelity. *B* promises on his part that he will, at least once a month, see *M* make up the cash. *B* omits to see this done as promised, and *M* embezzles. *A* is not liable to *B* on his guarantee.

Rights of surety on payment or performance.

**140.** Where a guaranteed debt has become due, or default of the principal debtor to perform a guaranteed duty has taken place, the surety, upon payment or performance of all that he is liable for, is invested with all the rights which the creditor had against the principal debtor.

Surety's right to benefit of creditor's securities.

**141.** A surety is entitled to the benefit of every security which the creditor has against the principal debtor at the time when the contract of suretyship is entered into, whether the surety knows of the existence of such security or not; and, if the creditor loses or, without the consent of the surety, parts with such security, the surety is discharged to the extent of the value of the security.

*Illustrations.*

(*a*) *C* advances to *B*, his tenant, 2,000 rupees on the guarantee of *A*. *C* has also a further security for the 2,000 rupees by a mortgage of *B*'s furniture. *C* cancels the mortgage. *B* becomes insolvent, and *C* sues *A* on his guarantee. *A* is discharged from liability to the amount of the value of the furniture.

(*b*) *C*, a creditor, whose advance to *B* is secured by a decree, receives also a guarantee for that advance from *A*. *C* afterwards takes *B*'s goods in execution under the decree, and then, without the knowledge of *A*, withdraws the execution. *A* is discharged.

(*c*) *A*, as surety for *B*, makes a bond jointly with *B* to *C*, to secure a loan from *C* to *B*. Afterwards *C* obtains from *B* a further security for the same debt. Subsequently *C* gives up the further security. *A* is not discharged.

[1] *See* section 44.

**142.** Any guarantee which has been obtained by means of misrepresentation made by the creditor, or with his knowledge and assent, concerning a material part of the transaction, is invalid. Guarantee obtained by misrepresentation invalid.

**143.** Any guarantee which the creditor has obtained by means of keeping silence as to material circumstances is invalid. Guarantee obtained by concealment invalid.

*Illustrations.*

(*a*) *A* engages *B* as clerk to collect money for him. *B* fails to account for some of his receipts, and *A* in consequence calls upon him to furnish security for his duly accounting. *C* gives his guarantee for *B*'s duly accounting. *A* does not acquaint *C* with *B*'s previous conduct. *B* afterwards makes default. The guarantee is invalid.

(*b*) *A* guarantees to *C* payment for iron to be supplied by him to *B* to the amount of 2,000 tons. *B* and *C* have privately agreed that *B* should pay five rupees per ton beyond the market price, such excess to be applied in liquidation of an old debt. This agreement is concealed from *A*. *A* is not liable as a surety.

**144.** Where a person gives a guarantee upon a contract that the creditor shall not act upon it until another person has joined in it as co-surety, the guarantee is not valid if that other person does not join. Guarantee on contract that creditor shall not act on it until co-surety joins.

**145.** In every contract of guarantee there is an implied promise by the principal debtor to indemnify the surety; the surety is entitled to recover from the principal debtor whatever sum he has rightfully paid under the guarantee, but no sums which he has paid wrongfully. Implied promise to indemnify surety.

*Illustrations.*

(*a*) *B* is indebted to *C*, and *A* is surety for the debt. *C* demands payment from *A*, and on his refusal sues him for the amount. *A* defends the suit, having reasonable grounds for doing so, but is compelled to pay the amount of the debt with costs. He can recover from *B* the amount paid by him for costs, as well as the principal debt.

(*b*) *C* lends *B* a sum of money, and *A*, at the request of *B*, accepts a bill of exchange drawn by *B* upon *A* to secure the amount. *C*, the holder of the bill, demands payment of it from *A*, and on *A*'s refusal to pay sues him upon the bill. *A*, not having reasonable grounds for so doing, defends the suit, and has to pay the amount of the bill and costs. He can recover from *B* the amount of the bill, but not the sum paid for costs, as there was no real ground for defending the action.

(*c*) *A* guarantees to *C*, to the extent of 2,000 rupees, payment for rice to be supplied by *C* to *B*. *C* supplies to *B* rice to a less amount than 2,000 rupees, but obtains from *A* payment of the sum of 2,000 rupees in respect of the rice supplied. *A* cannot recover from *B* more than the price of the rice actually supplied.

**146.** Where two or more persons are co-sureties for the same debt or duty, either jointly or severally, and whether under the same or different contracts, and whether with or without the knowledge of each other, the co-sureties, in the absence of any contract to the contrary, are liable, as between themselves, to pay each an equal share of the whole debt, or of that part of it which remains unpaid by the principal debtor.[1] Co-sureties liable to contribute equally.

*Illustrations.*

(*a*) *A*, *B* and *C* are sureties to *D* for the sum of 3,000 rupees lent to *E*. *E* makes default in payment. *A*, *B* and *C* are liable, as between themselves, to pay 1,000 rupees each.

[1] *See* section 43.

(*b*) *A*, *B* and *C* are sureties to *D* for the sum of 1,000 rupees lent to *E*, and there is a contract between *A*, *B* and *C* that *A* is to be responsible to the extent of one-quarter, *B* to the extent of one-quarter and *C* to the extent of one-half. *E* makes default in payment. As between the sureties, *A* is liable to pay 250 rupees, *B* 250 rupees, and *C* 500 rupees.

Liability of co-sureties bound in different sums.

**147.** Co-sureties who are bound in different sums are liable to pay equally as far as the limits of their respective obligations permit.

*Illustrations.*

(*a*) *A*, *B* and *C*, as sureties for *D*, enter into three several bonds, each in a different penalty, namely, *A* in the penalty of 10,000 rupees, *B* in that of 20,000 rupees, *C* in that of 40,000 rupees, conditioned for *D*'s duly accounting to *E*. *D* makes default to the extent of 30,000 rupees. *A*, *B* and *C* are each liable to pay 10,000 rupees.

(*b*) *A*, *B* and *C*, as sureties for *D*, enter into three several bonds, each in a different penalty, namely, *A* in the penalty of 10,000 rupees, *B* in that of 20,000 rupees, *C* in that of 40,000 rupees, conditioned for *D*'s duly accounting to *E*. *D* makes default to the extent of 40,000 rupees. *A* is liable to pay 10,000 rupees, and *B* and *C* 15,000 rupees each.

(*c*) *A*, *B* and *C*, as sureties for *D*, enter into three several bonds, each in a different penalty, namely, *A* in the penalty of 10,000 rupees, *B* in that of 20,000 rupees, *C* in that of 40,000 rupees, conditioned for *D*'s duly accounting to *E*. *D* makes default to the extent of 70,000 rupees. *A*, *B* and *C* have to pay each the full penalty of his bond.

## CHAPTER IX.

### OF BAILMENT.

"Bailment," "bailor" and "bailee" defined.

**148.** A "bailment" is the delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them. The person delivering the goods is called the "bailor." The person to whom they are delivered is called the "bailee."

*Explanation.*—If a person already in possession of the goods of another contracts to hold them as a bailee, he thereby becomes the bailee, and the owner becomes the bailor, of such goods although they may not have been delivered by way of bailment.

Delivery to bailee how made.

**149.** The delivery to the bailee may be made by doing anything which has the effect of putting the goods in the possession of the intended bailee or of any person authorized to hold them on his behalf.

Bailor's duty to disclose faults in goods bailed.

**150.** The bailor is bound to disclose to the bailee faults in the goods bailed, of which the bailor is aware, and which materially interfere with the use of them, or expose the bailee to extraordinary risks; and, if he does not make such disclosure, he is responsible for damage arising to the bailee directly from such faults.

If the goods are bailed for hire, the bailor is responsible for such damage, whether he was or was not aware of the existence of such faults in the goods bailed.

*Illustrations.*

(*a*) *A* lends a horse, which he knows to be vicious, to *B*. He does not disclose the fact that the horse is vicious. The horse runs away. *B* is thrown and injured. *A* is responsible to *B* for damage sustained.

(*b*) *A* hires a carriage of *B*. The carriage is unsafe, though *B* is not aware of it, and *A* is injured. *B* is responsible to *A* for the injury.

Care to be taken by bailee.

**151.** In all cases of bailment the bailee is bound to take as much care of the goods bailed to him as a man of ordinary prudence would, under similar circumstances, take of his own goods of the same bulk, quality and value as the goods bailed.[1]

Bailee when not liable for loss, etc., of thing bailed.

**152.** The bailee, in the absence of any special contract, is not responsible for the loss, destruction or deterioration of the thing bailed if he has taken the amount of care of it described in section 151.

Termination of bailment by bailee's act inconsistent with conditions.

**153.** A contract of bailment is voidable at the option of the bailor if the bailee does any act with regard to the goods bailed inconsistent with the conditions of the bailment.

*Illustration.*

*A* lets to *B*, for hire, a horse for his own riding. *B* drives the horse in his carriage. This is, at the option of *A*, a terminaton of the bailment.

Liability of bailee making unauthorized use of goods bailed.

**154.** If the bailee makes any use of the goods bailed, which is not according to the conditions of the bailment, he is liable to make compensation to the bailor for any damage arising to the goods from or during such use of them.

*Illustrations.*

(*a*) *A* lends a horse to *B* for his own riding only. *B* allows *C*, a member of his family to ride the horse. *C* rides with care, but the horse accidentally falls and is injured. *B* is liable to make compensation to *A* for the injury done to the horse.

(*b*) *A* hires a horse in Rangoon from *B* expressly to march to Mandalay. *A* rides with due care, but marches to Kalaw instead. The horse accidentally falls and is injured. *A* is liable to make compensation to *B* for the injury to the horse.

Effect of mixture, with bailor's consent, of his goods with bailee's.

**155.** If the bailee, with the consent of the bailor, mixes the goods of the bailor with his own goods, the bailor and the bailee shall have an interest, in proportion to their respective shares, in the mixture thus produced.

Effect of mixture, without bailor's consent, when the goods can be separated.

**156.** If the bailee, without the consent of the bailor, mixes the goods of the bailor with his own goods, and the goods can be separated or divided, the property in the goods remains in the parties respectively; but the bailee is bound to bear the expense of separation or division, and any damage arising from the mixture.

*Illustration.*

*A* bails 100 bales of cotton marked with a particular mark to *B*. *B*, without *A*'s consent, mixes the 100 bales with other bales of his own, bearing a different mark. *A* is entitled to have his 100 bales returned, and *B* is bound to bear all the expense incurred in the separation of the bales, and any other incidental damage.

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[1] As to railway contracts, *see* section 72 of the Railways Act; as to the liability of common Earriers, *see* section 8 of the Carriers Act.

Effect of mixture without bailor's consent, when the goods cannot be separated.

**157.** If the bailee, without the consent of the bailor, mixes the goods of the bailor with his own goods, in such a manner that it is impossible to separate the goods bailed from the other goods and deliver them back, the bailor is entitled to be compensated by the bailee for the loss of the goods.

*Illustration.*

*A* bails a barrel of Cape flour worth Rs. 45 to *B*. *B*, without *A*'s consent, mixes the flour with country flour of his own, worth only Rs. 25 a barrel. *B* must compensate *A* for the loss of his flour.

Repayment by bailor of necessary expenses.

**158.** Where, by the conditions of the bailment, the goods are to be kept or to be carried, or to have work done upon them by the bailee for the bailor, and the bailee is to receive no remuneration, the bailor shall repay to the bailee the necessary expenses incurred by him for the purpose of the bailment.

Restoration of goods lent gratuitously.

**159.** The lender of a thing for use may at any time require its return, if the loan was gratuitous, even though he lent it for a specified time or purpose. But if, on the faith of such loan made for a specified time or purpose, the borrower has acted in such a manner that the return of the thing lent before the time agreed upon would cause him loss exceeding the benefit actually derived by him from the loan, the lender must, if he compels the return, indemnify the borrower for the amount in which the loss so occasioned exceeds the benefit so derived.

Return of goods bailed on expiration of time or accomplishment of purpose.

**160.** It is the duty of the bailee to return, or deliver according to the bailor's directions, the goods bailed, without demand, as soon as the time for which they were bailed has expired, or the purpose for which they were bailed has been accomplished.

Bailee's responsibility when goods are not duly returned.

**161.** If, by the default of the bailee, the goods are not returned, delivered or tendered at the proper time, he is responsible to the bailor for any loss, destruction or deterioration of the goods from that time.

Termination of gratuitous bailment by death.

**162.** A gratuitous bailment is terminated by the death either of the bailor or of the bailee.

Bailor entitled to increase or profit from goods bailed.

**163.** In the absence of any contract to the contrary, the bailee is bound to deliver to the bailor, or according to his directions, any increase or profit which may have accrued from the goods bailed.

*Illustration.*

*A* leaves a cow in the custody of *B* to be taken care of. The cow has a calf. *B* is bound to deliver the calf as well as the cow to *A*.

Bailor's responsibility to bailee.

**164.** The bailor is responsible to the bailee for any loss which the bailee may sustain by reason that the bailor was not entitled to make the bailment, or to receive back the goods or to give directions respecting them.

Bailment by several joint owners.

**165.** If several joint owners of goods bail them, the bailee may deliver them back to, or according to the directions of, one joint owner without the consent of all, in the absence of any agreement to the contrary.

Bailee not responsible on re-delivery to bailor without title.

**166.** If the bailor has no title to the goods, and the bailee, in good faith, delivers them back to, or according to the directions of, the bailor, the bailee is not responsible to the owner in respect of such delivery.[1]

Right of third person claiming goods bailed.

**167.** If a person, other than the bailor, claims goods bailed, he may apply to the Court to stop the delivery of the goods to the bailor, and to decide the title to the goods.

Right of finder of goods; may sue for specific reward offered.

**168.** The finder of goods has no right to sue the owner for compensation for trouble and expense voluntarily incurred by him to preserve the goods and to find out the owner, but he may retain the goods against the owner until he receives such compensation; and, where the owner has offered a specific reward for the return of goods lost, the finder may sue for such reward, and may retain the goods until he receives it.

When finder of thing commonly on sale may sell it.

**169.** When a thing which is commonly the subject of sale is lost, if the owner cannot with reasonable diligence be found, or if he refuses, upon demand, to pay the lawful charges of the finder, the finder may sell it—

(1) when the thing is in danger of perishing or of losing the greater part of its value, or,

(2) when the lawful charges of the finder, in respect of the thing found, amount to two-thirds of its value.

Bailee's particular lien.

**170.** Where the bailee has, in accordance with the purpose of the bailment, rendered any service involving the exercise of labour or skill in respect of the goods bailed, he has, in the absence of a contract to the contrary, a right to retain such goods until he receives due remuneration for the services he has rendered in respect of them.

*Illustrations.*

(*a*) *A* delivers a rough diamond to *B*, a jeweller, to be cut and polished, which is accordingly done. *B* is entitled to retain the stone till he is paid for the services he has rendered.

(*b*) *A* gives cloth to *B*, a tailor, to make into a coat. *B* promises *A* to deliver the coat as soon as it is finished, and to give a three months' credit for the price. *B* is not entitled to retain the coat until he is paid.

General lien of bankers, factors, wharfingers, advocates and policy-brokers.

**171.** Bankers, factors, wharfingers, advocates of the High Court and policy-brkers may, in the absence of a contract to the contrary, retain, as a security for a general balance of account, any goods bailed to them; but no other persons have a right to retain, as a security for such balance, goods bailed to them, unless there is an express contract to that effect.[2]

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[1] *See* section 117 of the Evidence Act.

[2] As to lien of an agent, *see* section 221; as to lien of a Railway Administration, *see* section 55 of the Railways Act.

*Bailment of Pledges.*

"Pledge," "pawnor" and "pawnee" defined.

**172.** The bailment of goods as security for payment of a debt or performance of a promise is called "pledge." The bailor is in this case called the "pawnor." The bailee is called the "pawnee."

Pawnee's right of retainer.

**173.** The pawnee may retain the goods pledged, not only for payment of the debt or the performance of the promise, but for the interest of the debt, and all necessary expenses incurred by him in respect of the possession or for the preservation of the goods pledged.

Pawnee not to retain for debt or promise other than that for which goods pledged. Presumption in case of subsequent advances.

**174.** The pawnee shall not, in the absence of a contract to that effect, retain the goods pledged for any debt or promise other than the debt or promise for which they are pledged; but such contract, in the absence of anything to the contrary, shall be presumed in regard to subsequent advances made by the pawnee.

Pawnee's right as to extraordinary expenses incurred.

**175.** The pawnee is entitled to receive from the pawnor extraordinary expenses incurred by him for the preservation of the goods pledged.

Pawnee's right where pawnor makes default.

**176.** If the pawnor makes default in payment of the debt or performance at the stipulated time of the promise, in respect of which the goods were pledged, the pawnee may bring a suit against the pawnor upon the debt or promise, and retain the goods pledged as a collateral security; or he may sell the thing pledged on giving the pawnor reasonable notice of the sale.

If the proceeds of such sale are less than the amount due in respect of the debt or promise, the pawnor is still liable to pay the balance. If the proceeds of the sale are greater than the amount so due, the pawnee shall pay over the surplus to the pawnor.

Defaulting pawnor's right to redeem.

**177.** If a time is stipulated for the payment of the debt or performance of the promise, for which the pledge is made, and the pawnor makes default in payment of the debt or performance of the promise at the stipulated time, he may redeem the goods pledged at any subsequent time before the actual sale of them; but he must, in that case, pay in addition any expenses which have arisen from his default.

Pledge by mercantile agent.

**178.** Where a mercantile agent is, with the consent of the owner, in possession of goods or the documents of title to goods, any pledge made by him, when acting in the ordinary course of business of a mercantile agent, shall be as valid as if he were expressly authorized by the owner of the goods to make the same: provided that the pawnee acts in good faith and has not at the time of the pledge notice that the pawnor has not authority to pledge.

*Explanation.*—In this section, the expressions "mercantile agent" and "documents of title" shall have the meanings assigned to them in the Sale of Goods Act.

Pledge by person in possession under voidable contract.

**178A.** When the pawnor has obtained possession of the goods pledged by him under a contract voidable under section 19 or section 19A, but the contract has not been rescinded at the time of the pledge, the pawnee acquires a good title to the goods, provided he acts in good faith and without notice of the pawnor's defect of title.

Pledge where pawnor has only a limited interest.

**179.** Where a person pledges goods in which he has only a limited interest, the pledge is valid to the extent of that interest.

*Suits by Bailees or Bailors against Wrong-doers.*

Suit by bailor or bailee against wrong-doer.

**180.** If a third person wrongfully deprives the bailee of the use or possession of the goods bailed, or does them any injury, the bailee is entitled to use such remedies as the owner might have used in the like case if no bailment had been made; and either the bailor or the bailee may bring a suit against a third person for such deprivation or injury.

Apportionment of relief or compensation obtained by such suits.

**181.** Whatever is obtained by way of relief or compensation in any such suit shall, as between the bailor and the bailee, be dealt with according to their respective interests.

## CHAPTER X.

### AGENCY.

*Appointment and Authority of Agents.*

"Agent" and "principal" defined.

**182.** An "agent" is a person employed to do any act for another or to represent another in dealings with third persons. The person for whom such act is done, or who is so represented, is called the "principal."

Who may employ agent.

**183.** Any person who is of the age of majority according to the law to which he is subject, and who is of sound mind, may employ an agent.

Who may be an agent.

**184.** As between the principal and third persons any person may become an agent, but no person who is not of the age of majority and of sound mind can become an agent so as to be responsible to his principal according to the provisions in that behalf herein contained.

Consideration not necessary.

**185.** No consideration is necessary to create an agency.

Agent's authority may be expressed or implied.

**186.** The authority of an agent may be expressed or implied.

Definitions of express and implied authority.

**187.** An authority is said to be express when it is given by words spoken or written. An authority is said to be implied when it is to be inferred from the circumstances of the case; and things spoken or written, or the ordinary course of dealing, may be accounted circumstances of the case.

*Illustration.*

*A* owns a shop in Mandalay, living himself in Rangoon and visiting the shop occasionally. The shop is managed by *B*, and he is in the habit of ordering goods from *C* in the name of *A* for the purposes of the shop, and of paying for them out of *A*'s funds with *A*'s knowledge. *B* has an implied authority from *A* to order goods from *C* in the name of *A* for the purposes of the shop.

Extent of agent's authority.

**188.** An agent having an authority to do an act has authority to do every lawful thing which is necessary in order to do such act.

An agent having an authority to carry on a business has authority to do every lawful thing necessary for the purpose, or usually done in the course of conducting such business.

*Illustrations.*

(*a*) *A* is employed by *B*, residing in London, to recover at Rangoon a debt due to *B*. *A* may adopt any legal process necessary for the purpose of recovering the debt, and may give a valid discharge for the same.

(*b*) *A* constitutes *B* his agent to carry on his business of a ship-builder. *B* may purchase timber and other materials, and hire workmen, for the purposes of carrying on the business.

Agent's authority in an emergency.

**189.** An agent has authority, in an emergency, to do all such acts for the purpose of protecting his principal from loss as would be done by a person of ordinary prudence, in his own case, under similar circumstances.

*Illustrations.*

(*a*) An agent for sale may have goods repaired if it be necessary.

(*b*) *A* consigns provisions to *B* at Rangoon, with directions to send them immediately to *C* at Moulmein. *B* may sell the provisions at Rangoon, if they will not bear the journey to Moulmeinwithout spoiling.

*Sub-Agents.*

When agent cannot delegate.

**190.** An agent cannot lawfully employ another to perform acts which he has expressly or impliedly undertaken to perform personally, unless by the ordinary custom of trade a sub-agent may, or, from the nature of the agency, a sub-agent must, be employed.

'Sub-agent."

**191.** A "sub-agent" is a person employed by, and acting under the control of, the original agent in the business of the agency.

Representation of principal by sub-agent properly appointed.

**192.** Where a sub-agent is properly appointed, the principal is, so far as regards third persons, represented by the sub-agent, and is bound by and responsible for his acts as if he were an agent originally appointed by the principal.

Agent's responsibility for sub-agent.

The agent is responsible to the principal for the acts of the sub-agent.

Sub-agent's responsibility.

The sub-agent is responsible for his acts to the agent, but not to the principal except in case of fraud or wilful wrong.

**193.** Where an agent, without having authority to do so, has appointed a person to act a a sub-agent, the agent stands towards such person in the relation of a principal to an agent, and is responsible for his acts both to the principal and to third persons; the principal is not represented by or responsible for the acts of the person so employed, nor is that person responsible to the principal. **Agent's responsibility for sub-agent appointed without authority.**

**194.** Where an agent, holding an expresss or implied authority to name another person to act for the principal in the business of the agency, has named another person accordingly, such person is not a sub-agent, but an agent of the principal for such part of the business of the agency as is entrusted to him. **Relation between principal and person duly appointed by agent to act in business of agency.**

*Illustrations.*

(*a*) *A* directs *B*, his solicitor, to sell his estate by auction, and to employ an auctioneer for the purpose. *B* names *C*, an auctioneer, to conduct the sale. *C* is not a sub-agent, but is *A*'s agent for the conduct of the sale.

(*b*) *A* authorizes *B*, a merchant in Calcutta, to recover the moneys due to *A* from *C* & Co. *B* instructs *D*, a solicitor, to take legal proceedings against *C* & Co. for the recovery of the money. *D* is not a sub-agent, but is solicitor for *A*.

**195.** In selecting such agent for his principal, an agent is bound to exercise the same amount of discretion as a man of ordinary prudence would exercise in his own case; and if he does this he is not responsible to the principal for the acts or negligence of the agent so selected. **Agent's duty in selecting such person.**

*Illustrations.*

(*a*) *A* instructs *B*, a merchant, to buy a ship for him. *B* employs a ship surveyor of good reputation to choose a ship for *A*. The surveyor makes the choice negligently and the ship turns out to be unseaworthy and is lost. *B* is not, but the surveyor is, responsible to *A*.

(*b*) *A* consigns goods to *B*, a merchant, for sale. *B*, in due course, employs an auctioneer in good credit to sell the goods of *A*, and allows the auctioneer to receive the proceeds of the sale. The auctioneer afterwards becomes insolvent without having accounted for the proceeds. *B* is not responsible to *A* for the proceeds.

## *Ratification.*

**196.** Where acts are done by one person on behalf of another, but without his knowledge or authority, he may elect to ratify or to disown such acts. If he ratify them, the same effects will follow as if they had been performed by his authority. **Right of person as to acts done for him without his authority. Effect of ratification.**

**197.** Ratification may be expressed or may be implied in the conduct of the person on whose behalf the acts are done. **Ratification may be expressed or implied.**

*Illustrations.*

(*a*) *A*, without authority, buys goods for *B*. Afterwards *B* sells them to *C* on his own account; *B*'s conduct implies a ratification of purchase made for him by *A*.

(*b*) *A*, without *B*'s authority, lends *B*'s money to *C*. Afterwards *B* accepts interest on the money from *C*. *B*'s conduct implies a ratification of the loan.

Knowledge requisite for valid ratification.

**198.** No valid ratification can be made by a person whose knowledge of the facts of the case is materially defective.

Effect of ratifying unauthorized act forming part of a transaction.

**199.** A person ratifying any unauthorized act done on his behalf ratifies the whole of the transaction of which such act formed a part.

Ratification of unauthorized act cannot injure third person.

**200.** An act done by one person on behalf of another, without such other person's authority, which, if done with authority, would have the effect of subjecting a third person to damages, or of terminating any right or interest of a third person, cannot, by ratification, be made to have such effect.

*Illustrations.*

(*a*) *A*, not being authorized thereto by *B*, demands, on behalf of *B*, the delivery of a chattel, the property of *B*, from *C*, who is in possession of it. This demand cannot be ratified by *B*, so as to make *C* liable for damages for his refusal to deliver.

(*b*) *A* holds a lease from *B*, terminable on three months' notice. *C*, an unauthorized person, gives no ice of termination to *A*. The notice cannot be ratified by *B*, so as to be binding on *A*.

## *Revocation of Authority.*

Termination of agency.

**201.** An agency is terminated by the principal revoking his authority; or by the agent renouncing the business of the agency; or by the business of the agency being completed; or by either the principal or agent dying or becoming of unsound mind; or by the principal being adjudicated an insolvent under the provisions of any Act for the time being in force for the relief of insolvent debtors.

Termination of agency where agent has an interest in subject-matter.

**202.** Where the agent has himself an interest in the property which forms the subject-matter of the agency, the agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest.

*Illustrations.*

(*a*) *A* gives authority to *B* to sell *A*'s land, and to pay himself, out of the proceeds, the debts due to him from *A*. *A* cannot revoke this authority, nor can it be terminated by his insanity or death.

(*b*) *A* consigns 1,000 bales of cotton to *B*, who has made advances to him on such cotton, and desires *B* to sell the cotton, and to repay himself, out of the price, the amount of his own advances. *A* cannot revoke this authority, nor is it terminated by his insanity or death.

When principal may revoke agent's authority.

**203.** The principal may, save as is otherwise provided by the last preceding section, revoke the authority given to his agent at any time before the authority has been exercised so as to bind the principal.

Revocation where authority had been partly exercised.

**204.** The principal cannot revoke the authority given to his agent after the authority has been partly exercised so far as regards such acts and obligations as arise from acts already done in the agency.

*Illustrations.*

(*a*) *A* authorizes *B* to buy 1,000 bales of cotton on account of *A*, and to pay for it out of *A*'s money remaining in *B*'s hands. *B* buys 1,000 bales of cotton in his own name, so as to make himself personally liable for the price. *A* cannot revoke *B*'s authority so far as regards payment for the cotton.

(*b*) *A* authorizes *B* to buy 1,000 bales of cotton on account of *A*, and to pay for it out of *A*'s moneys remaining in *B*'s hands. *B* buys 1,000 bales of cotton in *A*'s name and so as not to render himself personally liable for the price. *A* can revoke *B*'s authority to pay for the cotton.

Compensation for revocation by principal, or renunciation by agent.

**205.** Where there is an express or implied contract that the agency should be continued for any period of time, the principal must make compensation or the agent, or the agent to the principal, as the case may be, for any previous revocation or renunciation of the agency without sufficient cause.

Notice of revocation or renunciation.

**206.** Reasonable notice must be given of such revocation or renunciation ; otherwise the damage thereby resulting to the principal or the agent, as the case may be, must be made good to the one by the other.

Revocation and renunciation may be expressed or implied.

**207.** Revocation and renunciation may be expressed or may be implied in the conduct of the principal or agent respectively.

*Illustration.*

*A* empowers *B* to let *A*'s house. Afterwards *A* lets it himself. This is an implied revocation of *B*'s authority.

When termination of agent's authority takes effect as to agent, and as to third persons.

**208.** The termination of the authority of an agent does not, so far as regards the agent, take effect before it becomes known to him, or, so far as regards third persons, before it becomes known to them.

*Illustrations.*

(*a*) *A* directs *B* to sell goods for him, and agrees to give *B* five per cent. commission on the price fetched by the goods. *A* afterwards, by letter, revokes *B*'s authority. *B*, after the letter is sent, but before he receives it, sells the goods for 100 rupees. The sale is binding on *A*, and *B* is entitled to five rupees as his commission.

(*b*) *A*, at Rangoon, by letter, directs *B* to sell for him some cotton lying in a warehouse in Myingyan, and afterwards, by letter, revokes his authority to sell, and directs *B* to send the cotton to Rangoon. *B*, after receiving the second letter, enters into a contract with *C*, who knows of the first letter but not of the second, for the sale to him of the cotton. *C* pays *B* the money, with which *B* absconds. *C*'s payment is good as against *A*.

(*c*) *A* directs *B*, his agent, to pay certain money to *C*. *A* dies, and *D* takes out probate of his will. *B*, after *A*'s death, but before hearing of it, pays the money to *C*. The payment is good as against *D*, the executor.

Agent's duty on termination of agency by principal's death or insanity.

**209.** When an agency is terminated by the principal dying or becoming of unsound mind, the agent is bound to take, on behalf of the representatives of his late principal, all reasonable steps for the protection and preservation of the interests entrusted to him.

Termination of sub-agent's authority.

**210.** The termination of the authority of an agent causes the termination (subject to the rules herein contained regarding the termination of an agent's authority) of the authority of all sub-agents appointed by him.

### *Agent's Duty to Principal.*

Agent's duty in conducting principal's business.

**211.** An agent is bound to conduct the business of his principal according to the directions given by the principal, or, in the absence of any such directions, according to the custom which prevails in doing business of the same kind at the place where the agent conducts such business. When the agent acts otherwise, if any loss be sustained, he must make it good to his principal, and, if any profit accrues, he must account for it.

*Illustrations.*

(*a*) *A*, an agent engaged in carrying on for *B* a business in which it is the custom to invest from time to time, at interest, the moneys which may be in hand, omits to make such investment. *A* must make good to *B* the interest usually obtained by such investments.

(*b*) *B*, a broker, in whose business it is not the custom to sell on credit, sells goods of *A* on credit to *C*, whose credit at the time was very high. *C*, before payment, becomes insolvent. *B* must make good the loss to *A*.

Skill and diligence required from agent.

**212.** An agent is bound to conduct the business of the agency with as much skill as is generally possessed by persons engaged in similar business, unless the principal has notice of his want of skill. The agent is always bound to act with reasonable diligence, and to use such skill as he possesses; and to make compensation to his principal in respect of the direct consequences of his own neglect, want of skill or misconduct, but not in respect of loss or damage which are indirectly or remotely caused by such neglect, want of skill or misconduct.

*Illustrations.*

(*a*) *A*, a merchant in Rangoon, has an agent, *B*, in London to whom a sum of money is paid on *A*'s account, with orders to remit. *B* retains the money for a considerable time. *A*, in consequence of not receiving the money, becomes insolvent. *B* is liable for the money and interest from the day on which it ought to have been paid, according to the usual rate, and for any further direct loss—as, *e.g.*, by variation of rate of exchange—but not further.

(*b*) *A*, an agent for the sale of goods, having authority to sell on credit, sells to *B* on credit, without making the proper and usual enquiries as to the solvency of *B*. *B*, at the time of such sale, is insolvent. *A* must make compensation to his principal in respect of any loss thereby sustained.

(*c*) *A*, an insurance-broker employed by *B* to effect an insurance on a ship, omits to see that the usual clauses are inserted in the policy. The ship is afterwards lost. In consequence of the omission of the clauses nothing can be recovered from the underwriters. *A* is bound to make good the loss to *B*.

(*d*) *A*, a merchant in England, directs *B*, his agent at Rangoon who accepts the agency, to send him 100 bales of cotton by a certain ship. *B*, having it in his power to send the cotton, omits to do so. The ship arrives safely in England. Soon after her arrival the price of cotton rises. *B* is bound to make good to *A* the profit which he might have made by the 100 bales of cotton at the time the ship arrived, but not any profit he might have made by the subsequent rise.

Agent's accounts.

**213.** An agent is bound to render proper accounts to his principal on demand.

Agent's duty to communicate with principal.

**214.** It is the duty of an agent, in cases of difficulty, to use all reasonable diligence in communicating with his principal, and in seeking to obtain his instructions.[1]

[1] *See* section 189.

**215.** If an agent deals on his own account in the business of the agency, without first obtaining the consent of his principal and acquainting him with all material circumstances which have come to his own knowledge on the subject, the principal may repudiate the transaction, if the case shows either that any material fact has been dishonestly concealed from him by the agent, or that the dealings of the agent have been disadvantageous to him. Right of principal when agent deals on his own account in business of agency without principal's consent.

*Illustrations.*

(*a*) *A* directs *B* to sell *A*'s estate. *B* buys the estate for himself in the name of *C*. *A*, on discovering that *B* has bought the estate for himself, may repudiate the sale, if he can show that *B* has dishonestly concealed any material fact, or that the sale has been disadvantageous to him.

(*b*) *A* directs *B* to sell *A*'s estate. *B*, on looking over the estate before selling it, finds a mine on the estate which is unknown to *A*. *B* informs *A* that he wishes to buy the estate for himself, but conceals the discovery of the mine. *A* allows *B* to buy in ignorance of the existence of the mine. *A*, on discovering that *B* knew of the mine at the time he bought the estate, may either repudiate or adopt the sale at his option.

**216.** If an agent, without the knowledge of his principal, deals in the business of the agency on his own account instead of on account of his principal, the principal is entitled to claim from the agent any benefit which may have resulted to him from the transaction. Principal's right to benefit gained by agent dealing on his own account in business of agency.

*Illustration.*

*A* directs *B*, his agent, to buy a certain house for him. *B* tells *A* it cannot be bought, and buys the house for himself. *A* may, on discovering that *B* has bought the house, compel him to sell it to *A* at the price he gave for it.

**217.** An agent may retain,[1] out of any sums received on account of the principal in the business of the agency, all moneys due to himself in respect of advances made or expenses properly incurred by him in conducting such business, and also such remuneration as may be payable to him for acting as agent. Agent's right of retainer out of sums received on principal's account.

**218.** Subject to such deductions, the agent is bound to pay to his principal all sums received on his account. Agent's duty to pay sums received for principal.

**219.** In the absence of any special contract, payment for the performance of any act is not due to the agent until the completion of such act; but an agent may detain moneys received by him on account of goods sold, although the whole of the goods consigned to him for sale may not have been sold, or although the sale may not be actually complete. When agent's remuneration becomes due.

**220.** An agent who is guilty of misconduct in the business of the agency is not entitled to any remuneration in respect of that part of the business which he has misconducted. Agent not entitled to remuneration for business misconducted.

*Illustrations.*

(*a*) *A* employs *B* to recover 1,00,000 rupees from *C*, and to lay it out on good security. *B* recovers the 1,00,000 rupees and lays out 90,000 rupees on good security, but lays out 10,000 rupees on security which he ought to have known to be bad, whereby *A* loses 2,000 rupees. *B* is entitled to remuneration for recovering the 1,00,000 rupees and for investing the 90,000 rupees. He is not entitled to any remuneration for investing the 10,000 rupees, and he must make good the 2,000 rupees to *B*.

[1] See section 221.

(*b*) *A* employs *B* to recover 1,000 rupees from *C*. Through *B*'s misconduct the money is not recovered. *B* is entitled to no remuneration for his services, and must make good the loss.

Agent's lien on principal's property.

**221.** In the absence of any contract to the contrary, an agent is entitled to retain goods, papers and other property, whether moveable or immoveable, of the principal received by him, until the amount due to himself for commission, disbursements and services in respect of the same has been paid or accounted for to him.[1]

### *Principal's Duty to Agent.*

Agent to be indemnified against consequences of lawful acts.

**222.** The employer of an agent is bound to indemnify him against the consequences of all lawful acts done by such agent in exercise of the authority conferred upon him.

*Illustrations.*

(*a*) *B*, at Singapore, under instructions from *A* of Rangoon, contracts with *C* to deliver certain goods to him. *A* does not send the goods to *B*, and *C* sues *B* for breach of contract. *B* informs *A* of the suit, and *A* authorizes him to defend the suit. *B* defends the suit, and is compelled to pay damages and costs, and incurs expenses. *A* is liable to *B* for such damages, costs and expenses.

(*b*) *B*, a broker at Rangoon, by the orders of *A*, a merchant there, contracts with *C* for the purchase of 10 casks of oil for *A*. Afterwards *A* refuses to receive the oil, and *C* sues *B*. *B* informs *A*, who repudiates the contract altogether. *B* defends, but unsuccessfully, and has to pay damages and costs and incurs expenses. *A* is liable to *B* for such damages, costs and expenses.

Agent to be indemnified against consequences of acts done in good faith.

**223.** Where one person employs another to do an act, and the agent does the act in good faith, the employer is liable to indemnify the agent against the consequences of that act, though it causes an injury to the rights of third persons.

*Illustrations.*

(*a*) *A*, a decree-holder and entitled to execution of *B*'s goods, requires the officer of the Court to seize certain goods, representing them to be the goods of *B*. The officer seizes the goods, and is sued by *C*, the true owner of the goods. *A* is liable to indemnify the officer for the sum which he is compelled to pay to *C*, in consequence of obeying *A*'s directions.

(*b*) *B*, at the request of *A*, sells goods in the possession of *A*, but which *A* had no right to dispose of. *B* does not know this, and hands over the proceeds of the sale to *A*. Afterwards *C*, the true owner of the goods, sues *B* and recovers the value of the goods and costs. *A* is liable to indemnify *B* for what he has been compelled to pay to *C* and for *B*'s own expenses.

Non-liability of employer of agent to do a criminal act.

**224.** Where one person employs another to do an act which is criminal, the employer is not liable to the agent, either upon an express or an implied promise, to indemnify him against the consequences of that act.

*Illustrations.*

(*a*) *A* employs *B* to beat *C*, and agrees to indemnify him against all consequences of the act. *B* thereupon beats *C*, and has to pay damages to *C* for so doing. *A* is not liable to indemnify *B* for those damages.

(*b*) *B*, the proprietor of a newspaper, publishes, at *A*'s request, a libel upon *C* in the paper, and *A* agrees to indemnify *B* against the consequences of the publication, and all costs and damages of any action in respect thereof. *B* is sued by *C* and has to pay damages, and also incurs expenses. *A* is not liable to *B* upon the indemnity.

[1] As to the general lien of an agent who is a banker, factor, advocate or policy-broker, *see* section 171.

**225.** The principal must make compensation to his agent in respect of injury caused to such agent by the principal's neglect or want of skill.

Compensation to agent for injury caused by principal's neglect.

*Illustration*

*A* employs *B* as a bricklayer in building a house, and puts up the scaffolding himself. The scaffolding is unskilfully put up, and *B* is in consequence hurt. *A* must make compensation to *B*.

### *Effect of Agency on Contract with third Persons.*

**226.** Contracts entered into through an agent, and obligations arising from acts done by an agent, may be enforced in the same manner, and will have the same legal consequences, as if the contracts had been entered into and the acts done by the principal in person.

Enforcement and consequences of agent's contracts.

*Illustrations.*

(*a*) *A* buys goods from *B*, knowing that he is an agent for their sale, but not knowing who is the principal. *B*'s principal is the person entitled to claim from *A* the price of the goods, and *A* cannot in a suit by the principal set off against that claim a debt due to himself from *B*.

(*b*) *A*, being *B*'s agent with authority to receive money on his behalf, receives from *C* a sum of money due to *B*. *C* is discharged of his obligation to pay the sum in question to *B*.

**227.** When an agent does more than he is authorized to do, and when the part of what he does which is within his authority can be separated from the part which is beyond his authority, so much only of what he does as is within his authority is binding as between him and his principal.

Principal how far bound when agent exceeds authority.

*Illustration.*

*A*, being owner of a ship and cargo, authorizes *B* to procure an insurance for 4,000 rupees on the ship. B procures a policy for 4,000 rupees on the ship, and another for the like sum on the cargo. *A* is bound to pay the premium for the policy on the ship, but not the premium for the policy on the cargo.

**228.** Where an agent does more than he is authorized to do, and what he does beyond the scope of his authority cannot be separated from what is within it, the principal is not bound to recognize the transaction.

Principal not bound when excess of agent's authority is not separable.

*Illustration.*

*A* authorizes *B* to buy 500 sheep for him. *B* buys 500 sheep and 200 lambs for one sum of 6,000 rupees. *A* may repudiate the whole transaction.

**229.** Any notice given to or information obtained by the agent, provided it be given or obtained in the course of the business transacted by him for the principal, shall, as between the principal and third parties, have the same legal consequence as if it had been given to or obtained by the principal.

Consequences of notice given to agent.

*Illustrations.*

(*a*) *A* is employed by *B* to buy from *C* certain goods, of which *C* is the apparent owner, and buys them accordingly In the course of the treaty for the sale, *A* learns that the goods really belonged to *D*, but *B* is ignorant of that fact. *B* is not entitled to set off a debt owing to him from *C* against the price of the goods.

(*b*) *A* is employed by *B* to buy from *C* goods of which *C* is the apparent owner. *A* was, before he was so employed, a servant of *C*, and then learnt that the goods really belonged to *D*, but *B* is ignorant of that fact. In spite of the knowledge of his agent, *B* may set off against the price of the goods a debt owing to him from *C*.

Agent cannot personally enforce, nor be bound by, contracts on behalf of principal.

**230.** In the absence of any contract to that effect, an agent cannot personally enforce contracts entered into by him on behalf of his principal, nor is he personally bound by them.

Presumption of contract to contrary.

Such a contract shall be presumed to exist in the following cases:—

(1) where the contract is made by an agent for the sale or purchase of goods for a merchant resident abroad;

(2) where the agent does not disclose the name of his principal;

(3) where the principal, though disclosed, cannot be sued.

Rights of parties to a contract made by agent not disclosed.

**231.** If an agent makes a contract with a person who neither knows, nor has reason to suspect, that he is an agent, his principal may require the performance of the contract; but the other contracting party has, as against the principal, the same rights as he would have had as against the agent if the agent had been principal.

If the principal discloses himself before the contract is completed, the other contracting party may refuse to fulfil the contract, if he can show that, if he had known who was the principal in the contract, or if he had known that the agent was not a principal, he would not have entered into the contract.

Performance of contract with agent supposed to be principal.

**232.** Where one man makes a contract with another, neither knowing nor having reasonable ground to suspect that the other is an agent, the principal, if he requires the performance of the contract, can only obtain such performance subject to the rights and obligations subsisting between the agent and the other party to the contract.

*Illustration.*

*A*, who owes 500 rupees to *B*, sells 1,000 rupees' worth of rice to *B*. *A* is acting as agent for *C* in the transaction, but *B* has no knowledge nor reasonable ground of suspicion that such is the case. *C* cannot compel *B* to take the rice without allowing him to set-off *A*'s debt.

Right of person dealing with agent personally liable.

**233.** In cases where the agent is personally liable, a person dealing with him may hold either him or his principal, or both of them, liable.

*Illustration.*

*A* enters into a contract with *B* to sell him 100 bales of cotton, and afterwards discovers that *B* was acting as agent for *C*. *A* may sue either *B* or *C*, or both, for the price of the cotton.

Consequence of inducing agent or principal to act on belief that principal or agent will be held exclusively liable.

**234.** When a person who has made a contract with an agent induces the agent to act upon the belief that the principal only will be held liable, or induces the principal to act upon the belief that the agent only will be held liable, he cannot afterwards hold liable the agent or principal respectively.

**235.** A person untruly representing himself to be the authorized agent of another, and thereby inducing a third person to deal with him as such agent, is liable, if his alleged employer does not ratify his acts, to make compensation to the other in respect of any loss or damage which he has incurred by so dealing. Liability of pretended agent.

**236.** A person with whom a contract has been entered into in the character of agent is not entitled to require the performance of it if he was in reality acting, not as agent, but on his own account. Person falsely contracting as agent not entitled to performance.

**237.** When an agent has, without authority, done acts or incurred obligations to third persons on behalf of his principal, the principal is bound by such acts or obligations if he has by his words or conduct induced such third persons to believe that such acts and obligations were within the scope of the agent's authority. Liability of principal inducing belief that agent's unauthorized acts were authorized.

*Illustrations.*

(*a*) *A* consigns goods to *B* for sale, and gives him instructions not to sell under a fixed price. *C*, being ignorant of *B*'s instructions, enters into a contract with *B* to buy the goods at a price lower than the reserved price. *A* is bound by the contract.

(*b*) *A* entrusts *B* with negotiable instruments endorsed in blank. *B* sells them to *C* in violation of private orders from *A*. The sale is good.

**238.** Misrepresentations made, or frauds committed, by agents acting in the course of their business for their principals, have the same effect on agreements made by such agents as if such misrepresentations or frauds had been made or committed by the principals; but misrepresentations made, or frauds committed, by agents in matters which do not fall within their authority do not affect their principals. Effect on agreement of misrepresentation or fraud by agent.

*Illustrations.*

(*a*) *A*, being *B*'s agent for the sale of goods, induces *C* to buy them by a misrepresentation, which he was not authorized by *B* to make. The contract is voidable, as between *B* and *C*, at the option of *C*.

(*b*) *A*, the captain of *B*'s ship, signs bills of lading without having received on board the goods mentioned therein. The bills of lading are void as between *B* and the pretended consignor.

## CHAPTER XI.

### OF PARTNERSHIP.[1]

**239—266.** * * * *

[1] *See* now the Partnership Act.

# PART XII.—INSURANCE.
# အပိုင်း ၁၂။ ။အာမခံစံနှစ်ဆိုင်ရာ။

## THE INSURANCE COMPANIES ACT.

[INDIA ACT XX, 1928.] (15th November, 1928.)

Whereas it is expedient to provide for the collection of statistical information in respect of insurance business other than life assurance business ; It is hereby enacted as follows :—

### PARTS I—II.

**1—5.** * * * *

### PART III.

*Provisions as to Insurance Business other than Life Assurance Business.*

Definitions.

**6.** In this Part, unless there is anything repugnant in the subject or context,—

(*a*) "certified," in relation to any copy or translation of a document required to be furnished by or on behalf of an insurance company, means certified by a responsible officer of the company to be a true copy or a correct translation, as the case may be ;

(*b*) "insurance company" means any person who transacts in the Union of Burma the business of effecting contracts of insurance against any risk ;

(*c*) expressions used in this Act and defined in the Life Assurance Companies Act shall have the meanings assigned to them respectively in that Act.

Deposit of accounts, etc., with President.

**7.** Every insurance company which does not transact life assurance business in the Union of Burma shall, within six months after the close of each financial year or within such further period as the President of the Union may in any case for special reasons allow, deposit with the President of the Union four copies of every report on the affairs of the company, and of every balance sheet, revenue account and profit and loss account in respect of that year, which has been submitted to its shareholders or policy-holders, and also, in the case of a company whose head office is situated outside the Union of Burma, four copies of such of the aforementioned documents as are required by law to be submitted to the Government of the country in which the head office is situated.

Statements to be appended

**8.** The following statements shall be appended to every revenue account (other than a life assurance revenue account) deposited by an insurance company with the President of the Union in compliance with section 7 or

with the provisions of the Life Assurance Companies Act, as respects the year and the class of insurance business to which the revenue account relates, namely, statements showing— to revenue account.

(1) in respect of premium income for which credit is taken in the revenue account, the amount of premiums derived from business effected in the Union of Burma,

(2) in respect of claims, the amount of the claims paid in the year of account under policies effected in the Union of Burma—

(*a*) to claimants in the Union of Burma, and

(*b*) to claimants outside the Union of Burma.

**9.** There shall be appended to every balance sheet deposited by an insurance company with the President of the Union in compliance with section 7 a statement showing, in such form as the President of the Union may prescribe, a classified summary of the investments of the company in the Union of Burma and India or Pakistan in government securities and in Burman or [Indian or Pakistan][1] concerns and the other Burman or [ Indian or Pakistan][1] assets held by the company. Statement of Burman and Indian or Pakistan assets.

**10.** At least one copy of every document deposited by an insurance company with the President of the Union in accordance with the requirements of section 7, section 8 or section 9 shall be signed in the manner provided in section 11 of the Life Assurance Companies Act. Signing of documents.

**11.** If any portion of any document required to be deposited under section 7, section 8 or section 9 by an insurance company with the President of the Union is not written in the [Burmese][1] language, a certified translation thereof shall be furnished along with each copy of the document. Certified copies of vernacular documents.

**12.** Every insurance company which does not transact life assurance business in the Union of Burma shall, before it begins to carry on business, furnish to the President of the Union— Particulars to be filed.

(*a*) the full address of the principal office of the company in the Union of Burma ;

(*b*) the names of the directors, principal officer and the auditor of the company in the Union of Burma ;

(*c*) a statement of the classes of insurance business carried on or intended to be carried on by the company in the Union of Burma ;

(*d*) a certified copy of the charter, status, deed of settlement or memorandum and articles of the company, or other instrument constituting or defining the constitution of the company, and, if the instrument is not written in the [Burmese][1] language, a certified translation thereof ;

(*e*) in the case of any such company established outside the Union of Burma, the names and addresses of some one or more persons

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

resident in the Union of Burma, authorized to accept on behalf of the company service of process and any notice required to be served on the company ;

and, in the event of any alteration being made in the address of the principal office or in such classes of business or in any such instrument as aforesaid or in the name of any such person, the company shall forthwith furnish to the President of the Union particulars of the alteration.

Custody and inspection of documents.

**13.** Every document deposited with the President of the Union, in compliance with section 7, section 8 or section 9, or a certified copy of such document, shall be kept by the Registrar, and any such documents or copies shall be open to inspection, and any person may procure a copy of any such document or of any part thereof on payment of a fee of six annas for every hundred words or fractional part thereof required to be copied.

Evidence of documents.

**14.** (*1*) Every document deposited with the President of the Union, in compliance with section 7, section 8 or section 9, which has been certified by the Registrar to be a document so deposited, shall be deemed to be a document so deposited.

(*2*) Every such document purporting to be certified by the Registrar to be a copy of a document so deposited shall be deemed to be a copy of that document, and shall be received in evidence as if it were the original document, unless some variation between it and the original document be proved.

Summary of accounts, etc., to be published.

**15.** The President of the Union shall, from time to time, cause to be published, in such manner as he may direct, a summary of the accounts, balance sheets and statements deposited with him in compliance with section 7, section 8 or section 9, and may append to such summary any note of the President of the Union thereon and any correspondence in relation thereto.

Penalty for non-compliance with Act.

**16.** Any insurance company which makes default in complying with any of the requirements of this Part, and every director, manager or secretary, or other officer or agent of, or partner in, the company who is knowingly a party to the default, shall be punishable in the manner provided in section 34 of the Life Assurance Companies Act.

Penalty for falsifying documents.

**17.** If any account, balance sheet, statement or other document required by the provisions of section 7, section 8 or section 9 is false in any particular to the knowledge of any person who signs it, such person shall be punishable in the manner provided in section 35 of the Life Assurance Companies Act.

Cognizance of offences.

**18.** No Court inferior to that of a Magistrate of the first class shall try any offence under this Act.

**19.** A person transacting the business of re-insuring contracts of insurance effected by any other person in the course of any class of business other than life assurance business shall not, by reason only of that fact, be deemed to be transacting insurance business of that class. Application of Part III to re-insurance business.

**20.** The President of the Union may, by notification in the Gazette, and subject to such restrictions and conditions as he thinks fit, exempt from all or any of the provisions of this Act any provident insurance society registered under the Provident Insurance Societies Act. Exemption.

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## THE LIFE ASSURANCE COMPANIES ACT.

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### CONTENTS.

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*Preliminary.*

*Sections.*

1. * * * *
2. Definitions.
2A. * * * *
3. Companies to which Act applies.

*Deposits.*

4. Deposits.

*Accounts and Documents.*

5. Separation of funds.
6. Appropriation of life assurance fund.
7. Accounts and balance-sheets.
8. Actuarial report and abstract.
9. Actuarial abstract in case of mutual company.
10. Statement of life assurance business.
11. Deposit of accounts, etc., with President.
12. Deposit of report.
13. Exemption from certain provisions of the Burma Companies Act.
14. Right of shareholders, etc., to copies of accounts, etc.
15. Audit of accounts.
16. List of shareholders.
17. Deed of settlement.
18. Publication of authorized as well as subscribed and paid-up capital.
19. Requirements as to companies established outside the Union of Burma.

*Amalgamation or Transfer.*

20. Amalgamation or transfer.
21. Statement in case of amalgamation or transfer.

*Winding-up.*

22. Special provisions as to winding-up of assurance companies.
23. Winding-up of subsidiary companies.
24. Valuation of annuities and policies.
25. Rules of valuation.
26. Power to Court to reduce contracts.
26A. Application of surplus assets in liquidation.

*Special Provisions relating to Accounts and Documents.*

27. Custody and inspection of documents deposited with President.
28. Accounts, etc., to be published.
29. Evidence of documents.
30. Evidence of copies of documents.
31. Alteration of forms.

*Companies carrying on business in the United Kingdom.*

32. * * * *
33. * * * *

*Penalties and Procedure.*

34. Penalty for non-compliance with Act.
35. Penalty for falsifying statements, etc.
36. Cognizance of offences.

*Miscellaneous.*

37. Appointment of inspectors.
38. Service of notices.
39. Power to make rules.
40. * * * *
41. Power of President to exempt from the provisions of the Act.

THE FIRST SCHEDULE.—REVENUE ACCOUNTS.

THE SECOND SCHEDULE.—PROFIT AND LOSS ACCOUNT.

THE THIRD SCHEDULE.—BALANCE-SHEETS.

THE FOURTH SCHEDULE.—STATEMENT RESPECTING VALUATION OF LIABILITIES.

THE FIFTH SCHEDULE.—STATEMENT OF LIFE ASSURANCE AND ANNUITY BUSINESS.

THE SIXTH SCHEDULE.—RULES FOR VALUING ANNUITIES, ETC.

# THE LIFE ASSURANCE COMPANIES ACT.

[INDIA ACT VI, 1912.] (18th March, 1912.)

*Preliminary.*

**1.** * * * *

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

(1) "actuary" means an actuary possessing such qualifications as may be prescribed by rules made by the President of the Union :

(2) "chairman" means the person for the time being presiding over the board of directors or other governing body of a life assurance company :

(3) "Court" means the principal civil Court of original jurisdiction in a district, and includes the High Court in the exercise of its ordinary original civil jurisdiction :

(4) "financial year" means each period of twelve months at the end of which the balance of the accounts of the life assurance company is struck, or, if no such balance is struck, then the calendar year :

(5) "life assurance business" means the issue of, or the undertaking of liability under, policies of assurance upon human life, or the granting of annuities upon human life :

(6) "policy of assurance on human life" means any instrument by which the payment of money is assured on death (except death by accident only) or the happening of any contingency dependent on human life or any instrument evidencing a contract which is subject to payment of premiums for a term dependent on human life :

(7) "policy-holder" means the person who for the time being is the legal holder of the policy for securing the contract with the life assurance company :

(8) where a company grants annuities upon human life, "policy" includes the instrument evidencing the contract to pay such an annuity, and "policy-holder" includes annuitant : and

(9) "Registrar" means any person who may be appointed by the President of the Union to perform the duties of the Registrar under this Act.

[1]**2A.** * * * *

**3.** Save as hereafter expressly provided, this Act shall apply to all persons or bodies of persons, whether corporate or unincorporate (which persons and bodies of persons are hereafter referred to as life assurance companies), who carry on life assurance business within the Union of Burma. Companies to which Act applies.

*Explanation.*—A company registered under the Burma Companies Act which carries on life assurance business in any part of the world shall for the purposes of this section be deemed to be a company carrying on such business within the Union of Burma.

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

*Exception.*—Nothing in this Act shall apply to any society to which the Provident Insurance Societies Act applies or to any fund which the President of the Union may, by notification in the Gazette, exempt from the operation of this Act.

*Deposits.*

Deposits.

**4.** (*1*) Every life assurance company shall, [* * * *][1] before it commences to carry on the business of life assurance, deposit and keep deposited with the [Union Bank of Burma][2] or such other Bank as the President of the Union may direct, for and on behalf of the President of the Union, securities of [* * * *][3] the Government of the Union of Burma, of the face value of twenty-five thousand rupees or of a face value equal to one-third of the income derived from life assurance business as shown in the revenue account for the last financial year, whichever is greater; and, until the company keeps deposited securities of the face value of two hundred thousand rupees, shall annually deposit and keep deposited in like manner like securities of a face value—

(*a*) equal to one-third of the income derived from life assurance business as shown in the revenue account for the last financial year, until the face value of the securities deposited exceeds one hundred thousand rupees;

(*b*) and thereafter equal in amount to one-third of the increase to the life assurance fund as shown in the revenue account for the last financial year:

Provided that a company may at any time deposit securities of a face value of two hundred thousand rupees or make up its deposit of securities to that value.

(*2*) The interest accruing due on the securities deposited under sub-section (*1*) shall be paid to the company, subject only to deduction of the normal commission chargeable for the realisation of interest.

(*3*) The deposit may be made by the subscribers of the memorandum of association of a company, or any of them, in the name of a proposed company and, upon the incorporation of the company, shall be deemed to have been made by, and to be part of the assets of, the company, and the Registrar shall not issue a certificate of incorporation of the company until the deposit has been made.

(*4*) The deposit shall be deemed to form part of the life assurance fund of the company.

Separation of funds.

[4]**4A.** A life assurance company which has deposited securities of the Government of India before the commencement of the Life Assurance Companies (Amendment) Act, 1951, shall, within six months from the date

[1] Omitted by the Union of Burma (Adaptation of Laws) Order, 1948.
[2] Substituted *ibid.*
[3] Deleted by Act XXXII, 1951.
[4] Inserted *ibid.*

of commencement of the said Act, deposit and keep deposited, as provided in sub-section (*1*) of section 4, securities of the Government of the Union of Burma of equal face value in lieu of the said securities of the Government of India.

[1]**4B.** A life assurance company which has been exempted, before the commencement of the Life Assurance Companies (Amendment) Act, 1951, from the provisions of section 4 and certain other sections, shall as from the date of commencement of the said Act be subject to all the provisions of this Act ; and shall within *two* months from the said date, deposit and keep deposited securities of the Government of the Union of Burma as provided in sub-section (*1*) of section 4 of the face value of two hundred thousand rupees :

[2] Provided that if a life assurance company has ceased, before the commencement of the said Act, to enter into any new life assurance contracts, the company shall deposit and keep deposited securities of the Government of the Union of Burma of the face value equal to the total amount of its liabilities in the Union of Burma, as certified by an actuary :

[2] Provided further that, if in any case it is made to appear to the President of the Union that the circumstances are such that a longer period should be allowed, he may extend the period prescribed in this section or in section 4A by such period as he may think fit.

[1]**4C.** A life assurance company, which has ceased to carry on the business of life assurance in the Union of Burma, shall be entitled to the return of the securities deposited under section 4 or section 4A or section 4B, when its liabilities in the Union of Burma have been fully satisfied.

*Accounts and Documents.*

Separation of funds.

**5.** In the case of a life assurance company transacting other business besides that of life assurance, a separate account shall be kept of all receipts in respect of the life assurance business, and the said receipts shall be carried to and form a separate fund to be called the life assurance fund.

*Explanation.*—Nothing in this section shall be deemed to require any life assurance fund to be invested in separate investments from any other fund, but a separate balance-sheet as prescribed under section 7 shall be kept in respect of the life assurance fund.

*Exception.*—Nothing in this section shall apply to a life assurance company established before the 18th March, 1912,[3] by the terms of whose deed of settlement the whole of the profits of all the business carried on by the company are paid exclusively to the life policy-holders, and on the face of whose life policies the liability of the life assurance fund in respect of the other business distinctly appears.

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[1] Inserted by Act XXXII, 1951.
[2] Provisos inserted by Act XXIII, 1952.
[3] Date of commencement of this Act.

Appropriation of life assurance fund.

**6.** The life assurance fund shall be as absolutely the security of the life policy-holders as though it belonged to a company carrying on no other business than life assurance business, and shall not be liable for any contracts of the company for which it would not have been liable had the business of the company been only that of life assurance, and shall not be applied, directly or indirectly, for any purposes other than those of life assurance.

*Exception.*—Nothing in this section shall affect the liability of the life assurance fund, in the case of a company established before the 18th March, 1912,[1] for contracts entered into by the company before such date.

Accounts and balance-sheets.

**7.** (*1*) Every life assurance company shall, at the expiration of each financial year, prepare—

(*a*) a revenue account for the year in the form or forms set forth in the First Schedule and applicable to the class or classes of business carried on by the company ;

(*b*) a profit and loss account in the form set forth in the Second Schedule, except where the company carries on life assurance business only and no other business ;

(*c*) a balance-sheet or balance-sheets in the form or forms set forth in the Third Schedule ;

(*d*) a statement containing the name of every person who during the year was a member of the board of directors or other governing body or was manager or secretary or held any similar office by whatever name called ;

(*e*) a statement showing—

(A) as regards new policies of life assurance in respect of which a premium has been paid in the year of account,—

(i) the number of policies,

(ii) the sums assured,

(iii) the amount received by way of single premiums (including all premiums paid at the outset where no subsequent premium is payable), and

(iv) the amount of yearly renewal premium income ;

(B) as regards total life assurance business,—

(i) the number of policies in force at the end of the year of account,

(ii) the sum assured (including reversionary bonus additions thereto) under policies in force at the end of the year of account, and

(iii) the premium income for which credit is taken in the revenue account ;

(C) as regards claims, the amount of the claims paid in the year of account under policies effected in the Union of Burma—

(i) to claimants in the Union of Burma, and

(ii) to claimants outside the Union of Burma ;

[1] Date of commencement of this Act.

(*f*) a statement showing, in such forms as the President of Union may prescribe, a classified summary of the investments of the company in the Union of Burma or India or Pakistan in government securities and in Burman or [Indian or Pakistan][1] concerns and the other Burman or [Indian or Pakistan][1] assets held by the company.

(*2*) For the purposes of clause (*e*) of sub-section (*1*), all items required to be stated shall be net amounts after deduction of the re-insurances of the company's risks, and for the purposes of sub-clauses (A) and (B) of that clause—

(*a*) the statement shall show separately the numbers and amounts in respect of policies effected in, and policies effected outside, the Union of Burma;

(*b*) where a sum assured is payable periodically, whether by way of an annuity or otherwise, it shall be stated separately from lump sum payments; and

(*c*) policies of assurance upon the lives of a group of persons whereby sums assured are payable in respect of several persons included in the group shall be excluded from the statement and be shown in a separate statement containing the like particulars.

Actuarial report and abstract.

**8.** (*1*) Every life assurance company shall once in every five years, or at such shorter intervals as may be prescribed by the instrument constituting the company or by its regulations or bye-laws, cause an investigation to be made into its financial condition, including a valuation of its liabilities, by an actuary, and shall cause an abstract of the report of such actuary to be made in the form set forth in the Fourth Schedule.

(*2*) The provisions of sub-section (*1*) regarding the making of an abstract shall also apply whenever at any other time an investigation into the financial condition of a life assurance company is made with a view to the distribution of profits, or whenever the results of any such investigation are made public.

Actuarial abstract in case of mutual company.

**9.** In the case of a mutual life assurance company whose profits are allocated to members wholly or mainly by annual abatements of premium, the abstract of the report of the actuary on the financial condition of the company prepared in accordance with the Fourth Schedule may, notwithstanding anything in section 8, be made and returned at intervals not exceeding five years : Provided that, where such return is not made annually, it shall include particulars as to the rates of abatement of premiums applicable to different classes or series of assurances allowed in each year during the period which has elapsed since the previous return under the Fourth Schedule.

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

Statement of life assurance business.

**10.** Every life assurance company shall, at the date to which the accounts of the company are made up for the purposes of the investigation prescribed by section 8, prepare a statement of its assurance business in the form set forth in the Fifth Schedule: Provided that, if the investigation is made annually by any company, the company may prepare such a statement at any time so that it be made at least once in every five years.

Deposit of accounts, etc., with President.

**11.** (*1*) Every account, balance-sheet, abstract or statement hereinbefore required to be made shall be printed, and four copies thereof, one of which shall be signed by the chairman and two directors of the company, and by the principal officer of the company, and if the company has a managing director, by the managing director, shall be deposited with the President of the Union within six months in the case of accounts and balance-sheets required by section 7, and within one year in other cases, after the close of the period to which the account, balance-sheet, abstract or statement relates: Provided that, if in any case it is made to appear to the President of the Union that the circumstances are such that a longer period should be allowed, he may extend that period by such period as he may think fit.

(*2*) The President of the Union shall consider any document deposited in accordance with the provisions of sub-section (*1*) and, if any such document appears to the President of the Union to be inaccurate or defective in any respect, the President of the Union may call upon the company to furnish a further statement correcting any such inaccuracies or supplying any such deficiencies.

Deposit of report.

**12.** There shall be deposited with every revenue-account and balance-sheet of a life assurance company every report on the affairs of the company submitted to the shareholders or policy-holders of the company in respect of the financial year to which the account and balance-sheet relate.

Exemption from certain provisions of the Burma Companies Act.

**13.** Where a life assurance company registered under the Burma Companies Act in any year deposits its accounts and balance-sheet in accordance with the provisions of section 11, the company may, at the same time, send to the Registrar of Companies a copy of such accounts and balance-sheet, and, where such copy is so sent, it shall not be necessary for the company to file a balance-sheet with the Registrar of Companies as required by the Burma Companies Act, and the copy of the accounts and balance-sheet so sent shall be dealt with in all respects as if it were a balance-sheet filed in accordance with that Act.

Right of shareholders, etc., to copies of accounts, etc.

**14.** A printed copy of the accounts, balance-sheet, abstract or statement last deposited shall, on the application of any shareholder or policy-holder of the company, be forwarded to him by the company by post or otherwise.

Audit of accounts.

**15.** The accounts of every life assurance company shall be audited annually in such manner as the President of the Union may prescribe.

List of shareholders.

**16.** Every life assurance company which is not registered under the Burma Companies Act shall keep a list of the names and addresses of its shareholders, and shall, on the application of any shareholder or policy-holder of the company, furnish to him a copy of such list on payment of a sum not exceeding two annas for every hundred words required to be copied.

Deed of settlement.

**17.** Every life assurance company which is not registered under the Burma Companies Act shall cause a sufficient number of copies of its deed of settlement or other instrument constituting the company to be printed, and shall, on the application of any shareholder or policy-holder of the company, furnish to him a copy of such deed of settlement or other instrument on payment of a sum not exceeding one rupee.

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

**18.** Where any notice, advertisement or other official publication of a life assurance company contains a statement of the amount of the authorized capital of the company, the publication shall also contain a statement of the amount of the capital which has been subscribed and the amount paid up.

Requirements as to companies established outside the Union of Burma.

**19.** (*1*) Every life assurance company constituted outside the Union of Burma, which establishes a place of business within the Union of Burma, or appoints an agent in the Union of Burma with the object of obtaining life assurance business, shall, within three months from the establishment of the place of business or the appointment of such agent, file with the Registrar—

(*a*) a certified copy of the charter, statutes or memorandum and articles of the company, or other instrument constituting or defining the constitution of the company, and, if the instrument is not written in the [Burmese][1] language, a certified translation thereof;

(*b*) a list of the directors of the company;

(*c*) the names and addresses of some one or more persons resident in the Union of Burma authorized to accept on behalf of the company service of process and any notices required to be served on the company;

and, in the event of any alteration being made in any such instrument or in the list of directors or in the names and addresses of such persons as aforesaid, the company shall, within such time as the President of the Union may prescribe, file with the Registrar a notice of the alteration.

(*2*) Any process or notice required to be served on the company shall be sufficiently served if addressed to any person whose name has been so filed as aforesaid and left at or sent by post to the address which has been so filed.

(*3*) There shall be paid to the Registrar for registering any document, required by this section to be filed, a fee of five rupees or such smaller fee as the President of the Union may prescribe.

[2](*4*) * * * *

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

[2] Omitted *ibid.*

*Amalgamation or Transfer.*

Amalgamation or transfer.

**20.** (*1*) Where it is intended to amalgamate two or more life assurance companies, or to transfer the life assurance business of one company to another, the directors of any one or more of such companies may apply to the Court, by petition, to sanction the proposed arrangement.

(*2*) Before any such application is made to the Court—

(*a*) notice of the intention to make the application shall be published in the Gazette at least two months before the application is made;

(*b*) a statement of the nature of the amalgamation or transfer, as the case may be, together with an abstract containing the material facts embodied in the agreement or deed under which the amalgamation or transfer is proposed to be effected, and copies of the actuarial or other reports upon which the agreement or deed is founded, including a report by an independent actuary, shall, unless the Court otherwise directs, be transmitted to each policy-holder of each company ; and

(*c*) the agreement or deed under which the amalgamation or transfer is effected shall be open for the inspection of the policy-holders and shareholders at the offices of the companies for a period of fifteen days after the last publication of the notice.

(*3*) The Court, after hearing the directors and other persons whom it considers entitled to be heard upon the petition, may sanction the arrangement if it is satisfied that no sufficient objection to the arrangement has been established.

(*4*) The Court shall not sanction the amalgamation or transfer in any case in which it appears to the Court that the life policy-holders representing one-tenth or more of the total amount assured in any company which it is proposed to amalgamate, or in any company the business of which it is proposed to transfer, dissent from the amalgamation or transfer.

(*5*) No life assurance company shall amalgamate with another, or transfer its business to another, unless the amalgamation or transfer is sanctioned by the Court in accordance with this section.

Statement in case of amalgamation or transfer.

**21.** Where an amalgamation takes place between any life assurance companies, or where any life assurance business of one such company is transferred to another company, the combined company or the purchasing company, as the case may be, shall, within one month from the date of the completion of the amalgamation or transfer, deposit with the President of the Union—

(*a*) certified copies of statements of the assets and liabilities of the companies concerned in such amalgamation or transfer, together with a statement of the nature and terms of the amalgamation or transfer ; and

(*b*) a certified copy of the agreement or deed under which the amalgamation or transfer is effected ; and

(*c*) certified copies of the actuarial or other reports upon which that agreement or deed is founded ; and

(*d*) a declaration under the hand of the chairman of each company, and the principal officer of each company, that to the best of their belief every payment made or to be made to any person whatsoever on account of the amalgamation or transfer is therein fully set forth, and that no other payments beyond those set forth have been made or are to be made either in money, policies, bonds, valuable securities or other property by or with the knowledge of any parties to the amalgamation or transfer.

*Winding-up.*

Special provisions as to winding-up of assurance companies.

**22**. The Court may order the winding-up of a life assurance company in accordance with the Burma Companies Act and the provisions of that Act shall apply accordingly, subject, however, to the modification that the company may be ordered to be wound up—

(*a*) on the petition of ten or more policy-holders :

Provided that such a petition shall not be presented except by the leave of the Court, and leave shall not be granted until a *prima facie* case has been established to the satisfaction of the Court, and until security for costs for such amount as the Court may think reasonable has been given ; or

(*b*) on application made on behalf of the President of the Union, showing that from a consideration of the documents deposited with him under the provisions of this Act it appears to him that the company is insolvent.

Winding-up of subsidiary companies.

**23**. (*1*) Where a life assurance business or any part of the life assurance business of a life assurance company has been transferred to another company under an arrangement in pursuance of which the first mentioned company (in this section called the subsidiary company) or the creditors thereof has or have claims against the company to which such transfer was made (in this section called the principal company), then, if the principal company is being wound up by or under the supervision of the Court, the Court shall (subject as hereinafter mentioned) order the subsidiary company to be wound up in conjunction with the principal company, and may by the same or any subsequent order appoint the same person to be liquidator for the two companies, and make provision for such other matters as may seem to the Court necessary with a view to the companies being wound up as if they were one company.

(*2*) The commencement of winding-up of the principal company shall, save as otherwise ordered by the Court, be the commencement of the winding-up of the subsidiary company.

(*3*) In adjusting the rights and liabilities of the members of the several companies between themselves, the Court shall have regard to the constitution of the companies and to the arrangements entered into between the companies, in the same manner as the Court has regard to the rights and liabilities of different classes of contributories in the case of the winding-up of a single company, or as near thereto as circumstances admit.

(*4*) Where any company alleged to be subsidiary is not in process of being wound up at the same time as the principal company to which it is subsidiary, the Court shall not direct the subsidiary company to be wound up unless, after hearing all objections (if any) that may be urged by or on behalf of the company against its being wound up, the Court is of opinion that the company is subsidiary to the principal company, and that the winding-up of the company in conjunction with the principal company is just and equitable.

(*5*) An application may be made in relation to the winding-up of any subsidiary company in conjunction with a principal company by any creditor of, or person interested in, the principal or subsidiary company.

(*6*) Where a company stands in the relation of a principal company to one company, and in the relation of a subsidiary company to some other company, or where there are several companies standing in the relation of subsidiary companies to one principal company, the Court may deal with any number of such companies together or in separate groups as it thinks most expedient upon the principles laid down in this section.

Valuation of annuities and policies.

**24.** Where a life assurance company is being wound up by the Court, or subject to the supervision of the Court, or voluntarily, the value of a policy or of a liability under a policy requiring to be valued in such winding-up shall be estimated in manner applicable to policies and liabilities provided by the Sixth Schedule.

Rules of valuation.

**25.** The rules in the Sixth Schedule shall be of the same force, and may be repealed, altered or amended as if they were rules made in pursuance of section 254 of the Indian Companies Act, 1882,[1] and rules may be made under that section for the purpose of carrying into effect the provisions of this Act with respect to the winding-up of life assurance companies. India VI, 1882.

Power to Court to reduce contracts.

**26.** The Court, in the case of a life assurance company which has been proved to be unable to pay its debts, may, if it thinks fit, reduce the amount of the contracts of the company upon such terms and subject to such conditions as it thinks just, in place of making a winding-up order.

Application of surplus assets in liquidation.

**26A.** In the winding-up of a life assurance company in a case where any proportion of the profits of the company was before the commencement of the winding-up allocated to policy-holders, if when the assets and liabilitiesof the company have been ascertained there is found to be a surplus of assets over liabilities (hereinafter referred to as a *prima facie* surplus), there shall

[1] Repealed by the Indian Companies Act, 1913 (India Act VII, 1913).

be added to the liabilities of the company in respect of its life assurance business an amount equal to such proportion of the *prima facie* surplus as is equivalent to such proportion of the profits allocated to shareholders and policy-holders as was allocated to policy-holders during the ten years immediately preceding the commencement of the winding-up, and the assets of the company shall be deemed to exceed its liabilities only in so far as those assets exceed those liabilities after such addition as aforesaid :

Provided that, if in any case there has been no such allocation, or if it appears to the Court that by reason of special circumstances it would be inequitable that the amount to be added to the liabilities of the company in respect of the life assurance business should be an amount equal to such proportion as aforesaid, the amount to be so added shall be such amount as the Court may direct.

*Special Provisions relating to Accounts and Documents.*

Custody and inspection of documents deposited with President.

**27.** The President of the Union may direct any documen deposited with him under this Act, or certified copies thereof, to be kept by the Registrar or by any other officer appointed in this behalf, and any such documents and copies shall be open to inspection, and copies thereof may be procured by any person, on payment of such fees as the President of the Union may direct.

Accounts, etc., to be published.

**28.** The President of the Union shall annually cause to be published, in such manner as he may direct, a summary of the accounts, balance-sheets, abstracts, statements and other documents under this Act, or purporting to be under this Act, deposited with him during the preceding year by every life assurance company except reports on the affairs of life assurance companies submitted to the shareholders or policy-holders thereof, and may append to such summary any note of the President of the Union thereon, and any correspondence in relation thereto.

Evidence of documents.

**29.** Every document deposited under this Act with the President of the Union, and certified by the Registrar or by any person appointed in that behalf by the President of the Union to be a document so deposited, shall be deemed to be a document so deposited.

Evidence of copies of documents.

**30.** Every document purporting to be certified by the Registrar, or by any person appointed in that behalf by the President of the Union, to be a copy of a document so deposited, shall be deemed to be a copy of that document, and shall be received in evidence as if it were the original document unless some variation between it and the original document be proved.

Alteration of forms

**31.** The President of the Union may, on the application or with the consent of a life assurance company, alter the forms contained in the Schedules to this Act as respects that company for the purpose of adapting them to the circumstances of that company.

*Companies carrying on business in the United Kingdom.*

[1]32-33. * * * *

*Penalties and Procedure.*

Penalty for non-compliance with Act.

**34.** Any life assurance company which makes default in complying with any of the requirements of this Act, and every director, manager, or secretary, or other officer or agent of the company who is knowingly a party to the default, shall be punishable with fine which may extend to one thousand rupees, or, in the case of a continuing default, with fine which may extend to five hundred rupees for every day during which the default continues; and, if default continues for a period of three months after notice of default by the President of the Union (which notice shall be published in one or more newspapers as the President of the Union may, upon the application of one or more policy-holders or shareholders, direct), the default shall be a ground on which the Court may order the winding-up of the company in accordance with the Burma Companies Act.

Penalty for falsifying statements, etc.

**35.** If any account, balance-sheet, abstract, statement or other document required by this Act is false in any particular to the knowledge of any person who signs it, such person shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

Cognizance of offences.

**36.** No Court inferior to that of a Magistrate of the first class shall try any offence against this Act.

*Miscellaneous.*

Appointment of inspectors.

**37.** (*1*) The President of the Union may appoint one or more inspectors to examine into the affairs of any life assurance company, and to report thereon in such manner as he may direct—

(i) in the case of a life assurance company which is not registered under the Burma Companies Act, upon the application—

(*a*) of shareholders being in number not less than one-fifth of the whole number of persons for the time being entered on the list of shareholders kept in accordance with the provisions of section 16; or

(*b*) of twenty or more policy-holders owning policies of an aggregate value of not less than twenty thousand rupees;

(ii) in any case where a life assurance company has failed to furnish a further statement when required to do so under the provisions of section 11, sub-section (*2*), or where the President of the Union is of opinion that any such further statement is insufficient or unsatisfactory.

[1] Deleted by Act XXXII, 1951.

(*2*) On an appointment being made under sub-section (*1*), the provisions of the Burma Companies Act shall apply to the examination made by such inspectors.

Service of notices.

**38.** Any notice or other document which is by this Act required to be sent to any policy-holder may be addressed and sent to the person to whom notices respecting such policy are usually sent, and any notice so addressed and sent shall be deemed and taken to be notice to the holder of such policy :

Provided that, where any person claiming to be interested in a policy has given to the company notice in writing of his interest, any notice which is by this Act required to be sent to policy-holders shall also be sent to such person at the address specified by him in his notice.

Power to make rules.

**39.** (*1*) The President of the Union may make rules to carry out the purposes of this Act.

(*2*) In particular, and without prejudice to the generality of the foregoing power, such rules may—

(*a*) prescribe the qualifications to be possessed by actuaries, auditors and inspectors under this Act, and the manner in which the accounts of life assurance companies shall be audited ;

(*b*) prescribe the time within, and the form in which, notice of alteration of the particulars specified in section 19 of the Act shall be filed with the Registrar ;

(*c*) subject to the provisions of this Act, prescribe the fees payable thereunder.

(*3*) All rules made under this Act shall be published in the Gazette and, on such publication, shall have effect as if enacted in this Act.

**40.** * * * *

Power of President to exempt from the provisions of the Act.

**41.** The President of the Union may, by notification in the Gazette and subject to such restrictions and conditions as he thinks fit, exempt any life assurance company from all or any of the provisions of this Act.

## THE FIRST SCHEDULE.

(*See section 7.*)

REVENUE ACCOUNTS OF THE FOR THE YEAR ENDING

### (A) Life Assurance Account.

| | Rs. | | Rs. |
|---|---|---|---|
| | | Dividends payable on 19 for the year ending 19 . (This is only to be stated here by companies not supplying a Profit and Loss account.) | |
| | | Claims under policies paid and outstanding— | |
| Amount of life assurance fund at the beginning of the year. | | By death ... ... ... | |
| | | By maturity ... ... ... | |
| | | Surrenders, including surrenders of bonus additions. | |
| | | Annuities ... ... ... | |
| | | Bonuses in cash ... ... ... | |
| Premiums ... ... ... | | Bonuses in reduction of premiums ... | |
| | | Expenses of management :— | |
| | | Commission ... ... ... | |
| | | Agent's and Canvassers' allowances ... | |
| Consideration for annuities granted* (see Note 1). | | Salaries, etc. (other than to Agents and Canvassers.) | |
| | | Travelling expenses ... ... | |
| | | Directors' fees ... ... ... | |
| | | Auditors' fees ... ... ... | |
| Rs. | | Medical fees ... ... ... | |
| Interests, dividends and rents | | Rents for offices belonging to and occupied by the company. | |
| | | Rents of other offices occupied by the company. | |
| | | Law charges ... ... ... | |
| Less income-tax thereon ... | | Advertising ... ... ... | |
| | | Printing and stationery ... ... | |
| | | Other expenses of management (accounts to be specified.) | |
| | | Other payments (accounts to be specified.) | |
| | | Amount of life assurance fund at the end of the year, as per Third Schedule. | |
| Other receipts (accounts to be specified). | | | |
| Rs. | | Rs. | |

* NOTE 1.—Companies having a separate annuity fund with investments separate from those of the life assurance fund to return the particulars of their annuity business in a separate statement, in Form B of this Schedule.

NOTE 2.—Items in this account to be net amounts after deduction of the amounts paid and received in respect of reassurances of the company's risks.

NOTE 3.—If any sum has been deducted from the expenses of management account, and taken credit for in the balance-sheet as an asset, the sum so deducted to be separately shown in the above account.

(B) Revenue Account applicable to annuity business of those companies having a separate annuity fund, the investments of which are kept separate from those of the life assurance fund.

| | Rs. | | Rs. |
|---|---|---|---|
| Amount of annuity fund at the beginning of the year. | | Annuities ... ... ... | |
| Consideration for annuities granted | | Surrenders ... ... ... | |
| Rs. | | Expenses of management :— | |
| Interests, dividends and rents | | Commission ... ... ... | |
| Less income-tax thereon ... | | Other expenses (to be specified.) ... | |
| | | Other payments (accounts to be specified) | |
| Other receipts ... ... | | Amount of annuity fund at the end of the year as per balance-sheet. | |
| Rs. | | Rs. | |

NOTE.—Items in this account to be net amounts after deduction of the amounts paid and received in respect of reassurances of the company's risks.

(C) General Revenue Account applicable to all classes of business other than life assurance and annuity transactions.

| | Rs. | | Rs. |
|---|---|---|---|
| Amount of funds at the beginning of the year. | | Claims less reassurances (accounts to be specified). | |
| Premiums (accounts to be specified) | | Expenses of management :— | |
| Rs. | | Commission ... ... ... | |
| Interests, dividends and rents | | Other expenses (to be specified) ... | |
| Less income-tax thereon ... | | Losses (accounts to be specified) ... | |
| | | Other payments (accounts to be specified) | |
| Profits (accounts to be specified) ... | | | |
| Other receipts (to be specified) ... | | Amount of funds at the end of the year as per balance-sheet. | |
| Rs. | | Rs. | |

NOTE 1.—All the items in the above account to be exclusive of life assurance and annuity transactions.

NOTE 2.—Items in this account to be net amounts after deduction of the amounts paid and received in respect of reassurances of the company's risks.

## THE SECOND SCHEDULE.

(*See section 7.*)

PROFIT AND LOSS ACCOUNT OF THE FOR THE YFAR ENDING

| | Rs. | | Rs. |
|---|---|---|---|
| Balance of last year's account ... | | Dividends and bonuses to share-holders payable on 19 , | |
| Rs. | | for the year ending 19 . | |
| Interest and dividends not carried to other accounts. | | Expenses not charged to other accounts' | |
| Less income-tax thereon ... | | Loss realised (accounts to be specified) | |
| Profits realized (accounts to be specified). | | Other payments (accounts to be specified) | |
| Other receipts (accounts to be specified). | | Balance as per Third Schedule ... | |
| Rs. | | Rs. | |

## THE THIRD SCHEDULE.

(*See section 7.*)

(A) BALANCE-SHEET OF THE ON THE 19

| LIABILITIES. | Rs. | ASSETS. | Rs. |
|---|---|---|---|
| | | Assets of life assurance fund as per separate balance-sheet (if any). | |
| Rs. | | Assets of annuity fund as per separate balance-sheet (if any). | |
| Life assurance fund— | | Assets of funds other than those shown in the above mentioned balance-sheets. | |
| Outstanding liabilities of life assurance fund. | | Mortgages on property within the Union of Burma. | |
| Annuity fund (if any) as per separate balance-sheet. | | Mortgages on property out of the Union of Burma. | |
| Outstanding liabilities of annuity fund. | | Loans on public rates ... ... | |
| Shareholders' capital paid up (if any) ... ... ... | | Do. life interests and reversions ... | |
| Profit and Loss account (if any) ... | | Do. stocks and shares ... ... | |
| Funds contained in General Revenue Account (if any) [Schedule I (c)]. | | Do. company's policies within their surrender values. | |
| | | Do. personal security ... ... | |
| | | Investments— | |
| | | Deposit with the authorized Bank (securities to be specified). | |
| | | Indian Government securities or the Union of Burma Government securities. | |
| | | British and Colonial Government securities. | |
| Other sums owing by the Company ... (Accounts to be specified and stated separately under each class of business.) | | Foreign Government securities ... | |
| | | Indian Municipal and Provincial securities or the Union of Burma Municipal and Provincial securities. | |
| | | British and Colonial securities ... | |
| | | Foreign ditto ditto ... ... | |

(A) BALANCE-SHEET OF THE ON THE 19 —[*contd.*]

| LIABILITIES. | Rs. | ASSETS. | Rs. |
|---|---|---|---|
| | | Bonds, debentures, stocks and other securities whereon interest is guaranteed by the Government of the Union of Burma, or by any Government in India or Pakistan, or by the Secretary of State, as successor to the Secretary of State for India in Council. | |
| | | Bonds, debentures, stocks and other securities whereon interest is guaranteed by the British or any Colonial Government. | |
| | | Bonds, debentures, stocks and other securities whereon interest is guaranteed by any Foreign Government. | |
| | | Ordinary stocks and shares of any Indian Presidency Bank. | |
| | | Debentures of any Railway in the Union of Burma. | |
| | | Debentures of any Railway out of the Union of Burma. | |
| | | Preference or guaranteed shares of any Railway in the Union of Burma. | |
| | | Preference or guaranteed shares of any Railway out of the Union of Burma. | |
| | | Ordinary stocks and shares of any Railway in the Union of Burma. | |
| | | Ordinary stocks and shares of any Railway out of the Union of Burma. | |
| | | House property in the Union of Burma. | |
| | | House property out of the Union of Burma. | |
| | | Freehold and leasehold ground rents and rent charges in the Union of Burma. | |
| | | Life interests and reversions in the Union of Burma. | |

(A) BALANCE-SHEET OF THE ON THE 19 —[*concld.*]

| LIABILITIES. | Rs. | ASSETS. | Rs. |
|---|---|---|---|
| | | Life interests and reversions out of the Union of Burma. | |
| | | Other investments in the Union of Burma (to be specified). | |
| | | Other investments out of the Union of Burma (to be specified). | |
| | | Agents' balances ... ... ... | |
| | | Outstanding premiums * ... ... | |
| | | Outstanding interests, dividends and rents* | |
| | | Interest accrued but not payable * ... | |
| | | Bills receivable ... ... ... | |
| | | Cash— | |
| | | On deposit ... ... ... | |
| | | In hand and on current account ... | |
| | —— | Other assets (to be specified) ... | —— |
| Rs. | | Rs. | |

* These items are or have been included in the corresponding items in the First Schedule.

NOTE 1.—When part of the assets of the company are specifically deposited under local law in various places out of the Union of Burma, as security to holders of life assurance policies there issued, each such place and the amount compulsorily lodged therein must be specified.

NOTE 2.—The balance-sheet must state how the values of the stock exchange securities are arrived at, and on the occasions when a statement respecting valuation under the Fourth Schedule is made, a certificate must be appended, signed by the same persons as signed the balance-sheet, to the effect that in their belief the assets set forth in the balance-sheet are in the aggregate fully of the value stated therein, less any investment reserve fund taken into account.

NOTE 3.—Companies having investments with any uncalled liability shall state separately the full amount thereof.

NOTE 4.—Particulars must be given of all loans, including temporary advances, except loans on policies within their surrender values, made at any time during the year to any director or officer of a company or to any other company in which any of the said directors or officers may hold the position either of director or of officer.

(B) BALANCE-SHEET OF THE LIFE ASSURANCE FUND ON THE 19 , TO BE COMPLETED BY COMPANIES DOING BUSINESS OTHER THAN LIFE ASSURANCE FOR WHICH THEY HAVE SEPARATE FUNDS.

| LIABILITIES. | Rs. | ASSETS | Rs. |
|---|---|---|---|
| Life assurance fund ... ... | | Mortgages on property within the Union of Burma. | |
| | | Mortgages on property out of the Union of Burma. | |
| Claims admitted or intimated * but not paid. | | Loans on public rates ... ... | |
| | | Do. life interest and reversions ... | |
| Other sums owing by the company * (under this class of business). | | Do. stocks and shares ... ... | |
| | | Do. company's policies within their surrender values. | |
| | | Do. personal security ... ... | |
| | | Investments :— | |
| | | Deposit with the authorized Bank (securities to be specified). | |
| | | Indian Government securities or the Union of Burma Government securities. | |
| | | British and Colonial Government securities. | |
| | | Foreign Government securities ... | |
| | | Indian Municipal and Provincial securities or the Union of Burma Municipal and Provincial securities. | |
| | | British and Colonial securities ... | |
| | | Foreign do. do. ... | |
| | | Bonds, debentures, stocks and other securities whereon interest is guaranteed by the Government of the Union of Burma, or by any Government in India or Pakistan, or by the Secretary of State, as successor to the Secretary of State for India in Council. | |
| | | Bonds, debentures, stocks and other securities whereon interest is guaranteed by the British or any Colonial Government. | |
| | | Bonds, debentures, stocks and other securities whereon interest is guaranteed by any Foreign Government. | |
| | | Ordinary stocks and shares of any Indian Presidency Bank. | |
| | | Debentures of any Railway in the Union of Burma. | |
| | | Debentures of any Railway out of the Union of Burma. | |
| | | Preference or guaranteed shares of any Railway in the Union of Burma. | |
| | | Preference or guaranteed shares of any Railway out of the Union of Burma. | |
| | | Ordinary stocks and shares of any Railway in the Union of Burma. | |
| | | Ordinary stocks and shares of any Railway out of the Union of Burma. | |

* These items are or have been included in the corresponding items in the Fir chedule.

(B) BALANCE-SHEET OF THE LIFE ASSURANCE FUND ON THE 19 , TO BE COMPLETED BY COMPANIES DOING BUSINESS OTHER THAN LIFE ASSURANCE FOR WHICH THEY HAVE SEPARATE FUNDS—*concld.*

| LIABILITIES. | Rs. | ASSETS. | Rs. |
|---|---|---|---|
| | | House property in the Union of Burma. | |
| | | House property out of the Union of Burma. | |
| | | Freehold and leasehold ground rents and rent-charges in the Union of Burma. | |
| | | Life interests and reversions in the Union of Burma. | |
| | | Life interests and reversions out of the Union of Burma. | |
| | | Other investments in the Union of Burma (to be specified). | |
| | | Other investments out of the Union of Burma (to be specified). | |
| | | Agents' balances ... ... .. | |
| | | Outstanding premiums * ... ... | |
| | | Do. interests, dividends and rents.* | |
| | | Interest accrued but not payable* ... | |
| | | Bills receivable ... ... ... | |
| | | Cash— | |
| | | On deposit ... ... ... | |
| | | In hand and on current account ... | |
| | | Other assets (to be specified) ... | |
| Rs. | | Rs. | |

* These items are or have been included in the corresponding items in the First Schedule.

NOTE 1.—When part of the assets of the company are specifically deposited under local laws in various places out of the Union of Burma, as security to holders of life assurance policies there issued, each such place and the amount compulsorily lodged therein must be specified.

NOTE 2.—A balance-sheet in the above form must be rendered in respect of the annuity fund if the investments of that fund are distinct from those of the life assurance fund.

NOTE 3.—The balance-sheet must state how the values of the stock exchange securities are arrived at, and on the occasions when a statement respecting valuation under the Fourth Schedule is made, a certificate must be appended, signed by the same persons as signed the balance-sheet, to the effect that in their belief the assets set forth in the balance-sheet are in the aggregate fully of the value stated therein, less any investment reserve fund taken into account.

NOTE 4.—A certificate must be appended hereto, signed by the same persons as signed the balance-sheet (Form A), and by the auditor, to the effect that no part of any such fund has been applied, directly or indirectly, for any purpose other than the class of businese to which it is applicable.

NOTE 5.—Companies having investments with any uncalled liability shall state separately the full amount thereof.

NOTE 6.—Particulars must be given of all loans, including temporary advances, except loans on policies within their surrender values, made at any time during the year to any director or officer of a company or to any other company in which any of the said directors or officers may hold the position either of director or of officer.

## THE FOURTH SCHEDULE.

(*See* sections 8 and 9.)

STATEMENT RESPECTING THE VALUATION OF THE LIABILITIES UNDER LIFE POLICIES AND ANNUITIES OF THE , TO BE MADE AND SIGNED BY THE ACTUARY.

(*The answers should be numbered to accord with the numbers of the corresponding questions.*)

1. The date up to which the valuation is made.

2. The general principles adopted in the valuation, and the method followed in the valuation of particular classes of assurances, including a statement of the method by which the net premiums have been arrived at, and whether these principles were determined by the instrument constituting the company or by its regulations or bye-laws, or how otherwise ; together with a statement of the manner in which policies on under-average lives are dealt with.

3. The table or tables of mortality used in the valuation. In cases where the tables employed are not published, specimen policy values are to be given at the rate of interest employed in the valuation, in respect of whole-life assurance policies effected at the respective ages of 20, 30, 40 and 50, and having been respectively in force for 5 years, 10 years and upwards at intervals of five years, respectively ; with similar specimen policy values in respect of endowment assurance policies, according to age at entry, original term of policy and duration.

4. The rate or rates of interest assumed in the calculations.

5. The actual proportion of the annual premium income (if any), reserved as a provision for future expenses and profits, separately specified in respect of assurances with immediate profits, with deferred profits, and without profits. (If none, state how this provision is made.)

6. The consolidated revenue-account since the last valuation, or in case of a company which has made no valuation, since the commencement of the business. (This return should be made in the form annexed. No return under this heading will be required where a statement under this Schedule is deposited annually.)

7. The liabilities of the company under life policies and annuities at the date of the valuation, showing the number of policies, the amount assured and the amount of premiums payable annually under each class of policies, both with and without participation in profits ; and also the net liabilities and assets of the company with the amount of surplus or deficiency. (These returns to be made in the forms annexed.)

8. The principles upon which the distribution of profits among the share-holders and policy-holders is made, and whether these principles were determined by the instrument constituting the company or by its regulations or bye-laws, or how otherwise, and the number of years' premiums to be paid before a bonus (*a*) is allotted, and (*b*) vests.

9. The results of the valuation, showing—

(1) the total amount of profit made by the company, allocated as follows:—

(*a*) among policy-holders with immediate participation, and the number and amount of the policies which participated;

(*b*) among policy-holders with deferred participation, and the number and amount of the policies which participated;

(*c*) among the shareholders;

(*d*) to reserve funds or other accounts;

(*e*) carried forward unappropriated;

(2) specimens of bonuses allotted to whole life assurance policies for Rs. 1,000 effected at the respective ages of 20, 30, 40 and 50, and having been respectively in force for five years, 10 years and upwards at intervals of 5 years respectively, together with the amounts apportioned under the various modes in which the bonus might be received; with similar specimen bonuses and particulars in respect of endowment assurance policies, according to age at entry, original term of policy, and duration.

(FORM REFERRED TO UNDER HEADING NO. 6 IN FOURTH SCHEDULE.)

*Consolidated Revenue Account of the for years*
*commencing and ending*

| | Rs. | | Rs. |
|---|---|---|---|
| Amount of life assurance fund at the beginning of the period | | Claims under policies paid and outstanding— | |
| | | Rs. | |
| Premiums ... ... ... | | By death ... ... | |
| | | By maturity ... | |
| Consideration of annuities granted ... | | Surrenders ... ... ... | |
| Rs. | | Annuities ... ... ... | |
| Interest, dividends and rents | | Bonuses in cash ... ... | |
| | | Bonuses in reduction of premiums | |
| Less income-tax thereon ... | | Commission ... ... | |
| | | Expenses of management ... | |
| Other receipts (accounts to be specified) | | Other payments (accounts to be specified) | |
| | | Amount of life assurance fund at the end of the period as per Third Schedule. | |
| Rs. | | Rs. | |

NOTE.—If any sum has been deducted from the expenses of management account and taken credit for in the balance-sheet as an asset, the sum so deducted to be separately shown in the above statement.

(FORM REFERRED TO UNDER HEADING NO. 7 IN FOURTH SCHEDULE.)

*Summary and valuation of the policies of the as at 19*

| — | Particulars of the policies for valuation | | | | Valuation. | | | |
|---|---|---|---|---|---|---|---|---|
| | | | | | Value by the Table, interest per cent. | | | |
| | Number of policies. | Sums assured and bonuses. | Office yearly premiums. | Net yearly premiums. | Sums assured and bonuses. | Office yearly premiums. | Net yearly premiums. | Net liability. |
| ASSURANCES. | | | | | | | | |
| I.—*With immediate participation in profits.* | | | | | | | | |
| For whole term of life ... ... | | | | | | | | |
| Other classes (to be specified) ... | | | | | | | | |
| Extra premiums payable ... ... | | | | | | | | |
| II.—*With deferred participation in profits.* | | | | | | | | |
| For whole term of life ... ... | | | | | | | | |
| Other classes (to be specified) ... | | | | | | | | |
| Extra premiums payable ... ... | | | | | | | | |
| TOTAL ASSURANCES WITH PROFITS ... | | | | | | | | |
| III.—*Without participation in profits.* | | | | | | | | |
| For whole term of life ... ... | | | | | | | | |
| Other classes (to be specified) ... | | | | | | | | |
| Extra premiums ... ... | | | | | | | | |
| TOTAL ASSURANCES WITHOUT PROFITS. | | | | | | | | |
| Total assurances ... ... | | | | | | | | |
| Deduct reassurances (to be specified according to class in a separate statement) ... ... | | | | | | | | |
| Net amount of assurances ... | | | | | | | | |
| Adjustments, if any (to be separately specified) ... ... | | | | | | | | |
| ANNUITIES ON LIVES. | | | | | | | | |
| Immediate ... ... ... | | | | | | | | |
| Other classes (to be specified) ... | | | | | | | | |
| TOTAL OF THE RESULTS ... | | | | | | | | |

NOTE 1.—The term " extra premium " in this Act shall be taken to mean the charge for any risk not provided for in the minimum contract premium. If policies are issued in or for any country at rates of premium deducted from tables other than the European mortality tables adopted by the company, separate schedules similar in form to the above must be furnished.

NOTE 2.—Separate returns and valuation results must be furnished in respect of classes of policies valued by different tables of mortality, or at different rates of interest, also for business at other than European rates.

NOTE 3.—In cases also where separate valuations of any portion of the business are required under local laws in places outside the Union of Burma, a summary statement must be furnished in respect of the business so valued in each such place showing the total number of policies, the total sums assured and bonuses, the total office yearly premiums and the total net liability on the bases as to mortality and interest adopted in each such place, with a statement as to such bases respectively.

(FORM REFERRED TO UNDER HEADING NO. 7 IN FOURTH SCHEDULE.)

*Valuation Balance-sheet of* *as at* *19*

| DR. | Rs. | | CR. | Rs. |
|---|---|---|---|---|
| To net liability under life assurance and annuity transactions (as per summary statement provided in Fourth Schedule). ... ... | | By life assurance and annuity funds (as per balance-sheet under Third Schedule) ... ... | | |
| To surplus, if any ... ... | | By deficiency, if any .. ... | | |

## THE FIFTH SCHEDULE.

(*See* section 10.)

STATEMENT OF THE LIFE ASSURANCE AND ANNUITY BUSINESS OF THE ON THE 19 , TO BE SIGNED BY THE ACTUARY.

(*The answers should be numbered to accord with the numbers of the corresponding questions. Statements of reassurances corresponding to the statements in respect of assurances are to be given throughout.*) Separate statements are to be furnished in the replies to all the headings under this Schedule for business at other than European rates.

1. The published table or tables of premiums for assurances for the whole term of life and for endowment assurances which are in use at the date abovementioned.

2. The total amount assured on lives for the whole term of life which are in existence at the date abovementioned, distinguishing the portions assured with immediate profits, with deferred profits and without profits, stating separately the total reversionary bonuses and specifying the sums assured for each year of life from the youngest to the oldest ages, the basis of division as to immediate and deferred profits being stated.

3. The amount of premiums receivable annually for each year of life after deducting the abatements made by the application of bonuses in respect of the respective assurances mentioned under Heading No. 2, distinguishing ordinary from extra premiums. A separate statement is to be given of premiums payable for a limited number of years, classified according to the number of years' payments remaining to be made.

4. The total amount assured under endowment assurances, specifying sums assured and office premiums separately in respect of each year in which such assurances will mature for payment. The reversionary bonuses must also be separately specified, and the sums assured with immediate profits, with deferred profits and without profits separately returned.

5. The total amount assured under classes of assurance business, other than assurances dealt with under questions 2 and 4, distinguishing the sums assured under each class and stating separately the amount assured with immediate profits, with deferred profits, and without profits, and the total amount of reversionary bonuses.

6. The amount of premiums receivable annually in respect of each such special class of assurance mentioned under Heading No. 5, distinguishing ordinary from extra premiums.

7. The total amount of premiums which has been received from the commencement upon pure endowment policies which are in force at the date abovementioned.

8. The total amount of immediate annuities on lives, distinguishing the amounts for each year of life, and distinguishing male and female lives.

9. The amount of all annuities on lives other than those specified under Heading No. 8, distinguishing the amount of annuities payable under each class, and the amount of premiums annually receivable.

10. The average rate of interest yielded by the assets, whether invested or uninvested, constituting the life assurance fund of the company, calculated upon the mean fund of each year during the period since the last investigation, without deduction of income-tax.

It must be stated whether or not the mean fund upon which the average rate of interest is calculated includes reversionary investments.

11. A table of minimum values, if any, allowed for the surrender of policies for the whole term of life and for endowments and endowment assurances, or a statement of the method pursued in calculating such surrender values, with instances of the application of such method to policies of different standing and taken out at various interval ages from the youngest to the oldest.

## THE SIXTH SCHEDULE.

(*See* section 24 and 25.)

### RULES FOR VALUING ANNUITIES, LIFE POLICIES AND LIABILITIES.

*Rule for valuing an annuity.*

An annuity shall be valued according to the tables used by the company which granted such annuity at the time of granting the same, and, where such tables cannot be ascertained or adopted to the satisfaction of the Court, then according to such rate of interest and table of mortality as the Court may direct.

*Rule for valuing a policy.*

The value of the policy is to be the difference between the present value of the reversion in the sum assured according to the contingency upon which it is payable, including any bonus or addition thereto made before the commencement of the winding-up, and the present value of the future annual premiums.

In calculating such present values interest is to be assumed at such rate, and the rate of mortality according to such tables, as the Court may direct.

The premium to be calculated is to be such premium as according to the said rate of interest and rate of mortality is sufficient to provide for the risk incurred by the office in issuing the policy, exclusive of any addition thereto for office expenses and other charges.

*Rule for valuing a liability.*

The liquidator, in the case of all persons appearing by the books of the company to be entitled to or interested in policies granted by such company, is to ascertain the value of the liability of the company to each such person, and give notice of such value to such persons in such manner as the Court may direct, and any person to whom notice is so given shall be bound by the value so ascertained unless he gives notice of his intention to dispute such value in manner and within a time to be prescribed by a rule or order of the Court.

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# THE PROVIDENT INSURANCE SOCIETIES ACT.

## CONTENTS.

*Preliminary.*

*Sections.*

1. * * * *
2. Definitions.
3. Application of Act.

*General.*

4. Insurable interest.
5. Provisions to be made by rules.
6. Registration of Provident Insurance Societies.
7. Unregistered society not to receive premium or contribution.
8. Amendment of rules.
9. Right to supply of copies of rules.
10. Register of members.
11. Publication of authorized, subscribed and paid-up capital.
12. Office.

*Sections.*

13. Revenue-account and balance-sheet.
14. Delivery and publication of revenue-account, etc.
15. Record of insurances effected on life other than life of person insuring.
16. Inspection of books.
17. Inquiry.
18. Cancellation of registry.
19. Liquidators.

*Appeals.*

20. Appeals.

*Offences and Procedure.*

21. Penalty for non-compliance with Act.
22. Penalty for falsifying documents.
23. Cognizance of offences.

*Rules.*

24. Rules.

*Miscellaneous.*

25. Saving of existing policies.
26. Power of President to exempt from provisions of the Act.

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## THE PROVIDENT INSURANCE SOCIETIES ACT.

[INDIA ACT V, 1912.] (18th March, 1912.)

*Preliminary.*

1. * * * *

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(1) "Court" means the principal civil Court of original jurisdiction in a district, and includes the High Court in the exercise of its ordinary original civil jurisdiction:

(2) "financial year" means each period of twelve months at the end of which the balance of the accounts of any Provident Insurance Society is struck, or, if no such balance is struck, then the calendar year:

(3) "life assurance business" means the issue of, or the undertaking of liability under, policies of assurance upon human life, or the granting of annuities upon human life:

(4) "policy of assurance on human life" means any instrument by which the payment of money is assured on death (except death by accident only) or the happening of any contingency dependent on human life, or any instrument evidencing a contract which is subject to payment of premiums for a term dependent on human life:

(5) "policy-holder" means the person who for the time being is the legal holder of the policy for securing the contract with the Provident Insurance Society:

(6) where a Provident Insurance Society grants annuities upon human life, "policy" includes the instrument evidencing the contract to pay such an annuity, and "policy-holder" includes annuitant:

(7) "prescribed" means prescribed by rules made under this Act:

(8) "Provident Insurance Society" means any person who, or body of persons whether corporate or unincorporate which, receives premiums or contributions for insuring money to be paid on the birth, marriage or death of any person or on the happening of such other contingency or class of contingency as may be prescribed: and

(9) "Registrar" means any person who may be appointed by the President of the Union to perform the duties of the Registrar under this Act.

**Application of Act.**

**3.** Nothing in this Act shall apply to any Provident Insurance Society carrying on life assurance business, which undertakes to pay on any life assurance policy, or series of life assurance policies on any one life, an annuity exceeding fifty rupees or a gross sum exceeding five hundred rupees, or which receives or undertakes to receive by way of premium or contribution for life assurance on any one life any sum exceeding two hundred and fifty rupees where the said premiums or contributions are payable for one year or a limited number of years, or exceeding twenty-five rupees in any one year where the premiums or contributions are unlimited in number and terminable on death or the occurrence of an uncertain event:

Provided that, in determining whether this Act applies to any Provident Insurance Society carrying on life assurance business, contracts entered into by the society before the 18th March, 1912,[1] shall not be taken into consideration.

*General.*

**Insurable interest.**

**4.** No Provident Insurance Society shall receive any premium or contribution for insuring money to be paid on the death of any person other than the person paying such premium or contribution or the wife, husband, child, parent, brother or sister of such person.

**Provisions to be made by rules.**

**5.** Every Provident Insurance Society shall by its rules—

(*a*) specify the object, name and registered office of the society;

(*b*) prescribe the proportion of the annual income of the society derived from premiums or contributions which may be disbursed for the expenses of management of the society;

(*c*) in the case of a society which by rule or practice divides any part of the funds thereof, provide for the payment of all debts due

[1] Date of commencement of this Act.

by the society existing at the time of division before any such division has taken place; and

(*d*) provide for any other matters which may be prescribed.

Registration of Provident Insurance Societies.

**6.** (*1*) Every Provident Insurance Society shall, before it receives any premium or contribution, apply to the Registrar for that part of the Union of Burma in which the office of the society is situate for registration under this Act, and shall deliver to him a copy of the rules of the society.

(*2*) The Registrar shall, on being satisfied that such rules comply with the provisions of this Act, acknowledge the receipt of the rules and register the society and its rules.

(*3*) If the Registrar is not satisfied that the rules or any of them comply with the provisions of this Act, he shall send to the Provident Insurance Society a notice by post stating in what respect such rule or rules is or are not in accordance with the provisions of this Act, and calling upon such society to deliver to him an amended rule or rules within sixty days.

(*4*) On receipt of a notice under sub-section (*3*), the Provident Insurance Society may within sixty days deliver to the Registrar an amended rule or rules in conformity with this Act, and the Registrar shall thereupon acknowledge the receipt of the rules and register the society and its rules as hereinbefore provided.

Unregistered society not to receive premium or contribution.

**7.** No Provident Insurance Society shall receive any premium or contribution, unless it is registered in accordance with the provisions of this Act.

Amendment of rules.

**8.** (*1*) No amendment of any rule of a Provident Insurance Society shall be valid until the same has been registered under this Act, for which purpose a copy of the amended rule shall be sent to the Registrar.

(*2*) The Registrar shall, on being satisfied that any amendment of a rule is not contrary to the provisions of this Act, issue to the society an acknowledgment of the registration of the same.

Right to supply of copies of rules.

**9.** Every Provident Insurance Society shall, on demand, deliver free of cost to any member of the society a copy of the rules of the society, and to any person other than a member a copy of such rules on the payment of a sum not exceeding one rupee.

Register of members.

**10.** Every Provident Insurance Society which is not a company, as defined in section 2 of the Burma Companies Act, shall cause to be kept in the prescribed form a register of the names and addresses of its members.

Publication of authorized, subscribed and paid-up capital.

**11.** Where any notice, advertisement or other official publication of a Provident Insurance Society contains a statement of the amount of the authorized capital of the society, the publication shall also contain a statement of the amount of the capital which has been subscribed and the amount paid up.

**12.** Every Provident Insurance Society which is not a company, as defined in section 2 of the Burma Companies Act, shall have an office on the outside of which it shall display and keep displayed its name in a conspicuous position in legible letters, to which all communications and notices may be addressed, and shall give notice to the Registrar of the situation of such office and of any change therein. Office.

**13.** Every Provident Insurance Society shall, at the expiration of each financial year, prepare a revenue-account and balance-sheet in the prescribed form and verified in the prescribed manner, and shall cause them to be audited by an auditor possessing the prescribed qualifications. Revenue-account and balance-sheet.

**14.** Every Provident Insurance Society shall, within six months of the expiration of each financial year, deliver to the Registrar the revenue-account and balance-sheet required by section 13, and shall publish them in the prescribed manner. Delivery and publication of revenue-account, etc.

**15.** Every Provident Insurance Society shall maintain in the prescribed form a record of every insurance effected on a life other than the life of the person insuring, and shall deliver a copy of such record to the Registrar, together with the balance-sheet and revenue-account. Record of insurances effected on life other than life of person insuring.

**16.** The books of every Provident Insurance Society shall at all reasonable hours be open to inspection by the Registrar, or by any person appointed by him in this behalf, or by any member of the society. Inspection of books.

**17.** (*1*) The Registrar may, if he thinks fit, of his own motion, and shall, upon the application of ten or more members or policy-holders of a Provident Insurance Society, hold or direct an inquiry to be held by an actuary possessing the prescribed qualifications appointed by him by order in writing in this behalf as to the solvency of any Provident Insurance Society or as to the manner in which the business of any such society is conducted. Inquiry.

(*2*) An application to the Registrar under sub-section (*1*) shall be supported by such evidence as the Registrar may require for the purpose of showing that the applicants have good reason for applying for an inquiry.

(*3*) The Registrar may require the applicants under sub-section (*1*) to give such security as he thinks fit for the costs of the proposed inquiry before such an inquiry is held.

(*4*) All expenses of, and incidental to or preliminary to, any inquiry made on application as aforesaid shall be defrayed by the applicants therefor or out of the funds of the society or by the members or officers of the society in such proportions as the Registrar may direct by order in writing.

(*5*) An order made under sub-section (*4*) shall on application be enforced by any civil Court having local jurisdiction in the same manner as a decree of such Court.

(*6*) A person holding an inquiry under this section shall have access to all the books and documents of the society, and shall have power to call upon the society and the officers of the society to furnish such statements and other information in relation to its business as he may direct.

(*7*) The result of the inquiry shall be communicated to the society and to the applicants (if any).

Cancellation of registry.

**18.** When an inquiry has been held under section 17, the Registrar may, if he is satisfied—

(*a*) that the society is insolvent, or must necessarily become so, or

(*b*) that the business of any such society is conducted fraudulently or not in accordance with the rules thereof,

after giving previous notice in writing in such manner as he thinks fit specifying briefly the grounds of the proposed cancellation, cancel the registry of the society.

Liquidators.

**19.** (*1*) Where the registry of a Provident Insurance Society is cancelled in accordance with the provisions of section 18, the Registrar may appoint a liquidator to wind up the society.

(*2*) A liquidator appointed under sub-section (*1*) shall have power—

(*a*) to institute or defend any legal proceedings on behalf of the society by his name of office;

(*b*) to determine the contribution to be made by members of the society, respectively, to the assets of the society;

(*c*) to investigate all claims against the society and to decide questions of priority arising between claimants;

(*d*) to determine by what persons and in what proportions the costs of the liquidation are to be borne; and

(*e*) to give such directions in regard to the collection and distribution of the assets of the society as may appear to him to be necessary for winding up the affairs of the society.

(*3*) Subject to any rules of procedure made under this Act, a liquidator appointed under this section shall, in so far as such powers are necessary to carry out the purposes of this section, have power to summon and enforce the attendance of witnesses and to compel the production of documents by the same means and as far as may be in the same manner as is provided in the case of a civil Court by the Code of Civil Procedure.

(*4*) Orders made under this section shall on application be enforced as follows:—

(*a*) when made by a liquidator, by any civil Court having local jurisdiction in the same manner as a decree of such Court;

(*b*) when made by the Court on appeal, in the same manner as a decree of the Court.

*Appeals.*

Appeals.

**20.** (*1*) An appeal shall lie to the Court within thirty days—

(*a*) from an order of the Registrar refusing to register a Provident Insurance Society or any rules or amendments of rules of such society ;

(*b*) from an order of the Registrar cancelling the registry of a society ;

(*c*) from an order made by a liquidator appointed under section 19.

(*2*) Save as hereinbefore expressly provided, orders made under this Act shall be final and conclusive.

*Offences and Procedure.*

Penalty for non-compliance with Act.

**21.** Any Provident Insurance Society which makes default in complying with any of the requirements of this Act, and every director, manager or secretary or other officer or agent of the society, who is knowingly a party to the default, shall be punishable with fine which may extend to five hundred rupees, or, in the case of a continuing default, with fine which may extend to two hundred and fifty rupees for every day during which the default continues.

Penalty for falsifying documents.

**22.** If any register, account, balance-sheet or other document required by this Act is false in any particular to the knowledge of any person who signs it, such person shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

Cognizance of offences.

**23.** No Court inferior to that of a Magistrate of the first class shall try any offence against this Act.

*Rules.*

Rules.

**24.** (*1*) The President of the Union may make rules to carry out the purposes of this Act.

(*2*) In particular, and without prejudice to the generality of the foregoing power, such rules may prescribe—

(*a*) contingencies or class of contingencies and thereby extend the application of this Act to the receipt of premiums or contributions for insuring money to be paid on the happening of such contingencies or class of contingencies ;

(*b*) the matters in respect of which a society shall make rules ;

(*c*) the form of any account, return or register required by this Act, and the manner in which any such account, return or register shall be verified ;

(*d*) the fees to be charged for matters transacted under this Act, and the manner in which the same are to be collected ;

(*e*) the qualification of auditors and actuaries under this Act ;

(*f*) the manner in which any document required to be published by this Act shall be published ; and

(*g*) the procedure to be followed by liquidators under this Act.

(*3*) The power to make rules conferred by this Act is subject to the condition of the rules being made after previous publication.

(*4*) All rules made under this Act shall be published in the Gazette, and on such publication shall have effect as if enacted therein.

*Miscellaneous.*

Saving of existing policies.

**25**. No policy effected before the 18th March, 1912 [1], with a Provident Insurance Society shall be deemed to be void by reason only that the insurance is not authorized by this Act.

Power of President to exempt from provisions of the Act.

**26**. The President of the Union may, by notification in the Gazette, and subject to such conditions and restrictions as he thinks fit, exempt any Provident Insurance Society or class of Provident Insurance Societies from all or any of the provisions of this Act.

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## THE PROVIDENT FUNDS ACT.

[INDIA ACT XIX, 1925.] (1st April, 1926.)

**1.** * * * *

Definitions.

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

(*a*) "compulsory deposit" means a subscription to, or deposit in, a Provident Fund which, under the rules of the Fund, is not, until the happening of some specified contingency, repayable on demand otherwise than for the purpose of the payment of premia in respect of a policy of life insurance, or the payment of subscriptions or premia in respect of a family pension fund, and includes any contribution and any interest or increment which has accrued under the rules of the Fund on any such subscription, deposit or contribution, and also any such subscription, deposit, contribution, interest or increment remaining to the credit of the subscriber or depositor after the happening of any such contingency;

(*b*) "contribution" means any amount credited in a Provident Fund, by any authority administering the Fund, by way of addition to a subscription to, or deposit or balance at the credit of an individual account in, the Fund; and "contributory Provident Fund" means a Provident Fund the rules of which provide for the crediting of contributions;

(*c*) "dependant" means any of the following relatives of a deceased subscriber to, or a depositor in, a Provident Fund, namely, a wife, husband, parent, child, minor brother, unmarried sister

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[1] Date of commencement of this Act.

and a deceased son's widow and child, and, where no parent of the subscriber or depositor is alive, a paternal grand-parent;

(*d*) "Government Provident Fund" means a Provident Fund, other than a Railway Provident Fund, constituted by the authority of the Government for any class or classes of its employees or of persons employed in educational institutions or employed by bodies existing solely for educational purposes;

(*e*) "Provident Fund" means a fund in which subscriptions or deposits of any class or classes of employees are received and held on their individual accounts, and includes any contributions and any interest or increment accruing on such subscriptions, deposits or contributions under the rules of the Fund;

(*f*) "railway administration" means any authority administering a railway or tramway under any enactment in force in the Union of Burma regulating railways or tramways, or under contract with the Government [* * *][1];

(*g*) "Railway Provident Fund" means a Provident Fund constituted by the authority of a railway administration for any class or classes of its employees.

Protection of compulsory deposits.

**3.** (*1*) A compulsory deposit in any Government or Railway Provident Fund shall not in any way be capable of being assigned or charged and shall not be liable to attachment under any decree or order of any civil, revenue or criminal Court in respect of any debt or liability incurred by the subscriber or depositor, and neither the Official Assignee nor any receiver appointed under the Burma Insolvency Act shall be entitled to, or have any claim on, any such compulsory deposit.

(*2*) Any sum standing to the credit of any subscriber to, or depositor in, any such Fund at the time of his decease and payable under the rules of the Fund to any dependant of the subscriber or depositor, or to such person as may be authorized by law to receive payment on his behalf, shall, subject to any deduction authorized by this Act and, save where the dependant is the widow or child of the subscriber or depositor, subject also to the rights of an assignee under an assignment made before the 1st April, 1926,[2] vest in the dependant, and shall, subject as aforesaid, be free from any debt or other liability incurred by the deceased or incurred by the dependant before the death of the subscriber or depositor.

Provisions regarding repayments.

**4.** (*1*) When under the rules of any Government or Railway Provident Fund the sum standing to the credit of any subscriber or depositor, or the balance thereof after the making of any deduction authorized by this Act, has become payable, the officer whose duty it is to make the payment

[1] The words "or the Railway Board" were omitted by the Union of Burma (Adaptation of Laws) Order, 1948.

[2] Date of commencement of this Act.

shall pay the sum or balance, as the case may be, to the subscriber or depositor, or, if he is dead, shall—

(*a*) if the sum or balance, or any part thereof, vests in a dependant under the provisions of section 3, pay the same to the dependant or to such person as may be authorized by law to receive payment on his behalf; or

(*b*) if the whole sum or balance, as the case may be, does not exceed five thousand rupees, pay the same, or any part thereof which is not payable under clause (*a*), to any person nominated to receive it under the rules of the Fund, or, if no person is so nominated, to any person appearing to him to be otherwise entitled to receive it; or

(*c*) in the case of any sum or balance, or any part thereof, which is not payable to any person under clause (*a*) or clause (*b*) pay the same—

(i) to any person nominated to receive it under the rules of the Fund, on production by such person of probate or letters of administration evidencing the grant to him of administration to the estate of the deceased or a succession certificate entitling the holder thereof to receive payment of such sum, balance or part, or

(ii) where no person is so nominated, to any person who produces such probate, letters or certificate:

Provided that, where the whole or any part of any sum standing to the credit of the subscriber or depositor has been assigned to any other person before the 1st April, 1926,[1] and notice in writing of the assignment has been received by the officer from the assignee, the officer shall, after making any deduction authorized by this Act and any payment due under clause (*a*) to or on behalf of the widow or children of the subscriber or depositor—

(i) if the subscriber or depositor or, if he is dead, the person to whom in the absence of any valid assignment the sum or balance would be payable under this sub-section gives his consent in writing, pay the sum or part or the balance thereof, as the case may be, to the assignee, or

(ii) if such consent is not forthcoming, withhold payment of the sum, part or balance, as the case may be, pending a decision of a competent civil Court as to the person entitled to receive it.

(*2*) The making of any payment authorized by sub-section (*1*) shall be a full discharge to the Government or the railway administration, as the case may be, from all liability in respect of so much of the sum standing to the credit of the subscriber or depositor as is equivalent to the amount so paid.

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[1] Date of commencement of this Act.

Rights of nominees.

**5.** (*1*) Subject to the provisions of this Act, but otherwise notwithstanding anything contained in any law for the time being in force or any disposition, whether testamentary or otherwise, by a subscriber to, or depositor in, a Government or Railway Provident Fund of the sum standing to his credit in the Fund, or of any part thereof, any nomination, duly made in accordance with the rules of the Fund, which purports to confer upon any person the right to receive the whole or any part of such sum on the death of the subscriber or depositor, shall be deemed to confer such right absolutely until such nomination is varied by another nomination made in like manner or is expressly cancelled by the subscriber or depositor by notice given in such manner and to such authority as is prescribed by those rules.

(2) Any such person shall, on the death of the subscriber or depositor, be entitled to the grant of a succession certificate entitling him to receive payment of such sum or part, and such certificate shall not be deemed to be invalidated or superseded by any grant to any other person of probate or letters of administration to the estate of the deceased.

Power to make deductions.

**6.** When the sum standing to the credit of any subscriber or depositor in any Government or Railway Provident Fund which is a contributory Provident Fund becomes payable, there may, if the authority specified in this behalf in the rules of the Fund so directs, be deducted therefrom and paid to Government or the Railway administration, as the case may be—

(*a*) any amount due under a liability incurred by the subscriber or depositor to Government or the Railway Administration, but not exceeding in any case the total amount of any contributions credited to the account of the subscriber or depositor and of any interest or increment which has accrued on such contributions ; or

(*b*) where the subscriber or depositor has been dismissed from his employment for any reasons specified in this behalf in the rules of the Fund, or where he has resigned such employment within five years of the commencement thereof, the whole or any part of the amount of any such contributions, interest and increment.

Protection for acts done in good faith.

**7.** No suit or other legal proceeding shall lie against any person in respect of anything which is in good faith done or intended to be done under this Act.

Power to apply the Act to other Provident Funds.

**8.** (*1*) The President of the Union may, by notification in the Gazette, direct that the provisions of this Act shall apply to any Provident Fund established for the benefit of its employees by any local authority within the meaning of the Local Authorities Loans Act, and, on the making of such declaration, this Act shall apply accordingly as if such Provident Fund were a Government Provident Fund and such local authority were the Government.

(*2*) The President of the Union may, by notification, direct that the provisions of this Act shall apply to any Provident Fund established for the

benefit of the employees of the University of Rangoon or of any college affiliated thereto, or of any other public institution.

Savings as to estates of soldiers.

**9.** Nothing in section 4 or section 5 shall apply to money belonging to any estate for the purpose of the administration of which the Regimental Debts Act, 1893, [would have applied if the Constitution of the Union had not come into operation.][1] 56 and 57 Vict., c. 5.

## THE CONTRIBUTORY PROVIDENT FUNDS ACT.*

[BURMA ACT VII, 1943.] (8th December, 1941.)

Whereas it is expedient to make provision for safeguarding, for the benefit of the subscribers and their dependants, the assets of certain Contributory Provident Funds established in the Union of Burma; * * * *

It is hereby enacted as follows:—

Short title, commencement and extent.

**1.** (*1*) This Act may be called the Contributory Provident Funds Act, 1943.

(*2*) It shall be deemed to have come into force on the 8th day of December 1941, and shall continue in force until the President of the Union, by notification, declares that it shall cease to be operative.

Definitions.

**2.** In this Act—

(1) "dependant" means and includes any relative or nominee of a deceased subscriber to the Provident Fund who, under the rules of the Fund, is or may become entitled to receive the whole or any portion of the sum standing to the credit of the subscriber;

(2) "employer" means any person who, by himself or through Trustees, contributes to a Provident Fund maintained for the benefit of his employees;

(3) "Provident Fund" means a fund in which subscriptions or deposits of any class or classes of employees are received and held on their individual accounts, and includes any contributions and any interest or increment accruing on such subscriptions, deposits or contributions under the rules of the Fund;

(4) "subscriber" means any person who, in accordance with the rules of the Provident Fund, subscribes to or deposits in the Fund and thereby is entitled to participate in the Fund;

(5) "Trustees" means the Trustees of the Provident Fund, and includes any person or persons acting in similar capacity in relation to the Fund.

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

* Published in Chief Secretary's Office Notification No. 54, dated 27th February 1943 and republished in *Burma Gazette*, 1946, Part I, page 135.

India XIX, 1925.

Notification of Provident Funds.

**3.** In the case of any Provident Fund established in the Union of Burma to which the provisions of the Provident Funds Act are not applicable, and which is such that the subscribers to the Fund have no claim upon the general assets of the employer, the President of the Union may, by notification, declare such Provident Fund to be a "notified Provident Fund" as from a specified date, whether prospectively or retrospectively, and the provisions of this Act shall thereupon be deemed to apply to such Fund as from such date.

Undertaking by Trustees or employer.

**4.** As a condition to the issue of such notification the President of the Union may require from the Trustees or from the employer such undertakings as he may think fit, and in particular an undertaking that the Trustees will pay from the assets of the Fund to the subscribers or their dependants, debarred by reason of the provisions of this Act from receiving payment from the Trustees in accordance with the rules of the Fund, amounts computed in a specified manner.

Rights of continuing employees, and priority.

**5.** In making payments in accordance with any undertaking given in pursuance of section 4 the Trustees shall reserve a portion of the Fund sufficient, at the time of making such payments as aforesaid, to make payments similarly computed to those subscribers who are still in the employment of the employer, or whose whereabouts are unknown or to whom immediate payment is for any other reason impracticable; and no subscriber whose employment terminated on or after the eighth day of December, 1941, shall be entitled to any priority over other subscribers by reason of the date on which his employment terminated.

Release of Trustees from liability.

**6.** (*1*) On the issue of a notification under section 3, but subject to such undertakings as may have been given in pursuance of section 4, the Trustees of a notified Provident Fund or the employer shall, notwithstanding anything contained in the rules of the Fund, be released from liability to make payments out of the Fund to any subscriber, or to the dependants of any subscriber.

(*2*) Such exemption from liability shall continue so long as the realization of any of the securities belonging to the Provident Fund would involve their disposal at prices below the cost of purchase; but nothing in this Act shall be deemed to prohibit the Trustees from realizing securities at prices which are not below the cost of purchase, or from making payments *pro rata* to subscribers or their dependants in excess of the undertakings given under section 4.

Modification of undertakings, and cancellation of notification.

**7.** The President of the Union may at any time require any modification of the undertakings given under section 4, and may rescind or cancel any notification issued under section 3.

Fund to continue in existence.

**8.** Notwithstanding anything contained in the rules of the Fund, a Provident Fund notified under this Act shall be deemed to continue in existence until such notification is rescinded or cancelled.

Bar to jurisdiction.

**9.** No suit or other proceeding shall lie against the Trustees of a notified Provident Fund or against the employer for any of the reliefs to which a subscriber or the dependants of a subscriber might have been entitled but for this Act.

## ပြည်ထောင်စုအာမခံစံနစ်အဖွဲ့အက်ဥပဒေ။

[၁၉၅၀ ပြည့်နှစ်၊ အက်ဥပဒေအမှတ် ၁၆။] (၁၉၅၀ ပြည့်နှစ်၊ မေလ ၁ ရက်။)

အောက်ပါအတိုင်း အက်ဥပဒေအဖြစ် ပြဋ္ဌာန်းလိုက်သည်။

၁။ ။(၁) ဤအက်ဥပဒေကို၊ ၁၉၅၀ ပြည့်နှစ်၊ ပြည်ထောင်စု အာမခံစံနစ်အဖွဲ့ အက်ဥပဒေဟုခေါ်ရမည်။

(၂) ဤအက်ဥပဒေသည်၊ နိုင်ငံတော်သမတ က အမိန့်ထုတ်ပြန်ကျေညာ၍ သတ်မှတ်သောနေ့ရက်တွင် [*] အာဏာတည်ရမည်။

၂။ ။ဤအက်ဥပဒေတွင်၊ အကြောင်းအရာနှင့်ဖြစ်စေ၊ ရှေနောက်စကားတို့၏ အဓိပ္ပါယ်နှင့်ဖြစ်စေ မဆန့်ကျင်လျှင်—

(က) "အဖွဲ့" ဆိုသည်မှာ၊ ဤအက်ဥပဒေအရ ဖွဲ့စည်းသော ပြည်ထောင်စုအာမခံစံနစ်အဖွဲ့ကိုဆိုလိုသည်။

(ခ) "ဒါရိုက်တာလူကြီး" ဆိုသည်မှာ၊ ဤအက်ဥပဒေအရ ခန့်ထားသော အဖွဲ့ဝင်ကိုဆိုလိုသည်။

(ဂ) "ပြည်ထောင်စု ပြည်သူ့ဝန်ထမ်း" ဆိုသည်မှာ၊ ပြည်ထောင်စု ပြည်သူ့ဝန်ထမ်းအဖွဲ့၌ဖြစ်စေ၊ ပြည်ထောင်စု အဖွဲ့ဝင် ပြည်နယ် ပြည်သူ့ဝန်ထမ်းအဖွဲ့၌ဖြစ်စေ၊ အမြဲတမ်း ရာထူးထမ်းရွက်သူကို သော်၎င်း၊ ရာထူးခန့်သော အရာရှိက အမြဲတမ်းဖြစ်တန်ရာသည်ဟု ထင်မြင်သောရာထူးတွင် ခန့်ထားခြင်းခံရသူကိုသော်၎င်း ဆိုလိုသည်။

(ဃ) "ပြည်သူ ပြည်သား" ဆိုသည်မှာ၊ ပြည်ထောင်စု ပြည်သူ့ဝန်ထမ်းမဟုတ်သူကို ဆိုလိုသည်။

(င) "အသက်အာမခံ" ဆိုသည်မှာ၊ ဤအက်ဥပဒေပါ ပြဋ္ဌာန်းချက်များနှင့်အညီ လူ့အသက်အတွက် ထားရှိသောအာမခံ ပေါ်လီစီအရ ထုတ်ပေးထိုက်သော ပေါ်လီစီငွေထုတ်ပေးရန် တာဝန်ယူခြင်းကိုသော်၎င်း၊ ထုတ်ပေးထိုက်သော သက်ဆိုးတိုင် ရာသက်ပန်နှစ်ကြေး (annuity) ကိုထုတ်ပေးရန်တာဝန်ယူခြင်းကိုသော်၎င်း ဆိုလိုသည်။

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[*] ၁၉၅၀ ပြည့်နှစ်၊ မေလ ၁ ရက်။ ။မြန်မာနိုင်ငံပြန်တမ်း၊ ၁၉၅၀ ပြည့်နှစ်၊ အပိုင်း ၁၊ စာမျက်နှာ ၃၄၂ တွင်ကြည့်။

(စ) ''ထောက်ပံ့မှုအာမခံ'' ဆိုသည်မှာ၊ နိုင်ငံသားစု အသီးသီးအတွက် အာမခံစံနှစ်ပူအတိုင်း၊ မုချသုံးစွဲ ဆောင်ရွက်ရသည်လည်းဖြစ်၍ ဝမ်းစာရှာအား ဆုံးရှုံးခြင်းကြောင့် သော်၎င်း၊ မကျန်းမမာခြင်းကြောင့် သော်၎င်း၊ အလုပ်လက်မဲ့ဖြစ်ခြင်းကြောင့် သော်၎င်း၊ အိုမင်းမစွမ်းဖြစ်ခြင်းကြောင့်သော်၎င်း၊ မိမိ၏ မိသားစုကို လောက်ငစွာ မထောက်ပံ့နိုင်ခြင်းကြောင့် သော်၎င်း တနည်းနည်း ချို့ငဲ့သူများအတွက် အကျိုးခံစားခွင့် ထားရှိသည်လည်းဖြစ်သော စီမံချက်ကိုဆိုလို၍ ထိုစီမံချက်လည်း ပါဝင်သည်။

(ဆ) ''အထွေထွေအာမခံ'' ဆိုသည်မှာ၊ အသက်အာမခံ၊ ထောက်ပံ့မှုအာမခံတို့မှအပ၊ အခြားအာမခံကိုဆိုလိုသည်။

[၀](ဇ) ''မိသားစု'' ဆိုသည့်စကားရပ်တွင်—

(၁) ဤအက်ဥပဒေအရ အာမခံထားသူသည် ယောက်ျားဖြစ်လျှင်၊ ထိုသူ၏ တရားဝင်မယားနှင့် ကလေးများ။

(၂) ဤအက်ဥပဒေအရ အာမခံထားသူသည် မိန်းမဖြစ်လျှင်၊ ထိုသူ၏တရားဝင်လင်နှင့်ကလေးများ။

(၃) ဤအက်ဥပဒေအရ အာမခံထားသူ၏ မိခင်ဘခင်။

(၄) ဤအက်ဥပဒေအရ အာမခံထားသူက မှီခိုအားထားခဲ့ရသည့်၊ ထိုမဟုတ်ငှင်းအပေါ်တွင် မှီခိုအားထားနေသည့် နီးစပ်သော ဆွေမျိုးညာတိများပါဝင်သည်။

[၂]၃။ ။ဤအက်ဥပဒေပါပြဋ္ဌာန်းချက်များနှင့်ငှင်း၊ ဤအက်ဥပဒေအရပြုသည့် နည်းဥပဒေများနှင့်ငှင်း၊ မဆန့်ကျင်စေဘဲ—

(က) ပြည်ထောင်စု၏ ကုန်းတပ်၊ ရေတပ်၊ လေတပ်တို့တွင် အမှုထမ်းနေသော သူများမှအပ၊ အခြားပြည်ထောင်စု ပြည်သူ့ဝန်ထမ်းတိုင်းသည်၊ နိုင်ငံတော်သမတ က၊ အမိန့်ကြော်ငြာစာဖြင့်သတ်မှတ်သောနေ့ရက်မှစ၍ အသက်အာမခံပြုလုပ်ရမည်။ ယင်းသို့သတ်မှတ်ရာတွင် ပြည်ထောင်စု ပြည်သူ့ဝန်ထမ်းမျိုးမည် ခွဲခြား၍သော်ငှင်း ဒေသခွဲခြား၍သော်ငှင်း နေ့ရက်များသတ်မှတ်နိုင်သည်။

(ခ) ပြည်ထောင်စု၏ ကုန်းတပ်၊ ရေတပ်၊ လေတပ်တို့တွင် အမှုထမ်းနေသော သူများနှင့် ပြည်ထောင်စု ပြည်သူ့ဝန်ထမ်း ဆိုသည့်စကားရပ်တွင် အကျုံးမဝင်သော ယာယီရာထမ်းမှုထင်း အသီးသီးမှာ မိမိသဘောအလျောက် အသက်အာမခံပြုလုပ်လိုလျှင်၊ ပြုလုပ်နိုင်ခွင့်ရှိရမည်။ ယင်းသို့ အသက်အာမခံပြုလုပ်ရာ၌ ထိုသူသည် ပြည်ထောင်စု ပြည်သူ့ဝန်ထမ်းတဦး ရရှိသည့်အခွင့်အရေးအားလုံးကို ရရှိစေရမည်။

(ဂ) ပြည်သူ ပြည်သားတဦးမှာ၊ မိမိသဘောအလျောက် အသက်အာမခံပြုလုပ်လိုလျှင် ပြုလုပ်နိုင်ခွင့်ရှိရမည်။

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[၀] ၁၉၅၀ ပြည့်နှစ်၊ အက်ဥပဒေအမှတ် ၄၄ အရ၊ အစားထည့်သွင်းသည်။

[၂] ၁၉၅၂ ခုနှစ်၊ အက်ဥပဒေအမှတ် ၁၅ အရ၊ အစားထည့်သွင်းသည်။

ခြွင်းချက်။ ။သို့ရာတွင် နိုင်ငံတော် သမတ သည်၊ မိမိက ဤကိစ္စအလို့ငှါသတ်မှတ်သော စည်းကမ်းချက်များအရ၊ ပြည်ထောင်စု ပြည်သူ့ဝန်ထမ်းတဦးအား အပိုဒ် (က) ၏ ပြဋ္ဌာန်းချက်များမှ ကင်းလွတ်ခွင့်ပြုနိုင်သည်။

၄။ ။(၁) နိုင်ငံတော်သမတ ကခန့်ထားသော ဥက္ကဋ္ဌပါဝင်သည့် ဒါရိုက်တာလူကြီးအနည်းဆုံး ငါးဦး၊ အများဆုံးကိုးဦးဖြင့်၊ ပြည်ထောင်စု အာမခံစံနစ်အဖွဲ့ဟူ ခေါ်တွင်ရမည့်အဖွဲ့ကို ဖွဲ့စည်းရမည်။

(၂) ဤအဖွဲ့သည်၊ တရားဝင်အဖွဲ့ဖြစ်ရမည်။

(၃) ဒါရိုက်တာလူကြီးများ၏ ရာထူးသက်တမ်းသည်၊ နိုင်ငံတော်သမတ က နည်းဥပဒေများ [၁] ဖြင့်သတ်မှတ်သည့်အတိုင်းဖြစ်ရမည်။

(၄) ပြည်ထောင်စု ပြည်သူ့ဝန်ထမ်းမဟုတ်သော ဒါရိုက်တာလူကြီးများအား၊ ဤကိစ္စအလို့ငှါ နိုင်ငံတော်သမတ ကသတ်မှတ်သောအခန့်ခ စရိတ်ကြေးငွေများကိုပေးရမည်။

၅။ ။အာမခံစံနစ်နှင့်သက်ဆိုင်သော ကျွမ်းကျင်မှုလိုသည့်ကိစ္စများအတွက်၊ အကြံဉာဏ်ပေးစေရန် ကျွမ်းကျင်သူတဦးဦးကို ဤအဖွဲ့သည် နိုင်ငံတော် သမတ ၏ကြိုတင်သဘောတူချက်ဖြင့် ခန့်ထားနိုင်သည့်ပြင်၊ ထိုကျွမ်းကျင်သူအား၊ နည်းဥပဒေဖြင့် နိုင်ငံတော်သမတက သတ်မှတ်သော အခကြေးငွေကိုလည်း ပေးနိုင်သည်။

၆။ ။(၁) ဤအဖွဲ့သည်၊ နိုင်ငံတော်သမတ ၏ကြိုတင်သဘောတူညီချက်ဖြင့် မိမိ၏ တာဝန်ဝတ်တရားများ၊ အာဏာများနှင့် အလုပ်ဝတ်တရားများကို နိုင်နင်းစွာ သုံးစွဲဆောင်ရွက်နိုင်ရန်၊ လိုအပ်သော အရာထမ်း အမှုထမ်းများကို ခန့်ထားနိုင်သည်။

(၂) အရာထမ်း အမှုထမ်းများ၏လစာနှင့်စရိတ်ကြေးငွေများနှင့် ထိုသူတို့၏ အမှုထမ်းစည်းကမ်းချက်များသည်၊ နိုင်ငံတော်သမတ ၏ကြိုတင်သဘောတူညီချက်ယူကာ ဤအဖွဲ့က စည်းကမ်းဥပဒေများဖြင့် သတ်မှတ်သည့်အတိုင်း ဖြစ်ရမည်။

(၃) ထိုအရာထမ်းအမှုထမ်းများ၏ တာဝန်ဝတ်တရားများနှင့် အာဏာများသည်၊ ဤအဖွဲ့က ပုဒ်မ ၈ အရ စည်းကမ်းဥပဒေများဖြင့် ပြဋ္ဌာန်းသည့်အတိုင်းဖြစ်ရမည်။

၇။ ။(၁) နိုင်ငံတော်သမတ က၊ အခါအားလျော်စွာသတ်မှတ်သော စည်းကမ်းချက်များနှင့် နည်းလမ်းအတိုင်း ဤအဖွဲ့သည် အသက်အာမခံလုပ်ငန်းနှင့် အခြားအာမခံလုပ်ငန်းများကို ဆောင်ရွက်ရမည်။

(၂) ဤအဖွဲ့သည် အထွေထွေအာမခံနှင့်ထောက်ပံ့မှုအာမခံလုပ်ငန်းအမျိုးမျိုးကို ရှာဖွေစုံစမ်းပြီးလျှင်၊ ထိုလုပ်ငန်းများနှင့် စပ်လျဉ်းသော စီမံချက်များကိုရေးဆွဲ၍၊ နိုင်ငံတော်သမတ ထံသို့ သဘောတူညီချက်ရရန် တင်သွင်းရမည်။

(၃) ဤအဖွဲ့သည်၊ နိုင်ငံတော်သမတ ၏ကြိုတင်သဘောတူညီချက်ဖြင့်၊ မည်သည့်အာမခံလုပ်ငန်းအတွက်မဆို၊ အခြားသူတဦးတယောက်၏ ကိုယ်စားလှယ်အဖြစ် ဆောင်ရွက်နိုင်သည်။

(၄) ဤအဖွဲ့သည်၊ အဖွဲ့၏တာဝန်ဝတ်တရားများကိုဆောင်ရွက်စေရန်၊ ကိုယ်စားလှယ်များကို ပြည်ထောင်စုမြန်မာနိုင်ငံအတွင်း၌ သော်၎င်း၊ ပြင်ပ၌သော်၎င်း အဖွဲ့ကသင့်လျော်သည်ထင်မြင်သော အမှုထမ်းစည်းကမ်းချက်များဖြင့် ခန့်ထားနိုင်သည်။

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[၁] ဤပုဒ်မအရ ပြုသည့်နည်းဥပဒေများကို မြန်မာနိုင်ငံပြန်တမ်း၊ ၁၉၅၂ ခု၊ အပိုင်း ၁၊ စာမျက်နှာ ၄၃၇ တွင်ထုတ်ပြန်ကြေညာသည်။

(၅) ဤအဖွဲ့သည်၊ ဤအက်ဥပဒေ၏ ရည်ရွယ်ချက်အောင်မြင်မှုအတွက် အထောက်အပံ့ပေးနိုင်သည့်ကိစ္စများကိုသော်၎င်း၊ ဖြစ်ပေါ်လာသည့် အကြောင်းသင့်ကိစ္စများကိုသော်၎င်း ဆောင်ရွက်နိုင်သည်။

၈။ ။ဤအဖွဲ့သည်၊ မိမိ၏လုပ်ငန်းကို စီမံခန့်ခွဲရန်အလို့ငှါ၊ ဤအက်ဥပဒေနှင့်၎င်း၊ ဤအက်ဥပဒေအရ ပြုသည့်နည်းဥပဒေများနှင့်၎င်း ညီညွတ်သော စည်းကမ်းဥပဒေများကို ရေးဆွဲရမည်။ ထို့ပြင် ဤအက်ဥပဒေအရ အပ်နှင်းထားသော အာဏာများ၏ယေဘုယျသဘောကိုမထိခိုက်စေဘဲ၊ ထိုစည်းကမ်းဥပဒေများသည် အထူးသဖြင့် အောက်ဖေါ်ပြပါ အချက်များအတွက်ဖြစ်ရမည်။

(က) အဖွဲ့၏လုပ်ငန်းကို စီမံဆောင်ရွက်ခြင်းနှင့် အဖွဲ့၏ အစည်းအဝေးများတွင် လိုက်နာရန်ကျင့်ထုံး။

(ခ) အဖွဲ့ရှိ အရာထမ်း အမှုထမ်းများ၏ တာဝန်ဝတ်တရားများနှင့် အာဏာများ။

[၁](ဂ) အဖွဲ့က မိမိ၏အာဏာများကို ဥက္ကဋ္ဌအား၎င်း၊ အဖွဲ့၏အရာရှိများအား၎င်း လွှဲအပ်ခြင်း။

(ဃ) အဖွဲ့ကိုယ်စား၊ ပဋိညာဉ်များနှင့် အခြားစာတမ်း အမှတ်အသားများကို လက်မှတ်ရေးထိုးခြင်း။

(င) အဖွဲ့သို့ အပ်နှင်းထားသော တာဝန်ဝတ်တရားများကို၊ ယေဘုယျအားဖြင့် ထိရောက်စွာ ဆောင်ရွက်ခြင်း။

၉။ ။ဤအဖွဲ့သည်၊ ပြည်ထောင်စုအာမခံ ရံပုံငွေဟုခေါ်တွင်သည့် ရံပုံငွေတခုကိုထားရှိ၍ အောက်ဖေါ်ပြပါငွေများကို ထိုရံပုံငွေ၌ထည့်သွင်းရမည်။

(က) ဤအက်ဥပဒေအရ၊ အဖွဲ့ကရရှိသောငွေများ။

(ခ) မိမိ၏အာဏာများနှင့် အလုပ်ဝတ်တရားများကို အဖွဲ့က သုံးစွဲဆောင်ရွက်နိုင်ရန်၊ အစိုးရထံမှရရှိသောငွေများ။

၁၀။ ။ဤအဖွဲ့သည်၊ မိမိ၏အာဏာများနှင့် အလုပ်ဝတ်တရားများကို သုံးစွဲဆောင်ရွက်နိုင်ရန်၊ အစိုးရကမိမိသင့်လျော်သည် ထင်မြင်သောစည်းကမ်းချက်များဖြင့် အဖွဲ့သို့ ငွေထုတ်ချေးနိုင်သည်။

၁၁။ [၂](၁) ဤအဖွဲ့သည်၊ ၎င်တို့တရက် သုံးစွဲရန်မလိုသော မိမိ၏ရံပုံငွေများကို၊ ပြည်ထောင်စုမြန်မာနိုင်ငံတော်ဘဏ်ဘွင်သော်၎င်း၊ နိုင်ငံတော်ကူးသန်းရောင်းဝယ်ရေးဘဏ်တွင်သော်၎င်း၊ ထိုဘဏ် နှစ်ခုစလုံးတွင်သော်၎င်း အပ်နှံထားရမည်။

(၂) ဤအဖွဲ့၏ရံပုံငွေများကို အဖွဲ့ကစည်းကမ်းဥပဒေများဖြင့်၊ ပြဋ္ဌာန်းသည့်အတိုင်း စီမံခန့်ခွဲရမည်။

[၃]၁၂။ ။(၁)ဤအဖွဲ့သည်၊ ပြည်ထောင်စုအာမခံရံပုံငွေကိုရင်းနှီးလိုလျှင် ပြည်ထောင်စုအစိုးရကတိုက်ရိုက်အာမခံသည့် ငွေချေးစာချုပ်များနှင့် ပြည်ထောင်စုအစိုးရက အသိအမှတ်ပြုထားသော ဒေသန္တရအဖွဲ့တခုခုက အာမခံသည့်ငွေချေးစာချုပ်များကို သက်ဆိုင်ရာအစိုးရဌာနမှသော်၎င်း၊ ဒေသန္တရအဖွဲ့မှသော်၎င်း၊ တိုက်ရိုက်ဝယ်ယူ၍ ရင်းနှီးနိုင်သည်။

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[၁] ၁၉၅၂ ခုနှစ်၊ အက်ဥပဒေအမှတ် ၁၅ အရ၊ အစားထည့်သွင်းသည်။

[၂] ၁၉၅၄ ခုနှစ်၊ အက်ဥပဒေအမှတ် ၆၃ အရ၊ အစားထည့်သွင်းသည်။

[၃] ၁၉၅၄ ခုနှစ်၊ အက်ဥပဒေအမှတ် ၆၂ အရ၊ အစားထည့်သွင်းသည်။

(၂) အဖွဲ့သည်၊ပြည်ထောင်စုအာမခံရံပုံငွေကို၊ ပုဒ်မခွဲ (၁)ပါ ပြဋ္ဌာန်းချက်နှင့်အညီမှ တပါး အခြားနည်းလမ်းဖြင့်ရင်းနှီးလိုလျှင်၊ နိုင်ငံတော်သမတ ၏သဘောတူညီချက်ကို ကြိုတင်ရယူ ရမည်။

၁၃။ ။ဤအဖွဲ့၏ ရံပုံငွေများကို အောက်ပါကိစ္စများအတွက် သုံးစွဲရမည်။

(က) အစိုးရက ဤအဖွဲ့သို့ထုတ်ချေးသောငွေအတွက် အစိုးရအား အတိုးပေးခြင်း၊ သို့တည်းမဟုတ် အရင်းပြန်ဆပ်ခြင်း။

(ခ) အာမခံထားသူအား ပေးရန်ရှိသည့် ပေါ်လီစီငွေများကို ထုတ်ပေးခြင်း။

(ဂ) အာမခံထားသူအား ငွေထုတ်ချေးခြင်း။

(ဃ) လုပ်ငန်းဆောင်ရွက်ရာတွင် ကုန်ကျမည့်အုပ်ချုပ်မှုအသုံးစရိတ်များ။

(င) ဤအဖွဲ့ကလိုအပ်သည်ဟု ယူဆသည့်အခြားအသုံးစရိတ်များကို နိုင်ငံတော်သမတ၏ သဘောတူညီချက်ဖြင့်ကျခံခြင်း။

၁၄။ ။ဤအဖွဲ့သို့ဖြစ်စေ၊ အစိုးရသို့ဖြစ်စေ၊ ပေါ်လီစီရှင်က ပေးဆပ်ရန်ရှိသောကြွေးမြီ နှင့်စပ်လျဉ်း၍မှတပါး ပေါ်လီစီရှင်ကပေးဆပ်ရန်ရှိသော အခြားကြွေးမြီများနှင့်စပ်လျဉ်း၍၊ ပေါ်လီစီ ရှင်သို့ ဤအက်ဥပဒေအရဖြစ်စေ၊ ဤအက်ဥပဒေအရပြုသည့် နည်းဥပဒေများအရဖြစ်စေ ထုတ်ပေး ရမည့် ပေါ်လီစီငွေများကို တရားမရုံးမှသော်၎င်း၊ အခွန်တော်ရုံးမှသော်၎င်း၊ ရာဇဝတ်ရုံးမှသော်၎င်း ချမှတ်သော အမိန့်အရ၊ သို့တည်းမဟုတ် ဒီကရီအရ၊ ဝါရမ်းမကပ်စေရ။

[၁] ၁၅။ ။(၁) ဥပဒေခွဲသော်၎င်း၊ ဥပဒေကဲ့သို့ပင် အာဏာတည်သော ဓလေ့ထုံးစံခွဲ သော်၎င်း၊ မည်သို့ပင်ဆိုထားစေကာမူ၊ ဤဥပဒေအရပြုသည့် အသက်အာမခံ ပေါ်လီစီ လွှဲပြောင်း ပေးခြင်းမှာ မပြုမနေရဖြစ်ရမည့်ပြင်၊ ဆိုခဲ့သည့်လွှဲပြောင်းပေးခြင်းသည် မည်သည့်စည်းကမ်းချက် ပါရှိစေကာမူ၊ ဆိုခဲ့သည့်ဥပဒေကြောင့် သော်၎င်း၊ ဆိုခဲ့သည့်ဓလေ့ထုံးစံကြောင့် သော်၎င်း မပျက်စေရ။

ခြွင်းချက်။ ။(က) သို့ရာတွင် မိသားစုရှိသော ဤအက်ဥပဒေအရ၊ အာမခံထားသူ တဦးသည်၊ မိမိ၏မိသားစုဥမပါသောသူအား ဆိုခဲ့သည့် လွှဲပြောင်းပေးခြင်းကိုမပြုရ။

(ခ) ထို့ပြင်၊မိသားတစုမရှိသော ဤအက်ဥပဒေအရအာမခံထားသူတဦးသည်၊မည်သူ့ အတွက်မဆို ဆိုခဲ့သည့် လွှဲပြောင်းပေးခြင်းကို မိမိသဘောအလျောက်ပြုနိုင်သည်။

(၂) ပုဒ်မခွဲ (၁)ခြွင်းချက် (ခ)အရ၊ အာမခံထားသူကပြုသည့်ဆိုခဲ့သော လွှဲပြောင်း ပေးခြင်းသည်၊ ထိုသူအိမ်ထောင်ပြုသည်နှင့်တပြိုင်နက်၊ အလိုအလျောက်ပျက်သည်ဟု မှတ်ယူရမည်။

(၃) အာမခံထားသူသည်၊ ဤအက်ဥပဒေအရပြုသည့် ဆိုခဲ့သောလွှဲပြောင်းပေးခြင်းကို အဖွဲ့က ပြဋ္ဌာန်းသည့် စည်းကမ်းချက်များအတိုင်း [ပြင်နိုင်သည်] [၂]၊ သို့တည်းမဟုတ် ပယ်ဖျက် နိုင်သည်။

၁၆။ ။(၁) ဤအဖွဲ့သည်၊နိုင်ငံတော်သမတ ၏အခွင့်အမိန့်ကိုရရှိရန်၊ ဘဏ္ဍာရေးနှစ် မကုန်ဆုံးမီ၊ နောက်လာမည့်ဘဏ္ဍာရေးနှစ်အတွက် ရ-သုံးမှန်းခြေငွေစာရင်းကို တင်ပြရမည်။ ထပ်မံ ပြင်ဆင်သော မှန်းခြေငွေစာရင်းကိုလည်း၊ အခါအားလျော်စွာ ထိုနည်းအတိုင်း နိုင်ငံတော်သမတ ထံ တင်ပြရမည်။

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[၁] ၁၉၅၀ ပြည့်နှစ်၊ အက်ဥပဒေအမှတ် ၄၄ အရ၊ အစားထည့်သွင်းသည်။

[၂] ၁၉၅၂ ခုနှစ်၊ အက်ဥပဒေအမှတ် ၁၅ အရ၊ အစားထည့်သွင်းသည်။

ခြွင်းချက်။ ။သို့ရာတွင် ဤအဖွဲ့က အလုပ်ဝတ်တရား စတင်ဆောင်ရွက်သော ပဌမနှစ် အတွက်မှာမူ၊ ထိုသို့စတင်ဆောင်ရွက်သောနေ့မှအစပြု၍၊ ဘဏ္ဍာရေးနှစ်ကုန်ဆုံးသည်အထိ ကာလ အပိုင်းအခြားအတွက် မှန်းခြေငွေစာရင်းကို၊ လျင်မြန်နိုင်သမျှလျင်မြန်စွာ နိုင်ငံတော်သမတ ထံ တင်ပြရမည်။

(၂) ဤအဖွဲ့သည်၊ နိုင်ငံတော်သမတ ၏ကြိုတင်သဘောတူညီချက် မရရှိဘဲ၊ ပုဒ်မခွဲ (၁) အရ၊ ခွင့်ပြုပြီးဖြစ်သော မှန်းခြေငွေစာရင်းထက်ပို၍ သုံးစွဲခြင်းမပြုရ။

၁၇။ ။(၁) ဤအဖွဲ့သည်၊ နိုင်ငံတော်သမတ ကညွှန်ကြားသည့် ကာလအပိုင်းအခြား အတွက် ငွေစာရင်းအကျယ်များနှင့် အခြားအစီရင်ခံ စာရင်းများကို နိုင်ငံတော်သမတ ထံတင်ပြ ရမည်။

(၂) ဤအဖွဲ့သည်၊ မိမိ၏ငွေစာရင်းများကို နိုင်ငံတော်သမတ ၏သဘောတူညီချက်ဖြင့် နိုင်ငံတော်စာရင်းစစ်ချုပ်ကပြဋ္ဌာန်းသည့် ပုံစံများအတိုင်း ထားရှိရမည်။

(၃) ဤအဖွဲ့၏ငွေစာရင်းများကိုနိုင်ငံတော်စာရင်းစစ်ချုပ်ကနှစ်စဉ်စစ်ဆေး၍၊နိုင်ငံတော် သမတ ထံ အစီရင်ခံစာတင်သွင်းရမည်။ ထိုအစီရင်ခံစာကို နိုင်ငံတော်သမတ က ပါလီမန်ဆိုင်ရာ လွှတ်တော်နှစ်ရပ်သို့ တင်ပြစေရမည်။

သို့ရာတွင်၊ အဖွဲ့၏ငွေစာရင်းများကို၊ နိုင်ငံတော်စာရင်းစစ်ချုပ်၏ ကြိုတင်သဘောတူညီ ချက်ဖြင့်ခန့်သော ပြည်သူ့ဝန်ထမ်းမဟုတ်သည့် နာမည်ရငွေစာရင်းစစ်က၊ ကုန်သည်တို့နည်းလမ်း အတိုင်း ကြားဖြတ်စစ်ဆေးရန်၊ ဤအဖွဲ့သည် နိုင်ငံတော်သမတ ၏သဘောတူညီချက်ဖြင့်ဆောင်ရွက် နိုင်သည်ဟူသော အခွင့်အရေးရှိစေရမည်။

(၄) ဤအဖွဲ့သည်၊ ဘဏ္ဍာရေးနှစ်ကုန်ဆုံးသည့်အခါတိုင်း၊ ထိုနှစ်အတွင်း မိမိဆောင် ရွက်သော လုပ်ငန်းအကြောင်းနှင့် မိမိချထားသော ဝါဒရည်ညွှန်းချက်မူကို မည်သို့ ဆောင်ရွက် ကြောင်းများ ဖေါ်ပြပါရှိသော နှစ်ချုပ်အစီရင်ခံစာကို၊ နိုင်ငံတော်သမတ ထံသို့တင်ပြရမည်။ ထိုနှစ်ချုပ် အစီရင်ခံစာကို၊ နိုင်ငံတော်သမတက ပါလီမန်ဆိုင်ရာ လွှတ်တော်နှစ်ရပ်သို့ တင်ပြစေ ရမည်။

၁၈။ ။ဤအဖွဲ့သည်။ မိမိ၏ဝင်ငွေနှင့်အမြတ်ငွေများအတွက် အမြတ်တော်ခွန်နှင့် အပို အမြတ်တော်ခွန်များ ထမ်းဆောင်ခြင်းမပြုထိုက်စေရ။

၁၉။ ။ပြည်ထောင်စု၏ ကုန်းတပ်၊ ရေတပ်၊ လေတပ်တို့တွင် အမှုထမ်းနေသောသူနှင့် စပ်လျဉ်း၍၊ ဤအက်ဥပဒေအတိုင်း ဆောင်ရွက်ရာတွင်၊ ဤအဖွဲ့သည် အဖွဲ့ကသင့်သည်ထင်မြင်သည့် အတိုင်း နိုင်ငံတော်သမတ ၏ကြိုတင်သဘောတူညီသော စည်းကမ်းဥပဒေများဖြင့် ပြုပြင်ဆောင်ရွက် နိုင်သည်။

၂၀။ ။နိုင်ငံတော်သမတ သည်၊ အမိန့်ထုတ်ပြန်ကျေညာခြင်းဖြင့် ဤအက်ဥပဒေကိုပြည် ထောင်စုအတွင်းရှိ မည်သည့်ဒေသန္တရအဖွဲ့သို့မဆို၊ မိမိကသင့်သည်ထင်မြင်သည့် နည်းလမ်းအတိုင်း သက်ရောက်ပျံ့နှံ့စေနိုင်သည်။

၂၁။ ။တည်ဆဲဥပဒေတခုခု၌၊ မည်သို့ပင်ဆိုထားစေကာမူ၊ ဤအက်ဥပဒေပေါ် ပြဋ္ဌာန်း ချက်များအရ၊ အရွယ်မရောက်သေးသူကပြုလုပ်သည့် အသက်အာမခံပေါ်လိစီသည်၊ တရားဝင် သည်ဟု မှတ်ယူရမည်။

၂၂။ ။(၁) နိုင်ငံတော်သမတ သည်၊ ဤအက်ဥပဒေပါကိစ္စများအလို့၄၊ နည်းဥပဒေများ[ံ] ပြုလုပ်နိုင်သည်။

(၂) အထူးသဖြင့် အထက်ကဆိုခဲ့သော အာဏာ၏ယေဘုယျသဘောကို မထိခိုက်စေဘဲ၊ ထိုနည်းဥပဒေများသည် အသက်အာမခံနှင့်စပ်လျဉ်း၍၊ အောက်ပါတို့ကို ပြဋ္ဌာန်း သတ်မှတ်နိုင်သည်။

(က) ပြည်ထောင်စု ပြည်သူ့ဝန်ထမ်းများ မုချထားရှိရမည့် အနည်းဆုံးအာမခံငွေ။

(ခ) ပြည်ထောင်စု ပြည်သူ့ဝန်ထမ်းများ မုချထားရမည့် အနည်းဆုံးထပ်တိုး အာမခံငွေ။

(ဂ) ဤအက်ဥပဒေအရ၊ ထုတ်ပေးသော ပေါ်လီစီအတွက် ပေါ်လီစီရှင်က အနည်းဆုံး ချေးယူနိုင်သည့်ငွေ။

(ဃ) ပြည်ထောင်စု ပြည်သူ့ဝန်ထမ်းက ပေးဆောင်ရမည့် ပရီမီယံများထဲသို့ အစိုးရကထည့်ဝင်ရမည့် တော်သင့်သော ထောက်ပံ့ငွေ။

(င) ပြည်ထောင်စု ပြည်သူ့ဝန်ထမ်းထံမှ၊ ပရီမီယံများ ကောက်ခံနည်း။

၂၃။ ။ဤအဖွဲ့ကဖြစ်စေ၊ ဤအဖွဲ့၏အရာထမ်း အမှုထမ်းများကဖြစ်စေ၊ ချမှတ်သည့် အမိန့်သည်၊ သို့တည်းမဟုတ် ဆုံးဖြတ်ချက်သည် သင့်လျော်သည် မသင့်လျော်သည်ကို စိတ်ကျေနပ်အောင် ကြည့်ရှုရန်၊ နိုင်ငံတော်သမတ သည်၊ ဤအဖွဲ့ထံမှသော်၎င်း၊ ဤအဖွဲ့၏အရာထမ်း အမှုထမ်းများထံမှသော်၎င်း ဆောင်ရွက်ပြီးဖြစ်သော မှုခင်းကိစ္စများနှင့်စပ်လျဉ်းသည့် အမှုတွဲမှတ်တမ်းများကို အချိန်မရွေးတောင်းယူကြည့်ရှုနိုင်သည့်ပြင်၊ မိမိသင့်လျော်သည် ထင်မြင်သော အမိန့်ကို ချမှတ်နိုင်သည်။

၂၄။ ။(၁) ဤအက်ဥပဒေက ပေးအပ်ထားသော တာဝန်ဝတ်တရား၊ အလုပ်ဝတ်တရားနှင့် အခြားတာဝန်များကို၊ ဤအဖွဲ့ကဆောင်ရွက်ရန်ပျက်ကွက်သည်ဟု၊ နိုင်ငံတော်သမတ ကထင်မြင်သဘောရရှိလျှင်၊ နိုင်ငံတော်သမတ သည် အမိန့်ထုတ်ပြန်၍၊ ဤအဖွဲ့ကိုပြန်လည်သိမ်းပိုက်ကြောင်းကျေညာနိုင်သည်၊ ထိုသို့ကျေညာပြီးနောက်၊ အဖွဲ့၏ယုပ်ငန်းအရပ်ရပ် စီမံခန့်ခွဲညွှန်ကြားဆောင်ရွက်မှုကို၊ နိုင်ငံတော်သမတ ကခန့်ထားသော ကိုယ်စားလှယ်သို့အပ်နှင်းရမည်။ ထိုသို့အပ်နှင်းခြင်းခံရသော ကိုယ်စားလှယ်သည်၊ ဤအက်ဥပဒေအရ၊ အဖွဲ့ကသုံးစွဲဆောင်ရွက်နိုင်သည့် အာဏာနှင့် လုပ်ငန်းများကို သုံးစွဲဆောင်ရွက်နိုင်သည်။

(၂) ပုဒ်မခွဲ (၁) အရ၊ အရေးယူသောအခါ၊ နိုင်ငံတော်သမတ သည်၊ ထိုသို့အရေးယူရသည့် အကြောင်းရင်းအခြေအနေများနှင့်၊ အရေးယူပုံ အစုံအလင်ဖေါ်ပြပါရှိသော အစီရင်ခံစာကို လျှင်မြန်နိုင်သမျှလျှင်မြန်စွာ ပါလီမန်ဆိုင်ရာ လွှတ်တော်နှစ်ရပ်သို့တင်ပြစေနိုင်သည်။ ထိုသို့တင်ပြစေခြင်းကို၊ ဤအဖွဲ့အား ပြန်လည်သိမ်းပိုက်ကြောင်း ကျေညာသည့်နေ့မှစ၍၊ ခြောက်လအတွင်း ပြုရမည်။

(၃) ဤပုဒ်မအရ၊ ထုတ်ပြန်သောကျေညာချက်၏ သက်တမ်းသည်၊ ခြောက်လထက်မပိုစေရ၊ သို့ရာတွင် နိုင်ငံတော်သမတ သည် ထိုကျေညာချက်ကိုပင်ထပ်မံ၍ ထုတ်ပြန်နိုင်သည်။ ထိုသို့ထပ်မံ၍ ထုတ်ပြန်သည့်အခါတိုင်း ခြောက်လမျှသာကြာမြင့်ရမည်။

ခြွင်းချက်။ ။သို့ရာတွင် နိုင်ငံတော်သမတ သည်၊ ဤပုဒ်မအရ၊ အဖွဲ့ကိုပြန်လည်သိမ်းပိုက်ပြီးသည့်နောက်၊ မည်သည့်အခါ၌မဆို၊ သင့်လျော်သည်ဟုထင်မြင်လျှင် ဤအက်ဥပဒေပုဒ်မ ၄ အရ၊ အဖွဲ့အသစ်တဖွဲ့ကို ဖွဲ့စည်းနိုင်သည်။

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ံ ဤပုဒ်မအရပြုသည့်၊ နည်းဥပဒေများကို၊ မြန်မာနိုင်ငံပြန်တမ်း၊ ၁၉၅၂ ခု၊ အတိုင်း ၁၊ စာမျက်နှာ ၈၃၁ တွင် ထုတ်ပြန်ကြေညာသည်။

၂၅။ ။အသက်အာမခံကုမ္ပဏီများ အက်ဥပဒေပါ ပြဋ္ဌာန်းချက်များသည်ငင်း၊ အာမခံကုမ္ပဏီများ အက်ဥပဒေပါပြဋ္ဌာန်းချက်များသည်ငင်း၊ ၎အက်ဥပဒေအရ၊ ဖွဲ့စည်းသောအဖွဲ့နှင့် မသက်ဆိုင်စေရ။

၂၆။ ။၎အက်ဥပဒေအရ ပြုလုပ်သည့် အာမခံအရာ၊ ထုတ်ပေးရန်ရှိသော ပေါ်လီစီငွေများအတွက်၊ ပြည်ထောင်စုအစိုးရက တာဝန်ခံသည်။

## အာမခံကုမ္ပဏီများကိုနိုင်ငံပိုင်ပြုလုပ်ခြင်းအက်ဥပဒေ။*

[၁၉၅၁ ခုနှစ်၊ အက်ဥပဒေအမှတ် ၆၀။] (၁၉၅၁ ခု၊ နိုဝင်ဘာလ ၂ ရက်။)

အောက်ပါအတိုင်း အက်ဥပဒေအဖြစ်ပြဋ္ဌာန်းလိုက်သည်။

၁။ ။၎အက်ဥပဒေကို၊ ၁၉၅၁ ခုနှစ်၊ အာမခံကုမ္ပဏီများကိုနိုင်ငံပိုင်ပြုလုပ်ခြင်း အက်ဥပဒေဟုခေါ်ရမည်။

၂။ ။၎အက်ဥပဒေတွင်—

(က) "ကုမ္ပဏီ" ဆိုသည်မှာ၊ မြန်မာနိုင်ငံကုမ္ပဏီ အက်ဥပဒေအရ၊ ၁၉၅၁ ခုနှစ်၊ ဇူလိုင်လ ၁ ရက်နေ့မတိုင်မီ ဖွဲ့စည်းတည်ထောင်၍ မှတ်ပုံတင်ရင်းတင်သွင်းပြီးလျှင် အသက်အာမခံကုမ္ပဏီအက်ဥပဒေ (Life Insurance Companies Act) † အရ၊ ပြည်ထောင်စုမြန်မာနိုင်ငံအတွင်းတွင်အသက်အာမခံအလုပ်များကို လုပ်ကိုင်လျက်ရှိသော လိမိတက် ကုမ္ပဏီများနှင့် အထွေထွေအာမခံလုပ်ငန်းများကို လုပ်ကိုင်နေသော အခြားကုမ္ပဏီများကို ဆိုလိုသည်။

(ခ) "အဖွဲ့" ဆိုသည်မှာ၊ ၁၉၅၀ ပြည့်နှစ်၊ ပြည်ထောင်စု အာမခံစံနှစ်အဖွဲ့ အက်ဥပဒေအရ ဖွဲ့စည်းထားသော ပြည်ထောင်စု အာမခံစံနှစ်အဖွဲ့ကို ဆိုလိုသည်။

၃။ ။(၁) နိုင်ငံတော်သမတ သည်၊ အမိန့်ကြော်ငြာစာထုတ်ပြန်၍ ထိုအမိန့်ကြော်ငြာစာတွင် သီးခြားဖော်ပြသောကုမ္ပဏီကို သီးခြားဖော်ပြသောနေ့ရက်တွင် နိုင်ငံပိုင်အဖြစ်ဖြင့် သိမ်းယူနိုင်သည်။ ယင်းသို့သိမ်းယူသည့်အခါ၊ ထိုကုမ္ပဏီ၌ရှိဌာနများကို တဌာနပြီးတဌာနခွဲ၍ ထိုဌာနဆိုင်ရာ ပစ္စည်းအရပ်ရပ်နှင့်တကွ အကြွေးမကြွေးသော်၎င်း၊ သိမ်းယူနိုင်သည်။ သို့တည်းမဟုတ် ထိုကုမ္ပဏီတခုလုံးကို ဆိုင်ရာပစ္စည်းအရပ်ရပ်နှင့်တကွ တကြွေးတည်းသော်၎င်း သိမ်းယူနိုင်သည်။

(၂) ပုဒ်မခွဲ (၁) အရ သိမ်းယူသောအခါ ထိုကုမ္ပဏီနှင့် ထိုကုမ္ပဏီဆိုင်ရာပစ္စည်းအရပ်ရပ်သည်၊ သို့တည်းမဟုတ် ကုမ္ပဏီထံမှသိမ်းယူသောဌာနနှင့် ထိုဌာနဆိုင်ရာ ပစ္စည်းအရပ်ရပ်သည် အဆိုပါအမိန့်ကြော်ငြာစာတွင် သီးခြားဖော်ပြသောနေ့မှအစပြု၍အဖွဲ့ပိုင်ဖြစ်ရမည်။

၄။ ။(၁) ပုဒ်မ ၃ အရ နိုင်ငံပိုင်အဖြစ်ဖြင့် သိမ်းယူသောနေ့မှအစပြု၍ သိမ်းယူသည့် ဌာနသည်၊ သို့တည်းမဟုတ် ကုမ္ပဏီသည် အဖွဲ့၏အုပ်ချုပ်စီမံမှုအောက်သို့ရောက်ရှိလာရမည်။ ထိုဌာန၏၊ သို့တည်းမဟုတ် ကုမ္ပဏီ၏ ရာထမ်းမှုထမ်းအားလုံးသည်လည်း၊ အဖွဲ့၏ ရာထမ်း မှုထမ်းများဖြစ်ကြရမည်။

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* မြန်မာနိုင်ငံပြန်တမ်း၊ ၁၉၅၁ ခု၊ အပိုင်း ၁၊ စာမျက်နှာ ၀၇၃ တွင် ထုတ်ပြန်ကြေညာသည်။

† Life Assurance Companies Act (India Act VI, 1912).

သို့ရာတွင် ထိုရာထူး မှထမ်းများ၏ ရာထူးအဆင့်အတန်း လစာနှင့် စရိတ်ကြေးငွေများသည်၊ အဖွဲ့ကသတ်မှတ်သည့်အတိုင်းဖြစ်ရမည်။

(၂) ပုဒ်မ ၃ (၁) အရ၊ ကုမ္ပဏီ၏ဌာနများထဲမှဌာနတခုသာစာဘင်သိမ်းယူသော အခါ၊ ထိုဌာနဆိုင်ရာအဖွဲ့၏ရာထူး မှထမ်းများသည်မသိမ်းယူသေးဘဲ ကျန်နေသော ဌာနများအတွက် အဖွဲ့၏ကြိုးကြပ်အုပ်ချုပ်ခြင်းကိုလိုက်နာလျက် အလုပ်လုပ်ကိုင်ဆောင်ရွက်နိုင်သည်။

၅။ ။(၁) ပုဒ်မ ၃ အရ နိုင်ငံပိုင်အဖြစ်ဖြင့် သိမ်းယူသည့်အတွက်၊ ဆိုင်ရာကုမ္ပဏီကို အစိုးရက တရားမျှတသောလျော်ကြေးပေးရမည်။ ထိုတရားမျှတသောလျော်ကြေးသည် ယင်းသို့သိမ်းယူသောနေ့၌ သိမ်းယူသောပစ္စည်းအရပ်ရပ်၏ကာလတန်ဘိုးဖြစ်ရမည်။ ထိုကာလတန်ဘိုးကို အဖွဲ့နှင့် ကုမ္ပဏီနှစ်ဦးသဘောတူရွေးချယ်သည့် အာမခံစာရင်းအင်းကျွမ်းကျင်သူ (actuary) က ဆုံးဖြတ်ရမည်။ အကယ်၍၊ ယင်းသို့ရွေးချယ်ရာတွင် အဖွဲ့နှင့်ကုမ္ပဏီတို့သဘောတူညီချက်မရရှိလျှင်၊ နိုင်ငံတော်သမတရွေးချယ်သည့် အာမခံစာရင်းအင်းကျွမ်းကျင်သူ (actuary) က ထိုကာလတန်ဘိုးကို ဆုံးဖြတ်ရမည်။

(၂) ပုဒ်မခွဲ (၁) အရရွေးချယ်ခြင်းခံရသည့် အာမခံစာရင်းအင်း ကျွမ်းကျင်သူ (actuary) ၏ အခကို အစိုးရနှင့်ကုမ္ပဏီတို့ကထက်ဝက်စီပေးရမည်။

၆။ ။အဆိုပါ ကာလတန်ဘိုးကို အစိုးရက သင့်တော်သည်ဟု သတ်မှတ်သောနည်းလမ်းအတိုင်း ဆိုင်ရာကုမ္ပဏီအား၎အစိုးရကပေးရမည်။

၇။ ။(၁)ပုဒ်မ ၅ အရ ဆုံးဖြတ်သောကာလတန်ဘိုးကိုအစိုးရကသော်၎င်း၊ကုမ္ပဏီကသော်၎င်း သဘောမတူခဲ့သော်၊ နိုင်ငံတော်သမတ ကခန့်သည့် ပုဂ္ဂိုလ်သုံးဦးပါဝင်သောခုံအဖွဲ့က ထိုကာလတန်ဘိုးကိုဆုံးဖြတ်ရမည်။

(၂) ထိုခုံအဖွဲ့တွင် လွှတ်တော်တရားဝန်ကြီးတဦးက ဥက္ကဋ္ဌအဖြစ်ဖြင့် ဆောင်ရွက်၍ ကျန်နှစ်ဦးအနက်၊ တဦးမှာ ပုဒ်မ ၅ အရ ကာလတန်ဘိုးဆုံးဖြတ်သူမဟုတ်သည့် အရာညအချင်းနှင့်ပြည့်စုံသော အာမခံစာရင်းအင်းကျွမ်းကျင်သူ (actuary) တဦးဖြစ်ရမည်။

(၃) ၁၉၅၀ ခုနှစ်၊ စုံစမ်းရေးကော်မိတီများအက်ဥပဒေပုဒ်မ ၉၊ ၁၀ နှင့် ၁၁ ပါ ပြဋ္ဌာန်းချက်များသည် ထိုအက်ဥပဒေပုဒ်မ ၂ တွင် ရည်ညွှန်းထားသည့် စုံစမ်းရေးကော်မိတီနှင့် သက်ဆိုင်သကဲ့သို့ ထိုခုံအဖွဲ့နှင့်သက်ဆိုင်ရမည်။

(၄) ထိုခုံအဖွဲ့ဝင်များ ထင်မြင်ယူဆချက်ကွဲလွဲသည့်အခါ အဖွဲ့ဝင်များရာ၏ထင်မြင်ယူဆချက်သည် အတည်ဖြစ်ရမည်။

(၅) ထိုခုံအဖွဲ့ဝင်သုံးဦးထဲမှ တဦးတယောက်သည် အကြောင်းတခုခုကြောင့်၊ ခုံအဖွဲ့၏တာဝန်များကို ဆက်လက်ဆောင်ရွက်ခြင်းမပြုနိုင်သော်၊ ထိုတာဝန်များကို ဆက်လက်ထမ်းဆောင်နိုင်ရန် အခြားသင့်တော်သောပုဂ္ဂိုလ်တဦးကို နိုင်ငံတော်သမတကခန့်ရမည်။ ယင်းသို့ခန့်ခြင်းဖြင့်၊ ခုံအဖွဲ့လုပ်ခဲ့ပြီးသော အလုပ်များကိုထိခိုက်ခြင်းမရှိဘဲ ခုံအဖွဲ့သည်စတင်ဖွဲ့စည်းစဉ်ကပင် ထိုသူအား ခုံအဖွဲ့ဝင်ခန့်ဘိသကဲ့သို့ ဆက်လက်၍ဆောင်ရွက်နိုင်သည်။

(၆) ခုံအဖွဲ့တွင် ပါဝင်ဆောင်ရွက်သောအာမခံစာရင်းအင်းကျွမ်းကျင်သူ (actuary) နှင့် ပြည်ထောင်စုဘဏ္ဍာတော်မှ လစာခံယူနေသည့်သူမဟုတ်သော ခုံအဖွဲ့ဝင် တဦးတယောက်၏အခကို၊ အစိုးရနှင့်ကုမ္ပဏီတို့က ထက်ဝက်စီပေးရမည်။

၀။ ။တရားမျှတသော လျော်ကြေးနှင့်စပ်လျဉ်း၍ ခုံအဖွဲ့ကချမှတ်သော ဆုံးဖြတ်ချက်ကို၊ ဥပဒေကြောင်းနှင့်ဖြစ်စေ၊ အမှုခြင်းရာနှင့်ဖြစ်စေ၊ အစိုးရသည်၊သို့တည်းမဟုတ် ဆိုင်ရာကုမ္ပဏီသည်၊ တရားလွှတ်တော်ချုပ်သို့အယူခံနိုင်သည်။

# PART XIII.—AGENCY.

# အပိုင်း ၁၃။ ။ကိုယ်စားလှယ်လွှဲအပ်ရေး။

## THE POWERS OF ATTORNEY ACT.

[INDIA ACT VII, 1882.] (1st May, 1882.)

Extent.

**1.** This Act shall not apply to Upper Burma unless extended thereto by the President of the Union by notification.

Execution under power-of-attorney.

**2.** The donee of a power-of-attorney may, if he thinks fit, execute or do any assurance, instrument or thing in and with his own name and signature, and his own seal, where sealing is required, by the authority of the donor of the power ; and every assurance, instrument and thing so executed and done shall be as effectual in law as if it had been executed or done by the donee of the power in the name, and with the signature and seal, of the donor thereof.

Payment by attorney under power, without notice of death, etc., good.

**3.** Any person making or doing any payment or act in good faith, in pursuance of a power-of-attorney, shall not be liable in respect of the payment or act by reason that, before the payment or act, the donor of the power had died or become lunatic, of unsound mind, or bankrupt or insolvent, or had revoked the power, if the fact of death, lunacy, unsoundness of mind, bankruptcy, insolvency or revocation was not, at the time of the payment or act, known to the person making or doing the same.

But this section shall not affect any right against the payee of any person interested in any money so paid ; and that person shall have the like remedy against the payee as he would have had against the payer, if the payment had not been made by him.

Deposit of original instruments creating powers-of-attorney.

**4.** (*a*) An instrument creating a power-of-attorney, its execution being verified by affidavit, statutory declaration or other sufficient evidence, may, with the affidavit or declaration, if any, be deposited in the High Court.

(*b*) A separate file of instruments so deposited shall be kept ; and any person may search that file, and inspect every instrument so deposited ; and a certified copy thereof shall be delivered out to him on request.

(*c*) A copy of an instrument so deposited may be presented at the office and may be stamped or marked as a certified copy, and, when so stamped or marked, shall become and be a certified copy.

(*d*) A certified copy of an instrument so deposited shall, without further proof, be sufficient evidence of the contents of the instrument and of the deposit thereof in the High Court.

(*e*) The High Court may, from time to time, make rules [1] for the purposes of this section, and prescribing, with the concurrence of the President of the Union, the fees to be taken under clauses (*a*), (*b*) and (*c*).

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[1] For rules made under clause (*e*), *see* High Court Rules and Orders and *Burma Gazette*, 1940, Part IV, p. 521.

Power of attorney of married woman.

**5.** A married woman, whether a minor or not, shall, by virtue of this Act, have power, as if she were unmarried and of full age, by a non-testamentary instrument, to appoint an attorney on her behalf for the purpose of executing any non-testamentary instrument or doing any other act which she might herself execute or do ; and the provisions of this Act, relating to instruments creating powers-of-attorney, shall apply thereto.

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# TRUSTS.

## ယုံကြည်အပ်နှံရေး။

# THE TRUSTS ACT.

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## CONTENTS.

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CHAPTER I.

PRELIMINARY.

*Sections.*

1. Extent and savings.
2. * * * *
3. Interpretation-clause.
   Expressions defined in Contract Act.

CHAPTER II.

OF THE CREATION OF TRUSTS.

4. Lawful purpose.
5. Trust of immoveable property.
   Trust of moveable property.
6. Creation of trust.
7. Who may create trusts.
8. Subject of trust.
9. Who may be beneficiary.
   Disclaimer by beneficiary.
10. Who may be trustee.
    No one bound to accept trust.
    Acceptance of trust.
    Disclaimer of trust.

## CHAPTER III.

### OF THE DUTIES AND LIABILITIES OF TRUSTEES.

*Sections.*

11. Trustee to execute trust.
12. Trustee to inform himself of state of trust-property.
13. Trustee to protect title to trust-property.
14. Trustee not to set up title adverse to beneficiary.
15. Care required from trustee.
16. Conversion of perishable property.
17. Trustee to be impartial.
18. Trustee to prevent waste.
19. Accounts and information.
20. Investment of trust-money.
20A. Power to purchase redeemable stock at a premium.
21. Mortgage of land pledged to Government under the Land Improvement Loans Act. Deposit in Government Savings Bank.
22. Sale by trustee directed to sell within specified time.
23. Liability for breach of trust.
24. No set-off allowed to trustee.
25. Non-liability for predecessor's default.
26. Non-liability for co-trustee's default.
Joining in receipt for conformity.
27. Several liability of co-trustees.
Contribution as between co-trustees.
28. Non-liability of trustee paying without notice of transfer by beneficiary.
29. Liability of trustee where beneficiary's interest is forfeited to Government.
30. Indemnity of trustees.

## CHAPTER IV.

### OF THE RIGHTS AND POWERS OF TRUSTEES.

31. Right to title-deeds.
32. Right to reimbursement of expenses.
Right to be recouped for erroneous overpayment.
33. Right to indemnity from gainer by breach of trust.
34. Right to apply to Court for opinion in management of trust-property.
35. Right to settlement of accounts.
36. General authority of trustee.
37. Power to sell in lots, and either by public auction or private contract.
38. Power to sell under special conditions.
Power to buy in and re-sell.
Time allowed for selling trust-property.
39. Power to convey.
40. Power to vary investments:

*Sections.*

41. Power to apply property of minors, etc., for their maintenance, etc.
42. Power to give receipts.
43. Power to compound, etc.
44. Power to several trustees of whom one disclaims or dies.
45. Suspension of trustee's powers by decree.

## CHAPTER V.

### Of the Disabilities of Trustees.

46. Trustee cannot renounce after acceptance.
47. Trustee cannot delegate.
48. Co-trustees cannot act singly.
49. Control of discretionary power.
50. Trustee may not charge for services.
51. Trustee may not use trust-property for his own profit.
52. Trustee for sale or his agent may not buy.
53. Trustee may not buy beneficiary's interest without permission.
Trustee for purchase.
54. Co-trustees may not lend to one of themselves.

## CHAPTER VI.

### Of the Rights and Liabilities of the Beneficiary.

55. Right to rents and profits.
56. Right to specific execution.
Right to transfer of possession.
57. Right to inspect and take copies of instrument of trust, accounts, etc.
58. Right to transfer beneficial interest.
59. Right to sue for execution of trust.
60. Right to proper trustees.
61. Right to compel to any act of duty.
62. Wrongful purchase by trustee.
63. Following trust-property—
into the hands of third persons ;
into that into which it has been converted.
64. Saving of rights of certain transferees.
65. Acquisition by trustee of trust-property wrongully converted.
66. Right in case of blended property.
67. Wrongful employment by partner-trustee of trust-property for partnership purposes.
68. Liability of beneficiary joining in breach of trust.
69. Rights and liabilities of beneficiary's transferee.

## CHAPTER VII.

### Of Vacating the Office of Trustee.

*Sections.*

70. Office how vacated.
71. Discharge of trustee.
72. Petition to be discharged from trust.
73. Appointment of new trustees on death, etc.
74. Appointment by Court.
Rules for selecting new trustees.
75. Vesting of trust-property in new trustees.
Powers of new trustees.
76. Survival of trust.

## CHAPTER VIII.

### Of the Extinction of Trusts.

77. Trust how extinguished.
78. Revocation of trust.
79. Revocation not to defeat what trustees have duly done.

## CHAPTER IX.

### Of certain Obligations in the Nature of Trusts.

80. Where obligation in nature of trust is created.
81. Where it does not appear that transferor intended to dispose of beneficial interest.
82. Transfer to one for consideration paid by another.
83. Trust incapable of execution or executed without exhausting trust-property.
84. Transfer for illegal purpose.
85. Bequest for illegal purpose.
Bequest of which revocation is prevented by coercion.
86. Transfer pursuant to rescindable contract.
87. Debtor becoming creditor's representative.
88. Advantage gained by fiduciary.
89. Advantage gained by exercise of undue influence.
90. Advantage gained by qualified owner.
91. Property acquired with notice of existing contract.
92. Purchase by person contracting to buy property to be held on trust.
93. Advantage secretly gained by one of several compounding creditors.
94. Constructive trusts in cases not expressly provided for.
95. Obligor's duties, liabilities and disabilities.
96. Saving of rights of *bona fide* purchasers.

# THE TRUSTS ACT.

[INDIA ACT II, 1882.] (1st March, 1882.)

[1] *(This Act came into force in Rangoon on the 30th September, 1904.)*

## CHAPTER I.

### PRELIMINARY.

Extent and savings.

**1.** [This Act extends to the whole of the Union of Burma.][2] But nothing herein contained affects the rules of Muhammadan law as to *waqf*, or the mutual relations of the members of an undivided family as determined by any customary or personal law, or applies to public or private religious or charitable endowments, or to trusts to distribute prizes taken in war among the captors ; and nothing in the second Chapter of this Act applies to trusts created before the 1st March, 1882.[3]

**2.** * * * *

Interpretation-clause— "trust":

**3.** A " trust " is an obligation annexed to the ownership of property, and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another, or of another and the owner ;

" author of the trust ": " trustee ": " beneficiary ": " trust-property ": " beneficial interest ": " instrument of trust ":

the person who reposes or declares the confidence is called the " author of the trust ": the person who accepts the confidence is called the " trustee " : the person for whose benefit the confidence is accepted is called the "beneficiary " : the subject-matter of the trust is called " trust-property " or " trust-money " : the " beneficial interest " or " interest " of the beneficiary is his right against the trustee as owner of the trust-property : and the instrument, if any, by which the trust is declared is called the " instrument of trust " :

" breach of trust":

a breach of any duty imposed on a trustee, as such, by any law for the time being in force, is called a " breach of trust " :

" notice."

and in this Act, unless there be something repugnant in the subject or context, a person is said to have " notice " of a fact either when he actually knows that fact, or when, but for wilful abstention from inquiry or gross negligence, he would have known it, or when information of the fact is given to or obtained by his agent, under the circumstances mentioned in the Contract Act, section 229 :

expressions defined in Contract Act.

and all expressions used herein and defined in the Contract Act shall be deemed to have the meaning respectively attributed to them by that Act.

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[1] This note was inserted by the Burma Laws (Adaptation) Act, 1940 (Burma Act XXVII, 1940).
[2] Substituted by the Union of Burma (Adaptation of Laws) Order, 1948.
[3] The date on which this Act was declared to have come into force.

## CHAPTER II.

### OF THE CREATION OF TRUSTS.

Lawful purpose.

**4.** A trust may be created for any lawful purpose. The purpose of a trust is lawful unless it is (*a*) forbidden by law, or (*b*) is of such a nature that, if permitted, it would defeat the provisions of any law, or (*c*) is fraudulent, or (*d*) involves or implies injury to the person or property of another, or (*e*) the Court regards it as immoral or opposed to public policy.

Every trust of which the purpose is unlawful is void. And where a trust is created for two purposes, of which one is lawful and the other unlawful, and the two purposes cannot be separated, the whole trust is void.

*Explanation.*—In this section the expression "law" includes, where the trust-property is immoveable and situate in a foreign country, the law of such country.

*Illustrations.*

(*a*) *A* conveys property to *B* in trust to apply the profits to the nurture of female foundlings to be trained up as prostitutes. The trust is void.

(*b*) *A* bequeaths property to *B* in trust to employ it in carrying on a smuggling business, and out of the profits thereof to support *A*'s children. The trust is void.

(*c*) *A*, while in insolvent circumstances, transfers property to *B* in trust for *A* during his life, and after his death to *B*. *A* is declared an insolvent. The trust for *A* is invalid as against his creditors.

Trust of immoveable property.

**5.** No trust in relation to immoveable property is valid unless declared by a non-testamentary instrument in writing signed by the author of the trust or the trustee and registered, or by the will of the author of the trust or of the trustee.

Trust of moveable property.

No trust in relation to moveable property is valid unless declared as aforesaid or unless the ownership of the property is transferred to the trustee.

These rules do not apply where they would operate so as to effectuate a fraud.

Creation of trust.

**6.** Subject to the provisions of section 5, a trust is created when the author of the trust indicates with reasonable certainty by any words or acts (*a*) an intention on his part to create thereby a trust, (*b*) the purpose of the trust, (*c*) the beneficiary, and (*d*) the trust-property, and (unless the trust is declared by will or the author of the trust is himself to be the trustee) transfers the trust-property to the trustee.

*Illustrations.*

(*a*) *A* bequeaths certain property to *B*, "having the fullest confidence that he will dispose of it for the benefit of *C*." This creates a trust so far as regards *A* and *C*.

(*b*) *A* bequeaths certain property to *B*, "hoping he will continue it in the family." This does not create a trust as the beneficiary is not indicated with reasonable certainty.

(*c*) *A* bequeaths certain property to *B*, requesting him to distribute it among such members of *C*'s family as *B* should think most deserving. This does not create a trust, for the beneficiaries are not indicated with reasonable certainty.

(*d*) *A* bequeaths certain property to *B*, desiring him to divide the bulk of it among *C*'s children. This does not create a trust, for the trust-property is not indicated with sufficient certainty.

(*e*) *A* bequeaths a shop and stock-in-trade to *B*, on condition that he pays *A*'s debts and a legacy to *C*. This is a condition, not a trust for *A*'s creditors and *C*.

Who may create trusts.

**7.** A trust may be created—

(*a*) by every person competent to contract, [1] and

(*b*) with the permission of a principal civil Court of original jurisdiction, by or on behalf of a minor ;

but subject in each case to the law for the time being in force as to the circumstances and extent in and to which the author of the trust may dispose of the trust-property.

Subject of trust.

**8.** The subject-matter of a trust must be property transferable to the beneficiary.

It must not be merely beneficial interest under a subsisting trust.

Who may be beneficiary.

**9.** Every person capable of holding property may be a beneficiary.

Disclaimer by beneficiary.

A proposed beneficiary may renounce his interest under the trust by disclaimer addressed to the trustee, or by setting up, with notice of the trust, a claim inconsistent therewith.

Who may be trustee.

**10.** Every person capable of holding property may be a trustee ; but, where the trust involves the exercise of discretion, he cannot execute it unless he is competent to contract.

No one bound to accept trust.

No one is bound to accept a trust.

Acceptance of trust.

A trust is accepted by any words or acts of the trustee indicating with reasonable certainty such acceptance.

Disclaimer of trust.

Instead of accepting a trust, the intended trustee may, within a reasonable period, disclaim it, and such disclaimer shall prevent the trust-property from vesting in him.

A disclaimer by one of two or more co-trustees vests the trust-property in the other or others, and makes him or them sole trustee or trustees from the date of the creation of the trust.

*Illustrations.*

(*a*) *A* bequeaths certain property to *B* and *C*, his executors, as trustees for *D*. *B* and *C* prove *A*'s will. This is in itself an acceptance of the trust, and *B* and *C* hold the property in trust for *D*.

(*b*) *A* transfers certain property to *B* in trust to sell it and to pay out of the proceeds *A*'s debts *B* accepts the trust and sells the property. So far as regards *B*, a trust of the proceeds is created for *A*'s creditors.

(*c*) *A* bequeaths a lakh of rupees to *B* upon certain trusts and appoints him his executor. *B* severs the lakh from the general assets and appropriates it to the specific purpose. This is an acceptance of the trust.

## CHAPTER III.

### OF THE DUTIES AND LIABILITIES OF TRUSTEES.

Trustee to execute trust.

**11.** The trustee is bound to fulfil the purpose of the trust, and to obey the directions of the author of the trust given at the time of its creation, except as modified by the consent of all the beneficiaries being competent to contract.

[1] *See* section 11 of the Contract Act.

Where the beneficiary is incompetent to contract, his consent may, for the purposes of this section, be given by a principal civil Court of original jurisdiction.

Nothing in this section shall be deemed to require a trustee to obey any direction when to do so would be impracticable, illegal or manifestly injurious to the beneficiaries.

*Explanation.*—Unless a contrary intention be expressed, the purpose of a trust for the payment of debts shall be deemed to be (*a*) to pay only the debts of the author of the trust existing and recoverable at the date of the instrument of trust, or, when such instrument is a will, at the date of his death, and (*b*) in the case of debts not bearing interest, to make such payment without interest.

*Illustrations.*

(*a*) *A*, a trustee, is simply authorized to sell certain land by public auction. He cannot sell the land by private contract.

(*b*) *A*, a trustee of certain land for *X*, *Y* and *Z*, is authorized to sell the land to *B* for a specified sum. *X*, *Y* and *Z*, being competent to contract, consent that *A* may sell the land to *C* for a less sum. *A* may sell the land accordingly.

(*c*) *A*, a trustee for *B* and her children, is directed by the author of the trust to lend, on *B*'s request, trust-property to *B*'s husband, *C*, on the security of his bond. *C* becomes insolvent and *B* requests *A* to make the loan. *A* may refuse to make it.

Trustee to inform himself of state of trust-property.

**12.** A trustee is bound to acquaint himself, as soon as possible, with the nature and circumstances of the trust-property ; to obtain, where necessary, a transfer of the trust-property to himself ; and (subject to the provisions of the instrument of trust) to get in trust-moneys invested on insufficient or hazardous security.

*Illustrations.*

(*a*) The trust-property is a debt outstanding on personal security. The instrument of trust gives the trustee no discretionary power to leave the debt so outstanding. The trustee's duty is to recover the debt without unnecessary delay.

(*b*) The trust-property is money in the hands of one of two co-trustees. No discretionary power is given by the instrument of trust. The other co-trustee must not allow the former to retain the money for a longer period than the circumstances of the case require.

Trustee to protect title to trust-property.

**13.** A trustee is bound to maintain and defend all such suits, and (subject to the provisions of the instrument of trust) to take such other steps as, regard being had to the nature and amount or value of the trust-property, may be reasonably requisite for the preservation of the trust-property and the assertion or protection of the title thereto.

*Illustration.*

The trust property is immoveable property which has been given to the author of the trust by an unregistered instrument. Subject to the provisions of the Registration Act, the trustee's duty is to cause the instrument to be registered.

Trustee not to set up title adverse to beneficiary.

**14.** The trustee must not for himself or another set up or aid any title to the trust-property adverse to the interest of the beneficiary.

Care required from trustee.

**15.** A trustee is bound to deal with the trust-property as carefully as a man of ordinary prudence would deal with such property if it were his own; and, in the absence of a contract to the contrary, a trustee so dealing is not responsible for the loss, destruction or deterioration of the trust-property.

*Illustrations.*

(*a*) *A*, living in Rangoon, is a trustee for *B*, living in Bombay. *A* remits trust-funds to *B* by bills drawn by a person of undoubted credit in favour of the trustee as such, and payable at Bombay. The bills are dishonoured. *A* is not bound to make good the loss.

(*b*) *A*, a trustee of leasehold property, directs the tenant to pay the rents on account of the trust to a banker, *B*, then in credit. The rents are accordingly paid to *B*, and *A* leaves the money with *B* only till wanted. Before the money is drawn out *B* becomes insolvent. *A*, having had no reason to believe that *B* was in insolvent circumstances, is not bound to make good the loss.

(*c*) *A*, a trustee of two debts for *B*, releases one and compounds the other, in good faith, and reasonably believing that it is for *B*'s interest to do so. *A* is not bound to make good any loss caused thereby to *B*.

(*d*) *A*, a trustee directed to sell the trust-property by auction, sells the same, but does not advertise the sale and otherwise fails in reasonable diligence in inviting competition. *A* is bound to make good the loss caused thereby to the beneficiary.

(*e*) *A*, a trustee for *B*, in execution of his trust, sells the trust-property, but from want of due diligence on his part fails to receive part of the purchase-money. *A* is bound to make good the loss thereby caused to *B*.

(*f*) *A*, a trustee for *B* of a policy of insurance, has funds in hand for payment of the premiums. *A* neglects to pay the premiums, and the policy is consequently forfeited. *A* is bound to make good the loss to *B*.

(*g*) *A* bequeaths certain moneys to *B* and *C* as trustees, and authorizes them to continue trust-moneys upon the personal security of a certain firm in which *A* had himself invested them. *A* dies, and a change takes place in the firm. *B* and *C* must not permit the moneys to remain upon the personal security of the new firm.

(*h*) *A*, a trustee for *B*, allows the trust to be executed solely by his co-trustee, *C*. *C* misapplies the trust-property. *A* is personally answerable for the loss resulting to *B*.

Conversion of perishable property.

**16.** Where the trust is created for the benefit of several persons in succession, and the trust-property is of a wasting nature or a future or reversionary interest, the trustee is bound, unless an intention to the contrary may be inferred from the instrument of trust, to convert the property into property of a permanent and immediately profitable character.

*Illustrations.*

(*a*) *A* bequeaths to *B* all his property in trust for *C* during his life, and on his death for *D*, and on *D*'s death for *E*. *A*'s property consists of three leasehold houses, and there is nothing in *A*'s will to show that he intended the houses to be enjoyed in specie. *B* should sell the houses, and invest the proceeds in accordance with section 20.

(*b*) *A* bequeaths to *B* his three leasehold houses in Rangoon and all the furniture there in trust for *C* during his life, and on his death for *D*, and on *D*'s death for *E*. Here an intention that the houses and furniture should be enjoyed in specie appears clearly, and *B* should not sell them.

Trustee to be impartial.

**17.** Where there are more beneficiaries than one, the trustee is bound to be impartial, and must not execute the trust for the advantage of one at the expense of another.

Where the trustee has a discretionary power, nothing in this section shall be deemed to authorize the Court to control the exercise reasonably and in good faith of such discretion.

*Illustration.*

*A*, a trustee for *B*, *C* and *D*, is empowered to choose between several specified modes of investing the trust-property. *A* in good faith chooses one of these modes. The Court will not interfere, although the result of the choice may be to vary the relative rights of *B*, *C* and *D*.

Trustee to prevent waste.

**18.** Where the trust is created for the benefit of several persons in succession and one of them is in possession of the trust-property, if he commits, or threatens to commit, any act which is destructive or permanently injurious thereto, the trustee is bound to take measures to prevent such act.

Accounts and information.

**19.** A trustee is bound (*a*) to keep clear and accurate accounts of the trust-property, and (*b*) at all reasonable times, at the request of the beneficiary to furnish him with full and accurate information as to the amount and state of the trust-property.

Investment of trust-money.

**20.** Where the trust-property consists of money and cannot be applied immediately or at an early date to the purposes of the trust, the trustee is bound (subject to any direction contained in the instrument of trust) to invest the money on the following securities, and on no others :—

(*a*) in promissory notes, debentures, stock or other securities of the Government of the Union of Burma or of the Central or any Provincial Government in India or Pakistan, or of the United Kingdom of Great Britain and Ireland:

Provided that securities, both the principal whereof and the interrest whereon shall have been fully and unconditionally guaranteed by any such Government, shall be deemed, for the purposes of this clause, to be securities of such Government;

(*b*) in bonds, debentures and annuities charged or secured by the [Parliament of the United Kingdom of Great Britain and Ireland][1] on the revenues of the Union of Burma or of the [Government of India or Pakistan][1] or any Province of India or Pakistan:

Provided that, after the fifteenth day of February, 1916,[2] no money shall be invested in any such annuity being a terminable annuity unless a sinking fund has been established in connection with such annuity; but nothing in this proviso shall apply to investments made before the date aforesaid;

(*bb*) in India or Pakistan three and a half per cent. stock, India or Pakistan three per cent. stock, India or Pakistan two and a half per cent. stock, or any other capital stock issued by the Secretary of State for India in Council under the authority of an Act of [Parliament of the United Kingdom of Great Britain and Ireland][1] and charged on the revenues of India or Pakistan, or in any sterling loans raised by the Secretary of State on behalf

[1] Substituted by the Union of Burma (Adaptation of Laws) Order, 1948.
[2] The date of commencement of the Indian Trusts (Amendment) Act, 1916 (India Act I, 1916), which added this proviso.

26 Geo. 5, C. 2.

of the Governor-General in Council under the provisions of Part XIII of the Government of India Act, 1935;

(*c*) in stock or debentures of, or shares in, railway or other companies the interest whereon shall have been guaranteed by the Secretary of State for India in Council or by the Government of India or Pakistan, or in debentures of the Bombay Provincial Co-operative Bank, Limited, the interest whereon shall have been guaranteed by the Secretary of State for India in Council;

(*d*) in debentures or other securities for money issued, under the authority of any Act of a Legislature established in India or Pakistan or the Union of Burma, by or on behalf of any municipal body, port trust or city improvement trust in any Presidency-town, or in Rangoon Town, or by or on behalf of the trustees of the port of Karachi;

(*e*) on a first mortgage of immoveable property situate in [* *][1] the Union of Burma: Provided that the property is not a leasehold for a term of years and that the value of the property exceeds by one-third, or, if consisting of buildings, exceeds by one-half, the mortgage-money; or

(*f*) on any other security expressly authorized by the instrument of trust, or by any rule which the High Court may from time to time prescribe in this behalf:

Provided that, where there is a person competent to contract and entitled in possession to receive the income of the trust-property for his life, or for any greater estate, no investment on any security mentioned or referred to in clauses (*d*), (*e*) and (*f*) shall be made without his consent in writing.

Power to purchase redeemable stock at a premium.

**20A.** (*1*) A trustee may invest in any of the securities mentioned or referred to in section 20, notwithstanding that the same may be redeemable and that the price exceeds the redemption value:

Provided that a trustee may not purchase at a price exceeding its redemption value any security mentioned or referred to in clauses (*c*) and (*d*) of section 20 which is liable to be redeemed within fifteen years of the date of purchase at par or at some other fixed rate, or purchase any such security as is mentioned or referred to in the said clauses which is liable to be redeemed at par or at some other fixed rate at a price exceeding fifteen per centum above par or such other fixed rate.

(*2*) A trustee may retain until redemption any redeemable stock, fund or security which may have been purchased in accordance with this section.

Mortgage of land pledged to Government under the Land Improvement Loans Act. Deposit

**21.** Nothing in section 20 shall apply to investments made before this Act comes into force, or shall be deemed to preclude an investment on a mortgage of immoveable property already pledged as security for an advance under the Land Improvement Loans Act, or, in case the

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

trust-money does not exceed three thousand rupees, a deposit thereof in a Government Savings Bank. in Government Savings Bank.

**22.** Where a trustee directed to sell within a specified time extends such time, the burden of proving, as between himself and the beneficiary, that the latter is not prejudiced by the extension lies upon the trustee, unless the extension has been authorized by a principal civil Court of original jurisdiction. Sale by trustee directed to sell within specified time.

*Illustration.*

*A* bequeaths property to *B*, directing him with all convenient speed and within five years to sell it, and apply the proceeds for the benefit of *C*. In the exercise of reasonable discretion, *B* postpones the sale for six years. The sale is not thereby rendered invalid, but *C*, alleging that he has been injured by the postponement, institutes a suit against *B* to obtain compensation. In such suit the burden of proving that *C* has not been injured lies on *B*.

**23.** Where the trustee commits a breach of trust, he is liable to make good the loss which the trust-property or the beneficiary has thereby sustained, unless the beneficiary has by fraud induced the trustee to commit the breach, or the beneficiary, being competent to contract, has himself, without coercion or undue influence having been brought to bear on him, concurred in the breach, or subsequently acquiesced therein, with full knowledge of the facts of the case and of his rights as against the trustee. Liability for breach of trust.

A trustee committing a breach of trust is not liable to pay interest except in the following cases :—

(*a*) where he has actually received interest ;

(*b*) where the breach consists in unreasonable delay in paying trust-money to the beneficiary ;

(*c*) where the trustee ought to have received interest, but has not done so ;

(*d*) where he may be fairly presumed to have received interest.

He is liable, in case (*a*), to account for the interest actually received, and, in cases (*b*), (*c*) and (*d*), to account for simple interest at the rate of six per cent. per annum, unless the Court otherwise directs.

(*e*) Where the breach consists in failure to invest trust-money and to accumulate the interest or dividends thereon, he is liable to account for compound interest (with half-yearly rests) at the same rate.

(*f*) Where the breach consists in the employment of trust-property or the proceeds thereof in trade or business, he is liable to account, at the option of the beneficiary, either for compound interest (with half-yearly rests) at the same rate, or for the nett profits made by such employment.

*Illustrations.*

(*a*) A trustee improperly leaves trust-property outstanding, and it is consequently lost ; he is liable to make good the property lost, but he is not liable to pay interest thereon.

(*b*) *A* bequeaths a house to *B* in trust to sell it and pay the proceeds to *C*. *B* neglects to sell the house for a great length of time, whereby the house is deteriorated and its market price falls. *B* is answerable to *C* for the loss.

(*c*) A trustee is guilty of unreasonable delay in investing trust-money in accordance with section 20, or in paying it to the beneficiary. The trustee is liable to pay interest thereon for the period of the delay.

(*d*) The duty of the trustee is to invest trust-money in any of the securities mentioned in section 20, clause (*a*), (*b*), (*c*) or (*d*). Instead of so doing, he retains the money in his hands. He is liable, at the option of the beneficiary, to be charged either with the amount of the principal money and interest, or with the amount of such securities as he might have purchased with the trust-money when the investment should have been made, and the intermediate dividends and interest thereon.

(*e*) The instrument of trust directs the trustee to invest trust-money either in any such securities or on mortgage of immoveable property. The trustee does neither. He is liable for the principal money and interest.

(*f*) The instrument of trust directs the trustee to invest trust-money in any of such securities and to accumulate the dividends thereon. The trustee disregards the direction. He is liable, at the option of the beneficiary, to be charged either with the amount of the principal money and compound interest, or with the amount of such securities as he might have purchased with the trust-money when the investment should have been made, together with the amount of the accumulation which would have arisen from a proper investment of the intermediate dividends.

(*g*) Trust property is invested in one of the securities mentioned in section 20, clause (*a*), (*b*), (*c*) or (*d*). The trustee sells such security for some purpose not authorized by the terms of the instrument of trust. He is liable, at the option of the beneficiary, either to replace the security with the intermediate dividends and interest thereon, or to account for the proceeds of the sale with interest thereon.

(*h*) The trust-property consists of land. The trustee sells the land to a purchaser for a consideration without notice of the trust. The trustee is liable, at the option of the beneficiary, to purchase other land of equal value to be settled upon the like trust, or to be charged with the proceeds of the sale with interest.

No set-off allowed to trustee.

**24.** A trustee who is liable for a loss occasioned by a breach of trust in respect of one portion of the trust-property cannot set-off against his liability a gain which has accrued to another portion of the trust-property through another and distinct breach of trust.

Non-liability for predecessor's default.

**25.** Where a trustee succeeds another, he is not, as such, liable for the acts or defaults of his predecessor.

Non-liability for co-trustee's default.

**26.** Subject to the provisions of sections 13 and 15, one trustee is not, as such, liable for a breach of trust committed by his co-trustee:

Provided that, in the absence of an express declaration to the contrary in the instrument of trust, a trustee is so liable—

(*a*) where he has delivered trust-property to his co-trustee without seeing to its proper application;

(*b*) where he allows his co-trustee to receive trust-property and fails to make due enquiry as to the co-trustee's dealings therewith or allows him to retain it longer than the circumstances of the case reasonably require;

(*c*) where he becomes aware of a breach of trust committed or intended by his co-trustee, and either actively conceals it or does not within a reasonable time take proper steps to protect the beneficiary's interest.

Joining in receipt for conformity

A co-trustee who joins in signing a receipt for trust-property and proves that he has not received the same is not answerable, by reason of such signature only, for loss or misapplication of the property by his co-trustee.

*Illustration.*

*A* bequeaths certain property to *B* and *C*, and directs them to sell it and invest the proceeds for the benefit of *D*. *B* and *C* accordingly sell the property, and the purchase-money is received by *B* and retained in his hands. *C* pays no attention to the matter for two years, and then calls on *B* to make the investment. *B* is unable to do so, becomes insolvent, and the purchase-money is lost. *C* may be compelled to make good the amount.

Several liability of co-trustees.

**27.** Where co-trustees jointly commit a breach of trust, or where one of them by his neglect enables the other to commit a breach of trust, each is liable to the beneficiary for the whole of the loss occasioned by such breach.

Contribution as between co-trustees.

But as between the trustees themselves, if one be less guilty than another and has had to refund the loss, the former may compel the latter, or his legal representative to the extent of the assets he has received, to make good such loss; and, if all be equally guilty, any one or more of the trustees who has had to refund the loss may compel the others to contribute.

Nothing in this section shall be deemed to authorize a trustee who has been guilty of fraud to institute a suit to compel contribution.

Non-liability of trustee paying without notice of transfer by beneficiary.

**28.** When any beneficiary's interest becomes vested in another person, and the trustee, not having notice of the vesting, pays or delivers trust-property to the person who would have been entitled thereto in the absence of such vesting, the trustee is not liable for the property so paid or delivered.

Liability of trustee where beneficiary's interest is forfeited to Government.

**29.** When the beneficiary's interest is forfeited or awarded by legal adjudication to Government, the trustee is bound to hold the trust-property to the extent of such interest for the benefit of such person in such manner as the Government may direct in this behalf.

Indemnity of trustees.

**30.** Subject to the provisions of the instrument of trust and of sections 23 and 26, trustees shall be respectively chargeable only for such moneys, stocks, funds and securities as they respectively actually receive and shall not be answerable the one for the other of them, nor for any banker, broker or other person in whose hands any trust-property may be placed, nor for the insufficiency or deficiency of any stocks, funds or securities, nor otherwise for involuntary losses.

## CHAPTER IV.

### OF THE RIGHTS AND POWERS OF TRUSTEES.

Right to title-deeds.

**31.** A trustee is entitled to have in his possession the instrument of trust and all the documents of title (if any) relating solely to the trust-property.

Right to reimbursement of expenses.

**32.** Every trustee may reimburse himself or pay or discharge out of the trust-property all expenses properly incurred in or about the execution of the trust, or the realization, preservation or benefit of the trust-property, or the protection or support of the beneficiary.

If he pays such expenses out of his own pocket, he has a first charge upon the trust-property for such expenses and interest thereon; but such charge (unless the expenses have been incurred with the sanction of a principal civil Court of original jurisdiction) shall be enforced only by prohibiting any disposition of the trust-property without previous payment of such expenses and interest.

If the trust-property fail, the trustee is entitled to recover from the beneficiary personally on whose behalf he acted, and at whose request, expressed or implied, he made the payment, the amount of such expenses.

Right to be recouped for erroneous over-payment.

Where a trustee has by mistake made an over-payment to the beneficiary, he may reimburse the trust-property out of the beneficiary's interest. If such interest fail, the trustee is entitled to recover from the beneficiary personally the amount of such over-payment.

Right to indemnity from gainer by breach of trust.

**33.** A person other than a trustee who has gained an advantage from a breach of trust must indemnify the trustee to the extent of the amount actually received by such person under the breach; and where he is a beneficiary the trustee has a charge on his interest for such amount.

Nothing in this section shall be deemed to entitle a trustee to be indemnified who has, in committing the breach of trust, been guilty of fraud.

Right to apply to Court for opinion in management of trust-property.

**34.** Any trustee may, without instituting a suit, apply by petition to a principal civil Court of original jurisdiction for its opinion, advice or direction on any present questions respecting the management or administration of the trust-property other than questions of detail, difficulty or importance, not proper in the opinion of the Court for summary disposal.

A copy of such petition shall be served upon, and the hearing thereof may be attended by, such of the persons interested in the application as the Court thinks fit.

The trustee stating in good faith the facts in such petition and acting upon the opinion, advice or direction given by the Court shall be deemed, so far as regards his own responsibility, to have discharged his duty as such trustee in the subject-matter of the application.

The costs of every application under this section shall be in the discretion of the Court to which it is made.

Right to settlement of accounts.

**35.** When the duties of a trustee, as such, are completed, he is entitled to have the accounts of his administration of the trust-property examined and settled; and, where nothing is due to the beneficiary under the trust, to an acknowledgment in writing to that effect.

General authority of trustee.

**36.** In addition to the powers expressly conferred by this Act and by the instrument of trust, and subject to the restrictions, if any, contained in such instrument, and to the provisions of section 17, a trustee may do all acts which are reasonable and proper for the realization, protection or benefit of the trust-property, and for the protection or support of a beneficiary who is not competent to contract.

Except with the permission of a principal civil Court of original jurisdiction, no trustee shall lease trust-property for a term exceeding twenty-one years from the date of executing the lease, nor without reserving the best yearly rent that can be reasonably obtained.

Power to sell in lots, and either by public auction or private contract.

**37.** Where the trustee is empowered to sell any trust-property, he may sell the same subject to prior charges or not, and either together or in lots, by public auction or private contract, and either at one time or at several times, unless the instrument of trust otherwise directs.

Power to sell under special conditions. Power to buy in and re-sell.

**38.** The trustee making any such sale may insert such reasonable stipulations either as to title or evidence of title, or otherwise, in any conditions of sale or contract for sale, as he thinks fit; and may also buy in the property or any part thereof at any sale by auction, and rescind or vary any contract for sale, and re-sell the property so bought in, or as to which the contract is so rescinded, without being responsible to the beneficiary for any loss occasioned thereby.

Time allowed for selling trust-property.

Where a trustee is directed to sell trust-property or to invest trust-money in the purchase of property, he may exercise a reasonable discretion as to the time of effecting the sale or purchase.

*Illustrations.*

(*a*) *A* bequeaths property to *B*, directing him to sell it with all convenient speed and pay the proceeds to *C*. This does not render an immediate sale imperative.

(*b*) *A* bequeaths property to *B*, directing him to sell it at such time and in such manner as he shall think fit and invest the proceeds for the benefit of *C*. This does not authorize *B*, as between him and *C*, to postpone the sale to an indefinite period.

Power to convey.

**39.** For the purpose of completing any such sale, the trustee shall have power to convey or otherwise dispose of the property sold in such manner as may be necessary.

Power to vary investments.

**40.** A trustee may, at his discretion, call in any trust-property invested in any security and invest the same on any of the securities mentioned or referred to in section 20, and from time to time vary any such investments for others of the same nature :

Provided that, where there is a person competent to contract and entitled at the time to receive the income of the trust-property for his life or for any greater estate, no such change of investment shall be made without his consent in writing.

Power to apply property of minors, etc., for their maintenance, etc.

**41.** Where any property is held by a trustee in trust for a minor, such trustee may, at his discretion, pay to the guardians (if any) of such minor, or otherwise apply for or towards his maintenance or education or advancement in life, or the reasonable expenses of his religious worship, marriage or funeral, the whole or any part of the income to which he may be entitled in respect of such property ; and such trustee shall accumulate all the residue of such income by way of compound interest by investing the same and the resulting income thereof from time to time in any of the securities mentioned

or referred to in section 20, for the benefit of the person who shall ultimately become entitled to the property from which such accumulations have arisen :

Provided that such trustee may, at any time, if he thinks fit, apply the whole or any part of such accumulations as if the same were part of the income arising in the then current year.

Where the income of the trust-property is insufficient for the minor's maintenance or education or advancement in life, or the reasonable expenses of his religious worship, marriage or funeral, the trustee may, with the permission of a principal civil Court of original jurisdiction, but not otherwise, apply the whole or any part of such property for or towards such maintenance, education, advancement or expenses.

Nothing in this section shall be deemed to affect the provisions of any local law for the time being in force relating to the persons and property of minors.

Power to give receipts.

**42.** Any trustees or trustee may give a receipt in writing for any money, securities or other moveable property payable, transferable or deliverable to them or him by reason, or in the exercise, of any trust or power ; and, in the absence of fraud, such receipt shall discharge the person paying, transferring or delivering the same therefrom, and from seeing to the application thereof, or being accountable for any loss or misapplication thereof.

Power to compound, etc.

**43.** Two or more trustees acting together may, if and as they think fit,—

(*a*) accept any composition or any security for any debt or for any property claimed ;

(*b*) allow any time for payment of any debt ;

(*c*) compromise, compound, abandon, submit to arbitration or otherwise settle any debt, account, claim or thing whatever relating to the trust ; and

(*d*) for any of those purposes, enter into, give, execute and do such agreements, instruments of composition or arrangement, releases and other things as to them seem expedient, without being responsible for any loss occasioned by any act or thing so done by them in good faith.

The powers conferred by this section on two or more trustees acting together may be exercised by a sole acting trustee when by the instrument of trust, if any, a sole trustee is authorized to execute the trusts and powers thereof.

This section applies only if and as far as a contrary intention is not expressed in the instrument of trust, if any, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

This section applies only to trusts created after this Act comes into force.

Power to several trustees of whom one disclaims or dies.

**44.** When an authority to deal with the trust-property is given to several trustees and one of them disclaims or dies, the authority may be exercised by the continuing trustees, unless from the terms of the instrument of trust it is apparent that the authority is to be exercised by a number in excess of the number of the remaining trustees.

Suspension of trustee's powers by decree.

**45.** Where a decree has been made in a suit for the execution of a trust, the trustee must not exercise any of his powers except in conformity with such decree, or with the sanction of the Court by which the decree has been made, or, where an appeal against the decree is pending, of the appellate Court.

## CHAPTER V.

### OF THE DISABILITIES OF TRUSTEES.

Trustee cannot renounce after acceptance.

**46.** A trustee who has accepted the trust cannot afterwards renounce it except (*a*) with the permission of a principal civil Court of original jurisdiction, or (*b*) if the beneficiary is competent to contract, with his consent, or (*c*) by virtue of a special power in the instrument of trust.

Trustee cannot delegate.

**47.** A trustee cannot delegate his office or any of his duties either to a co-trustee or to a stranger, unless (*a*) the instrument of trust so provides, or (*b*) the delegation is in the regular course of business, or (*c*) the delegation is necessary, or (*d*) the beneficiary, being competent to contract, consents to the delegation.

*Explanation.*—The appointment of an attorney or proxy to do an act merely ministerial and involving no independent discretion is not a delegation within the meaning of this section.

*Illustrations.*

(*a*) *A* bequeaths certain property to *B* and *C* on certain trusts to be executed by them or the survivor of them or the assigns of such survivor. *B* dies. *C* may bequeath the trust-property to *D* and *E* upon the trusts of *A*'s will.

(*b*) *A* is a trustee of certain property with power to sell the same. *A* may employ an auctioneer to effect the sale.

(*c*) *A* bequeaths to *B* fifty houses let at monthly rents in trust to collect the rents and pay them to *C*. *B* may employ a proper person to collect these rents.

Co-trustees cannot act singly.

**48.** When there are more trustees than one, all must join in the execution of the trust, except where the instrument of trust otherwise provides.

Control of discretionary power.

**49.** Where a discretionary power conferred on a trustee is not exercised reasonably and in good faith, such power may be controlled by a principal civil Court of original jurisdiction.

Trustee may not charge for services.

**50.** In the absence of express directions to the contrary contained in the instrument of trust or of a contract to the contrary entered into with the beneficiary or the Court at the time of accepting the trust, a trustee has no right to remuneration for his trouble, skill and loss of time in executing the trust.

Nothing in this section applies to the Official Trustee or Administrator-General or any person holding a certificate of administration.

Trustee may not use trust-property for his own profit.

**51.** A trustee may not use or deal with the trust-property for his own profit or for any other purpose unconnected with the trust.

Trustee for sale or his agent may not buy.

**52.** No trustee whose duty it is to sell trust-property, and no agent employed by such trustee for the purpose of the sale, may, directly or indirectly, buy the same or any interest therein on his own account or as agent for a third person.

Trustee may not buy beneficiary's interest without permission.

**53.** No trustee, and no person who has recently ceased to be a trustee, may, without the permission of a principal civil Court of original jurisdiction, buy or become mortgagee or lessee of the trust-property or any part thereof; and such permission shall not be given unless the proposed purchase, mortgage or lease is manifestly for the advantage of the beneficiary.

Trustee for purchase.

And no trustee whose duty it is to buy or to obtain a mortgage or lease of particular property for the beneficiary may buy it, or any part thereof, or obtain a mortgage or lease of it, or any part thereof, for himself.

Co-trustees may not lend to one of themselves.

**54.** A trustee or co-trustee whose duty it is to invest trust-money on mortgage or personal security must not invest it on a mortgage by, or on the personal security of, himself or one of his co-trustees.

## CHAPTER VI.

### OF THE RIGHTS AND LIABILITIES OF THE BENEFICIARY.

Right to rents and profits.

**55.** The beneficiary has, subject to the provisions of the instrument of trust, a right to the rents and profits of the trust-property.

Right to specific execution.

**56.** The beneficiary is entitled to have the intention of the author of the trust specifically executed to the extent of the beneficiary's interest;

Right to transfer of possession.

and, where there is only one beneficiary and he is competent to contract, or where there are several beneficiaries and they are competent to contract and all of one mind, he or they may require the trustee to transfer the trust-property to him or them, or to such person as he or they may direct.

When property has been transferred or bequeathed for the benefit of a married woman, so that she shall not have power to deprive herself of her beneficial interest, nothing in the second clause of this section applies to such property during her marriage.

*Illustrations.*

(*a*) Certain Government securities are given to trustees upon trust to accumulate the interest until *A* attains the age of 24, and then to transfer the gross amount to him. *A* on attaining majority may, as the person exclusively interested in the trust-property, require the trustees to transfer it immediately to him.

(*b*) *A* bequeaths Rs 10,000 to trustees upon trust to purchase an annuity for *B*, who has attained his majority and is otherwise competent to contract. *B* may claim the Rs. 10,000.

(*c*) *A* transfers certain property to *B* and directs him to sell or invest it for the benefit of *C* who is competent to contract. *C* may elect to take the property in its original character.

Right to inspect and take copies of instrument of trust, accounts, etc.

**57.** The beneficiary has a right, as against the trustee and all persons claiming under him with notice of the trust, to inspect and take copies of the instrument of trust, the documents of title relating solely to the trust-property, the accounts of the trust-property and the vouchers (if any) by which they are supported, and the cases submitted and opinions taken by the trustee for his guidance in the discharge of his duty.

Right to transfer beneficial interest.

**58.** The beneficiary, if competent to contract, may transfer his interest but subject to the law for the time being in force as to the circumstances and extent in and to which he may dispose of such interest :

Provided that when property is transferred or bequeathed for the benefit of a married woman, so that she shall not have power to deprive herself of her beneficial interest, nothing in this section shall authorize her to transfer such interest during her marriage.

Right to sue for execution of trust.

**59.** When no trustees are appointed or all the trustees die, disclaim, or are discharged, or where for any other reason the execution of a trust by the trustee is or becomes impracticable, the beneficiary may institute a suit for the execution of the trust, and the trust shall, so far as may be possible, be executed by the Court until the appointment of a trustee or new trustee.

Right to proper trustees.

**60.** The beneficiary has a right (subject to the provisions of the instrument of trust) that the trust-property shall be properly protected and held and administered by proper persons and by a proper number of such persons.

*Explanation I.*—The following are not proper persons within the meaning of this section :—

A person domiciled abroad : an alien enemy : a person having an interest inconsistent with that of the beneficiary : a person in insolvent circumstances ; and, unless the personal law of the beneficiary allows otherwise, a married woman and a minor.

*Explanation II.*—When the administration of the trust involves the receipt and custody of money, the number of trustees should be two at least.

*Illustrations.*

(*a*) *A*, one of several beneficiaries, proves that *B*, the trustee, has improperly disposed of part of the trust-property, or that the property is in danger from *B*'s being in insolvent circumstances, or that he is incapacitated from acting as trustee. *A* may obtain a receiver of the trust-property.

(*b*) *A* bequeaths certain jewels to *B* in trust for *C*. *B* dies during *A*'s lifetime ; then *A* dies. *C* is entitled to have the property conveyed to a trustee for him.

(*c*) *A* conveys certain property to four trustees in trust for *B*. Three of the trustees die. *B* may institute a suit to have three new trustees appointed in the place of the deceased trustees.

(*d*) *A* conveys certain property to three trustees in trust for *B*. All the trustees disclaim. *B* may institute a suit to have three trustees appointed in place of the trustees so disclaiming.

(*e*) *A*, a trustee for *B*, refuses to act, or goes to reside permanently out of the Union of Burma, or is declared an insolvent, or compounds with his creditors or suffers a co-trustee to commit a breach of trust. *B* may institute a suit to have *A* removed and a new trustee appointed in his room.

Right to compel to any act of duty.

**61.** The beneficiary has a right that his trustee shall be compelled to perform any particular act of his duty as such, and restrained from committing any contemplated or probable breach of trust.

*Illustrations.*

(*a*) *A* contracts with *B* to pay him monthly Rs. 100 for the benefit of *C*. *B* writes and signs a letter declaring that he will hold in trust for *C* the money so to be paid. *A* fails to pay the money in accordance with his contract. *C* may compel *B* on a proper indemnity to allow *C* to sue on the contract in *B*'s name.

(*b*) *A* is trustee of certain land, with a power to sell the same and pay the proceeds to *B* and *C* equally. *A* is about to make an improvident sale of the land. *B* may sue on behalf of himself and *C* for injunction to restrain *A* from making the sale.

Wrongful purchase by trustee.

**62.** Where a trustee has wrongfully bought trust-property, the beneficiary has a right to have the property declared subject to the trust or retransferred by the trustee, if it remains in his hands unsold, or, if it has been bought from him by any person with notice of the trust, by such person. But in such case the beneficiary must repay the purchase-money paid by the trustee, with interest, and such other expenses (if any) as he has properly incurred in the preservation of the property; and the trustee or purchaser must (*a*) account for the nett profits of the property, (*b*) be charged with an occupation-rent, if he has been in actual possession of the property, and (*c*) allow the beneficiary to deduct a proportionate part of the purchase-money if the property has been deteriorated by the acts or omissions of the trustee or purchaser.

Nothing in this section—

(*a*) impairs the rights of lessees and others who, before the institution of a suit to have the property declared subject to the trust or retransferred, have contracted in good faith with the trustee or purchaser; or

(*b*) entitles the beneficiary to have the property declared subject to the trust or retransferred where he, being competent to contract, has himself, without coercion or undue influence having been brought to bear on him, ratified the sale to the trustee with full knowledge of the facts of the case and of his rights as against the trustee.

Following trust-property—into the hands of third persons; into that into which it has been converted.

**63.** Where trust-property comes into the hands of a third person inconsistently with the trust, the beneficiary may require him to admit formally, or may institute a suit for a declaration, that the property is comprised in the trust.

Where the trustee has disposed of trust-property and the money or other property which he has received therefor can be traced in his hands, or the hands of his legal representative or legatee, the beneficiary has, in

respect thereof, rights as nearly as may be the same as his rights in respect of the original trust-property.

*Illustrations.*

(*a*) *A*, a trustee for *B* of Rs. 10,000, wrongfully invests the Rs. 10,000 in the purchase of certain land. *B* is entitled to the land.

(*b*) *A*, a trustee, wrongfully purchases land in his own name, partly with his own money, partly with money subject to a trust for *B*. *B* is entitled to a charge on the land for the amount of the trust-money so misemployed.

Saving of rights of certain transferees.

**64.** Nothing in section 63 entitles the beneficiary to any right in respect of property in the hands of—

(*a*) a transferee in good faith for consideration without having notice of the trust, either when the purchase-money was paid, or when the conveyance was executed, or

(*b*) a transferee for consideration from such a transferee.

A judgment-creditor of the trustee attaching and purchasing trust-property is not a transferee for consideration within the meaning of this section.

Nothing in section 63 applies to money, currency notes, and negotiable instruments in the hands of a *bonâ fide* holder to whom they have passed in circulation, or shall be deemed to affect the Contract Act, section 108, or the liability of a person to whom a debt or charge is transferred.

Acquisition by trustee of trust-property wrongfully converted.

**65.** Where a trustee wrongfully sells or otherwise transfers trust-property and afterwards himself becomes the owner of the property, the property again becomes subject to the trust, notwithstanding any want of notice on the part of intervening transferees in good faith for consideration.

Right in case of blended property.

**66.** Where the trustee wrongfully mingles the trust-property with his own, the beneficiary is entitled to a charge on the whole fund for the amount due to him.

Wrongful employment by partner-trustee of trust-property for partnership purposes.

**67.** If a partner, being a trustee, wrongfully employs trust-property in the business, or on the account of the partnership, no other partner is liable therefor in his personal capacity to the beneficiaries, unless he had notice of the breach of trust.

The partners having such notice are jointly and severally liable for the breach of trust.

*Illustrations.*

(*a*) *A* and *B* are partners. *A* dies, having bequeathed all his property to *B* in trust for *Z*, and appointed *B* his sole executor. *B*, instead of winding up the affairs of the partnership, retains all the assets in the business. *Z* may compel him, as partner, to account for so much of the profits as are derived from *A*'s share of the capital. *B* is also answerable to *Z* for the improper employment of *A*'s assets.

(*b*) *A*, a trader, bequeaths his property to *B* in trust for *C*, appoints *B* his sole executor, and dies. *B* enters into partnership with *X* and *Y* in the same trade, and employs *A*'s assets in the partnership-business. *B* gives an indemnity to *X* and *Y* against the claims of *C*. Here *X* and *Y* are jointly liable with *B* to *C* as having knowingly become parties to the breach of trust committed by *B*.

Liability of beneficiary joining in breach of trust.

**68.** Where one of several beneficiaries—

(*a*) joins in committing breach of trust, or

(*b*) knowingly obtains any advantage therefrom, without the consent of the other beneficiaries, or

(*c*) becomes aware of a breach of trust committed or intended to be committed, and either actually conceals it, or does not within a reasonable time take proper steps to protect the interests of the other beneficiaries, or

(*d*) has deceived the trustee and thereby induced him to commit a breach of trust,

the other beneficiaries are entitled to have all his beneficial interest impounded as against him and all who claim under him (otherwise than as transferee for consideration without notice of the breach) until the loss caused by the breach has been compensated.

When property has been transferred or bequeathed for the benefit of a married woman, so that she shall not have power to deprive herself of her beneficial interest, nothing in this section applies to such property during her marriage.

Rights and liabilities of beneficiary's transferee.

**69.** Every person to whom a beneficiary transfers his interest has the rights, and is subject to the liabilities, of the beneficiary in respect of such interest at the date of the transfer.

## CHAPTER VII.

### OF VACATING THE OFFICE OF TRUSTEE.

Office how vacated.

**70.** The office of a trustee is vacated by his death or by his discharge from his office.

Discharge of trustee.

**71.** The trustee may be discharged from his office only as follows:—

(*a*) by the extinction of the trust;

(*b*) by the completion of his duties under the trust;

(*c*) by such means as may be prescribed by the instrument of trust;

(*d*) by appointment under this Act of a new trustee in his place;

(*e*) by consent of himself and the beneficiary, or, where there are more beneficiaries than one, all the beneficiaries being competent to contract, or

(*f*) by the Court to which a petition for his discharge is presented under this Act.

Petition to be discharged from trust.

**72.** Nothwithstanding the provisions of section 11, every trustee may apply by petition to a principal civil Court of original jurisdiction to be discharged from his office; and, if the Court finds that there is sufficient reason for such discharge, it may discharge him accordingly, and direct his costs to be paid out of the trust-property. But, where there is no such

reason, the Court shall not discharge him, unless a proper person can be found to take his place.

Appointment of new trustees on death, etc.

**73.** Whenever any person appointed a trustee disclaims, or any trustee, either original or substituted, dies, or is for a continuous period of six months absent from the Union of Burma, or leaves the Union of Burma for the purpose of residing abroad, or is declared an insolvent, or desires to be discharged from the trust, or refuses or becomes, in the opinion of a principal civil Court of original jurisdiction, unfit or personally incapable to act in the trust, or accepts an inconsistent trust, a new trustee may be appointed in his place by—

(*a*) the person nominated for that purpose by the instrument of trust (if any), or

(*b*) if there be no such person, or no such person able and willing to act, the author of the trust if he be alive and competent to contract, or the surviving or continuing trustees or trustee for the time being, or legal representative of the last surviving and continuing trustee, or (with the consent of the Court) the retiring trustees, if they all retire simultaneously, or (with the like consent) the last retiring trustee.

Every such appointment shall be by writing under the hand of the person making it.

On an appointment of a new trustee the number of trustees may be increased.

The Official Trustee may, with his consent and by the order of the Court, be appointed under this section in any case in which only one trustee is to be appointed and such trustee is to be the sole trustee.

The provisions of this section relative to a trustee who is dead include the case of a person nominated trustee in a will but dying before the testator, and those relative to a continuing trustee include a refusing or retiring trustee if willing to act in the execution of the power.

Appointment by Court.

**74.** Whenever any such vacancy or disqualification occurs and it is found impracticable to appoint a new trustee under section 73, the beneficiary may, without instituting a suit, apply by petition to a principal civil Court of original jurisdiction for the appointment of a trustee or a new trustee, and the Court may appoint a trustee or a new trustee accordingly.

Rules for selecting new trustees.

In appointing new trustees, the Court shall have regard (*a*) to the wishes of the author of the trust as expressed in or to be inferred from the instrument of trust, (*b*) to the wishes of the person, if any, empowered to appoint new trustees, (*c*) to the question whether the appointment will promote or impede the execution of the trust, and, (*d*) where there are more beneficiaries than one, to the interests of all such beneficiaries.

Vesting of trust-property in new trustees.

**75.** Whenever any new trustee is appointed under section 73 or section 74, all the trust-property for the time being vested in the surviving or continuing trustees or trustee, or in the legal representative of any trustee, shall become vested in such new trustee either solely or jointly with the surviving or continuing trustees or trustee, as the case may require.

Powers of new trustees.

Every new trustee so appointed and every trustee appointed by a Court shall have the same powers, authorities and discretions, and shall in all respects act, as if he had been originally nominated a trustee by the author of the trust.

Survival of trust.

**76.** On the death or discharge of one of several co-trustees, the trust survives and the trust-property passes to the others, unless the instrument of trust expressly declares otherwise.

## CHAPTER VIII.

### OF THE EXTINCTION OF TRUSTS.

Trust how extinguished.

**77.** A trust is extinguished—

(*a*) when its purpose is completely fulfilled; or

(*b*) when its purpose becomes unlawful; or

(*c*) when the fulfilment of its purpose becomes impossible by destruction of the trust-property or otherwise; or

(*d*) when the trust, being revocable, is expressly revoked.

Revocation of trust.

**78.** A trust created by will may be revoked at the pleasure of the testator. A trust otherwise created can be revoked only—

(*a*) where all the beneficiaries are competent to contract—by their consent;

(*b*) where the trust has been declared by a non-testamentary instrument or by word of mouth—in exercise of a power of revocation expressly reserved to the author of the trust; or

(*c*) where the trust is for the payment of the debts of the author of the trust, and has not been communicated to the creditors—at the pleasure of the author of the trust.

*Illustration.*

*A* conveys property to *B* in trust to sell the same and pay out of the proceeds the claims of *A*'s creditors. *A* reserves no power of revocation. If no communication has been made to the creditors, *A* may revoke the trust. But if the creditors are parties to the arrangement, the trust cannot be revoked without their consent.

Revocation not to defeat what trustees have duly done.

**79.** No trust can be revoked by the author of the trust so as to defeat or prejudice what the trustees may have duly done in execution of the trust.

## CHAPTER IX.

### OF CERTAIN OBLIGATIONS IN THE NATURE OF TRUSTS.

Where obligation in nature of trust is created.

**80.** An obligation in the nature of a trust is created in the following cases.

Where it does not appear that transferor intended to dispose of beneficial interest.

**81.** Where the owner of property transfers or bequeaths it and it cannot be inferred consistently with the attendant circumstances that he intended to dispose of the beneficial interest therein, the transferee or legatee must hold such property for the benefit of the owner or his legal representative.

*Illustrations.*

(*a*) *A* conveys land to *B* without consideration and declares no trust of any part. It cannot, consistently with the circumstances under which the transfer is made, be inferred that *A* intended to transfer the beneficial interest in the land. *B* holds the land for the benefit of *A*.

(*b*) A conveys to *B* two fields, *Y* and *Z*, and declares a trust of *Y*, but says nothing about *Z*. It cannot, consistently with the circumstances under which the transfer is made, be inferred that *A* intended to transfer the beneficial interest in *Z*. *B* holds *Z* for the benefit of *A*.

(*c*) *A* transfers certain stock belonging to him into the joint names of himself and *B*. It cannot, consistently with the circumstances under which the transfer is made, be inferred that *A* intended to transfer the beneficial interest in the stock during his life. *A* and *B* hold the stock for the benefit of *A* during his life.

(*d*) *A* makes a gift of certain land to his wife *B*. She takes the beneficial interest in the land free from any trust in favour of *A*, for it may be inferred from the circumstances that the gift was for *B*'s benefit.

Transfer to one for consideration paid by another.

**82.** Where property is transferred to one person for a consideration paid or provided by another person, and it appears that such other person did not intend to pay or provide such consideration for the benefit of the transferee, the transferee must hold the property for the benefit of the person paying or providing the consideration.

Nothing in this section shall be deemed to affect section 66 of the Code of Civil Procedure.

Trust incapable of execution or executed without exhausting trust-property.

**83.** Where a trust is incapable of being executed, or where the trust is completely executed without exhausting the trust-property, the trustee, in the absence of a direction to the contrary, must hold the trust-property, or so much thereof as is unexhausted, for the benefit of the author of the trust or his legal representative.

*Illustrations.*

(*a*) *A* conveys certain land to *B*—

"upon trust," and no trust is declared ; or
"upon trust to be thereafter declared," and no such declaration is ever made ; or
upon trusts that are too vague to be executed ; or
upon trusts that become incapable of taking effect ; or
"in trust for *C*," and *C* renounces his interest under the trust.

In each of these cases *B* holds the land for the benefit of *A*.

(*b*) *A* transfers Rs. 10,000 in the four per cents. to *B*, in trust to pay the interest annually accruing due to *C* for her life. *A* dies. Then *C* dies. *B* holds the fund for the benefit of *A*'s legal representative.

(c) *A* conveys land to *B* upon trust to sell it and apply one moiety of the proceeds for certain charitable purposes, and the other for the maintenance of the worship of an idol. *B* sells the land, but the charitable purposes wholly fail, and the maintenance of the worship does not exhaust the second moiety of the proceeds. *B* holds the first moiety and the part unapplied of the second moiety for the benefit of *A* or his legal respresentative.

(d) *A* bequeaths Rs. 10,000 to *B* to be laid out in buying land to be conveyed for purposes which either wholly or partially fail to take effect. *B* holds for the benefit of *A*'s legal representative the undisposed of interest in the money or land if purchased.

Transfer for illegal purpose.

**84.** Where the owner of property transfers it to another for an illegal purpose and such purpose is not carried into execution, or the transferor is not as guilty as the transferee, or the effect of permitting the transferee to retain the property might be to defeat the provisions of any law, the transferee must hold the property for the benefit of the transferor.

Bequest for illegal purpose.

**85.** Where a testator bequeaths certain property upon trust and the purpose of the trust appears on the face of the will to be unlawful, or during the testator's lifetime the legatee agrees with him to apply the property for an unlawful purpose, the legatee must hold the property for the benefit of the testator's legal representative.

Bequest of which revocation is prevented by coercion.

Where property is bequeathed and the revocation of the bequest is prevented by coercion, the legatee must hold the property for the benefit of the testator's legal representative.

Transfer pursuant to rescindable contract.

**86.** Where property is transferred in pursuance of a contract which is liable to rescission or induced by fraud or mistake, the transferee must, on receiving notice to that effect, hold the property for the benefit of the transferor, subject to repayment by the latter of the consideration actually paid.

Debtor becoming creditor's representative.

**87.** Where a debtor becomes the executor or other legal representative of his creditor, he must hold the debt for the benefit of the persons interested therein.

Advantage gained by fiduciary.

**88.** Where a trustee, executor, partner, agent, director of a company, legal adviser, or other person bound in a fiduciary character to protect the interests of another person, by availing himself of his character, gains for himself any pecuniary advantage, or where any person so bound enters into any dealings under circumstances in which his own interests are, or may be, adverse to those of such other person and thereby gains for himself a pecuniary advantage, he must hold for the benefit of such other person the advantage so gained.

*Illustrations.*

(a) *A*, an executor, buys at an undervalue from *B*, a legatee, his claim under the will. *B* is ignorant of the value of the bequest. *A* must hold for the benefit of *B* the difference between the price and value.

(b) *A*, a trustee, uses the trust-property for the purpose of his own business. *A* holds for the benefit of his beneficiary the profits arising from such user.

(c) *A*, a trustee, retires from his trust in consideration of his successor paying him a sum of money. *A* holds such money for the benefit of his beneficiary.

(d) *A*, a partner, buys land in his own name with funds belonging to the partnership. *A* holds such land for the benefit of the partnership.

(*e*) *A*, a partner, employed on behalf of himself and his co-partners in negotiating the terms of a lease, clandestinely stipulates with the lessor for payment to himself of a lakh of rupees. *A* holds the lakh for the benefit of the partnership.

(*f*) *A* and *B* are partners. *A* dies. *B*, instead of winding up the affairs of the partnership, retains all the assets in the business. *B* must account to *A*'s legal representative for the profits arising from *A*'s share of the capital.

(*g*) *A*, an agent, employed to obtain a lease for *B*, obtains the lease for himself. *A* holds the lease for the benefit of *B*.

(*h*) *A*, a guardian, buys up for himself incumbrances on his ward *B*'s estate at an undervalue. *A* holds for the benefit of *B* the incumbrances so bought, and can only charge him with what he has actually paid.

Advantage gained by exercise of undue influence.

**89.** Where, by the exercise of undue influence, any advantage is gained in derogation of the interests of another, the person gaining such advantage without consideration, or with notice that such influence has been exercised, must hold the advantage for the benefit of the person whose interests have been so prejudiced.

Advantage gained by qualified owner

**90.** Where a tenant for life, co-owner, mortgagee or other qualified owner of any property, by availing himself of his position as such, gains an advantage in derogation of the rights of the other persons interested in the property, or where any such owner, as representing all persons interested in such property, gains any advantage, he must hold, for the benefit of all persons so interested, the advantage so gained, but subject to repayment by such persons of their due share of the expenses properly incurred, and to an indemnity by the same persons against liabilities properly contracted in gaining such advantage.

*Illustrations.*

(*a*) *A*, the tenant for life of leasehold property, renews the lease in his own name and for his own benefit. *A* holds the renewed lease for the benefit of all those interested in the old lease.

(*b*) A village belongs to a Hindu family. *A*, one of its members, pays *nazrana* to Government and thereby procures his name to be entered as the *inamdar* of the village. *A* holds the village for the benefit of himself and the other members.

(*c*) *A* mortgages land to *B*, who enters into possession. *B* allows the Government revenue to fall into arrear with a view to the land being put up for sale and his becoming himself the purchaser of it. The land is accordingly sold to *B*. Subject to the repayment of the amount due on the mortgage and of his expenses properly incurred as mortgagee, *B* holds the land for the benefit of *A*.

Property acquired with notice of existing contract.

**91.** Where a person acquires property with notice that another person has entered into an existing contract affecting that property, of which specific performance could be enforced, the former must hold the property for the benefit of the latter to the extent necessary to give effect to the contract.

Purchase by person contracting to buy property to be held on trust.

**92.** Where a person contracts to buy property to be held on trust for certain beneficiaries and buys the property accordingly, he must hold the property for their benefit to the extent necessary to give effect to the contract.

Advantage secretly gained by one of several compounding creditors.

**93.** Where creditors compound the debts due to them, and one of such creditors, by a secret arrangement with the debtor, gains an undue advantage over his co-creditors, he must hold for the benefit of such creditors the advantage so gained.

Constructive trusts in cases not expressly provided for.

**94.** In any case not coming within the scope of any of the preceding sections, where there is no trust, but the person having possession of property has not the whole beneficial interest therein, he must hold the property for the benefit of the persons having such interest, or the residue thereof (as the case may be), to the extent necessary to satisfy their just demands.

*Illustrations.*

(*a*) *A*, an executor, distributes the assets of his testator *B* to the legatees without having paid the whole of *B*'s debts. The legatees hold for the benefit of *B*'s creditors, to the extent necessary to satisfy their just demands, the assets so distributed.

(*b*) *A* by mistake assumes the character of a trustee for *B*, and under colour of the trust receives certain money. *B* may compel him to account for such moneys.

(*c*) *A* makes a gift of a lakh of rupees to *B* reserving to himself, with *B*'s assent, power to revoke at pleasure the gift as to Rs. 10,000. The gift is void as to Rs. 10,000 and *B* holds that sum for the benefit of *A*.

Obligor's duties, liabilities and disabilities.

**95.** The person holding property in accordance with any of the preceding sections of this Chapter must, so far as may be, perform the same duties, and is subject, so far as may be, to the same liabilities and disabilities, as if he were a trustee of the property for the person for whose benefit he holds it:

Provided that (*a*) where he rightfully cultivates the property or employs it in trade or business, he is entitled to reasonable remuneration for his trouble, skill and loss of time in such cultivation or employment; and (*b*) where he holds the property by virtue of a contract with a person for whose benefit he holds it, or with any one through whom such person claims, he may, without the permission of the Court, buy or become lessee or mortgagee of the property or any part thereof.

Saving of rights of *bona fide* purchasers.

**96.** Nothing contained in this Chapter shall impair the rights of transferees in good faith for consideration, or create an obligation in evasion of any law for the time being in force.

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# THE OFFICIAL TRUSTEES ACT.

## CONTENTS.


PART I.

PRELIMINARY.

*Sections.*

1. * * * *
2. Interpretation clause.
3. * * * *

PART II.

THE OFFICE OF OFFICIAL TRUSTEE.

4. Official Trustee.
5. Appointment and powers of Deputy Official Trustee.

*Sections.*

6. Official Trustee to be corporation sole, to have perpetual succession and official seal, and to sue and be sued in his corporate name.

PART III.

RIGHTS, POWERS, DUTIES AND LIABILITIES OF OFFICIAL TRUSTEE.

7. General powers and duties of Official Trustee.
8. Official Trustee may, with consent, be appointed trustee of settlement by grantor.
9. Appointment of Official Trustee as trustee by will.
10. Power of High Court to appoint Official Trustee to be trustee of property.
11. Power of private trustees to appoint Official Trustee to be trustee of property.
12. Executor or administrator may pay to Official Trustee legacy, share, etc., of infant or lunatic.
13. Official Trustee not to be required to give bond or security.
14. Entry of Official Trustee not to constitute notice of a trust.
15. Liability of Government.
16. Notice of suit not required in certain cases.

PART IV.

FEES.

17. Fees.
18. Disposal of fees.

PART V.

AUDIT.

19. Auditors to be appointed to examine Official Trustee's accounts, etc., and to report to Government.
20. Auditor's power to summon witnesses and to call for documents.
21. Costs of audit, etc., how paid.
22. Right of beneficiary to inspection and copies of accounts.

PART VI.

MISCELLANEOUS.

23. Transfer to Government of accumulations in the hands of Official Trustee.
24. Mode of proceeding by claimant to recover money so transferred.

*Sections.*

25. Power of High Court to make orders in respect of property vested in Official Trustee.
26. Who may apply for order under Act.
27. Order of Court to have effect of a decree.
28. General powers of administration.
29. Transfer of trust property by Official Trustee to original trustee or any other trustee.
30. Rules.
31. * * * *
32. Saving of provisions of Registration Act.

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## THE OFFICIAL TRUSTEES ACT.

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

### PART I.

### PRELIMINARY.

[1]1. * * * *

Interpretation clause.

2. In this Act, unless there is anything repugnant in the subject or context,—

(1)—(3) * * * *

(4) " prescribed " means prescribed by rules under this Act;

(5)—(7) * * * *

3. * * * *

### PART II.

### THE OFFICE OF OFFICIAL TRUSTEE.

Official Trustee.

4. (*1*) The President of the Union shall appoint an Official Trustee.

(*2*) No person shall be appointed to the office of Official Trustee who is not—

(*a*) a Barrister; or

(*b*) an Advocate of the High Court.

Appointment and powers of Deputy Official Trustee.

5. The President of the Union may appoint a Deputy or Deputies to assist the Official Trustee; and any Deputy so appointed shall, subject to the control of the President of the Union and the general or special orders of the Official Trustee, be competent to discharge any of the duties and exercise any of the powers of the Official Trustee, and, when discharging such duties or exercising such powers, shall have the same privileges and be subject to the same liabilities as the Official Trustee.

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

**6.** The Official Trustee shall be a corporation sole by the name of the Official Trustee of the Union of Burma and, as such Official Trustee, shall have perpetual succession and an official seal, and may sue and be sued in his corporate name.

Official Trustee to be corporation sole, to have perpetual succession and official seal, and to sue and be sued in his corporate name.

## PART III.

### RIGHTS, POWERS, DUTIES AND LIABILITIES OF OFFICIAL TRUSTEE.

General powers and duties of Official Trustee.

**7.** (*1*) Subject to, and in accordance with, the provisions of this Act and the rules made thereunder, the Official Trustee may, if he thinks fit,—

(*a*) act as an ordinary trustee;

(*b*) be appointed trustee by a Court of competent jurisdiction.

(*2*) Save as hereinafter expressly provided, the Official Trustee shall have the same powers, duties, and liabilities and be entitled to the same rights and privileges and be subject to the same control and orders of the Court as any other trustee acting in the same capacity.

(*3*) The Official Trustee may decline, either absolutely or except on such conditions as he may impose, to accept any trust.

(*4*) The Official Trustee shall not accept any trust under any composition or scheme of arrangement for the benefit of creditors, nor of any estate known or believed by him to be insolvent.

(*5*) The Official Trustee shall not, save as provided by any rules made under this Act, accept any trust for a religious purpose or any trust which involves the management or carrying on of any business.

(*6*) The Official Trustee shall not administer the estate of a deceased person unless he is expressly appointed sole executor of, and sole trustee under, the will of such person.

(*7*) The Official Trustee shall always be sole trustee, and it shall not be lawful to appoint the Official Trustee to be trustee along with any other person.

Official Trustee may, with consent, be appointed trustee of settlement by grantor.

**8.** (*1*) Any person intending to create a trust, other than a trust which the Official Trustee is prohibited from accepting under the provisions of this Act, may, by the instrument creating the trust and with the consent of the Official Trustee, appoint him by that name or any other sufficient description to be the trustee of the property subject to such trust:

Provided that the consent of the Official Trustee shall be recited in the said instrument and that such instrument shall be duly executed by the Official Trustee.

(*2*) Upon such appointment the property subject to the trust shall vest in such Official Trustee, and shall be held by him upon the trusts declared in such instrument.

Appointment of Official Trustee as trustee by will.

**9.** When the Official Trustee has by that name or any other sufficient description been appointed trustee under any will, the executor of the will of the testator or the administrator of his estate shall, after obtaining probate or letters of administration, notify in the prescribed manner the contents of such will to the Official Trustee; and if the Official Trustee consents to accept the trust, then upon the execution by such executor or administrator of an instrument in writing transferring the property subject to the trust to the Official Trustee, such property shall vest in the Official Trustee, and shall be held by him upon the trusts expressed in the said will:

Provided that the consent of the Official Trustee shall be recited in the said instrument and that such instrument shall be duly executed by the Official Trustee.

Power of High Court to appoint Official Trustee to be trustee of property.

**10.** (*1*) If any property is subject to a trust, other than a trust which the Official Trustee is prohibited from accepting under the provisions of this Act, and there is no trustee within the local limits of the ordinary or extraordinary original civil jurisdiction of the High Court willing or capable to act in the trust, the High Court may on application make an order for the appointment of the Official Trustee by that name with his consent to be the trustee of such property.

(*2*) Upon such order such property shall vest in the Official Trustee and shall be held by him upon the same trusts as the same was held previously to such order, and the previous trustee or trustees (if any) shall be exempt from liability as trustees of such property save in respect of acts done before the date of such order.

(*3*) Nothing in this section shall be deemed to affect the Trusts Act.

Power of private trustees to appoint Official Trustee to be trustee of property.

**11.** (*1*) If any property is subject to a trust, other than a trust which the Official Trustee is prohibited from accepting under the provisions of this Act, and all the trustees or the surviving or continuing trustee or trustees and all persons beneficially interested in the trust are desirous that the Official Trustee shall be appointed in the room of such trustee or trustees, it shall be lawful for such trustee or trustees, by an instrument in writing, to appoint the Official Trustee by that name or any other sufficient description with his consent to be the trustee of such property:

Provided that the consent of the Official Trustee shall be recited in the said instrument and that such instrument shall be duly executed by him.

(*2*) Upon such appointment such property shall vest in the Official Trustee and shall be held by him upon the same trusts as the same was held previously to such appointment, and the previous trustee or trustees shall be exempt from all liability as trustees of such property save in respect of acts done before the date of such appointment.

Executor or administrator may pay to

**12.** (*1*) If any infant or lunatic is entitled to any gift, legacy or share of the assets of a deceased person, it shall be lawful for the person by whom such gift is made, or executor or administrator by whom such legacy or share

is payable or transferable, or any trustee of such gift, legacy or share, to transfer the same by an instrument in writing to the Official Trustee by that name or any other sufficient description with his consent : Official Trustee legacy, share, etc., of infant or lunatic.

Provided that the consent of the Official Trustee shall be recited in the said instrument and that such instrument shall be duly executed by the Official Trustee.

(2) Any money or property transferred to the Official Trustee under this section shall vest in him and shall be subject to the same provisions as are contained in this Act as to other property vested in such Official Trustee.

**13.** (1) The Official Trustee shall not be required by any Court to enter into any bond or security on his appointment in any capacity under this Act. Official Trustee not to be required to give bond or security.

(2) The Official Trustee shall not be required to verify otherwise than by his signature any petition presented by him under the provisions of this Act, and if the facts stated in any such petition are not within the Official Trustee's personal knowledge, the petition may be verified and subscribed by any person competent to make the verification.

**14.** The entry of the Official Trustee by that name in the books of a company shall not constitute notice of a trust ; and a company shall not be entitled to object to enter the name of the Official Trustee on its register by reason only that the Official Trustee is a corporation ; and, in dealing with property, the fact that the person dealt with is the Official Trustee shall not of itself constitute notice of a trust. Entry of Official Trustee not to constitute notice of a trust.

**15.** (1) The revenues of the Union of Burma shall be liable to make good all sums required to discharge any liability which the Official Trustee, if he were a private trustee, would be personally liable to discharge, except when the liability is one to which neither the Official Trustee nor any of his officers has in any way contributed or which neither he nor any of his officers could by the exercise of reasonable diligence have averted, and in either of those cases the Official Trustee shall not, nor shall the revenues of the Union of Burma, be subject to any liability. Liability of Government.

(2) * * * *

**16.** Nothing in section 80 of the Code of Civil Procedure shall apply to any suit against the Official Trustee in which no relief is claimed against him personally. Notice of suit not required in certain cases.

## PART IV.

### FEES.

**17.** (1) There shall be charged in respect of the duties of the Official Trustee such fees, whether by way of percentage or otherwise, as the President of the Union may prescribe. Fees.

(*2*) The fees under this section may be at different rates for different properties or classes of properties or for different duties, and shall, so far as may be, be arranged so as to produce an amount sufficient to discharge the salaries and all other expenses incidental to the working of this Act (including such sum as the President of the Union may determine to be required to insure the revenues of the Union of Burma against loss under this Act).

Disposal of fees.

**18.** (*1*) All expenses which might be retained or paid out of the trust fund, if the Official Trustee were a private trustee, shall be so retained or paid, and any fees leviable under this Act shall be retained or paid in like manner as and in addition to such expenses.

(*2*) The Official Trustee shall transfer and pay to such authority and in such manner and at such times as the President of the Union may prescribe all fees received by him under this Act, and the same shall be carried to the account and credit of the Government.

## PART V.

### AUDIT.

Auditors to be appointed to examine Official Trustee's accounts, etc., and to report to Government.

**19.** (*1*) The accounts of the Official Trustee shall be audited at least once annually, and at any other time if the President of the Union so direct, by the prescribed person and in the prescribed manner.

(*2*) The auditor shall examine such accounts, and shall forward to Government a statement thereof in the prescribed form, together with a report thereon and a certificate signed by him showing—

[1](*a*) whether the accounts have been audited in the prescribed manner,

[2](*aa*) whether, so far as can be ascertained by such audit, the accounts contained a full and true account of everything which ought to be inserted therein, and

(*b*) whether the books, which by any rules made under this Act are directed to be kept by the Official Trustee, have been duly and regularly kept, and

(*c*) whether the trust funds and securities have been duly kept and invested and deposited in the manner prescribed by this Act or any rules made thereunder;

or (as the case may be) that such accounts are deficient, or that the Official Trustee has failed to comply with this Act or the rules made thereunder, in such respects as may be specified in such certificate.

Auditor's power to summon witnesses and to call for documents.

**20.** (*1*) Every auditor shall have the powers of a civil Court under the Code of Civil Procedure—

(*a*) to summon any person whose presence he may think necessary to attend him from time to time, and

[1] Substituted by Act XXII, 1948.
[2] Inserted *ibid.*

(*b*) to examine any person, on oath to be by him administered; and

(*c*) to issue a commission for the examination on interrogatories or otherwise of any person, and

(*d*) to summon any person to produce any document or thing, the production of which appears to be necessary for the purposes of such audit or examination.

(*2*) Any person who, when summoned, refuses, or without reasonable cause neglects to attend or to produce any document or thing, or attends and refuses to be sworn or to be examined, shall be deemed to have committed an offence within the meaning of, and punishable under, section 188 of the Penal Code, and the auditor shall report every case of such refusal or neglect to the President of the Union.

Cost of audit, etc., how paid.

**21.** The cost of and incidental to every such audit and examination shall be determined in accordance with rules made by the President of the Union and shall be defrayed in the prescribed manner.

Right of beneficiary to inspection and copies of accounts.

**22.** Every beneficiary under a trust which is being administered by the Official Trustee shall, subject to such conditions and restrictions as may be prescribed, be entitled, at all reasonable times, to inspect the accounts of such trust, and the report and certificate of the auditor, and, on payment of the prescribed fee, to be furnished with copies thereof or extracts therefrom, and nothing in the Trusts Act shall affect the provisions of this section.

## PART VI.

### MISCELLANEOUS.

Transfer to Government of accumulations in the hands of Official Trustee.

**23.** When any moneys payable to a beneficiary under a trust have been in the hands of the Official Trustee for a period of twelve years or upwards in consequence of the Official Trustee having been unable to trace the person entitled to receive the same, such moneys shall be transferred in the prescribed manner to the account and credit of the Government:

Provided that no such moneys shall be so transferred if any suit or proceeding is pending in respect thereof in any Court.

Mode of proceeding by claimant to recover money so transferred.

**24.** (*1*) If any claim is made to any moneys so transferred and such claim is established to the satisfaction of the prescribed authority, the Government shall pay to the claimant the amount in respect of which the claim is established.

(*2*) If such claim is not established to the satisfaction of the prescribed authority, the claimant may, without prejudice to his right to take any other proceedings for the recovery of such moneys, apply by petition to the High Court against the Government, and, after taking such evidence as it thinks fit, such Court shall make such order on the petition in regard to the

payment of such moneys as it thinks fit, and such order shall be binding on all parties to the proceedings:

Provided that nothing in this section affects any option afforded to a claimant [by any other law for the time being in force.][1]

(*3*) The Court may further direct by whom all or any part of the costs of such proceedings shall be paid.

Power to High Court to make orders in respect of property vested in Official Trustee.

**25.** The High Court may make such orders as it thinks fit respecting any trust-property vested in the Official Trustee, or the interest or produce thereof.

Who may apply for order under Act.

**26.** Any order under this Act may be made on the application of any person beneficially interested in any trust-property or of any trustee thereof.

Order of Court to have effect of a decree.

**27.** Any order made by the High Court under this Act shall have the same effect as a decree.

General powers of administration.

**28.** The Official Trustee may, in addition to and not in derogation of any other powers of expenditure lawfully exercisable by him, incur expenditure--

(*a*) on such acts as may be necessary for the proper care and management of any property belonging to any trust administered by him; and

(*b*) with the sanction of the High Court on such religious, charitable and other objects and on such improvements as may be reasonable and proper in the case of such property.

Transfer of trust-property by Official Trustee to original trustee or any other trustee.

**29.** (*1*) Nothing in this Act shall be deemed to prevent the transfer by the Official Trustee of any property vested in him to—

(*a*) the original trustee (if any); or

(*b*) any other lawfully appointed trustee; or

(*c*) any other person if the Court so directs.

(*2*) Upon such transfer such property shall vest in such trustee, and shall be held by him upon the same trusts as those upon which it was held prior to such transfer, and the Official Trustee shall be exempt from all liability as trustee of such property except in respect of acts done before such transfer:

Provided that, in the case of any transfer under this section, the Official Trustee shall be entitled to retain out of the property any fees leviable in accordance with the provisions of this Act.

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

**30.** (*1*) The President of the Union shall make rules for carrying into effect the objects of this Act and for regulating the proceedings of the Official Trustee in the discharge of his duties. Ruels.

(*2*) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for—

(*a*) the accounts to be kept by the Official Trustee and the audit and inspection thereof ;

(*b*) the safe custody and deposit of the funds and securities which come into the hands of the Official Trustee ;

(*c*) the remittance of sums of money in the hands of the Official Trustee in cases in which such remittances are required ;

(*d*) the statements, schedules and other documents to be submitted by the Official Trustee to Government or to any other authority and the publication of such statements, schedules or other documents ;

(*e*) the realization of the cost of preparing any such statements, schedules or other documents ;

(*f*) subject to the provisions of this Act, the fees to be paid thereunder and the collection and accounting for any fees so fixed ;

(*g*) the manner in which and the person by whom the costs of and incidental to any audit under the provisions of this Act are to be determined and defrayed ;

(*h*) the manner in which summonses issued under the provisions of section 20 are to be served and the payment of the expenses of any persons summoned or examined under the provisions of this Act and of any expenditure incidental to such examination ;

(*i*) the acceptance by the Official Trustee of trusts for religious purposes and trusts which involve the management or carrying on of business ; and

(*j*) any matter in this Act directed to be prescribed.

(*3*) Rules made under the provisions of this section shall be published in the Gazette, and shall thereupon have effect as if enacted in this Act.

**31.** * * * *

**32.** Nothing contained in this Act shall be deemed to affect the provisions of the Registration Act. Saving of provisions of Registration Act.

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## THE ADMINISTRATION OF PUBLIC FUNDS ACT. *

[BURMA ACT III, 1943.] (1st March, 1943.)

Whereas it is expedient to make provision for the administration [* * * *] [1] of funds belonging to certain public bodies in the Union of Burma and funds held in trust in the Union of Burma for public purposes ;

* * * *

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* Published in Chief Secretary's Office Notification No. 61, dated 1st March 1943.

[1] Omitted by Act IX, 1945.

It is hereby enacted as follows :—

Short title.

**1.** This Act may be called the Administration of Public Funds Act, 1943.

Definition.

**2.** " Body or authority " means any body or authority notified under this Act.

Appointment of persons to administer public funds.

**3.** (*1*) Notwithstanding anything contained in any law for the time being in force, the President of the Union may, by notification, assume to himself all or any of the rights, privileges, duties, powers and functions vested in or exercisable by any body or authority under any law relating thereto.

(*2*) On the issue of such notification, the President of the Union may, whether prospectively or retrospectively, invest any person or persons with all or any of the rights, privileges, duties, powers and functions which were previously vested in or exercisable by such body or authority.

Vesting of property.

**4.** Notwithstanding anything to the contrary contained in any law relating to the body or authority, all moveble and immoveble property belonging to such body or authority shall, subject to such conditions, if any, as the President of the Union may deem fit to impose, vest in the person or persons appointed under sub-section (*2*) of section 3, and shall, with all other property which may hereafter become similarly vested in such person or persons, be held in trust and administered by such person or persons for the purposes of this Act.

Appointment of officers and servants.

**5.** Subject to such rules as may be made by the President of the Union in this behalf, any person or persons appointed under sub-section (*2*) of section 3 may appoint such officers and servants as may be necessary or proper for the efficient execution and discharge of the duties, powers and functions imposed upon him or them, and may assign to such officers and servants such remuneration as he or they may think fit.

Power to administer public charities.

**6.** Notwithstanding anything contained in any deed of trust, scheme of management, rules or by-laws, or any other instrument, relating to the administration of a fund created for a public purpose, or for the benefit of the public or any section thereof, the President of the Union may, by notification, assume to himself all or any of the rights, privileges, duties, powers and functions relating to the administration of any such fund, and on the issue of such notification the provision of sub-section (*2*) of section 3 and sections 4, 5 and 7 of this Act, shall become applicable to such fund, with such alteration not affecting the substance thereof as may be necessary or proper for giving effect to the objects of this Act.

Powers to make rules.

**7.** (*1*) The President of the Union may make rules for carrying out the objects of this Act.

(*2*) In particular, and without prejudice to the generality of the foregoing power, the President of the Union may make rules—

(*a*) prescribing the manner in which and the conditions subject to which the person or persons appointed under sub-section (*2*) of section 3 shall have, exercise and discharge the rights, privileges, duties, powers and functions vested in him or them ;

(*b*) prescribing the manner in which such person or persons shall administer the moveble and immoveble property vested in him or them ;

(*c*) prescribing the conditions subject to which such person or persons shall sue or be sued ;

(*d*) prescribing the conditions subject to which officers and servants may be appointed by such person or persons.

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# ဗိုလ်ချုပ်ရံပုံငွေ အက်ဥပဒေ။*

[၁၉၄၈ ခုနှစ်၊ အက်ဥပဒေအမှတ် ၅၇။] (၁၉၄၈ခု၊ နိုဝင်ဘာလ ၄ ရက်။)

၁၉၄၇ ခုနှစ်၊ ဇူလိုင်လ ၁၉ ရက်နေ့၌ လူမသမာတို့၏ လုပ်ကြံခြင်းကိုခံရသည့် ဗိုလ်ချုပ်အောင်ဆန်းနှင့်တကွ၊ အခြားဝန်ကြီး ခြောက်ဦးဖြစ်ကြသော သခင်မြ၊ မိုင်းပွန်စော်ဘွားကြီး၊ ဦးဘချို၊ ဦးရာဇတ်၊ ဦးဘဝင်း၊ မန်းဘခိုင်တို့အပြင် အတွင်းဝန် ဦးအုံးမောင်၊ သက်တော်စောင့်ကိုးထွေးတို့၏ သားမယားတို့အား၊ ကူညီထောက်ပံ့ရန်နှင့် ကွယ်လွန်သူခေါင်းဆောင်ကြီးများအား အမှတ်တရရှိစေခြင်းငှါ၊ ဗိုလ်ချုပ်ရံပုံငွေခေါ်[1]သည့် ရံပုံငွေကို ရန်ကုန်မြို့၌ ဖွင့်လှစ်ခဲ့ရာ၊ အလှူရှင်များက ရွှေငွေ ရတနာ၊ လယ်မြေစသော ပစ္စည်းများကို ထိုရံပုံငွေသို့ ထည့်သွင်းလှူဒါန်းခဲ့ကြသည်။ အဆိုပါရံပုံငွေကို ယာယီအမှုဆောင်ကော်မီတီအဖွဲ့တခုက ထိန်းသိမ်းအုပ်ချုပ်လျက်ရှိသည်။

အဆိုပါရံပုံငွေကို ထိန်းသိမ်းစောင့်ရှောက်အုပ်ချုပ်ရန်၊ အမြဲတမ်း ဘဏ္ဍာထိန်းလူကြီးအဖွဲ့ခန့်ထားခြင်းကိစ္စနှင့် စပ်လျဉ်း၍၊ ပြဋ္ဌာန်းချက်များပြုလုပ်ရန် လိုအပ်သည်ဖြစ်သောကြောင့်အောက်ပါအတိုင်း အက်ဥပဒေအဖြစ် ပြဋ္ဌာန်းလိုက်သည်။

၁။ ။ဤအက်ဥပဒေကို၊ ၁၉၄၈ ခုနှစ်၊ ဗိုလ်ချုပ်ရံပုံငွေအက်ဥပဒေဟူ၍ခေါ်ရမည်။

၂။ ။(၁) ဤမှနောင်အဘို့တွင် " ဘဏ္ဍာထိန်းအဖွဲ့ " ဟူ၍ခေါ်တွင်ရမည့်အောက်ပါပုဂ္ဂိုလ်တို့သည်၊ ဗိုလ်ချုပ်ရံပုံငွေဆိုင်ရာ " ဘဏ္ဍာထိန်းအဖွဲ့ " ဝင်များဖြစ်ရမည်။

(က) နိုင်ငံတော်သမတက ခန့်သည့် ဥက္ကဋ္ဌတဦး။
(ခ) ရှမ်းပြည်နယ်ကောင်စီအဖွဲ့မှ ကိုယ်စားလှယ်တဦး။
(ဂ) ကရင်ရေးရာကောင်စီအဖွဲ့မှ ကိုယ်စားလှယ်တဦး။
(ဃ) နိုင်ငံတော်သမတ ကခန့်သည့် အခြားဘဏ္ဍာထိန်းလူကြီးနှစ်ဦး။

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* မြန်မာနိုင်ငံပြန်တမ်း၊ ၁၉၄၈ ခု၊ အပိုင်း ၁၊ စာမျက်နှာ ၁၂၂၆ တွင် ထုတ်ပြန်ကြေညာသည်။

[1] ယခုကရင်ပြည်နယ်ကောင်စီအဖွဲ့။

(၂) ဘဏ္ဍာထိန်းအဖွဲ့၏အစည်းအဝေးအရပ်ရပ်တွင် ဥက္ကဋ္ဌကသဘာပတိအဖြစ်ဆောင်ရွက်ရမည်။ အစည်းအဝေးသို့ ဥက္ကဋ္ဌမတက်ရောက်သည့်အခါ ဘဏ္ဍာထိန်းလူကြီးများသည်၊ မိမိတို့အထဲမှ လူကြီးတဦးကို သဘာပတိအဖြစ် ဆောင်ရွက်ရန် တင်မြှောက်ရမည်။

(၃) ဘဏ္ဍာထိန်းလူကြီးတဦး၏နေရာ လစ်လပ်လျှင်၊ အဆိုပါလစ်လပ်သောနေရာအတွက်ထို့ဘဏ္ဍာထိန်းလူကြီးဟောင်းအား ခန့်ထားသည့်နည်း၌ တိုင်း၊ သို့တည်းမဟုတ်တင်မြှောက်သည့်နည်းအတိုင်း ဘဏ္ဍာထိန်းလူကြီးသစ်တဦးကို ခန့်ထားတင်မြှောက်ရမည်။ အဆိုပါဘဏ္ဍာထိန်းလူကြီးသစ် ဆောင်ရွက်ရမည့် ကာလအပိုင်းအခြားသည်၊ သက်ဆိုင်ရာ ဘဏ္ဍာထိန်း လူကြီးဟောင်းက ဆောင်ရွက်ရန်ကျန်ရှိနေသည့်၊ ကာလအပိုင်းအခြားမျှသာဖြစ်သည်။

၃။ ။(၁) ဘဏ္ဍာထိန်းအဖွဲ့သည်၊ "မိုလ်ချုပ်ရုံပုံဌေဘဏ္ဍာထိန်းအဖွဲ့" အမည်ဖြင့်၊ ဥပဒေအရ ဖွဲ့စည်းသားသည့်အဖွဲ့တခုဖြစ်ရမည်။ ထိုအဖွဲ့တွင် အမြဲတမ်းဆက်ခံပိုင်ခွင့်နှင့် အဖွဲ့တံဆိပ်တခုလည်းရှိရမည်။ ထိုအမည်ဖြင့် တရားစွဲနိုင်သည်။ ထိုနည်းတူပင် တရားစွဲခြင်းကိုခံနိုင်သည်။

(၂) [ဘဏ္ဍာထိန်းအဖွဲ့သည်] [၁]—

(က) ရွှေပြောင်းနိုင်သည့်ပစ္စည်းများနှင့် မရွှေ့မပြောင်းနိုင်သည့်ပစ္စည်းများကိုရယူ၍ လက်ဝါထားနိုင်သည်၊

(ခ) ပဋိညာဉ်စာချုပ်များချုပ်ဆိုနိုင်သည်၊ ထို့ပြင်

(ဂ) ဤအက်ဥပဒေပါ် ကိစ္စများအတွက် ဤအက်ဥပဒေပါ် ပြဋ္ဌာန်းချက်များနှင့် ညီညွတ်သောဆောင်ရွက်မှု အရပ်ရပ်ကိုလည်း ပြုလုပ်နိုင်သည်။

(၃) ဘဏ္ဍာထိန်းအဖွဲ့၏ အစည်းအဝေးတွင်တက်ရောက်မဲပေးသည့်လူကြီးများအနက်၊ များရာ၏ဆုံးဖြတ်ချက်အရ ပြုလုပ်ဆောင်ရွက်မှုအရပ်ရပ်သည်၊ ဘဏ္ဍာထိန်းအဖွဲ့၏ ဆောင်ရွက်မှုဖြစ်သည်ဟူ၍ မှတ်ယူရမည်။

(၄) ဘဏ္ဍာထိန်းလူကြီးတဦးဦး၏ရာထူးလစ်လပ်ခြင်းကြောင့်ဖြစ်စေ၊ ဘဏ္ဍာထိန်းအဖွဲ့ဖွဲ့စည်းရာ၌ ချွတ်ယွင်းချက်တစုံတရာရှိခြင်းကြောင့်ဖြစ်စေ၊ ဘဏ္ဍာထိန်းအဖွဲ့၏ဆောင်ရွက်မှု ဟုံတခုမှာ ပျက်ပြယ်သည်ဟူ၍မမှတ်ယူရ။

(၅) ဥက္ကဋ္ဌသည်၊ဘဏ္ဍာထိန်းအဖွဲ့၏သဘောတူချက်အရတာဝန်အလုပ်ဝတ်တရားများ ဆောင်ရွက်ရန်၊ အတွင်းရေးမှူး တယောက်နှင့် လိုအပ်သည့် အခြားရာထမ်းမှုထမ်းများကို ခန့်ထားနိုင်သည်။ အတွင်းရေးမှူးနှင့် ရာထမ်းမှုထမ်းများ၏လစာငွေများမှာ ဘဏ္ဍာထိန်းအဖွဲ့က ပြဋ္ဌာန်းသည့် အတိုင်းဖြစ်ရမည်။

(၆) ငွေထုတ်ပေးရန်အမိန့်များကိုဘဏ္ဍာထိန်းအဖွဲ့၏ကိုယ်စားဘဏ္ဍာထိန်းလူကြီးနှစ်ဦးက လက်မှတ်ရေးထိုးရမည်။

၄။ ။ဘဏ္ဍာထိန်းအဖွဲ့သည်ပြတိုက်၊ စာကြည့်တိုက်၊ ဆေးရုံနှင့် သားဖွါးရုံ စသည်တို့ကို တည်ထောင်နိုင်သည့်အပြင်၊ ပညာရေး၊ ကျန်းမာရေး တိုးတက်မှုနှင့်စပ်လျဉ်း၍ အားပေးဆောင်ရွက်နိုင်သည်။ သို့တည်းမဟုတ် အဆိုပါ ကွယ်လွန်သူခေါင်းဆောင်ကြီးများ၏ စွန့်စားဆောင်ရွက်ခြင်းကို မိမိတို့ သင့်တော်မည်ထင်သည့် နည်းလမ်းအတိုင်း အထိမ်းအမှတ်ပြုလုပ်နိုင်သည်။ [သို့တည်းမဟုတ် အဆိုပါကွယ်လွန်သူ ခေါင်းဆောင်ကြီးများ၏ သားမယားများအား၊ မိမိတို့သင့်တော်မည်ထင်သည့် နည်းလမ်းအတိုင်း ကူညီထောက်ပံ့နိုင်သည်။] [၂]

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[၁] ၁၉၅၃ ခုနှစ်၊ အက်ဥပဒေအမှတ် ၄၄ အရ အစားထည့်သွင်းသည်။

[၂] အဆိုပါဥပဒေအရ ထည့်သွင်းသည်။

ခြွင်းချက်။ ။သို့ရာဘွင် ဤဥပဒေ အတည်မဖြစ်မီက ယာယီအမှုဆောင်ကော်မိတီအဖွဲ့က ပြုလုပ်ခဲ့သောဆောင်ရွက်မှုအရေးရပ်သည်၊ အတည်ဖြစ်သည်ဟု မှတ်ယူရမည်။

၅။ ။ဘဏ္ဍာထိန်းအဖွဲ့၏ လက်ဝယ်တွင် အောက်ဖေါ်ပြပါ ပစ္စည်းများတည်ရှိရမည်။

(က) ဆိုခဲ့သည့်ယာယီအမှုဆောင်ကော်မိတီအဖွဲ့က ယခင်ကထိန်းသိမ်းထားသည့် ငွေများနှင့် ရွှေပြောင်းနိုင်သည့် ပစ္စည်းများနှင့် မရွှေ့ မပြောင်းနိုင်သည့် ပစ္စည်းများ။

(ခ) ဆိုခဲ့သည့်ရုံပုံငွေကိစ္စများအလို့ငှါ၊ အဆိုပါယာယီအမှုဆောင်ကော်မိတီအဖွဲ့ ထံသို့ဖြစ်စေ၊ ဘဏ္ဍာထိန်းအဖွဲ့သို့ဖြစ်စေ၊ လွှဲပြောင်းပေးအပ်ပြီးဖြစ်သည့်၊ သို့ဘည်းမဟုတ် နောင်တွင်လွှဲပြောင်းပေးအပ်မည့် အခြားရွှေ့ပြောင်းနိုင်သည့်ပစ္စည်းများနှင့် မရွှေ့မပြောင်းနိုင်သည့်ပစ္စည်းများ။

(ဂ) ဆိုခဲ့သည့်ရုံပုံငွေကိစ္စများအလို့ငှါ၊ အဆိုပါ ယာယီအမှုဆောင်ကော်မိတီအဖွဲ့ ကဖြစ်စေ၊ ဘဏ္ဍာထိန်းအဖွဲ့ကဖြစ်စေ၊ ထိန်းသိမ်းရယူပြီးသည့်၊ သို့တည်း မဟုတ်နောင်တွင် ထိန်းသိမ်းရယူမည့် အခြားရွှေ့ပြောင်းနိုင်သည့် ပစ္စည်းများနှင့် မရွှေ့မပြောင်းနိုင်သည့်ပစ္စည်းများ။

၆။ ။(၁) နိုင်ငံတော်သမတ သည်၊ ဤအက်ဥပဒေပါကိစ္စများကို ဆောင်ရွက်ရန် အလို့ငှါ၊နည်းဥပဒေများ ပြုလုပ်နိုင်သည်။

(၂) အထက်ကဖေါ်ပြခဲ့သော အာဏာများ၏ ယေဘုယျသဘောကို မထိခိုက်စေဘဲ၊ အထူးအားဖြင့် အဆိုပါနည်းဥပဒေများဖြင့် အောက်ပါတို့ကို ပြဋ္ဌာန်းနိုင်သည်။

(က) ဘဏ္ဍာထိန်း လူကြီးများအဖြစ်ဖြင့် ရာထူးတွင် ဆောင်ရွက်ရမည့် ကာလ အပိုင်းအခြား။

(ခ) ဘဏ္ဍာထိန်းအဖွဲ့၏ အစည်းအဝေးကျင်းပရန် နည်းလမ်းများ၊ ၎င်းအစည်း အဝေးတွင်၊ အစည်းအဝေးအထဖြောက်ရန် အနည်းဆုံးဘက်ရောက်ရမည့် ဘဏ္ဍာထိန်း လူကြီးဦးရေနှင့် အဘည်းအဝေးများတွင် လိုက်နာခုန်ကျင့် ထုံးများ။

(ဂ) အဆိုပါရုံပုံငွေကို အုပ်ချုပ်စီမံရမည့်နည်းလမ်းများ။

(ဃ) ဘဏ္ဍာထိန်းအဖွဲ့တွင် ထားရှိရမည့်စာရင်းပုံစံနှင့် ၎င်းစာရင်းများကို စစ်ဆေး ခြင်းနှင့် ထုတ်ပြန်ကြေညာခြင်း။

(၃) ဤပုဒ်မအရနည်းဥပဒေများကိုပြုသည့်အခါ၌အစိုးရပြန်တမ်းတွင်ထုတ်ပြန်ကြေညာ ရမည်။ ထိုသို့ထုတ်ပြန်ကြေညာသည့်နေ့ရက်မှစ၍၊ အဆိုပါနည်းဥပဒေများသည်အာဏာတည်ရမည်။

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## အာဏာနည်ဗိမာန်အက်ဥပဒေ။*

[၁၉၄၉ ခုနှစ်၊ အက်ဥပဒေအမှတ် ၇။] (၁၉၄၉ ခု၊ ဖေဖြေလ ၄ ရက်။)

ပြည်ထောင်စု သမတနိုင်ငံတော်အဘွက်၊ အာဏာနည်ဗိသွာ ထမ်းရွက်သွားကြကုန်သော ပုဂ္ဂိုလ်များ၏အထိမ်းအမှတ်အဖြစ်ဖြင့်၊ အာဏာနည်ဗိမာန်ကို တည်ဆောက်ရန်၎င်း၊ ထိုအာဏာနည်

* မြန်မာနိုင်ငံပြန်တမ်း၊ ၁၉၄၉ ခု၊ အပိုင်း ၁၊ စာမျက်နှာ ၂၅၀ တွင်ထုတ်ပြန်ကြေညာသည်။

ဗိမာန်ကို ခုံညားထည်ဝါစွာ မွမ်းမံစေရန်၎င်း၊ အခွန်ရှည်စွာတည်မြဲအောင်ပြုပြင် စောင့်ရှောက်ရန်၎င်း၊ လိုအပ်သည်ဖြစ်သောကြောင့်၊ အောက်ပါအတိုင်း၊ အက်ဥပဒေအဖြစ် ပြဋ္ဌာန်းလိုက်သည်။

၁။ ။ဤအက်ဥပဒေကို ၁၉၄၉ ခုနှစ်၊ အာဇာနည်ဗိမာန် အက်ဥပဒေဟုခေါ်ရမည်။

၂။ ။(၁) အဖွဲ့ပိုင်တံဆိပ်တုံးတခုနှင့်တကွ၊ အာဇာနည်ဗိမာန်သိန်းသိမ်းရေးအဖွဲ့အမည်ဖြင့်၊စဉ်ဆက်မပြတ်ဆက်ခံဆောင်ရွက်နိုင်စေရန်ဖွဲ့စည်းထားသောတရားဝင်အဖွဲ့တခုရှိရမည်။ အဖွဲ့သည်ထိုအမည်ဖြင့် တရားစွဲဆိုနိုင်၍၊ တရားစွဲဆိုခြင်းကိုလည်းခံရမည့်အပြင်၊ ဤအက်ဥပဒေ အလို့ငှါ၊ ထို့ပြင် ဤအက်ဥပဒေနှင့်အညီ၊ ပစ္စည်းကိုရယူရန်၎င်း၊ ပစ္စည်းကို လက်ရှိထားရန်၎င်း၊ ပဋိညာဉ်စာချုပ်များကိုချုပ်ဆိုရန်၎င်း၊ လိုအပ်သည့်အမှုကိစ္စများကို ဆောင်ရွက်ရန်၎င်း အာဏာရှိရမည်။

(၂) အာဇာနည်ဗိမာန်ထိန်းသိမ်းရေးအဖွဲ့ဝင်များသည်၊အောက်ပါအတိုင်းဖြစ်ရမည်။

(၁) ဝန်ကြီးချုပ် (ရာထူးအလိုက်)။
(၂) နိုင်ငံတော်တရားဝန်ကြီးချုပ် (ရာထူးအလိုက်)။
(၃) လွှတ်တော်တရားဝန်ကြီးချုပ် (ရာထူးအလိုက်)။
(၄) နိုင်ငံတော်ရှေနေချုပ် (ရာထူးအလိုက်)။
(၅) နိုင်ငံတော်စာရင်းစစ်ချုပ် (ရာထူးအလိုက်)။
(၆) ရန်ကုန်မြို့နိုပါယ်အဖွဲ့၏ မြို့တော်ဝန်။
(၇) ပြည်သူ့လွှတ်တော်မှ ရွေးကောက်သည့် ပုဂ္ဂိုလ် ၂ ဦး။
(၈) အစိုးရက ရွေးကောက်သော ပုဂ္ဂိုလ် ၂ ဦး (၎င်းတို့အနက် တဦးမှာ၊ အဆောက်အဦအတတ်ပညာတွင်၊ သိကျွမ်းကျင်သောပုဂ္ဂိုလ်ဖြစ်စေရမည်)။

(၃) ဤအက်ဥပဒေအာဏာမတည်ခိုက်ဖြစ်စေ၊ တည်ပြီးမှဖြစ်စေ၊ အာဇာနည်ဗိမာန်အတွက် ရရှိသော၊ သို့တည်းမဟုတ် သူဘပါးကခေးအင်သော၊ သို့ဘည်းမဟုတ် မသေမီကမှာထားခဲ့ပေးသော၊ သို့တည်းမဟုတ် အခြားနည်းဖြင့်လွှဲပြောင်းပေးသော ရွှေ့ပြောင်းနိုင်သည့်ပစ္စည်း၊ မရွှေ့ပြောင်းနိုင်သည့် ပစ္စည်းအားလုံး၊ ထို့ပြင် ဤအက်ဥပဒေ အဘည်မဖြစ်မီက၊ ဖွဲ့စည်းထားသည့် ''အာဇာနည်ဗိမာန် တည်ဆောက်ရေးအဖွဲ့ ကော်မီတီ'' ၏လက်ရှိ ဖြစ်သော၊ သို့ဘည်းမဟုတ် ပိုင်ဆိုင်သော ငွေပစ္စည်းအခွင့်အရေးစသည်တို့သည်၊ အဆိုပါထိန်းသိမ်းရေးအဖွဲ့၌တည်ရှိသက်ရောက်ရမည်။

(၄) အာဇာနည် ဗိမာန်ကိုထားရှိစီမံ ခန့်ခွဲရာတွင်သုံးစွဲဆောင်ရွက်ရသောအဖွဲ့ဝင်တို့၏ အာဏာနှင့် အလုပ်ဝတ်တရားများ၏ ယေဘုယျသဘောကို မထိခိုက်စေဘဲ၊ အာဇာနည်ဗိမာန်ထိန်းသိမ်းရေးအဖွဲ့ဝင်တို့သည်၊ ဗိမာန်ဆိုင်ရာ ရွှေ့ပြောင်းနိုင်သောပစ္စည်း၊ မရွှေ့ပြောင်းနိုင်သော ပစ္စည်းများကို ကျွန်စွာပြင်ဆင်ထားရှိရန်၎င်း၊ ဗိမာန်ဥပစာ မပျက်မစီးစေရန်၎င်း၊ ဗိမာန်ဥပစာ၌ မဖွယ်မရာမဖြစ်စေရန်၎င်း၊ ခွင့်မရသောသူများ ကျော်နင်းဝင်ရောက်ခြင်းမပြုစေရန်၎င်း၊ ထိရှစ္ဆာန်များဝင်ရောက်လာခြင်းမပြုစေရန်၎င်း၊ မိမိတို့၏အလုပ်ဝတ်တရားအဖြစ်ဖြင့် လိုအပ်သလို အရေးယူဆောင်ရွက်ရမည်။

(၅) ထိန်းသိမ်းရေးအဖွဲ့၏ အစည်းအဝေး တက်ရောက်မဲပေးသော အဖွဲ့ဝင်များရာ၏ ဆောင်ရွက်ချက်များသည်၊ အဖွဲ့၏ဆောင်ရွက်ချက်များဖြစ်သည်ဟု မှတ်ယူရမည်။

(၆) ထိန်းသိမ်းရေးအဖွဲ့ကိုဖွဲ့စည်းရာ၌နေရာလစ်လပ်သောကြောင့်သော်၎င်း၊ ချွတ်ယွင်းချက်ရှိသောကြောင့်သော်၎င်း၊ အဖွဲ့၏ဆောင်ရွက်ချက်သည် တရားမဝင်ဟု မှတ်ယူခြင်းမပြုရ။

(၇) ထိန်းသိမ်းရေးအဖွဲ့ဝင်သည်၊ရာထူးအလျောက်ခန့်ထားသောအဖွဲ့ဝင်ဖြစ်လျှင်၊ ပုဒ်မခွဲ (၂)၌ပါရှိသော ရာထူးတခုခု၌ ဝတ်တရားဆောင်ရွက်နေဆဲအခါ၌သာလျှင် အဖွဲ့ဝင်အဖြစ်ဖြင့် ဆောင်ရွက်ရမည်။

(ဂ) ထိန်းသိမ်းရေးအဖွဲ့သည်၊မည်သူကိုမဆို အတွင်းရေးမှူးအဖြစ်ဖြင့်ခန့်ထားနိုင်သည်။

(ဃ) ထိန်းသိမ်းရေးအဖွဲ့၏ကိုယ်စား ငွေထုတ်ပေးရန်အမိန့်၌အဖွဲ့ဝင်များ နှစ်ဦးကလက်မှတ်ထိုး၍၊အတွင်းရေးမှူးကလည်းထပ်လက်မှတ်ရေးထိုးခဲ့သော်ထိုအမိန့်များသည် လုံလောက်တည်မြဲသည်ဟု မှတ်ယူရမည်။

၃။ ။ထိန်းသိမ်းရေးအဖွဲ့ကခန့်ထားသော ရာထမ်းမှုထမ်းများသည်၊ ရာဇသတ်ကြီး၏ အဓိပ္ပါယ်ရှင်းလင်းချက်တွင် အကျုံးဝင်သောပြည်သူ့ဝန်ထမ်းများဖြစ်သည်ဟု မှတ်ယူရမည်။

၄။ ။(၁) နိုင်ငံတော်သမတ သည်၊ ဤအက်ဥပဒေအလိုငှါ၊ နည်းဥပဒေများ[၁] ကိုပြုနိုင်သည်။

(၂) အထူးအားဖြင့်၊ ထို့ပြင် ရှေ့ကဖော်ပြခဲ့သောအာဏာများ၏ ယေဘုယျသဘောကို မထိခိုက်စေဘဲ၊ အောက်ပါကိစ္စများအတွက် နည်းဥပဒေများ ပြဋ္ဌာန်းနိုင်သည်။

(က) ရာထူးအလျောက် ပါဝင်ဆောင်ရွက်သော ထိန်းသိမ်းရေး အဖွဲ့ဝင်မဟုတ်သည့် အဖွဲ့ဝင်များကို ခန့်အပ်သော နည်းနာကိစ္စနှင့် အဖွဲ့ဝင်အဖြစ်ထမ်းရွက်သော ကာလအပိုင်းအခြားကိစ္စ၊

(ခ) ထိန်းသိမ်းရေးအဖွဲ့၏ အစည်းအဝေးများ ဘိတ်ခေါ်သော နည်းနာကိစ္စ၊ အစည်းအဝေး အထမြောက်မှုကိစ္စ၊ အစည်းအဝေး၏ကျင့်စဉ်ကိစ္စ၊

(ဂ) ထိန်းသိမ်းရေးအဖွဲ့က ကော်မီတီများ ခန့်ထားခြင်းကိစ္စ၊ ငွေသုံးနှုန်းသော အာဏာနှင့် ကြိုးကြပ်အုပ်ချုပ်မှုကို ထိုကော်မီတီများသို့ လွှဲအပ်ခြင်းကိစ္စ၊

(ဃ) ထိန်းသိမ်းရေးအဖွဲ့၌ တည်ရှိသက်ရောက်သော ဓိမာန်ဥပစာအတွင်းတွင် အနေအထားခင်းကျင်းသတ်မှတ်ခြင်း၊ မွမ်းမံခြင်း၊ ကြည့်ရှုစောင့်ရှောက်စိမံခြင်းကိစ္စနှင့် မည်သည့်ပုဂ္ဂိုလ်မျိုး၏ အထိန်းအမှတ်ရုပ်ကလာပ် အရိုးပြာ စသည်ဘို့ကို မည်သို့မြှုပ်နှံသင်္ကြံဟ်ထားရှိခြင်းကိစ္စ၊

(င) ထိန်းသိမ်းရေးအဖွဲ့က ထားရှိရမည့်ငွေစာရင်းများကိစ္စ၊ ထိုငွေစာရင်းများကို စစ်ဆေးခြင်း၊ ဖြန့်ချိခြင်းကိစ္စ၊

(စ) ထိန်းသိမ်းရေးအဖွဲ့၌ တည်ရှိသက်ရောက်သော ဓိမာန်ဥပစာအတွင်း အများပြည်သူတို့ လာရောက်ကြည့်ရှုနိုင်သော စည်းကမ်းများနှင့် ဓိမာန်ဥပစာအတွင်း စုရုံးစည်းဝေးမှုများ ကျင်းပနိုင်သော စည်းကမ်းများကိစ္စ၊

(ဆ) ထိန်းသိမ်းရေးအဖွဲ့၌ တည်ရှိသက်ရောက်သော ပစ္စည်းများကို ထိန်းသိမ်းစောင့်ရှောက်ခြင်း၊ ပျက်စီးစေမှု၊ နှောင့်ယှက်မှုတို့ကို တားဆီးခြင်း၊ ဓိမာန်ဥပစာအတွင်းသို့ ကျူးကျော်ဝင်ရောက်လာမှုကို၊ သို့တည်းမဟုတ် တိရစ္ဆာန်များ ခေါ်ဆောင်လာမှုကို တားဆီးခြင်းကိစ္စ၊

(ဇ) အာဇာနည်ဓိမာန်ဥပစာအတွင်းတွင်၊ ညစ်ညမ်းအောင်ပြုမှု၊ မဖွယ်မရာပြုမှု၊ မရိုမသေပြုမှု၊ ထို့ပြင်ဥပစာအတွင်းရှိပစ္စည်းအစရှိသည်တို့ကို မတရားသဖြင့် အသုံးပြုမှုတို့ကို တားဆီးခြင်းကိစ္စ။

(၃) ပုဒ်မခွဲ (၂) ရှိ၊အပိုဒ် (ဆ) နှင့် (ဇ) အရပြုလုပ်သော နည်းဥပဒေကိုဖေါက်ဖျက်လျှင်၊ ထိုဖေါက်ဖျက်မှုအတွက်၊ ခြောက်လထက်မပိုသောထောင်ဒဏ်ကိုဖြစ်စေ၊ ငါးရာအထိ ငွေဒဏ်ကိုဖြစ်စေ၊ ဒဏ်နှစ်ရပ်လုံးကိုဖြစ်စေ စီရင်နိုင်စေရန်နိုင်ငံတော်သမတ သည်၊နည်းဥပဒေများပြဋ္ဌာန်းနိုင်သည်။

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[၁] ဤအက်ဥပဒေအရ နည်းဥပဒေများကို မြန်မာနိုင်ငံပြန်တမ်း၊ ၁၉၄၉ ခု၊ အပိုင်း ၁၊ စာမျက်နှာ ၈၃၅ တွင် ထုတ်ပြန်ကြေညာသည်။ ၁၉၅၂ ခုနှစ်၊ အာဇာနည်ဓိမာန်ဌေစာရင်း နည်းဥပဒေများကို ၎င်းပြန်တမ်း၊ ၁၉၅၂ ခု၊ အပိုင်း ၁၊ စာမျက်နှာ ၆၃၁ တွင် ထုတ်ပြန်ကြေညာသည်။

# CHARITIES.

## ကုသိုလ်ဖြစ်အဖွဲ့အစည်းများဆိုင်ရာ။

## THE RELIGIOUS SOCIETIES ACT.

[INDIA ACT I, 1880.] (9th January, 1880.)

Preamble.

WHEREAS it is expedient to simplify the manner in which certain bodies of persons associated for the purpose of maintaining religious worship may hold property acquired for such purpose, and to provide for the dissolution of such bodies and the adjustment of their affairs and for the decision of certain questions relating to such bodies; It is hereby enacted as follows :—

Saving.

**1.** Nothing herein contained shall apply to any Hindus, Muhammadans or Buddhists, or to any persons whom the President of the Union may from time to time, by notification in the Gazette, exclude from the operation of this Act.

Appointment of new trustee in cases not otherwise provided for.

**2.** When any body of persons associated for the purpose of maintaining religious worship has acquired, or hereafter shall acquire, any property,

and such property has been or hereafter shall be vested in trustees in trust for such body,

and it becomes necessary to appoint a new trustee in the place of or in addition to any such trustee or any trustee appointed in the manner hereinafter prescribed,

and no manner of appointing such new trustee is prescribed by any instrument by which such property was so vested or by which the trusts on which it is held have been declared, or such new trustee cannot for any reason be appointed in the manner so prescribed,

such new trustee may be appointed in such manner as may be agreed upon by such body, or by a majority of not less than two-thirds of the members of such body actually present at the meeting at which the appointment is made.

Appointment under section 2 to be recorded in a memorandum under the hand of the chairman of the meeting.

**3.** Every appointment of new trustees under section 2 shall be made to appear by some memorandum under the hand of the chairman for the time being of the meeting at which such appointment is made.

Such memorandum shall be in the form set forth in the Schedule hereto annexed, or as near thereto as circumstances allow, shall be executed and attested by two or more credible witnesses in the presence of such meeting, and shall be deemed to be a document of which the registration is required by the Registration Act, section 17.

Property to vest in new trustees

**4.** When any new trustees have been appointed, whether in the manner prescribed by any such instrument as aforesaid or in the manner hereinbefore provided, the property subject to the trust shall forthwith, notwithstanding

anything contained in any such instrument, become vested, without any conveyance or other assurance, in such new trustees and the old continuing trustees jointly, or, if there are no old continuing trustees, in such new trustees wholly, upon the same trusts, and with and subject to the same powers and provisions, as it was vested in the old trustees. without conveyance.

**5.** Nothing herein contained shall be deemed to invalidate any appointment of new trustees, or any conveyance of any property, which may hereafter be made as heretofore was by law required. Saving of existing modes of appointment and conveyance.

**6.** Any number not less than three-fifths of the members of any such body as aforesaid may at a meeting convened for the purpose determine that such body shall be dissolved ; and thereupon it shall be dissolved forthwith, or at the time then agreed upon ; and all necessary steps shall be taken for the disposal and settlement of the property of such body, its claims and liabilities, according to the rules of such body applicable thereto, if any, and, if not, then as such body at such meeting may determine : Provision for dissolution of societies and adjustment of their affairs.

Provided that, in the event of any dispute arising among the members of such body, the adjustment of its affairs shall be referred to the principal Court of original civil jurisdiction of the district in which the chief building of such body is situate ; and the Court shall make such order in the matter as it deems fit.

**7.** If upon the dissolution of any such body there remains, after the satisfaction of all its debts and liabilities, any property whatsoever, the same shall not be paid to or distributed among the members of such body or any of them, but shall be given to some other body of persons associated for the purpose of maintaining religious worship or some other religious or charitable purpose to be determined by the votes of not less than three-fifths of the members present at a meeting convened in this behalf, or in default thereof by such Court as last aforesaid. Upon a dissolution no member to receive profit.

**8.** Nothing in sections 6 and 7 shall be deemed to affect any provision contained in any instrument for the dissolution of such body, or for the payment or distribution of such property. Saving of certain provisions of instruments.

**9.** When any question arises, either in connection with the matters hereinbefore referred to, or otherwise, as to whether any person is a member of any such body as aforesaid, or as to the validity of any appointment under this Act, any person interested in such question may apply by petition to the High Court for its opinion on such question. A copy of such petition shall be served upon, and the hearing thereof may be attended by, such other persons interested in the question as the Court thinks fit. Questions may be submitted to High Court.

Any opinion given by the Court on an application under this section shall be deemed to have the force of a declaratory decree. [1]

The costs of every application under this section shall be in the discretion of the Court.

## THE SCHEDULE.

(*See* section 3.)

Memorandum of the appointment of the new trustees of the (*describe the church, chapel, or other building and property*) appointed at a meeting duly convened and held for that purpose (*in the vestry of the said* ) on the day of 19 , *A.B.* of Chairman.

Names and descriptions of all the trustees on the constitution or last appointment of trustees, made the day of

(*here insert the same*).

Names and descriptions of all the trustees in whom the said (*chapel and property*) now become legally vested,

*First*.—Old continuing trustees :—

(*here insert the same*).

*Second*.—New trustees now chosen and appointed :—

(*here insert the same*).

Dated this day of 19

Signed by the said *A.B.* as chairman of the said meeting, at and in the presence of the said meeting, on the day and year aforesaid in the presence of—

*A.B.*,
*Chairman of the said meeting.*

*C. D.*
*E. F.*

[1] As to the effect of a declaratory decree, *see* section 43 of the Specific Relief Act.

# THE CHARITABLE ENDOWMENTS ACT.

[INDIA ACT VI, 1890.] (1st October, 1890.)

1. * * * *

2. In this Act, " charitable purpose " includes relief of the poor, education, medical relief and the advancement of any other object of general public utility, but does not include a purpose which relates exclusively to religious teaching or worship. Definition.

3. (*1*) The President of the Union may appoint an officer of the Government by the name of his office to be Treasurer of Charitable Endowments. Appointment and incorporation of Treasurer of Charitable Endowments.

(*2*) Such Treasurer shall, for the purposes of taking, holding and transferring moveable or immoveable property under the authority of this Act, be a corporation sole by the name of the Treasurer of Charitable Endowments, and, as such Treasurer, shall have perpetual succession and a corporate seal, and may sue and be sued in his corporate name.

4. (*1*) Where any property is held or is to be applied in trust for a charitable purpose, the President of the Union, if he thinks fit, may, on application made as hereinafter mentioned, and subject to the other provisions of this section, order, by notification in the Gazette, that the property be vested in the Treasurer of Charitable Endowments on such terms as to the application of the property or the income thereof as may be agreed on between the President of the Union and the person or persons making the application, and the property shall thereupon so vest accordingly. Orders vesting property in Treasurer.

(*2*) When any property has vested under this section in the Treasurer of Charitable Endowments, he is entitled to all documents of title relating thereto.

(*3*) The President of the Union shall not make an order under sub-section (*1*) for the vesting in the Treasurer of Charitable Endowments of any securities for money, except the following, namely:—

(*a*) promissory notes, debentures, stock and other securities of the Government of India or Pakistan or the Government of the Union of Burma, or of the United Kingdom of Great Britain and Ireland;

(*b*) bonds, debentures and annuities charged or secured [* * *][1] on the revenues of the Union of Burma or of the [Government of India or Pakistan;][2]

(*c*) stock or debentures of, or shares in, railway or other companies, the interest whereon has been guaranteed by the Secretary of State for India in Council;

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

(*d*) debentures or other securities for money issued by or on behalf of any local authority in exercise of powers conferred by an Act of a legislature established in India or Pakistan or the Union of Burma;

(*e*) a security expressly authorized by any order which the President of the Union may make in this behalf.

(*4*) An order under this section vesting property in the Treasurer of Charitable Endowments shall not require or be deemed to require him to administer the property, or impose or be deemed to impose upon him the duty of a trustee with respect to the administration thereof.

Schemes for administration of property vested in the Treasurer.

**5.** (*1*) On application made as hereinafter mentioned, and with the concurrence of the person or persons making the application, the President of the Union, if he thinks fit, may settle a scheme for the administration of any property which has been or is to be vested in the Treasurer of Charitable Endowments, and may in such scheme appoint, by name or office, a person or persons, not being or including such Treasurer, to administer the property.

(*2*) On application made as hereinafter mentioned, and with the concurrence of the person or persons making the application, the President of the Union may, if he thinks fit, modify any scheme settled under this section or substitute another scheme in its stead.

(*3*) A scheme settled, modified or substituted under this section shall, subject to the other provisions of this section, come into operation on a day to be appointed by the President of the Union in this behalf, and shall remain in force so long as the property to which it relates continues to be vested in the Treasurer of Charitable Endowments or until it has been modified or another such scheme has been substituted in its stead.

(*4*) Such a scheme, when it comes into operation, shall supersede any decree or direction relating to the subject-matter thereof in so far as such decree or direction is in any way repugnant thereto, and its validity shall not be questioned in any Court, nor shall any Court give, in contravention of the provisions of the scheme or in any way contrary or in addition thereto, a decree or direction regarding the administration of the property to which the scheme relates.

(*5*) In the settlement of such a scheme effect shall be given to the wishes of the author of the trust so far as they can be ascertained, and, in the opinion of the President of the Union, effect can reasonably be given to them.

(*6*) Where a scheme has been settled under this section for the administration of property not already vested in the Treasurer of Charitable Endowments, it shall not come into operation until the property has become so vested.

Mode of applying for vesting orders and schemes.

**6.** (*1*) The application referred to in the two last foregoing sections must be made,—

(*a*) if the property is already held in trust for a charitable purpose, then by the person acting in the administration of the trust, or,

where there are more persons than one so acting, then by those persons or a majority of them ; and

(*b*) if the property is to be applied in trust for such a purpose, then by the person or persons proposing so to apply it.

(*2*) For the purposes of this section the executor or administrator of a deceased trustee of property held in trust for a charitable purpose shall be deemed to be a person acting in the administration of the trust.

**7.** * * * *

Bare trusteeship of Treasurer.

**8.** (*1*) Subject to the provisions of this Act, the Treasurer of Charitable Endowments shall not, as such Treasurer, act in the administration of any trust whereof any of the property is for the time being vested in him under this Act.

(*2*) Such Treasurer shall keep a separate account of each property for the time being so vested in so far as the property consists of securities for money, and shall apply the property or the income thereof in accordance with the provisions made in that behalf in the vesting order under section 4 or in the scheme, if any, under section 5, or in both those documents.

(*3*) In the case of any property so vested other than securities for money, such Treasurer shall, subject to any special order which he may receive from the authority by whose order the property became vested in him, permit the persons acting in the administration of the trust to have the possession, management and control of the property, and the application of the income thereof, as if the property had been vested in them.

Annual publication of list of properties vested in Treasurer.

**9.** The Treasurer of Charitable Endowments shall cause to be published annually in the Gazette, at such time as the President of the Union may direct, a list of all properties for the time being vested in him under this Act and an abstract of all accounts kept by him under sub-section (*2*) of the last foregoing section.

Limitation of functions and powers of Treasurer.

**10.** (*1*) The Treasurer of Charitable Endowments shall always be a sole trustee, and shall not, as such Treasurer, take or hold any property otherwise than under the provisions of this Act, or, subject to those provisions, transfer any property vested in him except in obedience to a decree divesting him of the property, or in compliance with a direction in that behalf issuing from the authority by whose order the property became vested in him.

(*2*) Such a direction may require the Treasurer to sell or otherwise dispose of any property vested in him, and, with the sanction of the authority issuing the direction, to invest the proceeds of the sale or other disposal of the property in any such security for money as is mentioned in section 4, sub-section (*3*), clause (*a*), (*b*), (*c*), (*d*) or (*e*), or in the purchase of immoveable property.

(*3*) When the Treasurer of Charitable Endowments is divested, by a direction of the President of the Union under this section, of any property, it shall vest in the person or persons acting in the administration thereof and be held by him or them on the same trusts as those on which it was held by such Treasurer.

Provision for continuance of office of Treasurer in certain contingencies.

**11.** If the office held by an officer of the Government who has been appointed to be the Treasurer of Charitable Endowments is abolished or its name is changed, the President of the Union may appoint the same or another officer of the Government by the name of his office to be such Treasurer, and thereupon the holder of the latter office shall be deemed for the purposes of this Act to be the successor in office of the holder of the former office.

**12.** * * * *

**13.** (*1*) * * * *

Power to make rules.

(*2*) The President of the Union may make rules consistent with this Act for—

(*a*) prescribing the fees to be paid to the Government in respect of any property vested under this Act in the Treasurer of Charitable Endowments;

(*b*) regulating the cases and the mode in which schemes or any modification thereof are to be published before they are settled or made under section 5;

(*c*) prescribing the forms in which accounts are to be kept by the Treasurer of Charitable Endowments and the mode in which such accounts are to be audited; and

(*d*) generally carrying into effect the purposes of this Act.

Indemnity to Government and Treasurer.

**14.** No suit shall be instituted against the Government in respect of anything done or purporting to be done under this Act, or in respect of any alleged neglect or omission to perform any duty devolving on the Government under this Act, or in respect of the exercise of, or the failure to exercise, any power conferred by this Act on the Government, nor shall any suit be instituted against the Treasurer of Charitable Endowments except for divesting him of property on the ground of its not being subject to a trust for a charitable purpose, or for making him chargeable with or accountable for the loss or misapplication of any property vested in him, or the income thereof, where the loss or misapplication has been occasioned by or through his wilful neglect or default.

Saving with respect to Official Trustee and Attorney-General.

**15.** Nothing in this Act shall be construed to affect the provisions of the Official Trustees Act or section 92 of the Code of Civil Procedure.

# THE CHARITABLE AND RELIGIOUS TRUSTS ACT.

[INDIA ACT XIV, 1920.] (20th March, 1920.)

Whereas it is expedient to provide facilities for the obtaining of information regarding trusts created for public purposes of a charitable or religious nature, and to enable the trustees of such trusts to obtain the directions of a Court on certain matters, and to make special provision for the payment of the expenditure incurred in certain suits against the trustees of such trusts; It is hereby enacted as follows :—

**1.** (*1*) * * * *

Extent.

(*2*) The President of the Union may, by notification, direct that this Act, or any specified part thereof, shall not extend to any specified area in the Union of Burma or to any specified trust or class of trusts.

Interpretation.

**2.** In this Act, unless there is anything repugnant in the subject or context, "the Court" means the Court of the District Judge or any other Court empowered in that behalf by the President of the Union and includes the High Court in the exercise of its ordinary original civil jurisdiction.

Power to apply to the Court in respect of trusts of a charitable or religious nature.

**3.** Save as hereinafter provided in this Act, any person having an interest in any express or constructive trust created or existing for a public purpose of a charitable or religious nature may apply by petition to the Court within the local limits of whose jurisdiction any substantial part of the subject-matter of the trust is situate to obtain an order embodying all or any of the following directions, namely :—

(1) directing the trustee to furnish the petitioner through the Court with particulars as to the nature and objects of the trust, and of the value, condition, management and application of the subject-matter of the trust, and of the income belonging thereto, or as to any of these matters, and

(2) directing that the accounts of the trust shall be examined and audited :

Provided that no person shall apply for any such direction in respect of accounts relating to a period more than three years prior to the date of the petition.

Contents and verification of petition.

**4.** (*1*) The petition shall show in what way the petitioner claims to be interested in the trust, and shall specify, as far as may be, the particulars and the audit which he seeks to obtain.

(*2*) The petition shall be in writing and shall be signed and verified in the manner prescribed by the Code of Civil Procedure for signing and verifying plaints.

Procedure on petition.

**5.** (*1*) If the Court on receipt of a petition under section 3, after taking such evidence and making such inquiry, if any, as it may consider necessary, is of opinion that the trust to which the petition relates is a trust to which

this Act applies, and that the petitioner has an interest therein, it shall fix a date for the hearing of the petition, and shall cause a copy thereof, together with notice of the date so fixed, to be served on the trustee and upon any other person to whom in its opinion notice of the petition should be given.

(*2*) On the date fixed for the hearing of the petition, or on any subsequent date to which the hearing may be adjourned, the Court shall proceed to hear the petitioner and the trustee, if he appears, and any other person who has appeared in consequence of the notice, or who it considers ought to be heard, and shall make such further inquiries, if any, as it thinks fit. The trustee may and, if so required by the Court, shall at the time of the first hearing or within such time as the Court may permit present a written statement of his case. If he does present a written statement, the statement shall be signed and verified in the manner prescribed by the Code of Civil Procedure for signing and verifying pleadings.

(*3*) If any person appears at the hearing of the petition and either denies the existence of the trust or denies that it is a trust to which this Act applies, and undertakes to institute within three months a suit for a declaration to that effect and for any other appropriate relief, the Court shall order a stay of the proceedings and, if such suit is so instituted, shall continue the stay until the suit is finally decided.

(*4*) If no such undertaking is given, or if after the expiry of the three months no such suit has been instituted, the Court shall itself decide the question.

(*5*) On completion of the inquiry provided for in sub-section (*2*), the Court shall either dismiss the petition or pass thereon such other order as it thinks fit:

Provided that, where a suit has been instituted in accordance with the provisions of sub-section (*3*), no order shall be passed by the Court which conflicts with the final decision therein.

(*6*) Save as provided in this section, the Court shall not try or determine any question of title between the petitioner and any person claiming title adversely to the trust.

**Failure of trustee to comply with order under section 5.**

**6.** If a trustee without reasonable excuse fails to comply with an order made under sub-section (*5*) of section 5, such trustee shall, without prejudice to any other penalty or liability which he may incur under any law for the time being in force, be deemed to have committed a breach of trust affording ground for a suit under the provisions of section 92 of the Code of Civil Procedure; and any such suit may, so far as it is based on such failure, be instituted without the previous consent of the Advocate-General.[1]

**Power of trustee to apply for directions.**

**7.** (*1*) Save as hereinafter provided in this Act, any trustee of an express or constructive trust created or existing for public purpose of a charitable or religious nature may apply by petition to the Court, within the local limits of whose jurisdiction any substantial part of the subject-matter of the trust is situate, for the opinion, advice or direction of the Court on any question

[1] Now the Attorney-General.

affecting the management or administration of the trust property, and the Court shall give its opinion, advice or direction, as the case may be, thereon:

Provided that the Court shall not be bound to give such opinion, advice or direction on any question which it considers to be a question not proper for summary disposal.

(*2*) The Court, on a petition under sub-section (*1*), may either give its opinion, advice or direction thereon forthwith, or fix a date for the hearing of the petition, and may direct a copy thereof, together with notice of the date so fixed, to be served on such of the persons interested in the trust, or to be published for information in such manner, as it thinks fit.

(*3*) On any date fixed under sub-section (*2*) or on any subsequent date to which the hearing may be adjourned, the Court, before giving any opinion, advice or direction, shall afford a reasonable opportunity of being heard to all persons appearing in connection with the petition.

(*4*) A trustee stating in good faith the facts of any matter relating to the trust in a petition under sub-section (*1*), and acting upon the opinion, advice or direction of the Court given thereon, shall be deemed, as far as his own responsibility is concerned, to have discharged his duty as such trustee in the matter in respect of which the petition was made.

Costs of petition under this Act.

**8.** The costs, charges and expenses of and incidental to any petition, and all proceedings in connection therewith under the foregoing provisions of this Act shall be in the discretion of the Court, which may direct the whole or any part of any such costs, charges and expenses to be met from the property or income of the trust in respect of which the petition is made, or to be borne and paid in such manner and by such persons as it thinks fit:

Provided that no such order shall be made against any person (other than the petitioner) who has not received notice of the petition and had a reasonable opportunity of being heard thereon.

Savings.

**9.** No petition under the foregoing provisions of this Act in relation to any trust shall be entertained in any of the following circumstances, namely:—

(*a*) if a suit instituted in accordance with the provisions of section 92 of the Code of Civil Procedure is pending in respect of the trust in question;

(*b*) if the trust property is vested in the Treasurer of Charitable Endowments, the Administrator-General, the Official Trustee, or any society registered under the Societies Registration Act; or

(*c*) if a scheme for the administration of the trust-property has been settled or approved by any Court of competent jurisdiction, or by any other authority acting under the provisions of any enactment.

Power of Courts as to costs in certain suits against trustees of charitable and religious trusts.

**10.** (*1*) In any suit instituted under section 92 of the Code of Civil Procedure, the Court trying such suit may, if, on application of the plaintiff and after hearing the defendant and making such inquiry as it thinks fit, it is satisfied that such an order is necessary in the public interest, direct the defendant either to furnish security for any expenditure incurred or likely to be incurred by the plaintiff in instituting and maintaining such suit, or to deposit from any money in his hands as trustee of the trust to which the suit relates such sum as such Court considers sufficient to meet such expenditure in whole or in part.

(*2*) When any money has been deposited in accordance with an order made under sub-section (*1*), the Court may make over to the plaintiff the whole or any part of such sum for the conduct of the suit. Before making over any sum to the plaintiff, the Court shall take security from the plaintiff for the refund of the same in the event of such refund being subsequently ordered by the Court.

Provisions of the Code of Civil Procedure to apply.

**11.** (*1*) The provisions of the Code of Civil Procedure relating to—

(*a*) the proof of facts by affidavit,

(*b*) the enforcing of the attendance of any person and his examination on oath,

(*c*) the enforcing of the production of documents, and

(*d*) the issuing of commissions,

shall apply to all proceedings under this Act, and the provisions relating to the service of summonses shall apply to the service of notices thereunder.

(*2*) The provisions of the said Code relating to the execution of decrees shall, so far as they are applicable, apply to the execution of orders under this Act.

Barring of appeals.

**12.** No appeal shall lie from any order passed or against any opinion, advice or direction given under this Act.

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## THE MUSSALMAN WAKF ACT.

[INDIA ACT XLII, 1923.] (1st August, 1924.)

*Preliminary.*

Extent.

**1.** (*1*) * * * *

(*2*) The President of the Union may, by notification,[1] direct that this Act, or any specified part thereof, shall extend to the whole or any specified part of the Union of Burma.

Definitions.

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

(*a*) "benefit" does not include any benefit which a mutwalli is entitled to claim solely by reason of his being such mutwalli ;

[1] Sections 2 to 13 were brought into force in certain districts of Burma from the 1st August 1924 ; see *Burma Gazette*, 1924, Part I, page 600.

(*b*) "Court" means the Court of the District Judge or, within the limits of the ordinary original civil jurisdiction of the High Court, such Court, subordinate to the High Court, as the President of the Union may, by notification in the Gazette, designate in this behalf;

(*c*) "mutwalli" means any person appointed either verbally or under any deed or instrument by which a wakf has been created or by a Court of competent jurisdiction to be the mutwalli of a wakf, and includes a naib-mutwalli or other person appointed by a mutwalli to perform the duties of the mutwalli, and, save as otherwise provided in this Act, any person who is for the time being administering any wakf property;

(*d*) "prescribed" means prescribed by rules made under this Act; and

(*e*) "wakf" means the permanent dedication by a person professing the Mussalman faith of any property for any purpose recognized by the Mussalman law as religious, pious or charitable, but does not include any wakf, such as is described in section 3 of the Mussalman Wakf Validating Act,[1] under which any benefit is for the time being claimable for himself by the person by whom the wakf was created or by any of his family or descendants.

*Statements of Particulars.*

Obligation to furnish particulars relating to wakf

**3.** (*1*) Every mutwalli shall furnish to the Court within the local limits of whose jurisdiction the property of the wakf of which he is the mutwalli is situated, or to any one of two or more such Courts, a statement containing the following particulars, namely:—

(*a*) a description of the wakf property sufficient for the identification thereof;

(*b*) the gross annual income from such property;

(*c*) the gross amount of such income which has been collected during the five years preceding the date on which the statement is furnished, or of the period which has elapsed since the creation of the wakf, whichever period is shorter;

(*d*) the amount of the Government revenue and cesses, and of all rents, annually payable in respect of the wakf property;

(*e*) an estimate of the expenses annually incurred in the realization of the income of the wakf property, based on such details as are available of any such expenses incurred within the period to which the particulars under clause (*c*) relate;

(*f*) the amount set apart under the wakf for—

(i) the salary of the mutwalli and allowances to individuals;

(ii) purely religious purposes;

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[1] *See* Part XXII, C (Personal Laws—Muhammadan).

(iii) charitable purposes ;

(iv) any other purposes ; and

(*g*) any other particulars which may be prescribed.

(*2*) Every such statement shall be accompanied by a copy of the deed or instrument creating the wakf or, if no such deed or instrument has been executed or a copy thereof cannot be obtained, shall contain full particulars, as far as they are known to the mutwalli, of the origin, nature and objects of the wakf.

(*3*) Where—

(*a*) a wakf is created after the 1st August, 1924,[1] or

(*b*) in the case of a wakf such as is described in section 3 of the Mussalman Wakf Validating Act,[2] the person creating the wakf or any member of his family or any of his descendants is on the 1st August, 1924,[1] alive and entitled to claim any benefit thereunder,

the statement referred to in sub-section (*1*) shall be furnished, in the case referred to in clause (*a*), within six months of the date on which the wakf is created or, if it has been created by a written document, of the date on which such document is executed, or, in the case referred to in clause (*b*), within six months of the date of the death of the person entitled to such benefit as aforesaid, or of the last survivor of any such persons, as the case may be.

Publication of particulars and requisition of further particulars.

**4.** (*1*) When any statement has been furnished under section 3, the Court shall cause notice of the furnishing thereof to be affixed in some conspicuous place in the Court-house and to be published in such other manner, if any, as may be prescribed, and thereafter any person may apply to the Court by a petition in writing, accompanied by the prescribed fee, for the issue of an order requiring the mutwalli to furnish further particulars or documents.

(*2*) On such application being made, the Court may, after making such inquiry, if any, as it thinks fit, if it is of opinion that any further particulars or documents are necessary in order that full information may be obtained regarding the origin, nature or objects of the wakf or the condition or management of the wakf property, cause to be served on the mutwalli an order requiring him to furnish such particulars or documents within such time as the Court may direct in the order.

*Statement of Accounts and Audit.*

Statement of accounts.

**5.** Within three months after the thirty-first day of March next following the date on which the statement referred to in section 3 has been furnished, and thereafter within three months of the thirty-first day of March in every year, every mutwalli shall prepare and furnish to the Court to which such statement was furnished a full and true statement of accounts, in such form and containing such particulars as may be prescribed, of all moneys received or expended by him on behalf of the wakf of which he is the mutwalli during

[1] Date of commencement of this Act.

[2] *See* Part XXII, C (Personal Laws—Muhammadan)

the period of twelve months ending on such thirty-first day of March or, as the case may be, during that portion of the said period during which the provisions of this Act have been applicable to the wakf :

Provided that the Court may, if it is satisfied that there is sufficient cause for so doing, extend the time allowed for the furnishing of any statement of accounts under this section.

Audit of accounts.

**6.** Every statement of accounts shall, before it is furnished to the Court under section 5, be audited—

(*a*) in the case of a wakf the gross income of which during the year in question, after deduction of the land-revenue and cesses, if any, payable to the Government, exceeds two thousand rupees, by a person who is the holder of a certificate granted by the President of the Union under section 144 of the Burma Companies Act, or is a member of any institution or association the members of which have been declared under that section to be entitled to act as auditors of companies throughout the Union of Burma ; or

(*b*) in the case of any other wakf, by any person authorized in this behalf by general or special order of the said Court.

*General Provisions.*

Mutwalli entitled to pay cost of audit, etc., from wakf funds.

**7.** Notwithstanding anything contained in the deed or instrument creating any wakf, every mutwalli may pay from the income of the wakf property any expenses properly incurred by him for the purpose of enabling him to furnish any particulars, documents or copies under section 3 or section 4 or in respect of the preparation or audit of the annual accounts for the purposes of this Act.

Verification.

**8.** Every statement of particulars furnished under section 3 or section 4 and every statement of accounts furnished under section 5, shall be written in the language of the Court to which it is furnished, and shall be verified in the manner provided in the Code of Civil Procedure for the signing and verification of pleadings.

Inspection and copies.

**9.** Any person shall, with the permission of the Court and on payment of the prescribed fee, at any time at which the Court is open, be entitled to inspect in the prescribed manner, or to obtain a copy of, any statement of particulars or any document furnished to the Court under section 3 or section 4, or any statement of accounts furnished to it under section 5, or any audit report made on an audit under section 6.

*Penalty.*

Penalties.

**10.** Any person who is required by or under section 3 or section 4 to furnish a statement of particulars or any document relating to a wakf, or who is required by section 5 to furnish a statement of accounts, shall, if he, without reasonable cause the burden of proving which shall be upon him, fails to furnish such statement or document, as the case may be, in due

time, or furnishes a statement which he knows or has reason to believe to be false, misleading or untrue in any material particular, or, in the case of a statement of accounts, furnishes a statement which has not been audited in the manner required by section 6, be punishable with fine which may extend to five hundred rupees, or, in the case of a second or subsequent offence, with fine which may extend to two thousand rupees.

*Rules.*

Power to make rules.

**11.** (*1*) The President of the Union may, after previous publication, by notification in the Gazette, make rules to carry into effect the purposes of this Act.

(*2*) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :—

(*a*) the additional particulars to be furnished by mutwallis under clause (*g*) of sub-section (*1*) of section 3 ;

(*b*) the fees to be charged upon applications made to a Court under sub-section (*1*) of section 4 ;

(*c*) the form in which the statement of accounts referred to in section 5 shall be furnished; and the particulars which shall be contained therein ;

(*d*) the powers which may be exercised by auditors for the purpose of any audit referred to in section 6, and the particulars to be contained in the reports of such auditors ;

(*e*) the fees respectively chargeable on account of the allowing of inspections and of the supply of copies under section 9 ;

(*f*) the safe custody of statements, audit reports and copies of deeds or instruments furnished to Courts under this Act ; and

(*g*) any other matter which is to be or may be prescribed.

Savings.

**12.** Nothing in this Act shall —

(*a*) affect any other enactment for the time being in force in the Union of Burma providing for the control or supervision of religious or charitable endowments ; or

(*b*) apply in the case of any wakf the property of which—

(i) is being administered by the Treasurer of Charitable Endowments, the Administrator-General, or the Official Trustee ; or

(ii) is being administered either by a receiver appointed by any Court of competent jurisdiction, or under a scheme for the administration of the wakf which has been settled or approved by any Court of competent jurisdiction or by any other authority acting under the provisions of any enactment.

Exemption.

**13.** The President of the Union may, by notification in the Gazette, exempt from the operation of this Act or of any specified provision thereof any wakf or wakfs created or administered for the benefit of any specified section of the Mussalman community.

# PART XIV—ASSOCIATIONS.

## အပိုင်း ၁၄။ ။အသင်းအဖွဲ့များဆိုင်ရာ။

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### THE PARTITION ACT.

[INDIA ACT IV, 1893.] (9th March, 1893.)

Saving.

**1.** Nothing herein contained shall be deemed to affect any local law providing for the partition of immoveable property paying revenue to Government.

Power to Court to order sale instead of division in partition suits.

**2.** Whenever in any suit for partition in which, if instituted prior to the commencement of this Act, a decree for partition might have been made, it appears to the Court that, by reason of the nature of the property to which the suit relates, or of the number of the shareholders therein or of any other special circumstance, a division of the property cannot reasonably or conveniently be made, and that a sale of the property and distribution of the proceeds would be more beneficial for all the shareholders, the Court may, if it thinks fit, on the request of any of such shareholders interested individually or collectively to the extent of one moiety or upwards, direct a sale of the property and a distribution of the proceeds.

Procedure when sharer undertakes to buy.

**3.** (*1*) If, in any case in which the Court is requested under the last foregoing section to direct a sale, any other shareholder applies for leave to buy at a valuation the share or shares of the party or parties asking for a sale, the Court shall order a valuation of the share or shares in such manner as it may think fit and offer to sell the same to such shareholder at the price so ascertained, and may give all necessary and proper directions in that behalf.

(*2*) If two or more shareholders severally apply for leave to buy as provided in sub-section (*1*), the Court shall order a sale of the share or shares to the shareholder who offers to pay the highest price above the valuation made by the Court.

(*3*) If no such shareholder is willing to buy such share or shares at the price so ascertained, the applicant or applicants shall be liable to pay all costs of or incident to the application or applications.

Partition suit by transferee of share in dwelling-house.

**4.** (*1*) Where a share of a dwelling-house belonging to an undivided family has been transferred to a person who is not a member of such family and such transferee sues for partition, the Court shall, if any member of the family being a shareholder shall undertake to buy the share of such ransferee, make a valuation of such share in such manner as it thinks fit and

direct the sale of such share to such shareholder, and may give all necessary and proper directions in that behalf.

(*2*) If in any case described in sub-section (*1*) two or more members of the family being such shareholders severally undertake to buy such share, the Court shall follow the procedure prescribed by sub-section (*2*) of the last foregoing section.

Representation of parties under disability.

**5.** In any suit for partition a request for sale may be made or an undertaking, or application for leave, to buy may be given or made on behalf of any party under disability by any person authorized to act on behalf of such party in such suit, but the Court shall not be bound to comply with any such request, undertaking or application unless it is of opinion that the sale or purchase will be for the benefit of the party under such disability.

Reserved bidding and bidding by shareholders.

**6.** (*1*) Every sale under section *2* shall be subject to a reserved bidding, and the amount of such bidding shall be fixed by the Court in such manner as it may think fit and may be varied from time to time.

(*2*) On any such sale any of the shareholers shall be at liberty to bid at the sale on such terms as to non-payment of deposit or as to setting-off or accounting for the purchase money or any part thereof instead of paying the same as to the Court may seem reasonable.

(*3*) If two or more persons, of whom one is a shareholder in the property, respectively advance the same sum at any bidding at such sale, such bidding shall be deemed to be the bidding of the shareholder.

Procedure to be followed in case of sales.

**7.** Save as hereinbefore provided, when any property is directed to be sold under this Act, the following procedure shall, as far as practicable, be adopted, namely :—

(*a*) if the property be sold under a decree or order of the High Court the procedure of such Court in its original civil jurisdiction for the sale of property by the Registrar ;

(*b*) if the property be sold under a decree or order of any other Court, such procedure as the High Court may from time to time by rules prescribe in this behalf, and until such rules are made, the procedure prescribed in the Code of Civil Procedure in respect of sales in execution of decrees.

Orders for sale to be deemed decrees.

**8.** Any order for sale made by the Court under sections 2, 3 or 4 shall be deemed to be a decree within the meaning of section 2 of the Code of Civil Procedure.

Saving of power to order partly partition and partly sale.

**9.** In any suit for partition the Court may, if it shall think fit, make a decree for a partition of part of the property to which the suit relates and a sale of the remainder under this Act.

# THE PARTNERSHIP ACT.

## CONTENTS.

### CHAPTER I.

PRELIMINARY.

*Sections.*

1. * * * *
2. Definitions.
3. * * * *

### CHAPTER II.

THE NATURE OF PARTNERSHIP.

4. Definitions of "partnership", "partner", "firm" and "firm name".
5. Partnership not created by status.
6. Mode of determining existence of partnership.
7. Partnership at will.
8. Particular partnership.

### CHAPTER III.

RELATIONS OF PARTNERS TO ONE ANOTHER.

9. General duties of partners.
10. Duty to indemnify for loss caused by fraud.
11. Determination of rights and duties of partners by contract between the partners.
Agreements in restraint of trade.
12. The conduct of the business.
13. Mutual rights and liabilities.
14. The property of the firm.
15. Application of the property of the firm.
16. Personal profits earned by partners.
17. Rights and duties of partners after a change in the firm, after the expiry of the term of the firm, and where additional undertakings are carried out.

## CHAPTER IV.

### RELATIONS OF PARTNERS TO THIRD PARTIES.

*Sections.*

18. Partner to be agent of the firm.
19. Implied authority of partner as agent of the firm.
20. Extension and restriction of partner's implied authority.
21. Partner's authority in an emergency.
22. Mode of doing act to bind firm.
23. Effect of admissions by a partner.
24. Effect of notice to acting partner.
25. Liability of a partner for acts of the firm.
26. Liability of the firm for wrongful acts of a partner.
27. Liability of firm for misapplication by partners.
28. Holding out.
29. Rights of transferee of a partner's interest.
30. Minors admitted to the benefits of partnership.

## CHAPTER V.

### INCOMING AND OUTGOING PARTNERS.

31. Introduction of a partner.
32. Retirement of a partner.
33. Expulsion of a partner.
34. Insolvency of a partner.
35. Liability of estate of deceased partner.
36. Rights of outgoing partner to carry on competing business. Agreements in restraint of trade.
37. Right of outgoing partner in certain cases to share subsequent profits.
38. Revocation of continuing guarantee by change in firm.

## CHAPTER VI.

### DISSOLUTION OF A FIRM.

39. Dissolution of a firm.
40. Dissolution by agreement.
41. Compulsory dissolution.
42. Dissolution on the happening of certain contingencies.
43. Dissolution by notice of partnership at will.
44. Dissolution by the Court.
45. Liability for acts of partners done after dissolution.
46. Right of partners to have business wound up after dissolution.

*Sections.*

47. Continuing authority of partners for purposes of winding up.
48. Mode of settlement of accounts between partners.
49. Payment of firm debts and of separate debts.
50. Personal profits earned after dissolution.
51. Return of premium on premature dissolution.
52. Rights where partnership contract is rescinded for fraud or misrepresentation.
53. Right to restrain from use of firm name or firm property.
54. Agreements in restraint of trade.
55. Sale of goodwill after dissolution.
Rights of buyer and seller of goodwill.
Agreements in restraint of trade.

## CHAPTER VII.

### REGISTRATION OF FIRMS.

56. Power to exempt from application of this Chapter.
57. Appointment of Registrars.
58. Application for registration.
59. Registration.
60. Recording of alterations in firm name and principal place of business.
61. Noting of closing and opening of branches.
62. Noting of changes in names and addresses of partners.
63. Recording of changes in and dissolution of a firm.
Recording of withdrawal of a minor.
64. Rectification of mistakes.
65. Amendment of register by order of Court.
66. Inspection of register and filed documents.
67. Grant of copies.
68. Rules of evidence.
69. Effect of non-registration.
70. Penalty for furnishing false particulars.
71. Power to make rules.

## CHAPTER VIII.

### SUPPLEMENTAL.

72. Mode of giving public notice.
73. * * * *
74. Savings.

SCHEDULE.—Maximum Fees.

# THE PARTNERSHIP ACT.

[INDIA ACT IX, 1932.] (1st October, 1932.) [1]

## CHAPTER I.

### PRELIMINARY.

1. * * * *

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(*a*) an "act of a firm" means any act or omission by all the partners, or by any partner or agent of the firm which gives rise to a right enforceable by or against the firm;

(*b*) "business" includes every trade, occupation and profession;

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

(*d*) "third party", used in relation to a firm or to a partner therein, means any person who is not a partner in the firm; and

(*e*) expressions used but not defined in this Act and defined in the Contract Act shall have the meanings assigned to them in that Act.

3. * * * *

## CHAPTER II.

### THE NATURE OF PARTNERSHIP.

Definition of "partnership," "partner," "firm" and "firm name".

4. "Partnership" is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all.

Persons who have entered into partnership with one another are called individually "partners" and collectively "a firm", and the name under which their business is carried on is called the "firm name."

Partnership not created by status.

5. The relation of partnership arises from contract and not from status; and, in particular, the members of a Hindu undivided family carrying on a family business as such, or a Burmese Buddhist husband and wife carrying on business as such, are not partners in such business.

Mode of determining existence of partnership.

6. In determining whether a group of persons is or is not a firm, or whether a person is or is not a partner in a firm, regard shall be had to the real relation between the parties, as shown by all relevant facts taken together.

*Explanation 1.*—The sharing of profits or of gross returns arising from property by persons holding a joint or common interest in that property does not of itself make such persons partners.

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[1] This Act came into force on the 1st October, 1932, with the exception of section 69, which came into force on the 1st October, 1933; see section 1 (3) of India Act IX, 1932.

*Explanation 2.*—The receipt by a person of a share of the profits of a business, or of a payment contingent upon the earning of profits or varying with the profits earned by a business, does not of itself make him a partner with the persons carrying on the business.

and, in particular, the receipt of such share or payment—

(*a*) by a lender of money to persons engaged or about to engage in any business,

(*b*) by a servant or agent as remuneration,

(*c*) by the widow or child of a deceased partner as annuity, or

(*d*) by a previous owner or part owner of the business, as consideration for the sale of the goodwill or share thereof,

does not of itself make the receiver a partner with the persons carrying on the business.

Partnership at will.

**7.** Where no provision is made by contract between the partners for the duration of their partnership, or for the determination of their partnership, the partnership is "partnership at will".

Particular partnership.

**8.** A person may become a partner with another person in particular adventures or undertakings.

## CHAPTER III.

### RELATIONS OF PARTNERS TO ONE ANOTHER.

General duties of partners.

**9.** Partners are bound to carry on the business of the firm to the greatest common advantage, to be just and faithful to each other, and to render true accounts and full information of all things affecting the firm to any partner or his legal representative.

Duty to indemnify for loss caused by fraud.

**10.** Every partner shall indemnify the firm for any loss caused to it by his fraud in the conduct of the business of the firm.

Determination of rights and duties of partners by contract between the partners.

**11.** (*1*) Subject to the provisions of this Act, the mutual rights and duties of the partners of a firm may be determined by contract between the partners, and such contract may be express or may be implied by a course of dealing.

Such contract may be varied by consent of all the partners, and such consent may be express or may be implied by a course of dealing.

Agreements in restraint of trade.

(*2*) Notwithstanding anything contained in section 27 of the Contract Act, such contracts may provide that a partner shall not carry on any business other than that of the firm while he is a partner.

The conduct of the business.

**12.** Subject to contract between the partners—

(*a*) every partner has a right to take part in the conduct of the business;

(*b*) every partner is bound to attend diligently to his duties in the conduct of the business;

(*c*) any difference arising as to ordinary matters connected with the business may be decided by a majority of the partners, and every partner shall have the right to express his opinion before the matter is decided, but no change may be made in the nature of the business without the consent of all the partners ; and

(*d*) every partner has a right to have access to and to inspect and copy any of the books of the firm.

Mutual rights and liabilities.

**13.** Subject to contract between the partners—

(*a*) a partner is not entitled to receive remuneration for taking part in the conduct of the business ;

(*b*) the partners are entitled to share equally in the profits earned, and shall contribute equally to the losses sustained by the firm ;

(*c*) where a partner is entitled to interest on the capital subscribed by him such interest shall be payable only out of profits ;

(*d*) a partner making for the purposes of the business any payment or advance beyond the amount of capital he has agreed to subscribe, is entitled to interest thereon at the rate of six per cent. per annum ;

(*e*) the firm shall indemnify a partner in respect of payments made and liabilities incurred by him—

(i) in the ordinary and proper conduct of the business, and

(ii) in doing such act, in an emergency, for the purpose of protecting the firm from loss, as would be done by a person of ordinary prudence, in his own case, under similar circumstances ; and

(*f*) a partner shall indemnify the firm for any loss caused to it by his wilful neglect in the conduct of the business of the firm.

The property of the firm.

**14.** Subject to contract between the partners, the property of the firm includes all property and rights and interests in property originally brought into the stock of the firm, or acquired, by purchase or otherwise, by or for the firm, or for the purposes and in the course of the business of the firm, and includes also the goodwill of the business.

Unless the contrary intention appears, property and rights and interests in property acquired with money belonging to the firm are deemed to have been acquired for the firm.

Application of the property of the firm.

**15.** Subject to contract between the partners, the property of the firm shall be held and used by the partners exclusively for the purposes of the business.

Personal profits earned by partners.

**16.** Subject to contract between the partners,—

(*a*) if a partner derives any profit for himself from any transaction of the firm, or from the use of the property or business connection of the firm or the firm name, he shall account for that profit and pay it to the firm ;

(*b*) if a partner carries on any business of the same nature as and competing with that of the firm, he shall account for and pay to the firm all profits made by him in that business.

Rights and duties of partners after a change in the firm.

**17.** Subject to contract between the partners,—

(*a*) where a change occurs in the constitution of a firm, the mutual rights and duties of the partners in the reconstituted firm remain the same as they were immediately before the change, as far as may be;

after the expiry of the term of the firm, and

(*b*) where a firm constituted for a fixed term continues to carry on business after the expiry of that term, the mutual rights and duties of the partners remain the same as they were before the expiry, so far as they may be consistent with the incidents of partnership at will; and

where additional undertakings are carried out.

(*c*) where a firm constituted to carry out one or more adventures or undertakings, carries out other adventures or undertakings, the mutual rights and duties of the partners in respect of the other adventures or undertakings are the same as those in respect of the original adventures or undertakings.

## CHAPTER IV.

### RELATIONS OF PARTNERS TO THIRD PARTIES.

Partner to be agent of the firm.

**18.** Subject to the provisions of this Act, a partner is the agent of the firm for the purposes of the business of the firm.

Implied authority of partner as agent of the firm.

**19.** (*1*) Subject to the provisions of section 22, the act of a partner which is done to carry on, in the usual way, business of the kind carried on by the firm, binds the firm.

The authority of a partner to bind the firm conferred by this section is called his "implied authority."

(*2*) In the absence of any usage or custom of trade to the contrary, the implied authority of a partner does not empower him to—

(*a*) submit a dispute relating to the business of the firm to arbitration,

(*b*) open a banking account on behalf of the firm in his own name,

(*c*) compromise or relinquish any claim or portion of a claim by the firm,

(*d*) withdraw a suit or proceeding filed on behalf of the firm,

(*e*) admit any liability in a suit or proceeding against the firm,

(*f*) acquire immoveable property on behalf of the firm,

(*g*) transfer immoveable property belonging to the firm, or

(*h*) enter into partnership on behalf of the firm.

Extension and restriction of partner's implied authority.

**20.** The partners in a firm may, by contract between the partners, extend or restrict the implied authority of any partner.

Notwithstanding any such restriction, any act done by a partner on behalf of the firm which falls within his implied authority binds the firm, unless the person with whom he is dealing knows of the restriction or does not know or believe that partner to be a partner.

Partner's authority in an emergency.

**21.** A partner has authority, in an emergency, to do all such acts for the purpose of protecting the firm from loss as would be done by a person of ordinary prudence in his own case, acting under similar circumstances, and such acts bind the firm.

Mode of doing act to bind firm.

**22.** In order to bind a firm, an act or instrument done or executed by a partner or other person on behalf of the firm shall be done or executed in the firm name, or in any other manner expressing or implying an intention to bind the firm.

Effect of admissions by a partner.

**23.** An admission or representation made by a partner concerning the affairs of the firm is evidence against the firm, if it is made in the ordinary course of business.

Effect of notice to acting partner.

**24.** Notice to a partner who habitually acts in the business of the firm of any matter relating to the affairs of the firm operates as notice to the firm, except in the case of a fraud on the firm committed by or with the consent of that partner.

Liability of a partner for acts of the firm.

**25.** Every partner is liable, jointly with all the other partners and also severally, for all acts of the firm done while he is a partner.

Liability of the firm for wrongful acts of a partner.

**26.** Where, by the wrongful act or omission of a partner acting in the ordinary course of the business of a firm, or with the authority of his partners, loss or injury is caused to any third party, or any penalty is incurred, the firm is liable therefor to the same extent as the partner.

Liability of firm for misapplication by partners.

**27.** Where—

(*a*) a partner acting within his apparent authority receives money or property from a third party and misapplies it, or

(*b*) a firm in the course of its business receives money or property from a third party, and the money or property is misapplied by any of the partners while it is in the custody of the firm,

the firm is liable to make good the loss.

Holding out.

**28.** (*1*) Any one who by words spoken or written or by conduct represents himself, or knowingly permits himself to be represented, to be a partner in a firm, is liable as a partner in that firm to any one who has on the faith of any such representation given credit to the firm, whether the person representing himself or represented to be a partner does or does not know that the representation has reached the person so giving credit.

(*2*) Where after a partner's death the business is continued in the old firm name, the continued use of that name or of the deceased partner's name as a part thereof shall not of itself make his legal representative or his estate liable for any act of the firm done after his death.

Rights of transferee of a partner's interest.

**29.** (*1*) A transfer by a partner of his interest in the firm, either absolute or by mortgage, or by the creation by him of a charge on such interest, does not entitle the transferee, during the continuance of the firm, to interfere in the conduct of the business, or to require accounts, or to inspect the books of the firm, but entitles the transferee only to receive the share of profits of the transferring partner, and the transferee shall accept the account of profits agreed to by the partners.

(*2*) If the firm is dissolved or if the transferring partner ceases to be a partner, the transferee is entitled as against the remaining partners to receive the share of the assets of the firm to which the transferring partner is entitled, and, for the purpose of ascertaining that share, to an account as from the date of the dissolution.

Minors admitted to the benefits of partnership.

**30.** (*1*) A person who is a minor according to the law to which he is subject may not be a partner in a firm, but, with the consent of all the partners for the time being, he may be admitted to the benefits of partnership.

(*2*) Such minor has a right to such share of the property and of the profits of the firm as may be agreed upon, and he may have access to and inspect and copy any of the accounts of the firm.

(*3*) Such minor's share is liable for the acts of the firm, but the minor is not personally liable for any such act.

(*4*) Such minor may not sue the partners for an account or payment of his share of the property or profits of the firm, save when severing his connection with the firm, and in such case the amount of his share shall be determined by a valuation made as far as possible in accordance with the rules contained in section 48 :

Provided that all the partners acting together or any partner entitled to dissolve the firm upon notice to other partners may elect in such suit to dissolve the firm, and thereupon the Court shall proceed with the suit as one for dissolution and for settling accounts between the partners, and the amount of the share of the minor shall be determined along with the shares of the partners.

(*5*) At any time within six months of his attaining majority, or of his obtaining knowledge that he had been admitted to the benefits of partnership, whichever date is later, such person may give public notice that he has elected to become or that he has elected not to become a partner in the firm, and such notice shall determine his position as regards the firm :

Provided that, if he fails to give such notice, he shall become a partner in the firm on the expiry of the said six months.

(*6*) Where any person has been admitted as a minor to the benefits of partnership in a firm, the burden of proving the fact that such person had no knowledge of such admission until a particular date after the expiry of six months of his attaining majority shall lie on the person asserting that fact.

(*7*) Where such person becomes a partner,—

(*a*) his rights and liabilities as a minor continue up to the date on which he becomes a partner, but he also becomes personally liable to third parties for all acts of the firm done since he was admitted to the benefits of partnership, and

(*b*) his share in the property and profits of the firm shall be the share to which he was entitled as a minor.

(*8*) Where such person elects not to become a partner,—

(*a*) his rights and liabilities shall continue to be those of a minor under this section up to the date on which he gives public notice,

(*b*) his share shall not be liable for any acts of the firm done after the date of the notice, and

(*c*) he shall be entitled to sue the partners for his share of the property and profits in accordance with sub-section (*4*).

(*9*) Nothing in sub-sections (*7*) and (*8*) shall affect the provisions of section 28.

## CHAPTER V.

### INCOMING AND OUTGOING PARTNERS.

Introduction of a partner.

**31.** (*1*) Subject to contract between the partners and to the provisions of section 30, no person shall be introduced as a partner into a firm without the consent of all the existing partners.

(*2*) Subject to the provisions of section 30, a person who is introduced as a partner into a firm does not thereby become liable for any act of the firm done before he became a partner.

Retirement of a partner.

**32.** (*1*) A partner may retire—

(*a*) with the consent of all the other partners,

(*b*) in accordance with an express agreement by the partners, or

(*c*) where the partnership is at will, by giving notice in writing to all the other partners of his intention to retire.

(2) A retiring partner may be discharged from any liability to any third party for acts of the firm done before his retirement by an agreement made by him with such third party and the partners of the reconstituted firm, and such agreement may be implied by a course of dealing between such third party and the reconstituted firm after he had knowledge of the retirement.

(*3*) Notwithstanding the retirement of a partner from a firm, he and the partners continue to be liable as partners to third parties for any act done by any of them which would have been an act of the firm if done before the retirement, until public notice is given of the retirement :

Provided that a retired partner is not liable to any third party who deals with the firm without knowing that he was a partner.

(*4*) Notices under sub-section (*3*) may be given by the retired partner or by any partner of the reconstituted firm.

Expulsion of a partner.

**33.** (*1*) A partner may not be expelled from a firm by any majority of the partners, save in the exercise in good faith of powers conferred by contract between the partners.

(*2*) The provisions of sub-sections (*2*), (*3*) and (*4*) of section 32 shall apply to an expelled partner as if he were a retired partner.

Insolveney of a partner.

**34.** (*1*) Where a partner in a firm is adjudicated an insolvent he ceases to be a partner on the date on which the order of adjudication is made, whether or not the firm is thereby dissolved.

(*2*) Where under a contract between the partners the firm is not dissolved by the adjudication of a partner as an insolvent, the estate of a partner so adjudicated is not liable for any act of the firm, and the firm is not liable for any act of the insolvent, done after the date on which the order of adjudication is made.

Liability of estate of deceased partner.

**35.** Where under a contract between the partners the firm is not dissolved by the death of a partner, the estate of a deceased partner is not liable for any act of the firm done after his death.

Rights of outgoing partner to carry on competing business.

**36.** (*1*) An outgoing partner may carry on a business competing with that of the firm and he may advertise such business, but, subject to contract to the contrary, he may not—

(*a*) use the firm name,

(*b*) represent himself as carrying on the business of the firm, or

(*c*) solicit the custom of persons who were dealing with the firm before he ceased to be a partner.

Agreements in restraint of trade.

(*2*) A partner may make an agreement with his partners that on ceasing to be a partner he will not carry on any business similar to that of the firm within a specified period or within specified local limits; and, notwithstanding anything contained in section 27 of the Contract Act, such agreement shall be valid if the restrictions imposed are reasonable.

Right of outgoing partner in certain cases to share subsequent profits.

**37.** Where any member of a firm has died or otherwise ceased to be a partner, and the surviving or continuing partners carry on the business of the firm with the property of the firm without any final settlement of accounts as between them and the outgoing partner or his estate, then, in the absence of a contract to the contrary, the outgoing partner or his estate is entitled at the option of himself or his representatives to such share of the profits made

since he ceased to be a partner as may be attributable to the use of his share of the property of the firm or to interest at the rate of six per cent. per annum on the amount of his share in the property of the firm:

Provided that where by contract between the partners an option is given to surviving or continuing partners to purchase the interest of a deceased or outgoing partner, and that option is duly exercised, the estate of the deceased partner, or the outgoing partner or his estate, as the case may be, is not entitled to any further or other share of profits; but if any partner assuming to act in exercise of the option does not in all material respects comply with the terms thereof he is liable to account under the foregoing provisions of this section.

Revocation of continuing guarantee by change in firm.

**38.** A continuing guarantee given to a firm, or to a third party in respect of the transactions of a firm, is, in the absence of agreement to the contrary, revoked as to future transactions from the date of any change in the constitution of the firm.

## CHAPTER VI.

### Dissolution of a Firm.

Dissolution of a firm.

**39.** The dissolution of partnership between all the partners of a firm is called the "dissolution of the firm."

Dissolution by agreement.

**40.** A firm may be dissolved with the consent of all the partners or in accordance with a contract between the partners.

Compulsory dissolution.

**41.** A firm is dissolved—

(*a*) by the adjudication of all the partners or of all the partners but one as insolvent, or

(*b*) by the happening of any event which makes it unlawful for the business of the firm to be carried on or for the partners to carry it on in partnership:

Provided that, where more than one separate adventure or undertaking is carried on by the firm, the illegality of one or more shall not of itself cause the dissolution of the firm in respect of its lawful adventures and undertakings.

Dissolution on the happening of certain contingencies.

**42.** Subject to contract between the partners, a firm is dissolved—

(*a*) if constituted for a fixed term, by the expiry of that term;

(*b*) if constituted to carry out one or more adventures or undertakings, by the completion thereof;

(*c*) by the death of a partner; and

(*d*) by the adjudication of a partner as an insolvent.

Dissolution by notice of partnership at will.

**43.** (*1*) Where the partnership is at will, the firm may be dissolved by any partner giving notice in writing to all the other partners of his intention to dissolve the firm.

(*2*) The firm is dissolved as from the date mentioned in the notice as the date of dissolution or, if no date is so mentioned, as from the date of the communication of the notice.

**Dissolution by the Court.**

**44.** At the suit of a partner, the Court may dissolve a firm on any of the following grounds, namely :—

(*a*) that a partner has become of unsound mind, in which case the suit may be brought as well by the next friend of the partner who has become of unsound mind as by any other partner ;

(*b*) that a partner, other than the partner suing, has become in any way permanently incapable of performing his duties as partner ;

(*c*) that a partner, other than the partner suing, is guilty of conduct which is likely to affect prejudicially the carrying on of the business, regard being had to the nature of the business ;

(*d*) that a partner, other than the partner suing, wilfully or persistently commits breach of agreements relating to the management of the affairs of the firm or the conduct of its business, or otherwise so conducts himself in matters relating to the business that it is not reasonably practicable for the other partners to carry on the business in partnership with him ;

(*e*) that a partner, other than the partner suing, has in any way transferred the whole of his interest in the firm to a third party, or has allowed his share to be charged under the provisions of rule 49 of Order XXI of the First Schedule to the Code of Civil Procedure, or has allowed it to be sold in the recovery of arrears of land-revenue or of any dues recoverable as arrears of land-revenue due by the partner ;

(*f*) that the business of the firm cannot be carried on save at a loss ; or

(*g*) on any other ground which renders it just and equitable that the firm should be dissolved.

**Liability for acts of partners done after dissolution.**

**45.** (*1*) Notwithstanding the dissolution of a firm, the partners continue to be liable as such to third parties for any act done by any of them which would have been an act of the firm if done before the dissolution, until public notice is given of the dissolution :

Provided that the estate of a partner who dies, or who is adjudicated an insolvent, or of a partner who, not having been known to the person dealing with the firm to be a partner, retires from the firm, is not liable under this section for acts done after the date on which he ceases to be a partner.

(*2*) Notices under sub-section (*1*) may be given by any partner.

**Right of partners to have business wound**

**46.** On the dissolution of a firm every partner or his representative is entitled, as against all the other partners or their representatives, to have the property of the firm applied in payment of the debts and liabilities of the

up after dissolution.

firm, and to have the surplus distributed among the partners or their representatives according to their rights.

Continuing authority of partners for purposes of winding up.

**47.** After the dissolution of a firm the authority of each partner to bind the firm, and the other mutual rights and obligations of the partners, continue notwithstanding the dissolution, so far as may be necessary to wind up the affairs of the firm and to complete transactions begun but unfinished at the time of the dissolution, but not otherwise :

Provided that the firm is in no case bound by the acts of a partner who has been adjudicated insolvent ; but this proviso does not affect the liability of any person who has after the adjudication represented himself or knowingly permitted himself to be represented as a partner of the insolvent.

Mode of settlement of accounts between partners.

**48.** In settling the accounts of a firm after dissolution, the following rules shall, subject to agreement by the partners, be observed :—

(*a*) Losses, including deficiencies of capital, shall be paid first out of profits, next out of capital, and, lastly, if necessary, by the partners individually in the proportions in which they were entitled to share profits.

(*b*) The assets of the firm, including any sums contributed by the partners to make up deficiencies of capital, shall be applied in the following manner and order :—

(i) in paying the debts of the firm to third parties ;

(ii) in paying to each partner rateably what is due to him from the firm for advances as distinguished from capital ;

(iii) in paying to each partner rateably what is due to him on account of capital ; and

(iv) the residue, if any, shall be divided among the partners in the proportions in which they were entitled to share profits.

Payment of firm debts and of separate debts.

**49.** Where there are joint debts due from the firm, and also separate debts due from any partner, the property of the firm shall be applied in the first instance in payment of the debts of the firm, and, if there is any surplus, then the share of each partner shall be applied in payment of his separate debts or paid to him. The separate property of any partner shall be applied first in the payment of his separate debts, and the surplus (if any) in the payment of the debts of the firm.

Personal profits earned after dissolution.

**50.** Subject to contract between the partners, the provisions of clause (*a*) of section 16 shall apply to transactions by any surviving partner or by the representatives of a deceased partner, undertaken after the firm is dissolved on account of the death of a partner and before its affairs have been completely wound up :

Provided that where any partner or his representative has bough the goodwill of the firm, nothing in this section shall affect his right to use the firm name.

Return of premium on premature dissolution.

**51.** Where a partner has paid a premium on entering into partnership for a fixed term, and the firm is dissolved before the expiration of that term otherwise than by the death of a partner, he shall be entitled to repayment of the premium, or of such part thereof as may be reasonable, regard being had to the terms upon which he became a partner and to the length of time during which he was a partner, unless—

(*a*) the dissolution is mainly due to his own misconduct, or

(*b*) the dissolution is in pursuance of an agreement containing no provision for the return of the premium or any part of it.

Rights where partnership contract is rescinded for fraud or misrepresentation.

**52.** Where a contract creating partnership is rescinded on the ground of the fraud or misrepresentation of any of the parties thereto, the party entitled to rescind is, without prejudice to any other right, entitled—

(*a*) to a lien on, or a right of retention of, the surplus or the assets of the firm remaining after the debts of the firm have been paid, for any sum paid by him for the purchase of a share in the firm and for any capital contributed by him ;

(*b*) to rank as a creditor of the firm in respect of any payment made by him towards the debts of the firm ; and

(*c*) to be indemnified by the partner or partners guilty of the fraud or misrepresentation against all the debts of the firm.

Right to restrain from use of firm name or firm property.

**53.** After a firm is dissolved, every partner or his representative may, in the absence of a contract between the partners to the contrary, restrain any other partner or his representative from carrying on a similar business in the firm name or from using any of the property of the firm for his own benefit, until the affairs of the firm have been completely wound up :

Provided that where any partner or his representative has bought the goodwill of the firm, nothing in this section shall affect his right to use the firm name.

Agreements in restraint of trade.

**54.** Partners may, upon or in anticipation of the dissolution of the firm, make an agreement that some or all of them will not carry on a business similar to that of the firm within a specified period or within specified local limits ; and, notwithstanding anything contained in section 27 of the Contract Act, such agreement shall be valid if the restrictions imposed are reasonable.

Sale of goodwill after dissolution.

**55.** (*1*) In settling the accounts of a firm after dissolution, the goodwill shall, subject to contract between the partners, be included in the assets, and it may be sold either separately or along with other property of the firm.

Rights of buyer and seller of goodwill.

(*2*) Where the goodwill of a firm is sold after dissolution, a partner may carry on a business competing with that of the buyer and he may advertise such business, but, subject to agreement between him and the buyer, he may not—

(*a*) use the firm name,

(*b*) represent himself as carrying on the business of the firm, or

(*c*) solicit the custom of persons who were dealing with the firm before its dissolution.

Agreements in restraint of trade.

(*3*) Any partner may, upon the sale of the goodwill of a firm, make an agreement with the buyer that such partner will not carry on any business similar to that of the firm within a specified period or within specified local limits, and, notwithstanding anything contained in section 27 of the Contract Act, such agreement shall be valid if the restrictions imposed are reasonable.

## CHAPTER VII.

### REGISTRATION OF FIRMS.

Power to exempt from application of this Chapter.

**56.** The President of the Union may, by notification [1] in the Gazette, direct that the provisions of this Chapter shall not apply to the Union of Burma or to any part thereof specified in the notification.

Appointment of Registrars.

**57.** (*1*) The President of the Union may appoint Registrars of firms for the purposes of this Act, and may define the areas within which they shall exercise their powers and perform their duties.

(*2*) Every Registrar shall be deemed to be a public servant within the meaning of section 21 of the Penal Code.

Application for registration.

**58.** (*1*) The registration of a firm may be effected at any time by sending by post or delivering to the Registrar of the area, in which any place of business of the firm is situated or proposed to be situated, a statement in the prescribed form and accompanied by the prescribed fee, stating—

(*a*) the firm name,

(*b*) the place or principal place of business of the firm,

(*c*) the names of any other places where the firm carries on business,

(*d*) the date when each partner joined the firm,

(*e*) the names in full and permanent addresses of the partners, and

(*f*) the duration of the firm.

The statement shall be signed by all the partners, or by their agents specially authorized in this behalf.

(*2*) Each person signing the statement shall also verify it in the manner prescribed.

(*3*) A firm name shall not contain any of the following words, namely :—

"Crown", "Emperor", "Empress", "Empire", "Imperial", "King" "Queen", "Royal", ["President", "Union"] [2], or words expressing or implying the sanction, approval or partronage of the [* * *] [3] Government of the Union of Burma, or any Government in India or Pakistan, except when the President of the

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[1] For notification directing, in supersession of all previous notifications, that the provisions of Chapter VII shall not apply to any part of the Union of Burma other than the towns of Rangoon, Kyaukpyu, Bassein, Moulmein, Mandalay and Tavoy, see *Burma Gazette*, 1956, Part I, page 723.

[2] Inserted by the Union of Burma (Adaptation of Laws) Order, 1948.

[3] Omitted *ibid*.

Union signifies his consent to the use of such words as part of the firm name by order in writing.

Registration.

**59.** When the Registrar is satisfied that the provisions of section 58 have been duly complied with, he shall record an entry of the statement in a register called the register of firms, and shall file the statement.

Recording of alterations in firm name and principal place of business.

**60.** (*1*) When an alteration is made in the firm name or in the location of the principal place of business of a registered firm, a statement may be sent to the Registrar accompanied by the prescribed fee, specifying the alteration, and signed and verified in the manner required under section 58.

(*2*) When the Registrar is satisfied that the provisions of sub-section (*1*) have been duly complied with , he shall amend the entry relating to the firm in the register of firms in accordance with the statement, and shall file it along with the statement relating to the firm filed under section 59.

Noting of closing and opening of branches.

**61.** When a registered firm discontinues business at any place or begins to carry on business at any place, such place not being its principal place of business, any partner or agent of the firm may send intimation thereof to the Registrar, who shall make a note of such intimation in the entry relating to the firm in the register of firms, and shall file the intimation along with the statement relating to the firm filed under section 59.

Noting of changes in names and addresses of partners.

**62.** When any partner in a registered firm alters his name or permanent address, an intimation of the alteration may be sent by any partner or agent of the firm to the Registrar, who shall deal with it in the manner provided in section 61.

Recording of changes in and dissolution of a firm.

**63.** (*1*) When a change occurs in the constitution of a registered firm any incoming, continuing or outgoing partner, and when a registered firm is dissolved any person who was a partner immediately before the dissolution, or the agent of any such partner or person specially authorized in this behalf, may give notice to the Registrar of such change or dissolution, specifying the date thereof; and the Registrar shall make a record of the notice in the entry relating to the firm in the register of firms, and shall file the notice along with the statement relating to the firm filed under section 59.

Recording of withdrawal of a minor.

(*2*) When a minor who has been admitted to the benefits of partnership in a firm attains majority and elects to become or not to become a partner, and the firm is then a registered firm, he, or his agent specially authorized in this behalf, may give notice to the Registrar that he has or has not become a partner, and the Registrar shall deal with the notice in the manner provided in sub-section (*1*).

Rectification of mistakes.

**64.** (*1*) The Registrar shall have power at all times to rectify any mistake in order to bring the entry in the register of firms relating to any firm into conformity with the documents relating to that firm filed under this Chapter.

(*2*) On application made by all the parties who have signed any document relating to a firm filed under this Chapter, the Registrar may rectify any mistake in such document or in the record or note thereof made in the register of firms.

Amendment of register by order of Court.

**65.** A Court deciding any matter relating to a registered firm may direct that the Registrar shall make any amendment in the entry in the register of firms relating to such firm which is consequential upon its decision; and the Registrar shall amend the entry accordingly.

Inspection of register and filed documents.

**66.** (*1*) The register of firms shall be open to inspection by any person on payment of such fee as may be prescribed.

(*2*) All statements, notices and intimations filed under this Chapter shall be open to inspection, subject to such conditions and on payment of such fee as may be prescribed.

Grant of copies.

**67.** The Registrar shall on application furnish to any person, on payment of such fee as may be prescribed, a copy, certified under his hand, of any entry or portion thereof in the register of firms.

Rules of evidence.

**68.** (*1*) Any statement, intimation or notice recorded or noted in the register of firms shall, as against any person by whom or on whose behalf such statement, intimation or notice was signed, be conclusive proof of any fact therein stated.

(*2*) A certified copy of an entry relating to a firm in the register of firms may be produced in proof of the fact of the registration of such firm, and of the contents of any statement, intimation or notice recorded or noted therein.

Effect of non-registration.

**69.** (*1*) No suit to enforce a right arising from a contract or conferred by this Act shall be instituted in any Court by or on behalf of any person suing as a partner in a firm against the firm or any person alleged to be or to have been a partner in the firm unless the firm is registered and the person suing is or has been shown in the register of firms as a partner in the firm.

(*2*) No suit to enforce a right arising from a contract shall be instituted in any Court by or on behalf of a firm against any third party unless the firm is registered and the persons suing are or have been shown in the register of firms as partners in the firm.

(*3*) The provisions of sub-sections (*1*) and (*2*) shall apply also to a claim of set-off or other proceeding to enforce a right arising from a contract, but shall not affect—

(*a*) the enforcement of any right to sue for the dissolution of a firm or for accounts of a dissolved firm, or any right or power to realise the property of a dissolved firm, or

(*b*) the powers of the official assignee, receiver or Court under the Rangoon Insolvency Act or the Burma Insolvency Act to realize the property of an insolvent partner.

(*4*) This section shall not apply—

(*a*) to firms or to partners in firms which have no place of business in the Union of Burma, or whose places of business in the Union of Burma are situated in areas to which, by notification under section 56, this Chapter does not apply, or

(*b*) to any suit or claim of set-off not exceeding one hundred rupees in value which is not of a kind specified in the Second Schedule to the Burma Small Cause Courts Act or to any proceeding in execution or other proceeding incidental to or arising from any such suit or claim.

Penalty for furnishing false particulars.

**70.** Any person who signs any statement, amending statement, notice or intimation under this Chapter containing any particular which he knows to be false or does not believe to be true, or containing particulars which he knows to be incomplete or does not believe to be complete, shall be punishable with imprisonment which may extend to three months, or with fine, or with both.

Power to make rules.

**71.** (*1*) The President of the Union may make rules prescribing the fees which shall accompany documents sent to the Registrar of firms, or which shall be payable for the inspection of documents in the custody of the Registrar of firms, or for copies from the register of firms:

Provided that such fees shall not exceed the maximum fees specified in the Schedule.

(*2*) The President of the Union may make rules—

(*a*) prescribing the form of statement submitted under section 58, and of the verification thereof;

(*b*) requiring statements, intimation and notices under sections 60, 61, 62 and 63 to be in prescribed form, and prescribing the form thereof;

(*c*) prescribing the form of the register of firms, and the mode in which entries relating to firms are to be made therein, and the mode in which such entries are to be amended or notes made therein;

(*d*) regulating the procedure of the Registrar when disputes arise;

(*e*) regulating the filing of documents received by the Registrar;

(*f*) prescribing conditions for the inspection of original documents:

(*g*) regulating the grant of copies;

(*h*) regulating the elimination of registers and documents;

(*i*) providing for the maintenance and form of an index to the register of firms; and

(*j*) generally, to carry out the purposes of this Chapter.

(*3*) All rules made under this section shall be subject to the condition of previous publication.

## CHAPTER VIII.

### SUPPLEMENTAL.

Mode of giving public notice.

**72.** A public notice under this Act is given—

(*a*) where it relates to the retirement or expulsion of a partner from a registered firm, or the dissolution of a registered firm, or to the election to become or not to become a partner in a registered

firm by a person attaining majority who was admitted as a minor to the benefits of partnership, by notice to the Registrar of firms under section 63, and by publication in the Gazette and in at least one vernacular newspaper circulating in the district where the firm to which it relates has its place or principal place of business, and

(*b*) in any other case, by publication in the Gazette and in at least one vernacular newspaper circulating in the district where the firm to which it relates has its place or principal place of business.

**73.** * * * *

Savings.

**74.** Nothing in this Act or any repeal effected thereby[1] shall affect or be deemed to affect—

(*a*) any right, title, interest, obligation or liability already acquired, accrued or incurred before the 1st October, 1932,[2] or

(*b*) any legal proceeding or remedy in respect of any such right, title, interest, obligation or liability, or anything done or suffered before the said date, or

(*c*) anything done or suffered before the said date, or

(*d*) * * * *

(*e*) any rule of insolvency relating to partnership, or

(*f*) any rule of law not inconsistent with this Act.

## SCHEDULE.

### MAXIMUM FEES.

[*See* sub-section (1) of section 71.]

| Document or act in respect of which the fee is payable. | Maximum fee. |
|---|---|
| Statement under section 58 ... ... ... | Three rupees. |
| Statement under section 60 ... ... ... | One rupee. |
| Intimation under section 61 ... ... ... | One rupee. |
| Intimation under section 62 ... ... ... | One rupee. |
| Notice under section 63 ... ... ... | One rupee. |
| Application under section 64 ... ... ... | One rupee. |
| Inspection of the register of firms under sub-section (*1*) of section 66. | Eight annas for inspecting one volume of the register. |
| Inspection of documents relating to a firm under sub-section (*2*) of section 66. | Eight annas for the inspection of all documents relating to one firm. |
| Copies from the register of firms ... ... ... | Four annas for each hundred words or part thereof. |

[1] *i.e.* by the Indian Partnership Act, 1932 (India Act IX, 1932).

[2] Date of commencement of this Act.

# THE SOCIETIES REGISTRATION ACT.

[INDIA ACT XXI, 1860.] (21st May, 1860.)

Societies formed by memorandum of association and registration.

**1.** Any seven or more persons associated for any literary, scientific or charitable purpose, or for any such purpose as is described in section 20 of this Act, may, by subscribing their names to a memorandum of association and filing the same with the Registrar of Companies, form themselves into a society under this Act.

Memorandum of association.

**2.** The memorandum of association shall contain the following things (that is to say)—

the name of the society:

the objects of the society:

the names, addresses, and occupations of the governors, council, directors, committee or other governing body to whom, by the rules of the society, the management of its affairs is entrusted.

A copy of the rules and regulations of the society, certified to be a correct copy by not less than three of the members of the governing body, shall be filed with the memorandum of association.

Registration. Fees.

**3.** Upon such memorandum and certified copy being filed, the Registrar shall certify under his hand that the society is registered under this Act. There shall be paid to the Registrar for every such registration a fee of fifty rupees, or such smaller fee as the President of the Union may, from time to time, direct; and all fees so paid shall be accounted for to Government.

Annual list of managing body to be filed.

**4.** Once in every year, on or before the fourteenth day succeeding the day on which, according to the rules of the society, the annual general meeting of the society is held, or, if the rules do not provide for an annual general meeting, in the month of January, a list shall be filed with the Registrar of Companies of the names, addresses and occupations of the governors, council, directors, committee or other governing body then entrusted with the management of the affairs of the society.

Property of society how vested.

**5.** The property, moveable and immoveable, belonging to a society registered under this Act, if not vested in trustees, shall be deemed to be vested, for the time being, in the governing body of such society, and in all proceedings, civil and criminal, may be described as the property of the governing body of such society by their proper title.

Suits by and against societies.

**6.** Every society registered under this Act may sue or be sued in the name of the president, chairman, or principal secretary, or trustees, as shall be determined by the rules and regulations of the society, and, in default of

such determination, in the name of such person as shall be appointed by the governing body for the occasion :

Provided that it shall be competent for any person having a claim or demand against the society to sue the president or chairman or principal secretary or the trustees thereof, if on application to the governing body some other officer or person be not nominated to be the defendant.

Suits not to abate.

**7.** No suit or proceeding in any civil Court shall abate or discontinue by reason of the person by or against whom such suit or proceedings shall have been brought or continued dying or ceasing to fill the character in the name whereof he shall have sued or been sued, but the same suit or proceedings shall be continued in the name of or against the successor of such person.

Enforcement of judgment against society.

**8.** If a judgment shall be recovered against the person or officer named on behalf of the society, such judgment shall not be put in force against the property, moveable or immoveable, or against the body of such person or officer, but against the property of the society.

The application for execution shall set forth the judgment, the fact of the party against whom it shall have been recovered having sued or having been sued, as the case may be, on behalf of the society only, and shall require to have the judgment enforced against the property of the society

Recovery of penalty accruing under bye-law.

**9.** Whenever by any bye-law duly made in accordance with the rules and regulations of the society, or, if the rules do not provide for the making of bye-laws, by any bye-law made at a general meeting of the members of the society convened for the purpose (for the making of which the concurrent votes of three-fifths of the members present at such meeting shall be necessary), any pecuniary penalty is imposed for the breach of any rule or bye-law of the society, such penalty, when accrued, may be recovered in any Court having jurisdiction where the defendant shall reside, or the society shall be situate, as the governing body thereof shall deem expedient.

Members liable to be sued as strangers.

**10.** Any member who may be in arrear of a subscription which according to the rules of the society he is bound to pay, or who shall possess himself of or detain any property of the society in a manner or for a time contrary to such rules, or shall injure or destroy any property of the society, may be sued for such arrear or for the damage accruing from such detention, injury or destruction of property in the manner hereinbefore provided.

Recovery by successful defendant of costs adjudged.

But if the defendant shall be successful in any suit or other proceeding brought against him at the instance of the society, and shall be adjudged to recover his costs, he may elect to proceed to recover the same from the officer in whose name the suit shall be brought, or from the society, and in the latter case shall have process against the property of the said society in the manner above described.

Members guilty of offences punishable as strangers.

**11.** Any member of the society who shall steal, purloin or embezzle any money or other property, or wilfully and maliciously destroy or injure any property of such society, or shall forge any deed, bond, security for money, receipt, or other instrument, whereby the funds of the society may be exposed to loss, shall be subject to the same prosecution, and, if convicted, shall be liable to be punished in like manner, as any person not a member would be subject and liable to in respect of the like offence,

Societies enabled to alter, extend or abridge their purposes.

**12.** Whenever it shall appear to the governing body of any society registered under this Act, which has been established for any particular purpose or purposes, that it is advisable to alter, extend or abridge such purpose to or for other purposes within the meaning of this Act, or to amalgamate such society either wholly or partially with any other society, such governing body may submit the proposition to the members of the society in a written or printed report and may convene a special meeting for the consideration thereof according to the regulations of the society; but no such proposition shall be carried into effect unless such report shall have been delivered or sent by post to every member of the society ten days previous to the special meeting convened by the governing body for the consideration thereof, nor unless such proposition shall have been agreed to by the votes of three-fifths of the members delivered in person or by proxy, and confirmed by the votes of three-fifths of the members present at a second special meeting convened by the governing body at an interval of one month after the former meeting.

Provision for dissolution of societies and adjustment of their affairs.

**13.** Any number not less than three-fifths of the members of any society may determine that it shall be dissolved, and thereupon it shall be dissolved forthwith, or at the time then agreed upon, and all necessary steps shall be taken for the disposal and settlement of the property of the society, its claims and liabilities, according to the rules of the said society applicable thereto, if any, and, if not, then as the governing body shall find expedient: provided that, in the event of any dispute arising among the said governing body or the members of the society, the adjustment of its affairs shall be referred to the principal Court of original civil jurisdiction of the district in which the chief building of the society is situate, and the Court shall make such order in the matter as it shall deem requisite:

Assent required.

Provided that no society shall be dissolved unless three-fifths of the members shall have expressed a wish for such dissolution by their votes delivered in person or by proxy at a general meeting convened for the purpose:

Government consent.

Provided also that whenever the Government is a member of, or a contributor to, or otherwise interested in, any society registered under this Act, such society shall not be dissolved without the consent of Government.

Upon a dissolution no member to receive profit.

**14.** If upon the dissolution of any society registered under this Act there shall remain after the satisfaction of all its debts and liabilities any property whatsoever, the same shall not be paid to or distributed among the members of the said society or any of them, but shall be given to some other society, to be determined by the votes of not less than three-fifths of the members present personally or by proxy at the time of the dissolution, or, in default thereof, by such Court as aforesaid: Provided, however, that this clause shall not apply to any society which shall have been founded or established by the contributions of shareholders in the nature of a joint-stock company.

Clause not to apply to joint stock companies.

Member defined.

**15.** For the purposes of this Act a member of a society shall be a person who, having been admitted therein according to the rules and regulations thereof, shall have paid a subscription or shall have signed the roll or list of members thereof, and shall not have resigned in accordance with such rules and regulations; but in all proceedings under this Act no person shall be entitled to vote or to be counted as a member whose subscription at the time shall have been in arrear for a period exceeding three months.

Disqualified members.

Governing body defined.

**16.** The governing body of the society shall be the governors, council, directors, committee, trustees or other body to whom by the rules and regulations of the society the management of its affairs is entrusted.

**17—18.** * * * *

Inspection of documents.

**19.** Any person may inspect all documents filed with the Registrar under this Act on payment of a fee of one rupee for each inspection, and any person may require a copy or extract of any document, or any part of any document, to be certified by the Registrar on payment of two annas for every hundred words of such copy or extract; and such certified copy shall be *primâ facie* evidence of the matters therein contained in all legal proceedings whatever.

Certified copies.

To what societies Act applies.

**20.** The following societies may be registered under this Act:—

charitable societies, societies established for the promotion of science, literature, or the fine arts, for instruction, the diffusion of useful knowledge, the diffusion of political education, the foundation or maintenance of libraries or reading-rooms for general use among the members or open to the public, or public museums and galleries of paintings and other works of art, collections of natural history, mechanical and philosophical inventions, instruments, or designs.

# THE CO-OPERATIVE SOCIETIES ACT.

## CONTENTS.


PRELIMINARY.

*Sections.*

1. * * * *
2. Definitions.
3. Registration.
4. Prohibition of the use of the word "co-operative."
5. * * * *
6. Power to exempt co-operative societies from provisions of the Act.
7. Power to exempt societies from conditions as to registration.
8. Burma Companies Act not to apply.
9. The Registrar.
10. Liability of members of societies.
11. Limited liability to be set forth in name of society.
12. Conditions of registration.
13. Power of Registrar to decide certain questions.
14. Registration and evidence thereof.
15. Amendment of the bye-laws of a society.
16. Member not to exercise rights till due payment made.
17. Votes of members.
18. Shares or interest not liable to attachment.
19. Nomination of transferees.
20. Disposal of share or interest of a deceased member.
21. Disposal of share or interest of a member if society wound up.
22. Disposal of moneys due to a deceased member other than share or interest.
23. Disposal of share or interest of expelled, resigned or insane members.
24. Application of Government Savings Banks Act.
25. Discharge of persons from liability.
26. Liability of members.
27. Restrictions on transfer of share or interest.

DUTIES OF SOCIETIES.

28. Address of co-operative societies.
29. Copy of Act, rules, etc., to be open to inspection.
30. Audit.

PRIVILEGES OF CO-OPERATIVE SOCIETIES.

31. Co-operative societies to be bodies corporate.
32. Charge and set-off in respect of shares of interest of member.
33. Admissibility of copy of document or entry as evidence.

*Sections.*

34. Exemption from compulsory registration of instruments relating to shares and debentures of co-operative society.
35. Power to exempt from stamp duty and registration fees.

PROPERTY AND FUNDS OF CO-OPERATIVE SOCIETIES.

36. Restrictions on loans.
37. Restrictions on borrowing.
38. Restrictions on other transactions with non-members.
39. Investment of funds.
39A. Contribution to a fund maintained for supervision, etc., of societies.
40. Funds not to be divided by way of profit.
41. Contribution to charitable purpose.

INSPECTION OF AFFAIRS.

42. Inquiry by Registrar.
43. Inspection of books of indebted society.
44. Costs of inquiry.
44A. Supersession of Managing Committee.

LIQUIDATION AND DISSOLUTION.

45. Winding up.
46. Winding up where members are less than ten.
47. Liquidation.
48. Dissolution.
49. Jurisdiction of civil Courts.
50. Rules.

MISCELLANEOUS.

51. Recovery of sums due to Government.

## THE CO-OPERATIVE SOCIETIES ACT.

[BURMA ACT VI, 1927.] (4th June, 1927.)

PRELIMINARY.

Extent.

[1]**1.** This Act extends to the whole of the Union of Burma.

Definitions.

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

(*a*) "by-law" means the registered by-laws for the time being in force;

(*b*) "committee" means the governing body to whom the direction of the affairs of a society is entrusted;

[1] Inserted by Act XXXIX, 1948.

(*c*) a society is said to be "limited" where the liability of its members for the debts of the society in the event of its liquidation is declared by its by-laws to be limited (*a*) to the amount payable on the shares respectively held by the members or (*b*) to such amount as the members may respectively undertake to contribute to the assets of the society;

(*d*) "officer" includes a chairman, secretary, treasurer, member of committee, or other person empowered under the rules or under the by-laws of a society to give directions in regard to the business of such society;

(*e*) "co-operative society" means a society registered under this Act;

(*f*) "Registrar" means a person appointed to perform the duties of a Registrar of co-operative societies under this Act; and

(*g*) "rules" means rules made under this Act.

Registration.

**3.** Subject to the provisions hereinafter contained, a society which has as its object the promotion of the economic interests of its members in accordance with co-operative principles, or a society established with the object of facilitating the operations of such a society, may be registered under this Act.

Prohibition of the use of the word "co-operative."

**4.** (*1*) No person other than a co-operative society shall, without the sanction of the President of the Union, trade or carry on business under any name or title of which the word "co-operative" or its vernacular equivalent is part: provided that nothing in this sub-section shall apply to the use by any person or his successor in interest of any name or title under which he lawfully traded or carried on business on the 4th June, 1927.[1]

(2) Whoever contravenes the provisions of sub-section (*1*) shall be punishable with fine which may extend to fifty rupees, and in the case of a continuing offence with further fine of five rupees for each day on which the offence is continued after conviction therefor.

**5.** * * * *

Power to exempt co-operative societies from provisions of the Act.

**6.** The President of the Union may, by general or special order, exempt any co-operative society from any of the provisions of this Act, or may direct that such provisions shall apply to such society with such modifications as may be specified in the order.

Power to exempt societies from conditions as to registration.

**7.** Notwithstanding anything contained in this Act, the President of the Union may, by special order in each case and subject to such conditions, if any, as he may impose, exempt any society from any of the requirements of this Act as to registration.

Burma Companies Act not to apply.

**8.** The provisions of the Burma Companies Act shall not apply to co-operative societies.

[1] Date of commencement of this Act.

The Registrar.

**9.** The President of the Union may appoint a person to be Registrar of Co-operative Societies for the whole of the Union of Burma or any portion of it, and may appoint persons to assist such Registrar.

Liability of members of societies.

**10.** Unless the President of the Union, by general or special order, otherwise directs,—

(*a*) a society shall be registered as "limited" if any of its members is a society; and

[1](*b*) no society shall be registered as limited by shares unless its by-laws prescribe that no member, other than a co-operative society as member, shall hold more than one-fifth of the share capital of the society, or have any interest in the shares of the society exceeding three thousand rupees.

Limited liability to be set forth in name of society.

**11.** When a society is registered as limited the word "limited" or the vernacular equivalent shall be stated as the last word of the name of the society wherever the name appears.

Conditions of registration.

**12.** Every application for the registration of a society shall conform to the following requirements:—

(*a*) the application shall be accompanied by a copy of the proposed by-laws of the society which shall state the objects of the society;

(*b*) where all the applicants are individuals they shall include at least ten persons, who thereby undertake to become members of the society;

(*c*) every one of the applicants who is an individual shall be above the age of eighteen years;

(*d*) where the objects of the society include the creation of funds to be lent to its members and where all the applicants are individuals, all the applicants shall reside in the same town or village or in the same group of villages: provided that the Registrar may consent to registration on the ground that the applicants are of the same tribe, class, caste or occupation;

(*e*) the application shall be signed by every one of the applicants who is an individual and by a person duly authorized on behalf of every society which is an applicant;

(*f*) the application shall be presented to the Registrar, and the applicants shall furnish to him all such information about the society as he may require.

Power of Registrar to decide certain questions.

**13.** The Registrar shall decide all questions as to whether any application conforms to the requirements of section 12 and whether the objects of the society are in accordance with section 3.

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[1] Clause (*b*) in section 10 was deleted and clause (*c*) re-numbered as clause (*b*); and the word "three" was substituted for the word "one" by Act XXX, 1951.

Registration and evidence thereof.

**14.** If the Registrar is satisfied that the application and the proposed by-laws are in order he shall, unless for reasons given to the applicants he sees fit to refuse, register the society with such by-laws, and shall issue to the applicants a certificate of registration which shall be conclusive evidence that all the requirements of this Act and the rules in respect of registration have been complied with.

Amendment of the by-laws of a society.

**15.** (*1*) Every amendment of the by-laws of a co-operative society (whether by way of cancellation, addition or alteration) shall be forwarded by the society to the Registrar who shall, if such amendment is in order, register the amendment and issue to the society a copy thereof certified to be duly registered : provided that the Registrar may, for reasons given to the society, refuse to register the amendment.

(*2*) No amendment of any by-laws shall be valid until its registration is so certified.

Memebr not to exercise rights till due payment made.

**16.** No person shall exercise the rights of a member of a co-operative society unless or until he has made such payment to the society in respect of membership, or acquired such interest in the society, as may be prescribed by the rules or by the by-laws of such society.

Votes of members.

**17.** Each member of a co-operative society shall have one vote only as a member in the affairs of the society : provided that a co-operative society which is a member of any other co-operative society shall have as many votes as may be prescribed by the by-laws of such other society, and may, subject to such by-laws, appoint any number of its members, not exceeding the number of such votes, to exercise its voting power.

Shares or interest not liable to attachment.

**18.** Subject to the provisions of section 32, the share or interest of a member in the capital of a co-operative society shall not be liable to attachment or sale under any decree or order of a Court of Justice in respect of any debt or liability incurred by such member, and neither the Official Assignee under the Rangoon Insolvency Act nor a Receiver under the Burma Insolvency Act shall be entitled to or have any claim on such share or interest.

Nomination of transferees.

**19.** If the by-laws of a co-operative society so provide, any member of the society may nominate a person by name or designation to whom on such member's death his share or interest shall be transferred and any money due to him from the society shall be paid.

Disposal of share or interest of a deceased member.

**20.** When any member of a co-operative society dies (*a*) the committee may transfer his share or interest to the nominee, if any, nominated in accordance with section 19, or if the existence and residence of such nominee cannot be ascertained by the committee or for any other reason such transfer cannot be made without unreasonable delay, the committee may transfer such share or interest to any person who (notwithstanding the absence of probate, letters of administration or succession certificate) appears

to the committee to be entitled to possession of such share or interest as part of the estate of the deceased member: provided always that the transferee shall be a person who is qualified to be the transferee of such share or interest in accordance with section 27; (*b*) if the nominee nominated in accordance with section 19 or the person appearing to be entitled as aforesaid is not qualified in accordance with section 27 to be the transferee of the share or interest of the deceased member—(i) in the case of a limited society the committee shall pay to the nominee, or to the person appearing to be entitled as aforesaid, the value, as determined in accordance with the rules, of the share or interest of the deceased member, and shall transfer the said share or interest to another person qualified in accordance with section 27 to be the transferee of the said share or interest on receiving from such person the value thereof; (ii) in the case of an unlimited society the committee shall pay to the nominee or the person appearing to be entitled as aforesaid the value, determined in accordance with the rules, of the said share or interest.

Disposal of share or interest of a member if society wound up.

**21.** When a member of a limited co-operative society being itself a co-operative society is ordered to be wound up under section 45 or section 46, and a liquidator has been appointed under section 47, the value of the share or interest of the society ordered to be wound up shall on the application of the liquidator be paid to him, and the share or interest shall be transferred by the committee to another person or co-operative society qualified in accordance with section 27 to be the transferee on receiving from such person or society the value aforesaid.

Disposal of moneys due to a deceased member other than share or interest.

**22.** All moneys due from a co-operative society to a deceased member other than payments in respect of his share or interest in the society shall be paid to the person nominated in accordance with section 19: provided that, if no person has been so nominated or if the existence or residence of the nominee cannot be ascertained by the committee or if for any other reason payment cannot be made to him without unreasonable delay, the committee may pay such moneys to any person appearing to the committee to be entitled to possession of the money as part of the estate of the deceased member.

Disposal of share or interest of expelled, resigned or insane members.

**23.** When a member of a co-operative society is expelled or resigns in accordance with the rules or the by-laws of the society, or when a member becomes insane,—

(*a*) in the case of a limited society the committee shall transfer his share or interest to another person qualified in accordance with section 27 to be the transferee, on payment to the member who is expelled or resigns or to the guardian of the member who becomes insane of the value, determined in accordance with the rules, of the said share or interest;

(*b*) in the case of an unlimited society the committee may either transfer the said member's share or interest to another person qualified

under section 27 to be the transferee, on payment of the value thereof to the expelled or resigned member or the guardian of the insane member, or, if the by-laws so provide, may pay to the said member or guardian the value, determined in accordance with the rules, of the said share or interest.

Application of Government Savings Banks Act.

**24.** Subject to the provisions of sections 20, 21, 22 and 23, if any person to whom any money is due from a co-operative society dies or is a minor or becomes insane or otherwise incapable of managing his affairs, the provisions of the Government Savings Banks Act shall apply *mutatis mutandis* to the payment of such money and the powers conferred by that Act upon the secretary or any officer empowered under section 4 of that Act shall be exercised by the committee of the society.

Discharge of persons from liability.

**25.** When any transfer or payment is made in accordance with the provisions of sections 20, 21, 22, 23, or 24 the society and all persons shall be discharged from all liability to make such transfer or payment.

Liability of members

**26.** (*1*) The liability of the members of every co-operative society for payment of the debts of the society on its dissolution shall be joint and several, but subject in the case of a limited society to such limitation of amount as shall be provided by the by-laws.

(*2*) Subject to any limitation of liability existing at the date of dissolution, persons who have ceased to be members of a co-operative society shall, for a period of two years, retain their liability as members : provided that a past member shall not be liable to contribute in respect of any debts of the society which can be satisfied by contributions from present members, or in respect of any debt contracted after he ceased to be a member.

(*3*) The estate of a deceased member shall be liable in like manner, and subject to the same restrictions, for a period of one year from the time of his decease.

Restrictions on transfer of share or interest.

**27.** No transfer or mortgage by a member of his share or interest in a co-operative society shall be valid unless—

(*a*) he has held such share or interest for not less than one year ; and

(*b*) the transferee or mortgagee is a member of such society or a person whose application for membership has been accepted, or is another society ; and

(*c*) the transferee or mortgagee is not prohibited from holding such share or interest by the provisions of this Act or the rules or the by-laws of the society relating to the maximum amount of a member's holding.

## Duties of Societies.

Address of co-operative societies.

**28.** Every co-operative society shall have an address, registered in accordance with the rules, to which all notices and communications may be sent, and shall send to the Registrar notice of every change thereof within thirty days of such change.

Copy of Act, rules, etc. to be open to inspection.

**29.** Every co-operative society shall keep open to inspection free of charge at all reasonable times at the registered address of the society—

(*a*) a copy of this Act,

(*b*) a copy of the rules governing such society,

(*c*) a copy of the by-laws of such society, and

(*d*) a register of its members.

Audit.

**30.** (*1*) Every co-operative society shall cause its accounts to be audited once at least in every year by a person authorized in this behalf by the Registrar by special or general order.

(*2*) Every audit shall include an examination of overdue debts, a verification of the existence of cash balances and securities, and a valuation of the assets and liabilities of the society.

(*3*) The auditor shall have a right of access to all books, papers, and things in the possession or power of the society for the purposes of such audit, and may call upon any officer, agent, servant or member of the society to furnish such information and to render such assistance as may be reasonably required for the purpose of such audit.

(*4*) If any person fails to furnish information or render assistance as required by sub-section (*3*) he shall, on conviction by a Magistrate of the first class, be liable to a fine of rupees two hundred in respect of such default.

## PRIVILEGES OF CO-OPERATIVE SOCIETIES.

Co-operative societies to be bodies corporate.

**31.** The registration of a society shall render it a body corporate by the name under which it is registered, with perpetual succession and a common seal, and with power to hold property, to enter into contracts, to institute and defend suits and other legal proceedings and to do all things necessary for the purposes of its constitution.

Charge and set-off in respect of shares or interest of member.

**32.** Every co-operative society shall have a charge upon the share or interest in the capital and upon the deposits of a member or past member, and upon any dividend, bonus or profits payable to a member or past member in respect of any debt due from such member or past member to the society and may set-off any sum credited or payable to a member or past member in or towards payment of any such debt.

Admissibility of copy of document or entry as evidence.

**33.** (*1*) A copy of any entry in any book, register or list regularly kept in the course of business in the possession of a co-operative society shall, if certified in such manner as may be prescribed by the rules, be admissible in evidence of the existence of the document or entry.

(*2*) In the case of such co-operative societies as the President of the Union by general or special order may direct, no officer of a society shall, in any legal proceedings to which the society is not a party, be compelled to produce any of the society's books the contents of which can be proved under sub-section (*1*), or to appear as a witness to prove the matters,

transactions and accounts therein recorded, unless by order of the Court or a Judge made for special cause.

Exemption from compulsory registration of instruments relating to shares and debentures of co-operative society.

**34.** Nothing in section 17, sub-section (*1*), clauses (*b*) and (*c*), of the Registration Act shall apply to—

(*a*) any instrument relating to shares in a co-operative society, notwithstanding that the assets of such society consist in whole or in part of immoveable property ; or

(*b*) any debenture issued by any such society and not creating, declaring, assigning, limiting or extinguishing any right, title or interest to or in immoveable property, except in so far as it entitles the holder to the security afforded by a registered instrument whereby the society has mortgaged, conveyed or otherwise transferred the whole or part of its immoveable property or any interest therein to trustees upon trust for the benefit of the holders of such debentures ; or

(*c*) any endorsement upon or transfer of any debenture issued by any such society.

Power to exempt from stamp duty and registration fees.

**35.** The President of the Union may, by notification, in the case of any co-operative society or class of co-operative societies, remit—

(*a*) the stamp-duty with which, under any law for the time being in force, instruments executed by or on behalf of a co-operative society, or by an officer or member and relating to the business of such society, or any class of such instruments, are respectively chargeable ; and

(*b*) any fee payable under the law of registration for the time being in force.

## Property and Funds of Co-operative Societies.

Restrictions on loans.

**36.** (*1*) A co-operative society shall not make a loan to any person other than a member : provided that, with the general or special sanction of the Registrar, a co-operative society may make loans to another co-operative society.

(*2*) The President of the Union may, by general or special order, prohibit or restrict the lending of money on mortgage of immoveable property by any co-operative society or class of co-operative societies.

Restrictions on borrowing.

**37.** A co-operative society shall receive deposits and loans from persons who are not members only to such extent and under such conditions as may be prescribed by the rules or by-laws, and shall in respect of such deposits or loans make such provision for the maintenance of fluid resource as the Registar may, by general or special order in this behalf, prescribe.

Restrictions on other transactions with non-members.

**38.** (*1*) The transactions of a co-operative society with persons other than members shall be subject to such other prohibitions and restrictions, if any, as the President of the Union may, by rule, prescribe.

[1] (*2*) In making any rule under sub-section (*1*), the President of the Union may direct that a breach thereof shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

Investment of funds.

**39.** (*1*) A co-operative society may invest or deposit its funds—

(*a*) in the Government Savings Bank, or

(*b*) in any of the securities specified in section 20 of the Trusts Act, or

(*c*) in the shares or on the security of any other co-operative society, or

(*d*) with any bank or person carrying on the business of banking, approved for this purpose by the Registrar, or

(*e*) in any other mode permitted by the rules.

(*2*) Any investments or deposits made before the 4th June, 1927[2], which would have been valid if this Act had been in force are hereby ratified and confirmed.

Contribution to a fund maintained for supervision, etc., of societies.

[3] **39A.** Every co-operative society shall pay, out of its annual gross profits a contribution at such rate and in such manner as may be prescribed by rules, towards a fund to be maintained for the supervision, organization and education of co-operative societies, or for such other similar purposes as may be determined by the Registrar.

Funds not to be divided by way of profit.

**40.** No part of the funds of a co-operative society shall be divided by way of bonus or dividend or otherwise among its members :

Provided that after at least one-fourth of the net profits in any year have been carried to a reserve fund, payments from the remainder of such profits and from any profits of past years available for distribution may be made among the members to such extent and under such conditions as may be prescribed by the rules or by-laws :

Provided also that in the case of a co-operative society which is not limited no distribution of profits shall be made without the general or special order of the President of the Union in this behalf.

Contributio to charitable pupose.

**41.** Any co-operative society may, with the sanction of the Registrar, after one-fourth of the net profits in any year has been carried to the reserve fund, contribute an amount not exceeding ten per cent. of the remaining net profits to any charitable purpose, as defined in section 2 of the Charitable Endowments Act.

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[1] Inserted by Act XXX, 1951.
[2] Date of commencement of this Act.
[3] Inserted by Act XLIX, 1954.

INSPECTION OF AFFAIRS.

Inquiry by Registrar.

**42.** (*1*) The Registrar may of his own motion, by himself or by a person duly authorized by him in writing in this behalf, hold an inquiry into the constitution, working and financial condition of a co-operative society.

(*2*) The Registrar shall hold such an inquiry as is contemplated in sub-section (*1*)—

(*a*) on the application of a majority of the committee of the society ;

(*b*) on the application of not less than one-third of the members of the society.

(*3*) All officers and members of the society whose affairs are investigated shall furnish such information in their possession in regard to the affairs of the society as the Registrar or the person authorized by the Registrar may require.

(*4*) The result of any inquiry under this section shall be communicated to the society whose affairs have been investigated.

Inspection of books of indebted society.

**43.** (*1*) The Registrar shall, on the application of a creditor of a co-operative society, inspect, or direct some person authorized by him by order in writing in this behalf to inspect, the books of the society : provided that—

(*a*) the applicant satisfies the Registrar that the debt is a sum then due and that he has demanded payment thereof and has not received satisfaction within a reasonable time ; and

(*b*) the applicant deposits with the Registrar such sum as security for the costs of the proposed inspection as the Registrar may require.

(*2*) The Registrar shall communicate the results of any such inspection to the creditor.

Costs of inquiry.

**44.** Where an inquiry is held under section 42, or an inspection is made under section 43, the Registrar may apportion the costs, or such part of the costs as he may think right, between the society, the members or creditor demanding the inquiry or inspection, the officers or former officers, and members or past members of the society.

[1] **44A.** (*1*) If, in the opinion of the Registrar, the committee of any registered society is mismanaging the affairs of the society, he may, by order in writing, after giving the committee an opportunity to state its objections, if any, dissolve the committee and direct that all or any of its members shall be disqualified from being elected to the committee of the society for a period to be specified in the order not exceeding three years :

Provided that the Registrar may from time to time extend the period specified in such order for further periods not exceeding one year at a time, and not exceeding in the aggregate, two years.

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[1] Inserted by Act XXIII, 1948.

Every order of the Registrar under this sub-section shall state the reasons for which it is made and shall be communicated by registered post to the registered society concerned.

(*2*) When a committee is dissolved under sub-section (*1*), the society shall elect a fresh committee :

Provided that so long as an order under sub-section (*1*) remains in force, no member shall hold office except with the approval of the Registrar.

(*3*) If the society fails or refuses to elect a fresh committee under sub-section (*2*), the Registrar may—

(*a*) require an officer of the society to call a general meeting at such time and place at the headquarters of the society, and require the society to take into consideration such matters, as he may direct, and

(*b*) if such officer refuses or fails to call such a meeting or if there be no quorum at a meeting so convened, call such meeting himself by giving notice to the members in such manner as he may consider reasonable, notwithstanding any rules or by-laws prescribing the period of notice for calling a general meeting of the society. Any meeting so convened by the Registrar shall have all the powers of a general meeting convened under the by-laws of the society.

(*4*) Nothing in this section shall be deemed to affect the powers of the Registrar to order the winding up of a society under section 45 or to cancel the registration of the society under sub-section (*2*) of section 48.

(*5*) An appeal shall lie from an order of the Registrar under sub-section (*1*) to the Government on application made by any member of the committee within three months from the date of communication of the order to the registered society concerned, and the order of the Government thereon shall be final.

LIQUIDATION AND DISSOLUTION.

Winding up.

**45.** (*1*) If the Registrar, after an inquiry has been held under section 42 or after an inspection has been made under section 43 or on receipt of an application made by three-fourths of the members of a co-operative society, is of opinion that the society ought to be dissolved, he may order the society to be wound up.

(*2*) Any member of a co-operative society may, within two months from the date of an order made under sub-section (*1*), appeal from such order.

(*3*) Where no appeal is presented within two months from the making of an order for the winding up of a co-operative society the order shall take effect on the expiry of that period.

(*4*) Where an appeal is presented within two months, the order shall not take effect until it is confirmed by the appellate authority.

(*5*) The authority to which appeals under this section shall lie shall be the President of the Union : provided that the President of the Union may,

by notification, direct that appeals shall lie to such other authority as may be specified in the notification.

Winding up when members are less than ten.

**46.** In the case of a co-operative society of which all the members are individuals, the Registrar may order the society to be wound up if at any time it is proved to his satisfaction that the number of the members has been reduced to less than ten.

Liquidation.

**47.** (*1*) Where the Registrar has passed an order under section 45 or section 46 for the winding up of a co-operative society, he may forthwith appoint a competent person to be liquidator, and such person, notwithstanding anything in section 45 relating to the time when the order for winding up shall take effect, shall have power to take immediate possession of all assets belonging to the society, and of all books, records and other documents pertaining to the business thereof, and to carry on the business of the society so far as may be necessary for the beneficial winding up of the same.

(*2*) A liquidator appointed under sub-section (*1*) shall, as soon as the order of winding up takes effect, have power—

(*a*) to institute and defend suits and other legal proceedings on behalf of the society by his name or office ;

(*b*) from time to time to determine the debts payable and the contribution to be made or remaining to be made by the members or past members, or by the estates or nominees, heirs or legal representatives of deceased members, or by any officer, to the assets of the society. In the case of a society which is not limited such contributions shall be determined at the discretion of the liquidator both as to the persons who shall be called upon to pay and the amounts which they shall pay, but without prejudice to any right of contribution amongst themselves ;

(*c*) to investigate all claims against the society, and, subject to the provisions of this Act, to decide questions of priority arising between claimants ;

(*d*) to determine by what persons and in what proportions the costs of the liquidation are to be borne ;

(*e*) in the case of a society which is a member of a co-operative society established with the object of guaranteeing sums borrowed by co-operative societies which are its members, to determine, in accordance with the by-laws of such guaranteeing society, at any stage of the proceedings the amounts which the other members of such guaranteeing society shall severally contribute towards the discharge of the debts guaranteed by it.

(*3*) Subject to any rules, a liquidator appointed under this section shall, in so far as such powers are necessary for carrying out the purposes of this section, have power to summon and enforce the attendance of witnesses and to compel the production of documents by the same means and (so far as

may be) in the same manner as is provided in the case of a civil Court under the Code of Civil Procedure.

(*4*) Where an appeal from any order made by a liquidator under this section is provided for by the rules, it shall lie to the Court of the District Judge.

(*5*) Orders made under this section shall, save as provided for by section 51, on application, be enforced as follows :—

(*a*) when made by a liquidator, by any civil Court having local jurisdiction in the same manner as a decree of such Court;

(*b*) when made by the Court of the District Judge on appeal, in the same manner as a decree of such Court made in any suit pending therein.

Dissolution.

**48.** (*1*) The Registrar may cancel an order for the winding up of a co-operative society in any case where, in his opinion, the society should continue to exist.

(*2*) In any other case the Registrar shall, after considering the final report of the liquidator, if any has been appointed, order the registration of the society to be cancelled, and thereupon the society shall cease to exist as a corporate body.

Jurisdiction of civil Courts.

**49.** Save in so far as is hereinbefore expressly provided, no civil Court shall have any jurisdiction in respect of any matter connected with the dissolution or winding up of a co-operative society under this Act.

Rules.

**50.** (*1*) The President of the Union may, for the whole or any part of the Union of Burma and for any co-operative society or class of co-operative societies, make rules to carry out the purposes of this Act.

(*2*) In particular, and without prejudice to the generality of the foregoing power, such rules may—

(*a*) prescribe, subject to the provisions of section 10, the maximum number of shares or portion of the capital of a society which may be held by a member ;

(*b*) prescribe the forms to be used and the conditions to be complied with in the making of applications for the registration of a society, and the procedure in the matter of such applications ;

(*c*) prescribe the matters in respect of which a co-operative society may or shall make by-laws, and for the procedure to be followed in making, altering and abrogating by-laws, and the conditions to be satisfied prior to such making, alteration or abrogation ;

(*d*) prescribe the conditions to be complied with by persons applying for admission or admitted as members, and provide for the election and admission of members, and the payments to be made and the interests to be acquired before the exercise of the right of membership ;

(*e*) regulate the manner in which funds may be raised by means of shares or debentures or otherwise ;

(*f*) provide for general and special meetings of the members, and for the procedure at such meetings, and the resolutions to be passed at, and the powers to be exercised by, such meetings;

(*g*) provide for the appointment, suspension and removal of the members of the committee and other officers, and for the procedure at meetings of the committee, and for the powers to be exercised and the duties to be performed by the committee and other officers;

(*h*) prescribe the accounts and books to be kept by a co-operative society, and provide for the audit of such accounts and the charges, if any, to be made for such audit, and for the periodical publication of a balance sheet showing the assets and liabilities of a society;

(*i*) prescribe the returns to be submitted by a co-operative society to the Registrar, and provide for the persons by whom and the form in which such returns shall be submitted;

(*j*) provide for the persons by whom and the form in which copies of entries in books of co-operative societies may be certified, and for the charges to be levied for such copies;

(*k*) provide for the formation and maintenance of a register of members and, where the liability of the members is limited by shares, of a register of shares;

(*l*) provide that any dispute touching the business of a co-operative society between members or past members of the society, or persons claiming through a member or past member, or between a member or past member or persons so claiming and the committee or any officer, shall be referred to the Registrar for decision or, if he so directs, to arbitration, and prescribe the mode of appointing an arbitrator or arbitrators, and the procedure to be followed in proceedings before the Registrar or such arbitrator or arbitrators, and the enforcement of the decisions of the Registrar or the awards of arbitrators;

(*m*) provide for the mode in which the value of the share or interest shall be ascertained for the purposes of sections 20, 21 and 23, and for the nomination of transferees under section 19;

(*n*) prescribe the payments to be made and the conditions to be complied with by members applying for loans, the periods for which loans may be made, and the amount which may be lent to an individual member;

(*o*) provide for the formation and maintenance of reserve funds, and the objects to which such funds may be applied, and for the investment of any funds under the control of the society;

(*p*) prescribe the extent to which a co-operative society may limit the number of its members;

(*q*) prescribe the conditions under which profits may be distributed to the members of a co-operative society with unlimited liability,

and the maximum rate of dividend which may be paid by co-operative societies;

(*r*) subject to the provisions of section 45, determine in what cases an appeal shall lie from the orders of the Registrar, and prescribe the procedure to be followed in presenting and disposing of such appeals;

(*s*) prescribe the procedure to be followed by a liquidator appointed under section 47, and the cases in which an appeal shall lie from the order of such liquidator; and

(*t*) prescribe the remuneration which shall be payable to headmen or others employed to collect sums recoverable under section 51 in the same manner as arrears of land-revenue.

(*3*) The President of the Union may delegate, subject to such conditions, if any, as he thinks fit, all or any of his powers to make rules under this section to any authority specified in the order of delegation.

(*4*) The power to make rules conferred by this section is subject to the condition of the rules being made after previous publication.

(*5*) All rules made under this section shall be published in the Gazette.

MISCELLANEOUS.

Recovery of sums due to Government.

**51.** (*1*) All sums due from a co-operative society, or from an officer or member or past member of a society as such, to the Government, and all sums awarded as costs under section 44, or payable by order of a liquidator under section 47, shall be recovered in the same manner as arrears of land-revenue on a requisition being made by the Registrar to the Collector.

(*2*) Sums due from a co-operative society and recoverable under sub-section (*1*) may be recovered, firstly, from the property of the society, and secondly, in the case of a society of which the liability of the members is limited, from the members subject to the limit of their liability, and, in the case of other societies, from the members.

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# THE BURMA COMPANIES ACT.

## CONTENTS.

PART I.
PRELIMINARY.

*Sections.*

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

PART II.
CONSTITUTION AND INCORPORATION.

4. Prohibition of partnerships exceeding certain number.

*Memorandum of Association.*

*Sections.*

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

*Articles of Association.*

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

*General Provisions.*

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

*Associations not for Profit.*

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

*Companies limited by guarantee.*

27. Provision as to companies limited by guarantee.

## PART III.

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

*Distribution of Share Capital.*

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

*Sections.*

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

*Reduction of Share Capital.*

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

*Variation of Shareholders' Rights.*

*Sections.*

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

*Registration of Unlimited Company as Limited.*

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

*Reserve Liability of Limited Company.*

69. Reserve liability of limited company.

*Unlimited Liability of Directors.*

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

## PART IV.

MANAGEMENT AND ADMINISTRATION.

*Office and Name.*

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

*Meetings and Proceedings.*

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

*Directors.*

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

*Sections.*

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

*Managing Agents.*

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

*Contracts.*

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

*Prospectus.*

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

*Sections.*

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

*Allotment.*

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

*Commissions and Discounts.*

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

*Payment of Interest out of Capital.*

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

*Certificates of Shares, etc.*

108. Limitation of time for issue of certificates.

*Information as to Mortgages, Charges, etc.*

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

*Sections.*

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

*Debentures and Floating Charges.*

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

*Statements, Books and Accounts.*

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

*Statement to be published by Banking and certain other Companies.*

136. Certain companies to publish statement in schedule.

*Investigation by the Registrar.*

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

*Inspection and Audit.*

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

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

*Sections.*

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

*Service and Authentication of Documents.*

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

*Tables, Forms and Rules as to Prescribed Matters.*

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

*Arbitration and Compromise.*

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

*Conversion of Private Company into Public Company.*

154. Conversion of private company into public company.

## PART V.

### WINDING UP.

*Preliminary.*

155. Mode of winding up.

*Contributories.*

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

*Winding up by Court.*

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

*Sections.*

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

*Official Liquidators.*

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

*Ordinary Powers of Court.*

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

*Extraordinary Powers of Court.*

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

*Enforcement of and Appeal from Orders.*

*Sections.*

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

*Voluntary Winding up.*

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

*Members' Voluntary Winding up.*

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

*Creditors' Voluntary Winding up.*

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

*Members' or Creditors' Voluntary Winding up.*

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

*Sections.*

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

*Winding up subject to Supervision of Court.*

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

*Supplemental Provisions.*

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

*Rules.*

246. Power of High Court to make rules.

*Removal of defunct Companies from Register.*

247. Registrar may strike defunct company off register.

## PART VI.

### REGISTRATION OFFICE AND FEES.

*Sections.*

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

## PART VII.

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

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

## PART VIII.

### COMPANIES AUTHORIZED TO REGISTER UNDER THIS ACT.

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

## PART IX.

### WINDING UP OF UNREGISTERED COMPANIES.

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

*Sections.*

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

## PART X.

### COMPANIES ESTABLISHED OUTSIDE THE UNION OF BURMA.

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

## PART X-A.

### BANKING COMPANIES.

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

## PART XI.

### SUPPLEMENTAL.

*Legal Proceedings, Offences, etc.*

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

*Sections.*

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

SCHEDULES.

THE FIRST SCHEDULE.

THE SECOND SCHEDULE.

THE THIRD SCHEDULE.

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## THE BURMA COMPANIES ACT.[1]

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

### PART I.

### PRELIMINARY.

1 * * * *

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

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

India VI, 1882.

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

[3](2A) * * * *

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

(4) "debenture" includes debenture stock;

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

(6) * * * *

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

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

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

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

India X, 1866. India VI, 1882.

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

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

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

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

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

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

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

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

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

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

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

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

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

India VI, 1882. India X, 1866.

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

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

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

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

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

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

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

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

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

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

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

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

**Jurisdiction of the Courts.**

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

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

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

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

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

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

## PART II.

### CONSTITUTION AND INCORPORATION.

**Prohibition of partnerships exceeding certain number.**

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

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

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

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

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

### *Memorandum of Association.*

**Mode of forming incorporated company.**

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

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

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

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

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

Memorandum of company limited by shares.

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

(1) the memorandum shall state—

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

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

(iii) the objects of the company;

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

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

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

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

Memorandum of company limited by guarantee.

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

(1) the memorandum shall state—

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

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

(iii) the objects of the company;

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

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

(2) if the company has a share capital—

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

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

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

Memorandum of unlimited company.

**8.** In the case of an unlimited company—

(1) the memorandum shall state—

(i) the name of the company ;

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

(iii) the objects of the company ;

(2) if the company has a share capital—

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

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

Printing and signature of memorandum.

**9.** The memorandum shall—

(*a*) be printed,

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

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

Restriction on alteration of memorandum.

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

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

Name of company and change of name.

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

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

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

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

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

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

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

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

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

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

Alteration of memorandum.

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

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

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

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

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

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

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

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

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

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

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

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

[2] Omitted *ibid.*

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

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

Power of Court when confirming alteration.

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

Exercise of discretion by Court.

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

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

Procedure on confirmation of the alteration.

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

(*2*) * * * *

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

Effect of failure to register within three months.

**16.** No such alteration shall have any operation until registration thereof has been duly effected in accordance with the provisions of section 15, and if such registration is not effected within three months next after the date of the order of the Court confirming the alteration, or within such further time as may be allowed by the Court in accordance with the provisions of section 15, such alteration and order and all proceedings connected therewith shall, at the expiration of such period of three months or such further time, as the case may be, become absolutely null and void :

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

*Articles of Association.*

Registration of articles.

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

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

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

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

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

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

Application of Table A.

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

Form and signature of articles.

**19.** Articles shall—

(*a*) be printed ;

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

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

Alteration of articles by special resolution.

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

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

Effect of alteration in memorandum or articles.

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

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

*General Provisions.*

Effect of memorandum and articles.

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

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

Registrati n of memorandum and articles.

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

Effect of registration.

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

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

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

Conclusiveness of certificate of incorporation.

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

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

Copies of memorandum and articles to be given to members.

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

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

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

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

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

*Associations not for Profit.*

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

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

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

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

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

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

*Companies limited by Guarantee.*

Provision as to companies limited by guarantee.

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

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

## PART III.

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

*Distribution of Share Capital.*

Nature of shares.

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

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

Certificate of shares or stock.

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

Definition of "member."

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

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

Register of members.

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

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

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

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

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

Index of members of company.

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

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

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

Annual list of members and summary.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Trusts not to be entered on register.**

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

**Transfer of shares.**

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

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

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

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

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

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

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

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

Transfer by legal representative.

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

Inspection of register of members.

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

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

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

Power to close register.

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

Power of Court to rectify register.

**38.** (*1*) If—

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

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

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

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

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

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

Notice to Registrar of rectification of register.

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

Register to be evidence.

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

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

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

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

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

Regulations as to British register.

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

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

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

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

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

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

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

Issue of share-warrants to bearer.

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

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

Effect of share-warrant.

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

Registration of name of bearer of share-warrant.

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

Position of bearer of share-warrant.

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

Entries in register when share-

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Effect of conversion of shares into stock.

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

Notice of increase of share capital or of members.

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

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

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

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

Reorganization of share capital.

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

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

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

*Reduction of Share Capital.*

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

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

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

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

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

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

Reduction of share capital.

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

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

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

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

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

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

Application to Court for confirming order.

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

Addition to name of company of "and reduced."

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

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

Objections by creditors and settlement of list of objecting creditors.

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

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

Power to dispense with consent of creditor

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

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

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

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

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

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

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

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

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

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

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

Liability of members in respect of reduced shares.

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

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

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

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

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

Penalty on concealment of name of creditor.

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

Publication of reasons for reduction.

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

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

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

*Variation of Shareholders' Rights.*

Rights of holders of special classes of shares.

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

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

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

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

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

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

*Registration of Unlimited Company as Limited.*

Registration of unlimited company as limited.

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

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

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

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

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

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

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

*Reserve Liability of Limited Company.*

Reserve liability of limited company.

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

*Unlimited Liability of Directors.*

Limited company may have directors with unlimited liability.

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

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

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

Special resolution of limited company making liability of directors unlimited.

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

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

## PART IV.

### MANAGEMENT AND ADMINISTRATION.

### *Office and Name.*

Registered office of company.

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

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

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

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

Publication of name by a limited company.

**73.** Every limited company—

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

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

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

Penalties for non-publication of name.

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

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

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

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

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

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

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

*Meetings and Proceedings.*

Annual general meeting.

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

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

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

Statutory meeting of company.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Calling of extra-ordinary general meeting on requisition.

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

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

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

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

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

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

Provisions as to meetings and votes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Extraordinary and special resolutions.

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

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

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

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

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

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

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

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

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

Registration and copies of special and extra-ordinary resolutions.

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

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

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

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

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

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

Minutes of proceedings of general meetings and of its directors.

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

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

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

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

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

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

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

*Directors.*

Directors obligatory.

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

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

Appointment of directors.

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

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

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

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

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

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

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

Restrictions on appointment or advertisement of director.

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

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

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

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

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

Qualification of director.

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

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

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

Validity of acts of directors.

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

Ineligibility of bankrupt to act as director.

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

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

Assignment of office by directors.

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

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

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

Avoidance of provisions relieving liability of directors.

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

Provided that—

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

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

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

Loans of directors.

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

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

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

Director not to hold office of profit.

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

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

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

Sanction of directors necessary for certain contracts.

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

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

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

Removal of directors.

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

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

Restrictions on powers of directors.

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

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

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

Vacation of office of director.

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

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

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

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

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

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

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

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

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

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

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

Register of directors, managers and managing agents.

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

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

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

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

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

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

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

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

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

*Managing Agents.*

Duration of appointment of managing agent.

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

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

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

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

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

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

Conditions applicable to managing agents.

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

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

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

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

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

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

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

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

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

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

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

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

Remuneration of managing agent.

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

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

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

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

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

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

Loans to managing agents.

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

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

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

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

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

Loans to or by companies under the same management.

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

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

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

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

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

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

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

Restriction on managing agent's powers of management.

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

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

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

Limit on number of directors appointed by managing agent.

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

*Contracts.*

Form of contracts.

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

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

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

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

Bills of exchange and promissory notes.

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

Execution of deeds.

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

Power for company to have official seal for use abroad.

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

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

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

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

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

Disclosure of interest by director.

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

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

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

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

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

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

Prohibition of voting by interested director.

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

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

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

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

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

Disclosure to members in case of contract appointing a manager.

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

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

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

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

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

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

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

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

*Prospectus.*

Filing of prospectus.

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

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

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

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

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

Specific requirements as to particulars of prospectus.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Meaning of "vendor" in section 93.

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

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

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

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

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

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

Invalidity of certain conditions as to waiver or notice.

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

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

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

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

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

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

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

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

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

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

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

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

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

Obligations of companies where no prospectus is issued.

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

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

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

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

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

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

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

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

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

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

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

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

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

Liability for statements in prospectus.

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

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

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

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

or unless it is proved—

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

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

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

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

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

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

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

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

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

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

### *Allotment.*

Restriction as to allotment.

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

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

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

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

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

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

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

(*d*) working capital.

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

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

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

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

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

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

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

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

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

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

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

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

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

Effect of irregular allotment.

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

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

Restrictions on commencement of business.

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

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

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

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

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

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

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

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

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

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

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

Return as to allotments.

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

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

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

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

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

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

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

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

*Commissions and Discounts.*

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

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

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

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

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

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

Power to issue shares at a discount.

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

Provided that—

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

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

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

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

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

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

Issue of redeemable preference shares.

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

Provided that—

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

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

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

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

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

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

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

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

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

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

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

Further issue of capital.

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

Statement in balance-sheet as to commissions and discounts.

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

*Payment of Interest out of Capital.*

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

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

Provided that—

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

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

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

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

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

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

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

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

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

*Certificates of Shares, etc.*

Limitation of time for issue of certificates.

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

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

*Information as to Mortgages, Charges, etc.*

Certain mortgages and charges to be void if not registered.

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

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

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

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

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

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

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

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

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

Provided that—

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

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

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

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

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

Registration of charges on properties acquired subject to charge.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Register of mortgages and charges.

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

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

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

Index to register of mortgages and charges.

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

Certificate of registration.

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

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

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

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

Duty of company and right of interested party as regards registration

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

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

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

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

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

Registration of appointment of receiver.

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

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

Filing of accounts of receivers.

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

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

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

Rectification of register of mortgages.

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

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

Registration of satisfaction of mortgages and charges.

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

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

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

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

Penalties.

**122.** (*1*) If any company makes default in filing with the Registrar for registration the particulars—

(*a*) of any mortgage or charge created by the company; or

(*b*) of the payment or satisfaction of a debt in respect of which a mortgage or charge has been registered under section 109 or section 109A; or

(*c*) of the issues of debentures of a series,

requiring registration with the Registrar under the foregoing provisions of this Act, then, unless the registration has been effected on the application of some other person, the company, and every officer of the company or other person who is knowingly a party to the default, shall on conviction be liable to a fine not exceeding five hundred rupees for every day during which the default continues.

(2) Subject as aforesaid, if any company makes default in complying with any of the requirements of this Act as to the registration with the Registrar of any mortgage or charge created by the company, the company, and every officer of the company who knowingly and wilfully authorizes or permits the default, shall, without prejudice to any other liability, be liable on conviction to a fine not exceeding one thousand rupees.

(3) If any person knowingly and wilfully authorizes or permits the delivery of any debenture or certificate of debenture stock requiring registration with the Registrar under the foregoing provisions of this Act without a copy of the certificate of registration being endorsed upon it, he shall, without prejudice to any other liability, be liable on conviction to a fine not exceeding one thousand rupees.

Company's register of mortgages.

**123.** (1) Every company shall keep a register of mortgages and enter therein all mortgages and charges specifically affecting property of the company and all floating charges on the undertaking or on any property of the company, giving in each case a short description of the property mortgaged or charged; the amount of the mortgage or charge and (except in the case of securities to bearer) the names of the mortgagees or persons entitled thereto.

(2) If any director, manager or other officer of the company knowingly and wilfully authorizes or permits the omission of any entry required to be made in pursuance of this section, he shall be liable to a fine not exceeding five hundred rupees.

Right to inspect copies of instruments creating mortgages and charges and company's register of mortgages.

**124.** (1) The copies kept at the registered office of the company in pursuance of section 117 of instruments creating any mortgage or charge requiring registration under this Act with the Registrar, and the register of mortgages kept in pursuance of section 123, shall be open at all reasonable times to the inspection of any creditor or member of the company without fee, and the register of mortgages shall also be open to the inspection of any other person on payment of such fee, not exceeding one rupee for each inspection, as the company may prescribe.

(2) If inspection of the said copies or register is refused, the company shall be liable to a fine not exceeding fifty rupees, and a further fine not exceeding twenty rupees for every day during which the refusal continues, and every officer of the company who knowingly authorizes or permits the refusal shall incur the like penalty, and in addition to the above penalty, the Court may by order compel an immediate inspection of the copies or register.

Right to inspect the register of debenture-holders and to have copies of trust-deed.

**125.** (1) Every register of holders of debentures of a company shall, except when closed in accordance with the articles during such period or periods (not exceeding in the whole thirty days in any year) as may be specified in the articles, be open to the inspection of the registered holder of any such debentures, and of any holder of shares in the company, but subject ot such reasonable restrictions as the company may in general meeting impose, so that at least two hours in each day are appointed for inspection, and every

such holder may require a copy of the register or any part thereof on payment of six annas for every one hundred words or fractional part thereof required to be copied.

(*2*) A copy of any trust-deed for securing any issue of debentures shall be forwarded to every holder of any such debentures at his request on payment, in the case of a printed trust-deed, of the sum of one rupee or such less sum as may be prescribed by the company, or, where the trust-deed has not been printed, on payment of six annas for every one hundred words or fractional part thereof required to be copied.

(*3*) If inspection is refused, or a copy is refused or not forwarded, the company shall be liable to a fine not exceeding fifty rupees, and to a further fine not exceeding twenty rupees for every day during which the refusal continues, and every officer of the company who knowingly authorizes or permits the refusal shall incur the like penalty, and the Court may by order compel an immediate inspection of the register.

Transitory provisions as respects Indian companies.

**125A**. The separation of Burma and India shall not, as respects a company which was under the provisions of this Act as in force before the separation of Burma and India a company within the meaning of this Act, render valid any mortgage or charge which, by virtue of this Part of this Act, as in force immediately before the said date, was void against the liquidator and creditors of the company.

*Debentures and Floating Charges.*

Perpetual debentures.

**126**. A condition contained in any debentures or in any deed for securing any debentures, whether issued or executed before or after the passing of this Act, shall not be invalid by reason only that thereby the debentures are made irredeemable or redeemable only on the happening of a contingency, however remote or on the expiration of a period however long.

Power to re-issue redeemed debentures in certain cases.

**127**. (*1*) Where either before or after the commencement of this Act a company has redeemed any debentures previously issued, the company, unless the articles or the conditions of issue expressly otherwise provide, or unless the debentures have been redeemed in pursuance of any obligation on the company so to do (not being an obligation enforceable only by the person to whom the redeemed debentures were issued or his assigns), shall have power, and shall be deemed always to have had power, to keep the debentures alive for the purposes of re-issue, and where a company has purported to exercise such a power the company shall have power, and shall be deemed always to have had power, to re-issue the debentures either by re-issuing the same debentures or by issuing other debentures in their place, and upon such re-issue the person entitled to the debentures shall have, and shall be deemed always to have had, the same rights and priorities as if the debentures had not previously been issued.

(*2*) Where with the object of keeping debentures alive for the purpose of re-issue they have, either before or after the commencement of this Act,

been transferred to a nominee of the company, a transfer from that nominee shall be deemed to be a re-issue for the purposes of this section.

(*3*) Where a company has, either before or after the commencement of this Act, deposited any of its debentures to secure advances from time to time on current account or otherwise, the debentures shall not be deemed to have been redeemed by reason only of the account of the company having ceased to be in debit whilst the debentures remained so deposited.

(*4*) The re-issue of a debenture or the issue of another debenture in its place under the power by this section given to, or deemed to have been possessed by, a company, whether the re-issue or issue was made before or after the commencement of this Act, shall be treated as the issue of a new debenture for the purposes of stamp-duty, but it shall not be so treated for the purposes of any provision limiting the amount or number of debentures to be issued :

Provided that any person lending money on the security of a debenture re-issued under this section which appears to be duly stamped may give the debenture in evidence in any proceedings for enforcing his security without payment of the stamp-duty or any penalty in respect thereof, unless he had notice or, but for his negligence, might have discovered that the debenture was not duly stamped, but in any such case the company shall be liable to pay the proper stamp-duty and penalty.

(*5*) Nothing in this section shall prejudice—

(*a*) * * * * *

(*b*) any power to issue debentures in the place of any debentures paid off or otherwise satisfied or extinguished, reserved to a company by its debentures or the securities for the same.

Specific performance of contract to subscribe for debentures.

**128.** A contract with a company to take up and pay for any debentures of the company may be enforced by a decree for specific performance.

Payments of certain debts out of assets subject to floating charge in priority to claim under the charge.

**129.** (*1*) Where either a receiver is appointed on behalf of the holders of any debentures of a company secured by a floating charge, or possession is taken by or on behalf of those debenture-holders of any property comprised in or subject to the charge, then, if the company is not at the time in course of being wound up, the debts which in every winding up are under the provisions of Part V relating to preferential payments to be paid in priority to all other debts, shall be paid forthwith out of any assets coming to the hands of the receiver or other person taking possession as aforesaid in priority to any claim for principal or interest in respect of the debentures.

(*2*) The periods of time mentioned in the said provisions of Part V shall be reckoned from the date of the appointment of the receiver or of possession being taken as aforesaid, as the case may be.

(*3*) Any payments made under this section shall be recouped, as far as may be, out of the assets of the company available for payment of general creditors.

*Statements, Books and Accounts.*

Books to be kept by company and penalty for not keeping proper books.

**130.** (*1*) Every company shall cause to be kept proper books of account with respect to—

(*a*) all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place;

(*b*) all sales and purchases of goods by the company;

(*c*) the assets and liabilities of the company.

(*2*) The books of account shall be kept at the registered office of the company or at such other place as the directors think fit, and shall be open to inspection by the directors during business hours.

(*3*) In the case of a company managed by a managing agent the managing agent, or where the managing agent is a firm or company, the partner or director of such firm or company, and in any other case the director or directors, who have knowingly by their act or omission been the cause of any default by the company in complying with the requirements of this section, shall in respect of such offence be liable to a fine not exceeding one thousand rupees.

Annual balance-sheet.

**131.** (*1*) The directors of every company shall at some date not later than eighteen months after the incorporation of the company, and subsequently once at least in every calendar year, lay before the company in general meeting a balance-sheet and profit and loss account, or in the case of a company not trading for profit an income and expenditure account for the period, in the case of the first account since the incorporation of the company, and in any other case since the preceding account, made up to a date not earlier than the date of the meeting by more than nine months, or in the case of a company carrying on business or having interests outside the Union of Burma by more than twelve months :

Provided that the Registrar may for any special reason extend the period by a period not exceeding three months.

(*2*) The balance-sheet and the profit and loss account, or income and expenditure account, shall be audited by the auditor of the company as hereinafter provided, and the auditor's report shall be attached thereto, or there shall be inserted at the foot thereof a reference to the report, and the report shall be read before the company in general meeting and shall be open to inspection by any member of the company.

(*3*) Every company other than a private company shall send a copy of such balance-sheet and profit and loss account, or income and expenditure account, so audited, together with a copy of the auditors' report, to the registered address of every member of the company at least fourteen days before the meeting at which it is to be laid before the members of the company, and shall deposit a copy at the registered office of the company for the inspection of the members of the company during a period of at least fourteen days before that meeting.

Directors' report.

**131A.** (*1*) The directors shall make out and attach to every balance-sheet a report with respect to the state of the company's affairs, the amount, if any, which they recommend should be paid by way of dividend, and the amount, if any, which they propose to carry to the Reserve Fund, General Reserve or Reserve Account shown specifically on the balance-sheet, or to a Reserve Fund, General Reserve or Reserve Account to be shown specifically in a subsequent balance-sheet.

(*2*) The report referred to in sub-section (*1*) may be signed by the chairman of the directors on behalf of the directors if authorized in that behalf by the directors.

(*3*) The provisions of sub-section (*3*) of section 130 shall apply to any person being a director who is knowingly and wilfully guilty of a default in complying with this section.

Contents of balance-sheet.

**132.** (*1*) The balance-sheet shall contain a summary of the property and assets and of the capital and liabilities of the company, giving such particulars as will disclose the general nature of those liabilities and assets and how the value of the fixed assets has been arrived at.

(*2*) The balance-sheet shall be in the form marked F in the Third Schedule, or as near thereto as circumstances admit.

(*3*) The profit and loss account shall include particulars showing the total of the amount paid, whether as fees, percentages or otherwise, to the managing agent, if any, and the directors, respectively, as remuneration for their services, and, where a special resolution passed by the members of the company so requires, to the manager, and the total of the amount written off for depreciation. If any director of the company is by virtue of the nomination, whether direct or indirect, of the company, a director of any other company, any remuneration or other emoluments received by him for his own use, whether as a director of, or otherwise in connection with the management of, that other company, shall be shown in a note at the foot of the account or in a statement attached thereto.

Balance-sheet to include particulars as to subsidiary companies.

**132A.** (*1*) Where a company, in this Act referred to as the holding company, holds shares, either directly or through a nominee, in a subsidiary company or in two or more subsidiary companies, there shall be annexed to the balance-sheet of the holding company the last audited balance-sheet, profit and loss account and auditors' report of the subsidiary company or companies, and a statement signed by the persons by whom, in pursuance of section 133, the balance-sheet of the holding company is signed, stating how the profits and losses of the subsidiary company, or, where there are two or more subsidiary companies, the aggregate profits and losses of those companies, have been dealt with in or for the purposes of the accounts of the holding company, and in particular how and to what extent—

(*a*) provision has been made for the losses of a subsidiary company either in the accounts of that company or of the holding company or of both, and

(*b*) losses of a subsidiary company have been taken into account by the directors of the holding company in arriving at the profits and losses of the company as disclosed in its accounts :

Provided that it shall not be necessary to specify in any such statement the actual amount of the profits or losses of any subsidiary company or the actual amount of any part of any such profits or losses which has been dealt with in any particular manner :

Provided further that for the purposes of this section an investment company, that is to say, a company whose principal business is the acquisition and holding of shares, stocks, debentures or other securities, shall not be deemed to be a holding company by reason only that part of its assets consists in 51 per cent. or more of the shares of another company.

(*2*) If, in the case of a subsidiary company, the auditors' report on the balance-sheet of the company does not state without qualification that the auditors have obtained all the information and explanations they have required and that the balance-sheet is properly drawn up so as to exhibit a true and correct view of the state of the company's affairs according to the best of their information and the explanations given to them and as shown by the books of the company, the statement, which is to be annexed as aforesaid to the balance-sheet of the holding company, shall contain particulars of the manner in which the report is qualified.

(*3*) For the purposes of this section the profits or losses of a subsidiary company mean the profits or losses shown in any accounts of the subsidiary company made up to a date within the period to which the accounts of the holding company relate, or, if there are no such accounts of the subsidiary company available at the time when the accounts of the holding company are made up, the profits or losses shown in the last previous accounts of the subsidiary company which became available within that period.

(*4*) If for any reason the directors of the holding company are unable to obtain such information as is necessary for the preparation of the statement aforesaid, the directors who sign the balance-sheet shall so report in writing and their report shall be annexed to the balance-sheet in lieu of the statement.

(*5*) The holding company may by a resolution authorize representatives named in the resolution to inspect the books of account kept in accordance with section 130 by any subsidiary company, and on such resolution being passed those books of account shall be open to inspection by those representatives at any time during business hours.

(*6*) The rights conferred by section 138 upon members of a company may be exercised in respect of any subsidiary company by members of the holding company as if they were members of that subsidiary company.

Authentication of balance-sheet.

**133.** (*1*) Save as provided by sub-section (*2*), the balance-sheet and profit and loss account, or income and expenditure account, shall—

(i) in the case of a banking company, be signed by the manager or managing agent (if any) and, where there are more than three

directors of the company, by at least three of those directors and, where there are not more than three directors, by all the directors ;

(ii) in the case of any other company, be signed by two directors or, when there are less than two directors, by the sole director and by the manager or managing agent (if any) of the company.

(*2*) When the total number of directors of the company for the time being in the Union of Burma is less than the number of directors whose signatures are required by sub-section (*1*), then the balance-sheet and profit and loss account, or income and expenditure account, shall be signed by all the directors for the time being in the Union of Burma or, if there is only one director for the time being in the Union of Burma, by such director, but in such a case there shall be subjoined to the balance-sheet and profit and loss account, or income and expenditure account, a statement signed by such directors or director explaining the reason for non-compliance with the provisions of sub-section (*1*).

(*3*) If any default is made in laying before the company or in issuing a balance-sheet and profit and loss account, or income and expenditure account, as required by section 131, or if any balance-sheet and profit and loss account, or income and expenditure account, is issued, circulated or published which does not comply with the requirements laid down by and under section 131, section 132, section 132A and this section, the company and every officer of the company who is knowingly and wilfully a party to the default shall be punishable with fine which may extend to five hundred rupees.

Copy of balance-sheet to be forwarded to the Registrar.

**134.** (*1*) After the balance-sheet and profit and loss account have been laid before the company at the general meeting, a copy of the balance-sheet, signed by the manager or secretary of the company, shall be filed with the Registrar at the same time as the copy of the annual list of members and summary prepared in accordance with the requirements of section 32.

(*2*) If the general meeting before which a balance-sheet is laid does not adopt the balance-sheet, a statement of that fact and of the reasons therefor shall be annexed to the balance-sheet and to the copy thereof required to be filed with the Registrar.

(*3*) This section shall not apply to a private company.

(*4*) If a company makes default in complying with the requirements of this section, the company and every officer of the company who knowingly and wilfully authorizes or permits the default shall be liable to the like penalty as is provided by section 32 for a default in complying with the provisions of that section.

Right of member of company to copies of the balance-sheet and the auditor's report.

**135.** Save as otherwise provided in this Act, any member of a company shall be entitled to be furnished with copies of the balance-sheet and the profit and loss account, or the income and expenditure account, and the auditor's report at a charge not exceeding six annas for every hundred words or fractional part thereof.

*Statement to be published by Banking and certain other Companies.*

Certain companies to publish statement in schedule.

**136.** (*1*) Every company being a limited banking company or an insurance company or a deposit, provident or benefit society shall, before it commences business, and also on the first Monday in February and the first Monday in August in every year during which it carries on business, make a statement in the form marked G in the Third Schedule, or as near thereto as circumstances will admit.

(*2*) A copy of the statement, together with a copy of the last audited balance-sheet laid before the members of the company, shall be displayed and, until the display of the next following statement, kept displayed in a conspicuous place in the registered office of the company, and in every branch office or place where the business of the company is carried on.

(*3*) Every member and every creditor of the company shall be entitled to a copy of the statement on payment of a sum not exceeding eight annas.

(*4*) If a company makes default in complying with the requirements of this section, it shall be liable to a fine not exceeding fifty rupees for every day during which the default continues ; and every officer of the company who knowingly and wilfully authorizes or permits the default shall be liable to the like penalty.

(*5*) This section shall not apply to a life assurance company or provident insurance society to which the provisions of the Life Assurance Companies Act or of the Provident Insurance Societies Act, as the case may be, as to the annual statements to be made by such company or society, apply with or without modifications, if the company or society complies with those provisions.

*Investigation by the Registrar.*

Power of Registrar to call for information or explanation.

**137.** (*1*) Where the Registrar, on perusal of any document which a company is required to submit to him under the provisions of this Act, is of opinion that any information or explanation is necessary in order that such document may afford full particulars of the matter to which it purports to relate, he may, by a written order, call on the company submitting the document to furnish in writing such information or explanation within such time as he may specify in his order.

(*2*) On the receipt of an order under sub-section (*1*), it shall be the duty of all persons who are or have been officers of the company to furnish such information or explanation to the best of their power.

(*3*) If any such person refuses or neglects to furnish any such information or explanation, he shall be liable to a fine not exceeding fifty rupees in respect of each offence, and the Court may on the application of the Registrar and upon notice to the company make an order on the company for production of such documents as in its opinion may reasonably be required by the Registrar for his investigation and allow the Registrar inspection thereof on such terms and conditions as it thinks fit.

(*4*) On receipt of such information or explanation the Registrar may annex the same to the original document submitted to him ; and any additional

document so annexed by the Registrar shall be subject to the like provisions as to inspection and the taking of copies as the original document is subject.

(*5*) If such information or explanation is not furnished within the specified time, or if after perusal of such information or explanation the Registrar is of opinion that the document in question discloses an unsatisfactory state of affairs, or that it does not disclose a full and fair statement of the matters to which it purports to relate, the Registrar shall report in writing the circumstances of the case to the President of the Union.

(*6*) If it is represented to the Registrar in materials placed before him by any contributory or creditor that the business of a company is carried on in fraud of its creditors or in fraud of persons dealing with the company or for a fraudulent purpose, he may after giving the company an opportunity of being heard by written order call on the company for information or explanation on matters specified in the order within such time as he may specify in the order, and the provisions of sub-sections (*2*), (*3*) and (*5*) of this section shall apply to such order. If upon investigation the Registrar is satisfied that any representation on which he has taken action under this sub-section is frivolous or vexatious, he shall disclose the identity of the informant to the company.

(*7*) The provisions of this section shall apply *mutatis mutandis* to documents which a liquidator is required to file under this Act.

*Inspection and Audit.*

Investigation of affairs of company by inspectors.

**138.** The President of the Union may appoint one or more competent inspectors to investigate the affairs of any company and to report thereon in such manner as the President of the Union may direct—

(i) in the case of a banking company having a share capital, on the application of members holding not less than one-fifth of the shares issued;

(ii) in the case of any other company having a share capital, on the application of members holding not less than one-tenth of the shares issued;

(iii) in the case of a company not having a share capital, on the application of not less than one-fifth in number of the persons on the company's register of members;

(iv) in the case of any company, on a report by the Registrar under section 137, sub-section (*5*).

Application for inspection to be supported by evidence.

**139.** An application by members of a company under section 138 shall be supported by such evidence as the President of the Union may require for the purpose of showing that the applicants have good reason for, and are not actuated by malicious motives in requiring, the investigation; and the President of the Union may, before appointing an inspector, require the applicants to give security for payment of the costs of the inquiry.

Inspection of books and examination of officers.

**140.** (*1*) It shall be the duty of all persons who are or have been officers of the company to produce to the inspectors all books and documents in their custody or power relating to the company.

(*2*) An inspector may examine on oath any such person in relation to its business, and may administer an oath accordingly.

(*3*) If any person refuses to produce any book or document which under this section it is his duty to produce, or to answer any question relating to the affairs of the company, he shall be liable to a fine not exceeding fifty rupees in respect of each offence.

Results of examination how dealt with.

**141.** (*1*) On the conclusion of the investigation the inspectors shall report their opinion to the President of the Union, and a copy of the report shall be forwarded by the President of the Union to the Registrar and another copy to the registered office of the company, and a further copy shall, at the request of the applicants for the investigation, be delivered to them.

(*2*) The report shall be written or printed, as the President of the Union directs.

(*3*) All expenses of, and incidental to, the investigation shall be defrayed by the applicants unless the President of the Union directs the same to be paid by the company, which the President of the Union is hereby authorized to do :

Provided that the expenses of and incidental to an investigation held in pursuance of clause (iv) of section 138 shall be paid out of the assets of the company and shall be recoverable as an arrear of land-revenue.

(*4*) The Registrar shall keep the copy of the report sent to him with the records of the company in his custody.

Institution of prosecutions

**141A.** (*1*) If from any report made under section 138 it appears to the President of the Union that any person has been guilty of any offence in relation to the company for which he is criminally liable, the President of the Union shall refer the matter to the Attorney-General [1] or the Public Prosecutor.

(*2*) If the officer to whom the matter is referred considers that the case is one in which a prosecution ought to be instituted, he shall cause proceedings to be instituted, and it shall be the duty of all officers and agents of the company, past and present (other than the accused in the proceedings), to give to him all assistance in connection with the prosecution which they are reasonably able to give.

(*3*) For the purposes of sub-section (*2*), the expression "agents" in relation to a company shall be deemed to include the bankers and legal advisers of the company and any persons employed by the company as auditors, whether those persons are or are not officers of the company.

(*4*) Any director, manager or other officer of the company convicted as the result of a prosecution initiated under this section shall not without the

[1] Substituted by the Union of Burma (Adaptation of Laws) Order, 1948.

leave of the Court be a director of or in any way, whether directly or indirectly, be concerned in or take part in the management of a company for a period of five years from the date of such conviction,

Power of company to appoint inspectors.

**142.** (*1*) A company may by a special resolution appoint inspectors to investigate its affairs.

(*2*) Inspectors so appointed shall have the same powers and duties as inspectors appointed by the President of the Union, except that, instead of reporting to the President of the Union, they shall report in such manner and to such persons as the company in general meeting may direct.

(*3*) All persons who are or have been officers of the company shall incur the like penalties in case of refusal to produce any book or document required to be produced to inspectors so appointed, or to answer any question, as they would have incurred if the inspectors had been appointed by the President of the Union.

Report of inspectors to be evidence.

**143.** A copy of the report of any inspectors appointed under this Act, authenticated by the seal of the company whose affairs they have investigated, shall be admissible in any legal proceeding as evidence of the opinion of the inspectors in relation to any matter contained in the report.

Qualifications and appointment of auditors.

**144.** (*1*) No person shall be appointed or act as an auditor of any company, other than a private company not being the subsidiary company of a public company, unless he holds a certificate from the President of the Union entitling him to act as an auditor of companies:

Provided that a firm whereof all the partners practising in the Union of Burma hold such certificates may be appointed by its firm-name to be auditor of a company, and may act in its firm-name.

(*2*) The President of the Union may, by notification in the Gazette and after previous publication, make rules providing for the grant, renewal or cancellation of such certificates and prescribing conditions and restrictions for such grant, renewal or cancellation:

Provided that nothing contained in such rules shall preclude any person from being granted a certificate merely by reason that he does not practise as a public accountant.

(*2A*) In particular, and without prejudice to the generality of the foregoing power, such rules may—

(*a*) provide for the maintenance of a register of Accountants entitled to apply for such certificates;

(*b*) prescribe the qualifications for enrolment on the register and the fees therefor;

(*c*) provide for the examination of candidates for enrolment, and prescribe the fees to be paid by examinees;

(*d*) prescribe the circumstances in which the name of any person may be removed from or restored to the register;

(*e*) provide for the establishment, constitution and procedure of an Accountancy Board, consisting of persons representing the interests principally affected or having special knowledge of accountancy, to advise him on all matters of administration relating to accountancy, and to assist him in maintaining the standards of qualification and conduct of persons enrolled on the register; and

(*f*) provide for the establishment, constitution and procedure of local accountancy boards at such centres as the President of the Union may select, to advise him and the Accountancy Board on any matter that may be referred to them.

(*2B*) The holder of a certificate granted under this section shall be entitled to be appointed and act as an auditor of companies throughout the Union of Burma.

(*3*) Every company shall at each annual general meeting appoint an auditor or auditors to hold office until the next annual general meeting.

(*4*) If an appointment of an auditor is not made at an annual general meeting, the President of the Union may, on the application of any member of the company, appoint an auditor of the company for the current year, and fix the remuneration to be paid to him by the company for his services.

(*5*) The following persons, that is to say,

(i) a director or officer of the company, and

(ii) a partner of such director or officer, and

(iii) in the case of a company, other than a private company not being the subsidiary company of a public company any person in the employment of such director or officer, and

(iv) any person indebted to the company,

shall not be appointed auditors of the company, and if any person after being appointed auditor becomes indebted to the company his appointment shall thereupon be terminated.

(*6*) A person, other than a retiring auditor, shall not be capable of being appointed auditor at an annual general meeting unless notice of an intention to nominate that person to the office of auditor has been given by a member of the company to the company not less than fourteen days before such annual general meeting, and the company shall send a copy of any such notice to the retiring auditor, and shall give notice thereof to its members, either by advertisement or in any other mode allowed by the articles, not less than seven days before the annual general meeting:

Provided that, if after notice of the intention to nominate an auditor has been given to the company, an annual general meeting is called for a date fourteen days or less after the notice has been given, the requirements of this section as to time in respect of such a notice shall be deemed to have been satisfied, and the notice otbe sent or given by the company may, instead of being sent or given

within the time required by this section, be sent or given at the same time as the notice of the annual general meeting.

(*7*) The first auditors of the company may be appointed by the directors before the statutory meeting, and if so appointed shall hold office until the first annual general meeting unless previously removed by a resolution of the members of the company in general meeting, in which case such members at that meeting may appoint auditors.

(*8*) The directors may fill any casual vacancy in the office of auditor, but while any such vacancy continues the surviving or continuing auditor or auditors (if any) may act.

(*9*) The remuneration of the auditors of a company shall be fixed by the company in general meeting, except that the remuneration of any auditors appointed before the statutory meeting, or to fill any casual vacancy, may be fixed by the directors.

**Powers and duties of auditors.**

**145.** (*1*) Every auditor of a company shall have a right of access at all times to the books and accounts and vouchers of the company, and shall be entitled to require from the directors and officers of the company such information and explanation as may be necessary for the performance of the duties of the auditors.

(*2*) The auditors shall make a report to the members of the company on the accounts examined by them, and on every balance-sheet and profit and loss account laid before the company in general meeting during their tenure of office, and the report shall state :—

(*a*) whether or not they have obtained all the information and explanations they have required ; and

(*b*) whether or not in their opinion the balance-sheet and the profit and loss account referred to in the report are drawn up in conformity with the law ; and

(*c*) whether or not such balance-sheet exhibits a true and correct view of the state of the company's affairs according to the best of their information and the explanations given to them, and as shown by the books of the company ; and

(*d*) whether in their opinion books of account have been kept by the company as required by section 130.

(*2A*) Where any of the matters referred to in clauses (*a*), (*b*), (*c*) and (*d*) of sub-section (*2*) is answered in the negative or with a qualification, the report shall state the reason for such answer.

(*3*) In the case of a banking company, if the company has branch banks beyond the limits of the Union of Burma, it shall be sufficient if the auditor is allowed access to such copies of and extracts from the books and accounts of any such branch as have been transmitted to the head office of the company in the Union of Burma.

(*4*) The auditors of a company shall be entitled to receive notice of and to attend any general meeting of the company at which any accounts which have been examined or reported on by them are to be laid before the

company and may make any statement or explanation they desire with respect to the accounts.

(5) If any auditors' report is made which does not comply with the requirements of this section, every auditor who is knowingly and wilfully a party to the default shall be punishable with fine which may extend to one hundred rupees.

Rights of preference shareholders, etc., as to receipt and inspection of reports, etc.

**146.** (*1*) Holders of preference shares and debentures of a company shall have the same right to receive and inspect the balance-sheets and profit and loss accounts of the company and the reports of the auditors and other reports as is possessed by the holders of ordinary shares in the company.

(*2*) This section shall not apply to a private company, nor to a company registered before the commencement of this Act :

Provided that in the case of any public company whether registered before or after the commencement of this Act the trustees for holders of debentures shall have the right conferred by sub-section (*1*) on holders of preference shares and debentures of a company.

*Carrying on Business with less than the Legal Minimum of Members.*

Liability for carrying on business with fewer than seven or, in the case of a private company, two members.

**147.** If at any time the number of members of a company is reduced, in the case of a private company, below two, or in the case of any other company, below seven, and it carries on business for more than six months while the number is so reduced, every person who is a member of the company during the time that it so carries on business after those six months and is cognisant of the fact that it is carrying on business with fewer than two members or seven members, as the case may be, shall be severally liable for the payment of the whole debts of the company contracted during that time, and may be sued for the same without joinder in the suit of any other member.

*Service and Authentication of Documents.*

Service of documents on company.

**148.** A document may be served on a company by leaving it at, or sending it by post to, the registered office of the company.

Service of documents on Registrar.

**149.** A document may be served on the Registrar by sending it to him by post, or delivering it to him, or by leaving it for him at his office.

Authentication of documents.

**150.** A document or proceeding requiring authentication by a company may be signed by a director, secretary or other authorized officer of the company, and need not be under its common seal.

*Tables, Forms and Rules as to Prescribed Matters.*

Application and alteration of tables and forms, and power to make rules as to prescribed matters.

**151.** (*1*) The forms in the Third Schedule or forms as near thereto as circumstances admit shall be used in all matters to which those forms refer.

(*2*) The President of the Union may alter any of the Tables and forms in the First Schedule, so that he does not increase the amount of fees payable to the Registrar in the said Schedule mentioned, and may alter or add to the forms in the Third Schedule.

(*3*) Any such Table or form, when altered, shall be published in the Gazette, and on such publication shall have effect as if enacted in this Act, but no alteration made by the President of the Union in Table A in the First Schedule shall affect any company registered before the alteration, or repeal, as respects that company, any portion of that Table.

(*4*) In addition to the powers hereinbefore conferred by this section, the President of the Union may make rules providing for all or any matters which by this Act are to be prescribed by his authority.

(5) Every such rule shall be published in the Gazette, and on such publication shall have effect as if enacted in this Act.

*Arbitration and Compromise.*

Power for companies to refer matters to arbitration.

**152.** (*1*) A company may by written agreement refer to arbitration, in accordance with the Arbitration Act, an existing or future difference between itself and any other company or person.

(*2*) Companies, parties to the arbitration, may delegate to the arbitrator power to settle any terms or to determine any matter capable of being lawfully settled or determined by the companies themselves, or by their directors or other managing body.

(*3*) The provisions of the Arbitration Act [* * * *] [1] shall apply to all arbitrations between companies and persons in pursuance of this Act.

Power to compromise with creditors and members.

**153.** (*1*) Where a compromise or arrangement is proposed between a company and its creditors or any class of them, or between the company and its members or any class of them, the Court may, on the application in a summary way of the company or of any creditor or member of the company or, in the case of a company being wound up, of the liquidator, order a meeting of the creditors or class of creditors or of the members of the company or class of members, as the case may be, to be called, held and conducted in such manner as the Court directs.

(*2*) If a majority in number representing three-fourths in value of the creditors or class of creditors, or members or class of members, as the case may be, present either in person or by proxy at the meeting, agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the Court, be binding on all the creditors or the class of creditors, or on all the members or class of members, as the case may be, and also on the company, or, in the case of a company in the course of being wound up, on the liquidator and contributories of the company.

(*3*) An order made under sub-section (*2*) shall have no effect until a certified copy of the order has been filed with the Registrar, and a copy of every such order shall be annexed to every copy of the memorandum of the company issued after the order has been made, or in the case of a company not having a memorandum, of every copy so issued of the instrument constituting or defining the constitution of the company.

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[1] Deleted by Act IV, 1944.

(*4*) If a company makes default in complying with sub-section (*3*) the company and every officer of the company who is knowingly and wilfully in default shall be liable to a fine not exceeding ten rupees for each copy in respect of which default is made.

(5) The Court may, at any time after an application has been made to it under this section, stay the commencement or continuation of any suit or proceeding against a company on such terms as it thinks fit and proper until the application is finally disposed of.

(*6*) In this section the expression "company" means any company liable to be wound up under this Act, and for the purposes of this section unsecured creditors who may have filed suits or obtained decrees shall be deemed to be of the same class as other unsecured creditors.

(*7*) An appeal shall lie from any order made by the Court exercising original jurisdiction under this section to the authority authorized to hear appeals from the decisions of the Court.

Provisions for facilitating arrangements and compromises.

**153A.** (*1*) Where an application is made to the Court under section 153 for the sanctioning of a compromise or arrangement proposed between a company and any such persons as are mentioned in that section, and it is shown to the Court that the compromise or arrangement has been proposed for the purposes of or in connection with a scheme for the reconstruction of any company or companies or the amalgamation of any two or more companies, and that under the scheme the whole or any part of the undertaking or the property of any company concerned in the scheme (in this section referred to as a "transferor company") is to be transferred to another company (in this section referred to as "the transferee company"), the Court may, either by the order sanctioning the compromise or arrangement or by any subsequent order, make provision for all or any of the following matters :—

(*a*) the transfer to the transferee company of the whole or any part of the undertaking and of the property or liabilities of any transferor company ;

(*b*) the allotting or appropriation by the transferee company of any shares, debentures, policies, or other like interests in that company which under the compromise or arrangement are to be allotted or appropriated by that company to or for any person ;

(*c*) the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company ;

(*d*) the dissolution, without winding up, of any transferor company ;

(*e*) the provision to be made for any persons who, within such time and in such manner as the Court directs, dissent from the compromise or arrangement ;

(*f*) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation shall be fully and effectively carried out.

(*2*) Where an order under this section provides for the transfer of property or liabilities, that property shall, by virtue of the order, be transferred

to and vest in, and those liabilities shall, by virtue of the order, be transferred to and become the liabilities of, the transferee company, and in the case of any property, if the order so directs, freed from any charge which is by virtue of the compromise or arrangement to cease to have effect.

(*3*) Where an order is made under this section, every company in relation to which the order is made shall cause a certified copy thereof to be delivered to the Registrar for registration within fourteen days after the completion of the order, and if default is made in complying with this sub-section, the company and every officer of the company who is knowingly and wilfully in default shall be liable to a fine not exceeding fifty rupees.

(*4*) In this section the expression "property" includes property, rights and powers of every description, and the expression "liabilities" includes duties.

(*5*) Notwithstanding the provisions of sub-section (*4*) of section 153, the expression "company" in this section does not include any company other than a company within the meaning of this Act.

Power to acquire shares of shareholders dissenting from schemes or contract approved by majority.

**153B.** (*1*) Where a scheme or contract involving the transfer of shares or any class of shares in a company (in this section referred to as "the transferor company") to another company, whether a company within the meaning of this Act or not (in this section referred to as the "transferee company"), has within four months after the making of the offer in that behalf by the transferee company been approved by the holders of not less than three-fourths in value of the shares affected, the transferee company may, at any time within two months after the expiration of the said four months, give notice in the prescribed manner to any dissenting shareholder that it desires to acquire his shares, and where such a notice is given the transferee company shall, unless on an application made by the dissenting shareholder within one month from the date on which the notice was given the Court thinks fit to order otherwise, be entitled and bound to acquire those shares on the terms on which under the scheme or contract the shares of the approving shareholders are to be transferred to the transferee company:

Provided that, where any such scheme or contract has been so approved at any time before the 15th January, 1937,[1] the Court may by order, on an application made to it by the transferee company within two months after the said date, authorize notice to be given under this section at any time within fourteen days after the making of the order, and this section shall apply accordingly, except that the terms on which the shares of the dissenting shareholder are to be acquired shall be such terms as the Court may by the order direct instead of the terms provided by the scheme or contract.

(*2*) Where a notice has been given by the transferee company under this section and the Court has not, on an application made by the dissenting shareholder, ordered to the contrary, the transferee company shall, on the

[1] Date of commencement of the Indian Companies (Amendment) Act, 1936 (India Act XXII, 1936).

expiration of one month from the date on which the notice has been given or, if an application to the Court by the dissenting shareholder is then pending, after that application has been disposed of, transmit a copy of the notice to the transferor company and pay or transfer to the transferor company the amount or other consideration representing the price payable by the transferee company for the shares which by virtue of this section that company is entitled to acquire, and the transferor company shall thereupon register the transferee company as the holder of those shares.

(*3*) Any sums received by the transferor company under this section shall be paid into a separate bank account, and any such sums and any other consideration so received shall be held by that company on trust for the several persons entitled to the shares in respect of which the said sums or other consideration were respectively received.

(*4*) In this section the expression "dissenting shareholder" includes a shareholder who has not assented to the scheme or contract and any shareholder who has failed or refused to transfer his shares to the transferee company in accordance with the scheme or contract.

### *Conversion of Private Company into Public Company.*

Conversion of private company into public company.

**154.** (*1*) If a company, being a private company, alters its articles in such manner that they no longer include the provisions which, under the provisions of clause (13) of sub-section (*1*) of section 2, are required to be included in the articles of a company in order to constitute it a private company, the company shall, as on the date of the alteration, cease to be a private company and shall, within a period of fourteen days after the said date, file with the Registrar a prospectus or a statement in lieu of prospectus in the form and containing the particulars set out in the form marked II in the Second Schedule.

(*2*) If default is made in complying with sub-section (*1*) of this section, the company and every officer of the company who is knowingly and wilfully in default shall be liable to a fine not exceeding five hundred rupees.

(*3*) Where the articles of a company include the provisions aforesaid but default is made in complying with any of those provisions, the company shall cease to be entitled to the privileges and exemptions conferred on private companies under the provisions contained in this Act, and thereupon the provisions of this Act shall apply to the company as if it were not a private company :

Provided that the Court, on being satisfied that the failure to comply with the conditions was accidental or due to inadvertence or to some other sufficient cause, or that on other grounds it is just and equitable to grant relief, may, on the application of the company or any other person interested and on such terms and conditions as seem to the Court just and expedient, order that the company be relieved from such consequences as aforesaid.

## PART V.

### WINDING UP.

*Preliminary.*

Mode of winding up.

**155.** (*1*) The winding up of a company may be either—

(i) by the Court ; or

(ii) voluntary ; or

(iii) subject to the supervision of the Court.

(*2*) The provisions of this Act with respect to winding up apply, unless the contrary appears, to the winding up of a company in any of these modes.

*Contributories.*

Liability as contributories of present and past members.

**156.** (*1*) In the event of a company being wound up, every present and past member shall, subject to the provisions of this section, be liable to contribute to the assests of the company to an amount sufficient for payment of its debts and liabilities and the costs, charges and expenses of the winding up, and for the adjustment of the rights of the contributories among themselves, with the qualifications following (that is to say) :—

(i) a past member shall not be liable to contribute if he has ceased to be a member for one year or upwards before the commencement of the winding up ;

(ii) a past member shall not be liable to contribute in respect of any debt, or liability of the company contracted after he ceased to be a member ;

(iii) a past member shall not be liable to contribute unless it appears to the Court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this Act ;

(iv) in the case of a company limited by shares, no contribution shall be required from any member exceeding the amount (if any) unpaid on the shares in respect to which he is liable as a present or past member ;

(v) in the case of a company limited by guarantee, no contribution shall be required from any member exceeding the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up ;

(vi) nothing in this Act shall invalidate any provision contained in any policy of insurance or other contract whereby the liability of individual members on the policy or contract is restricted, or whereby the funds of the company are alone made liable in respect of the policy or contract ;

(vii) a sum due to any member of a company in his character of a member, by way of dividends, profits or otherwise, shall not be deemed to be a debt of the company payable to that member

in a case of competition between himself and any other creditor not a member of the company ; but any such sum may be taken into account for the purpose of the final adjustments of the rights of the contributories among themselves.

(*2*) In the winding up of a company limited by guarantee which has a share capital, every member of the company shall be liable, in addition to the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up, to contribute to the extent of any sums unpaid on any shares held by him.

Liability of directors whose liability is unlimited.

**157.** In the winding up of a limited company any director, whether past or present, whose liability is, in pursuance of this Act, unlimited, shall, in addition to his liability (if any) to contribute as an ordinary member, be liable to make a further contribution as if he were at the commencement of the winding up a member of an unlimited company :

Provided that—

(i) a past director shall not be liable to make such further contribution if he has ceased to hold office for a year or upwards before the commencement of the winding up ;

(ii) a past director shall not be liable to make such further contribution in respect of any debt or liability of the company contracted after he ceased to hold office ;

(iii) subject to the articles a director shall not be liable to make such further contribution unless the Court deems it necessary to require that contribution in order to satisfy the debts and liabilities of the company, and the costs, charges and expenses of the winding up.

Meaning of "contributory."

**8.** The term "contributory" means every person liable to contribute to the assets of a company in the event of its being wound up, and, in all proceedings for determining and in all proceedings prior to the final determination of the persons who are to be deemed contributories, includes any person alleged to be a contributory.

Nature of liability of contributory.

**159.** (*1*) The liability of a contributory shall create a debt payable at the time specified in the calls made on him by the liquidator.

(*2*) No claim founded on the liability of a contributory shall be cognizable by any Court of Small Causes.

Contributories in case of death of member.

**160.** (*1*) If a contributory dies either before or after he has been placed on the list of contributories, his legal representatives and his heirs shall be liable in a due course of administration to contribute to the assets of the company in discharge of his liability and shall be contributories accordingly.

(*2*) If the legal representatives or heirs make default in paying any money ordered to be paid by them, proceedings may be taken for administering the property of the deceased contributory, whether moveable or immoveable, or both and of compelling payment thereout of the money due.

(*3*) For the purposes of this section the surviving co-partners of a contributory who is a member of a Hindu joint family governed by the Mitakshara School of Hindu Law shall be deemed to be his legal representatives and heirs.

Contributories in case of insolvency of member.

**161.** If a contributory is adjudged insolvent either before or after he has been placed on the list of contributories, then—

(1) his assignees shall represent him for all the purposes of the winding up, and shall be contributories accordingly, and may be called on to admit to proof against the estate of the insolvent, or otherwise to allow to be paid out of his assets in due course of law, any money due from the insolvent in respect of his liability to contribute to the assets of the company ; and

(2) there may be proved against the estate of the insolvent the estimated value of his liability to future calls as well as calls already made.

*Winding up by Court.*

Circumstances in which company may be wound up by Court.

**162.** A company may be wound up by the Court—

(i) if the company has by special resolution resolved that the company be wound up by the Court ;

(ii) if default is made in filing the statutory report or in holding the statutory meeting ;

(iii) if the company does not commence its business within a year from its incorporation, or suspends its business for a whole year ;

(iv) if the number of members is reduced, in the case of a private company, below two ; or, in the case of any other company, below seven ;

(v) if the company is unable to pay its debts ;

[1](va) if its licence is withdrawn in accordance with the provisions of section 55 of the Union Bank of Burma Act, 1952 ;

(vi) if the Court is of opinion that it is just and equitable that the company should be wound up.

Company when deemed unable to pay its debts.

**163.** (*1*) A company shall be deemed to be unable to pay its debts—

(i) if a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding five hundred rupees then due, has served on the company, by causing the same to be delivered by registered post or otherwise at its registered office, a demand under his hand requiring the company to pay the sum so due and the company has for three weeks thereafter neglected to pay the sum, or to secure or compound for it to the reasonable satisfaction of the creditor ; or

[1] Inserted by Act IX, 1952.

(ii) if execution or other process issued on a decree or order of any Court in favour of a creditor of the company is returned unsatisfied in whole or in part; or

(iii) if it is proved to the satisfaction of the Court that the company is unable to pay its debts and, in determining whether a company is unable to pay its debts, the Court shall take into account the contingent and prospective liabilities of the company.

(*2*) The demand referred to in clause (i) of sub-section (*1*) shall be deemed to have been duly given under the hand of the creditor if it is signed by an agent or legal adviser duly authorized on his behalf, or in the case of a firm if it is signed by such agent or by a legal adviser or any one member of the firm on behalf of the firm.

**Winding up may be referred to District Court.**

**164.** Where the High Court makes an order for winding up a company under this Act, it may, if it thinks fit, direct all subsequent proceedings to be had in a District Court; and thereupon such District Court shall, for the purpose of winding up the company, be deemed to be "the Court" within the meaning of this Act, and shall have, for the purposes of such winding up, all the jurisdiction and powers of the High Court.

**Transfer of winding up from one District Court to another.**

**165.** If during the progress of a winding up in a District Court it is made to appear to the High Court that the same could be more conveniently prosecuted in any other District Court having jurisdiction to wind up companies, the High Court may transfer the same to such other Court, and thereupon the winding up shall proceed in such other District Court.

**Provisions as to applications for winding up.**

**166.** An application to the Court for the winding up of a company shall be by petition presented, subject to the provisions of this section, either by the company, or by any creditor or creditors (including any contingent or prospective creditor or creditors), contributory or contributories, or by all or any of those parties, together or separately, or by the Registrar:

Provided that—

(*a*) a contributory shall not be entitled to present a petition for winding up a company unless—

(i) either the number of members is reduced, in the case of a private company, below two, or, in the case of any other company, below seven, or

(ii) the shares in respect of which he is a contributory or some of them either were originally allotted to him or have been held by him, and registered in his name, for at least six months during the eighteen months before the commencement of the winding up, or have devolved on him through the death of a former holder;

(*aa*) the Registrar shall not be entitled to present a petition for winding up a company—

(i) except on the ground that from the financial condition of the company as disclosed in its balance-sheet or from the report of an inspector appointed under section 138 it appears that the company is unable to pay its debts, and

(ii) unless the previous sanction of the President of the Union has been obtained to the presentation of the petition :

Provided that no such sanction shall be given unless the company has first been afforded an opportunity of being heard ;

(*b*) a petition for winding up a company on the ground of default in filing the statutory report or in holding the statutory meeting shall not be presented by any person except a shareholder, nor before the expiration of fourteen days after the last day on which the meeting ought to have been held ;

(*c*) the Court shall not give a hearing to a petition for winding up a company by a contingent or prospective creditor until such security for costs has been given as the Court thinks reasonable and until a *prima facie* case for winding up has been established to the satisfaction of the Court.

Effect of winding up order.

**167.** An order for winding up a company shall operate in favour of all the creditors and of all the contributories of the company as if made on the joint petition of a creditor and of a contributory.

Commencement of winding up by Court.

**168.** A winding up of a company by the Court shall be deemed to commence at the time of the presentation of the petition for the winding up.

Court may grant injunction.

**169.** The Court may, at any time after the presentation of the petition for winding up a company under this Act, and before making an order for winding up the company, upon the application of the company or of any creditor or contributory of the company, restrain further proceedings in any suit or proceeding against the company, upon such terms as the Court thinks fit.

Powers of Court on hearing petition.

**170.** (*1*) On hearing the petition the Court may dismiss it with or without costs, or adjourn the hearing conditionally or unconditionally, or make any interim order or any other order that it deems just, but the Court shall not refuse to make a winding up order on the ground only that the assets of the company have been mortgaged to an amount equal to or in excess of those assets, or that the company has no assets.

(*2*) Where the petition is presented on the ground of default in filing the statutory report or in holding the statutory meeting, the Court may order the costs to be paid by any persons who, in the opinion of the Court, are responsible for the default.

(*3*) Where the Court makes an order for the winding up of a company it shall, except where a liquidator is appointed simultaneously, forthwith cause intimation thereof to be sent to the official receiver.

Suits stayed on winding up order.

**171**. When a winding up order has been made or a provisional liquidator has been appointed no suit or other legal proceeding shall be proceeded with or commenced against the company except by leave of the Court, and subject to such terms as the Court may impose.

Vacancy in the office of liquidator.

**171A**. (*1*) For the purposes of this Act, so far as it relates to the winding up of companies by the Court, the term " official receiver " means the official receiver attached to the Court, or, if there is no such official receiver, then such person as the President of the Union may, by notification in the Gazette, appoint for the purpose.

(*2*) On the making of a winding up order, the official receiver shall become the official liquidator of the company and shall continue to act as such until his further continuance is terminated by an order of the Court.

(*3*) The official receiver shall as such official liquidator forthwith take into his custody and control all the books, documents and the assets of the company.

(*4*) The official receiver shall be entitled to such remuneration as the Court shall fix.

Copy of winding up order to be filed with Registrar.

**172**. (*1*) On the making of a winding up order it shall be the duty of the petitioner in the winding up proceedings and of the company to file with the Registrar a copy of the order within a month from the date of the making of the order.

(*2*) On the filing of a copy of a winding up order, the Registrar shall make a minute thereof in his books relating to the company, and shall notify in the Gazette that such an order has been made.

(*3*) Such order shall be deemed to be notice of discharge to the servants of the company, except when the business of the company is continued.

Power of Court to stay winding up.

**173**. The Court may at any time after an order for winding up, on the application of any creditor or contributory, and on proof to the satisfaction of the Court that all proceedings in relation to the winding up ought to be stayed, make an order staying the proceedings, either altogether or for a limited time, on such terms and conditions as the Court thinks fit.

Court may have regard to wishes of creditors or contributories.

**174**. The Court may, as to all matters relating to a winding up, have regard to the wishes of the creditors or contributories as proved to it by any sufficient evidence.

*Official Liquidators.*

Appointment of official liquidator.

**175**. (*1*) For the purpose of conducting the proceedings in winding up a company and performing such duties in reference thereto as the Court may impose, the Court may appoint a person or persons other than the official receiver to be called an official liquidator or official liquidators.

(*2*) The Court may make such an appointment provisionally at any time after the presentation of a petition and before the making of an order for winding up, but shall before making any such appointment give notice to the company, unless for reasons to be recorded it thinks fit to dispense with notice.

(*3*) If more persons than one are appointed to the office of official liquidator, the Court shall declare whether any act by this Act required or authorized to be done by the official liquidator is to be done by all or any one or more of such persons.

(*4*) The Court may determine whether any, and what, security is to be given by any official liquidator on his appointment.

(*5*) The acts of an official liquidator shall be valid notwithstanding any defect that may afterwards be discovered in his appointment : Provided that nothing in this sub-section shall be deemed to give validity to acts done by an official liquidator after his appointment has been shown to be invalid.

(*6*) A receiver shall not be appointed of assets in the hands of an official liquidator.

Resignations, removals, filling up vacancies and compensation.

**176.** (*1*) Any official liquidator may resign or be removed by the Court on due cause shown.

(*2*) Any vacancy in the office of an official liquidator appointed by the Court shall be filled up by the Court and until the vacancy is so filled up the official receiver shall be and act as the official liquidator.

(*3*) There shall be paid to the official liquidator such salary or remuneration, by way of percentage or otherwise, as the Court may direct ; and, if more liquidators than one are appointed, such remuneration shall be distributed amongst them in such proportions as the Court directs.

Official liquidator.

**177.** The official liquidator shall be described by the style of the official liquidator of the particular company in respect of which he is appointed, and not by his individual name.

Statement of affairs to be made to the liquidator.

**177A.** (*1*) Where the Court has made a winding up order or appointed an official liquidator provisionally, there shall, unless the Court thinks fit to order otherwise and so orders, be made out and submitted to the official liquidator a statement as to the affairs of the company verified by an affidavit and containing the following particulars, namely :—

(*a*) the assets of the company, stating separately the cash balance in hand and at the bank, if any ;

(*b*) the debts and liabilities ;

(*c*) the names, residences and occupations of the creditors, stating separately the amount of secured debts and unsecured debts, and in the case of secured debts particulars of the securities, their value and the dates when they were given ;

(*d*) the debts due to the company and the names, residences and occupations of the persons from whom they are due and the amount likely to be realised therefrom.

(*2*) The statement shall be submitted and verified by one or more of the persons who are at the relevant date the directors and by the person who is at that date the secretary, manager or other chief officer of the company, or by such of the persons hereinafter in the sub-section mentioned as the official liquidator, subject to the direction of the Court, may require to submit and verify the statement, that is to say, persons--

(*a*) who are or have been directors or officers of the company ;

(*b*) who have taken part in the formation of the company at any time within one year before the relevant date ;

(*c*) who are in the employment of the company or have been in the employment of the company within the said year, and are in the opinion of the official liquidator capable of giving the information required ;

(*d*) who are or have been within the said year officers of or in the employment of a company which is, or within the said year was, an officer of the company to which the statement relates.

(*3*) The statement shall be submitted within twenty-one days from the relevant date, or within such extended time as the official liquidator or the Court may for special reasons appoint.

(*4*) Any person making or concurring in making the statement and affidavit required by this section shall be allowed, and shall be paid by the official liquidator or provisional liquidator, as the case may be, out of the assets of the company, such costs and expenses incurred in and about the preparation and making of the statement and affidavit as the official liquidator may consider reasonable, subject to an appeal to the Court.

(*5*) If any person, without reasonable excuse, knowingly and wilfully makes default in complying with the requirements of this section, he shall be liable to a fine not exceeding one hundred rupees for every day during which the default continues.

(*6*) Any person stating himself in writing to be a creditor or contributory of the company shall be entitled by himself or by his agent at all reasonable times, on payment of the prescribed fee, to inspect the statement submitted in pursuance of this section, and to a copy thereof or extract therefrom.

(*7*) Any person untruthfully so stating himself to be a creditor or contributory shall be guilty of an offence under section 182 of the Penal Code and shall, on the application of the liquidator or of the official receiver, be punishable accordingly.

(*8*) In this section the expression " the relevant date " means, in a case where a provisional liquidator is appointed, the date of his appointment, and, in a case where no such appointment is made, the date of the winding up order.

**177B.** (*1*) In a case where a winding up order is made, the official liquidator shall, as soon as practicable after receipt of the statement to be submitted under section 177A, and not later than four, or with the leave of the Court, six months from the date of the order, or in a case where the Court orders **Statemnet by liquidator.**

that no statement shall be submitted, as soon as practicable after the date of the order, submit a preliminary report to the Court—

(*a*) as to the amount of capital issued, subscribed, and paid up, any the estimated amount of assets and liabilities, giving separately under the heading of assets particulars of—

(i) cash and negotiable securities ;
(ii) debts due from contributories ;
(iii) debts due to and securities, if any, available to the company ;
(iv) moveable and immoveable properties belonging to the company ;
(v) unpaid calls ; and

(*b*) if the company has failed, as to the causes of the failure ; and

(*c*) whether in his opinion further inquiry is desirable as to any matter relating to the promotion, formation, or failure of the company, or the conduct of the business thereof.

(*2*) The official liquidator may also, if he thinks fit, make a further report, or further reports, stating the manner in which the company was formed and whether in his opinion any fraud has been committed by any person in its promotion or formation, or by any director or other officer of the company in relation to the company since the formation thereof, and any other matter which in his opinion it is desirable to bring to the notice of the Court.

Custody of company's property.

**178.** (*1*) The official liquidator, whether appointed provisionally or not, shall take into his custody, or under his control, all the property, effects and actionable claims to which the company is or appears to be entitled.

(*2*) All the property and effects of the company shall be deemed to be in the custody of the Court as from the date of the order for the winding up of the company.

Committee of inspection in compulsory winding up.

**178A.** (*1*) The official liquidator shall within a month from the date of the order for the winding up of a company convene a meeting of the creditors of the company (as ascertained from the books and documents of the company) for the purpose of determining whether or not a committee of inspection shall be appointed to act with the liquidator, and who are to be members of the committee, if appointed.

(*2*) The official liquidator shall within a week from the date of the creditors' meeting convene a meeting of the contributories to consider the decision of the creditors and to accept the same with or without modifications.

(*3*) If the contributories do not accept the decision of the creditors in its entirety, it shall be the duty of the official liquidator to apply to the Court for directions as to whether there shall be a committee of inspection and, if so, what shall be the composition of the committee, and who shall be members thereof.

(*4*) A committee of inspection appointed under this section shall consist of not more than twelve members being creditors and contributories of the company, or persons holding general or special powers-of-attorney from creditors or contributories, in such proportions as may be agreed on by the

meetings of creditors and contributories, or as, in case of difference, may be determined by the Court.

(*5*) The committee of inspection shall have the right to inspect the accounts of the official liquidator at all reasonable times.

(*6*) The committee shall meet at such times as they may from time to time appoint, and, failing such appointment, at least once a month, and the liquidator or any member of the committee may also call a meeting of the committee as and when he thinks necessary.

(*7*) The committee may act by a majority of their members present at a meeting, but shall not act unless a majority of the committee is present.

(*8*) A member of the committee may resign by notice in writing signed by him and delivered to the liquidator.

(*9*) If a member of the committee becomes bankrupt, or compounds or arranges with his creditors, or is absent from five consecutive meetings of the committee without the leave of those members who together with himself represent the creditors or contributories, as the case may be, his office shall thereupon become vacant.

(*10*) A member of the committee may be removed by an ordinary resolution at a meeting of creditors if he represents creditors, or of contributories if he represents contributories, of which seven days' notice has been given, stating the object of the meeting.

(*11*) On a vacancy occurring in the committee the liquidator shall forthwith summon a meeting of creditors or of contributories, as the case may require, to fill the vacancy, and the meeting may, by resolution, re-appoint the same or appoint another creditor or contributory to fill the vacancy.

(*12*) The continuing members of the committee, if not less than two, may act notwithstanding any vacancy in the committee.

Powers of official liquidator.

**179.** The official liquidator shall have power, with the sanction of the Court, to do the following things :—

(*a*) to institute or defend any suit or prosecution, or other legal proceeding, civil or criminal, in the name and on behalf of the company ;

(*b*) to carry on the business of the company so far as may be necessary for the beneficial winding up of the same ;

(*c*) to sell the immoveable and moveable property of the company by public auction or private contract, with power to transfer the whole thereof to any person or company, or to sell the same in parcels ;

(*d*) to do all acts and to execute, in the name and on behalf of the company, all deeds, receipts, and other documents, and for that purpose to use, when necessary, the company's seal ;

(*e*) to prove, frank and claim in the insolvency of any contributory for any balance against his estate, and to receive dividends in the insolvency, in respect of that balance, as a separate debt due from the insolvent, and rateably with the other separate creditors ;

(*f*) to draw, accept, make and indorse any bill of exchange, hundi or promissory note in the name and on behalf of the company, with the same effect with respect to the liability of the company as if the bill, hundi, or note had been drawn, accepted, made or indorsed by or on behalf of the company in the course of its business ;

(*g*) to raise, on the security of the assets of the company, any money requisite ;

(*h*) to take out, in his official name, letters of administration to any deceased contributory, and to do in his official name any other act necessary for obtaining payment of any money due from a contributory or his estate which cannot be conveniently done in the name of the company ; and in all such cases the money due shall, for the purpose of enabling the liquidator to take out the letters of administration or recover the money, be deemed to be due to the liquidator himself: Provided that nothing herein empowered shall be deemed to affect the rights, duties and privileges of the Administrator-General ;

(*i*) to do all such other things as may be necessary for winding up the affairs of the company and distributing its assets.

Discretion of official liquidator.

**180.** The Court may provide by any order that the official liquidator may exercise any of the above powers without the sanction or intervention of the Court, and, where an official liquidator is provisionally appointed, may limit and restrict his powers by the order appointing him.

Provision for legal assistance to official liquidator.

**181.** The official liquidator may, with the sanction of the Court, appoint a legal practitioner entitled to appear before the Court to assist him in the performance of his duties: Provided that, where the official liquidator is a legal practitioner, he shall not appoint his partner unless the latter consents to act without remuneration.

Liquidator to keep books containing proceedings of meetings and to submit account of his receipts to Court.

**182.** (*1*) The official liquidator of a company which is being wound up by the Court shall keep, in manner prescribed, proper books in which he shall cause to be made entries or minutes of proceedings at meetings, and of such other matters as may be prescribed, and any creditor or contributory may, subject to the control of the Court, personally or by his agent inspect any such books.

(*2*) Every official liquidator shall, at such times as may be prescribed but not less than twice in each year during his tenure of office, present to the Court an account of his receipts and payments as such liquidator.

(*3*) The account shall be in the prescribed form, shall be made in duplicate, and shall be verified by a declaration in the prescribed form.

(*4*) The Court shall cause the account to be audited in such manner as it thinks fit, and for the purpose of the audit the liquidator shall furnish the Court with such vouchers and information as the Court may require, and the Court may at any time require the production of and inspect any books or accounts kept by the liquidator.

(5) When the account has been audited, one copy thereof shall be filed and kept by the Court, and the other copy shall be delivered to the Registrar for filing, and each copy shall be open to the inspection of any creditor, or of any person interested.

Exercise and control of liquidator's powers.

**183.** (*1*) Subject to the provisions of this Act, the official liquidator of a company which is being wound up by the Court shall, in the administration of the assets of the company and in the distribution thereof among its creditors, have regard to any directions that may be given by resolution of the creditors or contributories at any general meeting or by the committee of inspection, and any directions given by the creditors or contributories at any general meeting shall in case of conflict be deemed to override any directions given by the committee of inspection.

(*2*) The official liquidator may summon general meetings of the creditors or contributories for the purpose of ascertaining their wishes, and it shall be his duty to summon meetings at such times as the creditors or contributories, by resolution, may direct, or whenever requested in writing to do so by one-tenth in value of the creditors or contributories, as the case may be.

(*3*) The official liquidator may apply to the Court in manner prescribed for directions in relation to any particular matter arising in the winding up.

(*4*) Subject to the provisions of this Act, the official liquidator shall use his own discretion in the administration of the assets of the company and in the distribution thereof among the creditors.

(5) If any person is aggrieved by any act or decision of the official liquidator, that person may apply to the Court, and the Court may confirm, reverse or modify the act or decision complained of, and make such order as it thinks just in the circumstances.

*Ordinary Powers of Court.*

Settlement of list of contributories and application of assets.

**184.** (*1*) As soon as may be after making a winding up order, the Court shall settle a list of contributories, with power to rectify the register of members in all cases where rectification is required in pursuance of this Act, and shall cause the assets of the company to be collected and applied in discharge of its liabilities.

(*2*) In settling the list of contributories, the Court shall distinguish between persons who are contributories in their own right and persons who are contributories as being representatives of or liable for the debts of others.

Power to require delivery of property.

**185.** The Court may, at any time after making a winding up order, require any contributory for the time being settled on the list of contributories and any trustee, receiver, banker, agent, or officer of the company to pay, deliver, surrender or transfer forthwith, or within such time as the Court directs, to the official liquidator any money, property or documents in his hands to which the company is *prima facie* entitled.

Power to order payment of debts by contributory.

**186.** (*1*) The Court may, at any time after making a winding up order, make an order on any contributory for the time being settled on the list of contributories to pay, in manner directed by the order, any money due from him or from the estate of the person whom he represents to the company exclusive of any money payable by him or the estate by virtue of any call in pursuance of this Act.

(*2*) The Court in making such an order may, in the case of an unlimited company, allow to the contributory by way of set-off any money due to him or to the estate which he represents from the company on any independent dealing or contract with the company, but not any money due to him as a member of the company in respect of any dividend or profit; and may, in the case of a limited company, make to any director whose liability is unlimited or to his estate the like allowance:

Provided that, in the case of any company whether limited or unlimited, when all the creditors are paid in full, any money due on any account whatever to a contributory from the company may be allowed to him by way of set-off against any subsequent call.

Power of Court to make calls.

**187.** (*1*) The Court may, at any time after making a winding up order, and either before or after it has ascertained the sufficiency of the assets of the company, make calls on and order payment thereof by all or any of the contributories for the time being settled on the list of the contributories to the extent of their liability, for payment of any money which the Court considers necessary to satisfy the debts and liabilities of the company, and the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves.

(*2*) In making the call the Court may take into consideration the probability that some of the contributories may partly or wholly fail to pay the call.

Power to order payment into bank.

**188.** The Court may order any contributory, purchaser or other person from whom money is due to the company to pay the same into the account of the official liquidator in any scheduled bank instead of to the official liquidator, and any such order may be enforced in the same manner as if it had directed payment to the official liquidator.

Regulation of account with Court.

**189.** All moneys, bills, hundis, notes and other securities paid and delivered into the bank where the liquidator of the company may have his account, in the event of a company being wound up by the Court, shall be subject in all respects to the orders of the Court.

Order on contributory conclusive evidence.

**190.** (*1*) An order made by the Court on a contributory shall (subject to any right of appeal) be conclusive evidence that the money, if any, thereby appearing to be due or ordered to be paid is due.

(*2*) All other pertinent matters stated in the order shall be taken to be truly stated as against all persons and in all proceedings whatsoever.

**191.** The Court may fix a time or times within which creditors are to prove their debts or claims, or to be excluded from the benefit of any distribution made before those debts are proved. Power to exclude creditors not proving in time.

**192.** The Court shall adjust the rights of the contributories among themselves, and distribute any surplus among the persons entitled thereto. Adjustment of rights of contributories.

**193.** The Court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the assets of the costs, charges and expenses incurred in the winding up in such order of priority as the Court thinks just. Power to order costs.

**194.** (*1*) When the affairs of a company have been completely wound up, the Court shall make an order that the company be dissolved from the date of the order, and the company shall be dissolved accordingly. Dissolution of company.

(*2*) The order shall be reported within fifteen days of the making thereof by the official liquidator to the Registrar, who shall make in his books a minute of the dissolution of the company.

(*3*) If the official liquidator makes default in complying with the requirements of this section, he shall be liable to a fine not exceeding fifty rupees for every day during which he is in default.

*Extraordinary Powers of Court.*

**195.** (*1*) The Court may, after it has made a winding up order, summon before it any officer of the company or person known or suspected to have in his possession any property of the company, or supposed to be indebted to the company, or any person whom the Court deems capable of giving information concerning the trade, dealings, affairs or property of the company. Power to summon persons suspted of having property of company.

(*2*) The Court may examine him on oath concerning the same, either by word of mouth or on written interrogatories, and may reduce his answers to writing and require him to sign them.

(*3*) The Court may require him to produce any documents in his custody or power relating to the company; but, where he claims any lien on documents produced by him, the production shall be without prejudice to that lien, and the Court shall have jurisdiction in the winding up to determine all questions relating to that lien,

(*4*) If any person so summoned, after being tendered a reasonable sum for his expenses, refuses to come before the Court at the time appointed, not having a lawful impediment (made known to the Court at the time of its sitting, and allowed by it), the Court may cause him to be apprehended and brought before the Court for examination.

**196.** (*1*) When an order has been made for winding up a company by the Court, and the official liquidator has applied to the Court stating that in his opinion a fraud has been committed by any person in the promotion or Power to order public examination of premoters, directors, etc.

formation of the company or by any director or other officer of the company, in relation to the company since its formation, the Court may, after consideration of the application, direct that any person who has taken any part in the promotion or formation of the company, or has been a director, manager or other officer of the company, shall attend before the Court on a day appointed by the Court for that purpose, and be publicly examined as to the promotion or formation or the conduct of the business of the company, or as to his conduct and dealings as director, manager or other officer thereof.

(*2*) The official liquidator shall take part in the examination, and for that purpose may, if specially authorized by the Court in that behalf, employ such legal assistance as may be sanctioned by the Court.

(*3*) Any creditor or contributory may also take part in the examination either personally or by any person entitled to appear before the Court.

(*4*) The Court may put such questions to the person examined as the Court thinks fit.

(5) The person examined shall be examined on oath, and shall answer all such questions as the Court may put or allow to be put to him.

(*6*) A person ordered to be examined under this section may at his own cost employ any person entitled to appear before the Court, who shall be at liberty to put to him such questions as the Court may deem just for the purpose of enabling him to explain or qualify any answers given by him : Provided that if he is, in the opinion of the Court, exculpated from any charges made or suggested against him, the Court may allow him such costs as in its discretion it may think fit.

(*7*) Notes of the examination shall be taken down in writing, and shall be read over to or by, and signed by, the person examined, and may thereafter be used in evidence against him in civil proceedings, and shall be open to the inspection of any creditor or contributory at all reasonable times.

(*8*) The Court may, if it thinks fit, adjourn the examination from time to time.

(*9*) An examination under this section may, if the Court so directs, and subject to any rules in this behalf, be held before any District Judge or before any officer of the High Court, being an official referee, master, registrar or deputy registrar, and the powers of the Court under this section as to the conduct of the examination, but not as to costs, may be exercised by the person before whom the examination is held.

Power to arrest absconding contributory.

**197**. The Court, at any time either before or after making a winding up order, on proof of probable cause for believing that a contributory is about to quit the Union of Burma or otherwise to abscond, or to remove or conceal any of his property for the purpose of evading payment of calls or of avoiding examination respecting the affairs of the company, may cause the contributory to be arrested and his books and papers and moveable property to be seized, and him and them to be safely kept until such time as the Court may order.

**198.** Any powers by this Act conferred on the Court shall be in addition to, and not in restriction of, any existing powers of instituting proceedings against any contributory or debtor of the company, or the estate of any contributory or debtor, for the recovery of any call or other sums. Saving of other proceedings.

*Enforcement of and Appeal from Orders.*

**199.** All orders made by a Court under this Act may be enforced in the same manner in which decrees of such Court made in any suit pending therein may be enforced. Power to enforce orders.

**200.** Any order made by a Court for or in the course of the winding up of a company shall be enforced in any place in the Union of Burma, other than that in which such Court is situate, by the Court that would have had jurisdiction in respect of such company if the registered office of the company had been situate at such other place, and in the same manner in all respects as if such order had been made by the Court that is hereby required to enforce the same. Order made in any Court to be enforced by other Courts.

**201.** Where any order made by one Court is to be enforced by another Court, a certified copy of the order so made shall be produced to the proper officer of the Court required to enforce the same, and the production of such certified copy shall be sufficient evidence of such order having been made ; and thereupon the last-mentioned Court shall take the requisite steps in the matter for enforcing the order, in the same manner as if it were the order of the Court enforcing the same. Mode of dealing with orders to be enforced by other Courts.

**202.** Re-hearings of and appeals from any order or decision made or given in the matter of the winding up of a company by the Court may be had in the same manner and subject to the same conditions in and subject to which appeals may be had from any order or decision of the same Court in cases within its ordinary jurisdiction. Appeals from orders.

*Voluntary Winding up.*

**203.** A company may be wound up voluntarily— Circumstances in which company may be wound up voluntarily.

(1) when the period (if any) fixed for the duration of the company by the articles expires, or the event (if any) occurs on the occurrence of which the articles provide that the company is to be dissolved, and the company in general meeting has passed a resolution requiring the company to be wound up voluntarily ;

(2) if the company resolves by special resolution that the company be wound up voluntarily ;

(3) if the company resolves by extraordinary resolution to the effect that it cannot by reason of its liabilities continue its business, and that it is advisable to wind up ;

and the expression "resolution for voluntarily winding up" when used hereafter in this Part means a resolution passed under clause (1), clause (2) or clause (3) of this section.

Commencement of voluntary winding up.

**204.** A voluntary winding up shall be deemed to commence at the time of the passing of the resolution for voluntarily winding up.

Effect of voluntary winding up on status of company.

**205.** When a company is wound up voluntarily, the company shall, from the commencement of the winding up, cease to carry on its business, except so far as may be required for the beneficial winding up thereof:

Provided that the corporate state and corporate powers of the company shall, notwithstanding anything to the contrary in its articles, continue until it is dissolved.

Notice of resolution to wind up voluntarily.

**206.** (*1*) Notice of any special resolution or extraordinary resolution for winding up a company voluntarily shall be given by the company within ten days of the passing of the same by advertisement in the Gazette and also in some newspaper (if any) circulating in the district where the registered office of the company is situate.

(*2*) If a company makes default in complying with the requirements of this section, it shall be liable to a fine not exceeding fifty rupees for every day during which the default continues ; and every officer of the company who knowingly and wilfully authorizes or permits the default shall be liable to a like penalty.

Declaration of solvency.

**207.** (*1*) Where it is proposed to wind up a company voluntarily, the directors of the company or, in the case of a company having more than two directors, the majority of the directors may, at a meeting of the directors held before the date on which the notices of the meeting at which the resolution for the winding up of the company is to be proposed are sent out, make a declaration verified by an affidavit to the effect that they have made a full inquiry into the affairs of the company, and that, having so done, they have formed the opinion that the company will be able to pay its debts in full within a period, not exceeding three years, from the commencement of the winding up.

(*2*) Such declaration shall be supported by a report of the company's auditors on the company's affairs, and shall have no effect for the purposes of this Act unless it is delivered to the Registrar for registration before the date mentioned in sub-section (*1*) of this section.

(*3*) A winding up in the case of which a declaration has been made and delivered in accordance with this section is in this Act referred to as a "members' voluntary winding up", and a winding up in the case of which a declaration has not been made and delivered as aforesaid is in this Act referred to as a "creditors' voluntary winding up".

*Members' Voluntary Winding up.*

Provisions applicable to a members' voluntary winding up.

**208.** The provisions contained in sections 208A to 208E, both inclusive shall apply in relation to a members' voluntary winding up.

Power of company to appoint and fix remuneration of liquidators.

**208A.** (*1*) The company in general meeting shall appoint one or more liquidators for the purpose of winding up the affairs and distributing the assets of the company, and may fix the remuneration to be paid to him or them.

(*2*) On the appointment of a liquidator all the powers of the directors shall cease, except so far as the company in general meeting, or the liquidator, sanctions the continuance thereof.

Power to fill vacancy in office of liquidator.

**208B.** (*1*) If a vacancy occurs by death, resignation or otherwise in the office of liquidator appointed by the company, the company in general meeting may, subject to any arrangement with its creditors, fill the vacancy.

(*2*) For that purpose a general meeting may be convened by any contributory or, if there were more liquidators than one, by the continuing liquidators.

(*3*) The meeting shall be held in manner provided by this Act or by the articles, or in such manner as may, on application by any contributory or by the continuing liquidators, be determined by the Court.

Power of liquidator to accept shares, etc., as consideration for sale of property of company.

**208C.** (*1*) Where a company is proposed to be, or is in course of being, wound up altogether voluntarily, and the whole or part of its business or property is proposed to be transferred or sold to another company, whether a company within the meaning of this Act or not (in this section called "the transferee company"), the liquidator of the first-mentioned company (in this section called "the transferor company") may, with the sanction of a special resolution of that company conferring either a general authority on the liquidator or an authority in respect of any particular arrangement, receive, in compensation or part compensation for the transfer or sale, shares, policies, or other like interests in the transferee company, for distribution among the members of the transferor company, or may enter into any other arrangement whereby the members of the transferor company may, in lieu of receiving cash, shares, policies, or other like interests or in addition thereto, participate in the profits of or receive any other benefit from the transferee company.

(*2*) Any sale or arrangement in pursuance of this section shall be binding on the members of the transferor company.

(*3*) If any member of the transferor company who did not vote in favour of the special resolution expresses his dissent therefrom in writing addressed to the liquidator and left at the registered office of the company within seven days after the passing of the special resolution, he may require the liquidator either to abstain from carrying the resolution into effect or to purchase his interest at a price to be determined by agreement or by arbitration in manner hereafter provided.

(*4*) If the liquidator elects to purchase the member's interest, the purchase money must be paid before the company is dissolved, and be raised by the liquidator in such manner as may be determined by special resolution.

(*5*) A special resolution shall not be invalid for the purposes of this section by reason that it is passed before or concurrently with a resolution for

voluntary winding up or for appointing liquidators, but if an order is made within a year for winding up the company by or subject to the supervision of the Court, the special resolution shall not be valid unless sanctioned by the Court.

(*6*) The provisions of the Arbitration Act, other than those restricting the application of the Act in respect of the subject-matter of the arbitration, shall apply to all arbitrations in pursuance of this section.

Duty of liquidator to call general meeting at end of each year.

**208D.** (*1*) In the event of the winding up continuing for more than one year, the liquidator shall summon a general meeting of the company at the end of the first year from the commencement of the winding up and of each succeeding year, or as soon thereafter as may be convenient within ninety days of the close of the year, and shall lay before the meeting an account of his acts and dealings and of the conduct of the winding up during the preceding year and a statement in the prescribed form containing the prescribed particulars with respect to the position of the liquidation.

(*2*) If the liquidator fails to comply with this section, he shall be liable to a fine not exceeding one hundred rupees.

Final meeting and dissolution.

**208E.** (*1*) As soon as the affairs of the company are fully wound up, the liquidator shall make up an account of the winding up, showing how the winding up has been conducted and the property of the company has been disposed of, and thereupon shall call a general meeting of the company for the purpose of laying before it the account and giving any explanation thereof.

(*2*) The meeting shall be called by advertisement specifying the time, place and object thereof, and published one month at least before the meeting in the manner specified in sub-section (*1*) of section 206 for publication of a notice under that sub-section.

(*3*) Within one week after the meeting, the liquidator shall send to the Registrar a copy of the account, and shall make a return to him of the holding of the meeting and of its date, and if the copy is not sent or the return is not made in accordance with this sub-section the liquidator shall be liable to a fine not exceeding fifty rupees for every day during which the default continues :

Provided that, if a quorum is not present at the meeting, the liquidator shall, in lieu of the said return, make a return that the meeting was duly summoned and that no quorum was present thereat, and upon such a return being made the provisions of this sub-section as to the making of the return shall be deemed to have been complied with.

(*4*) The Registrar on receiving the account and either of the returns mentioned in sub-section (*3*) shall forthwith register them, and on the expiration of three months from the registration of the return the company shall be deemed to be dissolved :

Provided that the Court may, on the application of the liquidator or of any other person who appears to the Court to be interested, make an orde

deferring the date at which the dissolution of the company is to take effect for such time as the Court thinks fit.

(*5*) It shall be the duty of the person on whose application an order of the Court under this section is made, within twenty-one days after the making of the order, to deliver to the Registrar a certified copy of the order for registration, and if that person fails so to do he shall be liable to a fine not exceeding fifty rupees for every day during which the default continues.

*Creditors' Voluntary Winding up.*

**209.** The provisions contained in sections 209A to 209H, both inclusive, shall apply in relation to a creditors' voluntary winding up. Provisions applicable to a creditors' voluntary winding up.

**209A.** (*1*) The company shall cause a meeting of the creditors of the company to be summoned for the day, or the day next following the day, on which there is to be held the meeting at which the resolution for voluntary winding up is to be proposed, and shall cause the notices of the said meeting of creditors to be sent by post to the creditors simultaneously with the sending of the notices of the said meeting of the company. Meeting of creditors.

(*2*) The company shall cause notice of the meeting of the creditors to be advertised in the manner specified in sub-section (*1*) of section 206 for the publication of a notice under that sub-section.

(*3*) The directors of the company shall—

(*a*) cause a full statement of the position of the company's affairs together with a list of the creditors of the company and the estimated amount of their claims to be laid before the meeting of creditors to be held as aforesaid; and

(*b*) appoint one of their number to preside at the said meeting.

(*4*) It shall be the duty of the director appointed to preside at the meeting of creditors to attend the meeting and preside thereat.

(*5*) If the meeting of the company at which the resolution for voluntary winding up is to be proposed is adjourned and the resolution is passed at an adjourned meeting, any resolution passed at the meeting of the creditors, held in pursuance of sub-section (*1*) of this section, shall have effect as if it had been passed immediately after the passing of the resolution for winding up the company.

(*6*) If default is made—

(*a*) by the company in complying with sub-sections (*1*) and (*2*);

(*b*) by the directors of the company in complying with sub-section (*3*);

(*c*) by any director of the company in complying with sub-section (*4*);

the company, directors or director, as the case may be, shall be liable to a fine not exceeding one thousand rupees, and, in the case of default by the company, every officer of the company who is in default shall be liable to the like penalty.

Appointment of liquidator.

**209B.** The creditors and the company at their respective meetings mentioned in section 209A may nominate a person to be liquidator for the purpose of winding up the affairs and distributing the assets of the company, and if the creditors and the company nominate different persons, the person nominated by the creditors shall be liquidator, and if no person is nominated by the creditors the person, if any, nominated by the company shall be liquidator :

Provided that, in the case of different persons being nominated, any director, member or creditor of the company may, within seven days after the date on which the nomination was made by the creditors, apply to the Court for an order either directing that the person nominated as liquidator by the company shall be liquidator instead of or jointly with the person nominated by the creditors, or appointing some other person to be liquidator instead of the person appointed by the creditors.

Appointment of committee of inspection.

**209C.** The creditors at the meeting to be held in pursuance of section 209A or at any subsequent meeting may, if they think fit, appoint a committee of inspection consisting of not more than five persons, and if such a committee is appointed the company may, either at the meeting at which the resolution for voluntary winding up is passed or at any time subsequently in general meeting, appoint such number of persons as they think fit to act as members of the committee not exceeding five in number :

Provided that the creditors may, if they think fit, resolve that all or any of the persons so appointed by the company ought not to be members of the committee of inspection, and, if the creditors so resolve, the persons mentioned in the resolution shall not, unless the Court otherwise directs, be qualified to act as members of the committee, and on any application to the Court under this provision the Court may, if it thinks fit, appoint other persons to act as such members in place of the persons mentioned in the resolution.

Fixing of liquidators' remuneration and cessor of directors' powers.

**209D.** (*1*) The committee of inspection, or if there is no such committee, the creditors, may fix the remuneration to be paid to the liquidator or liquidators, and where the remuneration is not so fixed, it shall be determined by the Court.

(*2*) On the appointment of a liquidator, all the powers of the directors shall cease, except so far as the committee of inspection, or if there is no such committee, the creditors, sanction the continuance thereof.

Power to fill vacancy in office of liquidator.

**209E.** If a vacancy occurs by death, resignation or otherwise in the office of a liquidator, other than a liquidator appointed by or by the direction of the Court, the creditors may fill the vacancy.

Application of section 208C to a creditors' voluntary winding up.

**209F.** The provisions of section 208C shall apply in the case of a creditors' voluntary winding up as in the case of a members' voluntary winding up, with the modification that the powers of the liquidator under the

said section shall not be exercised except with the sanction either of the Court or of the committee of inspection.

Duty of liquidator to call meetings of company and of creditors at end of each year.

**209G.** (*1*) In the event of the winding up continuing for more than one year, the liquidator shall summon a general meeting of the company and a meeting of creditors at the end of the first year from the commencement of the winding up, and of each succeeding year, or as soon thereafter as may be convenient, and shall lay before the meetings an account of his acts and dealings and of the conduct of the winding up during the preceding year and a statement in the prescribed form containing the prescribed particulars with respect to the position of the winding up.

(*2*) If the liquidator fails to comply with this section, he shall be liable to a fine not exceeding one hundred rupees.

Final meeting and dissolution.

**209H.** (*1*) As soon as the affairs of the company are fully wound up, the liquidator shall make up an account of the winding up, showing how the winding up has been conducted and the property of the company has been disposed of, and thereupon shall call a general meeting of the company and a meeting of the creditors for the purpose of laying the account before the meetings and giving any explanation thereof.

(*2*) Each such meeting shall be called by advertisement specifying the time, place and object thereof, and published one month at least before the meeting in the manner specified in sub-section (*1*) of section 206 for the publication of a notice under that sub-section.

(*3*) Within one week after the date of the meetings, or, if the meetings are not held on the same date, after the date of the later meeting, the liquidator shall send to the Registrar a copy of the account, and shall make a return to him of the holding of the meetings and of their dates, and if the copy is not sent or the return is not made in accordance with this sub-section the liquidator shall be liable to a fine not exceeding fifty rupees for every day during which the default continues :

Provided that, if a quorum (which for the purposes of this section shall be two persons) is not present at either such meeting, the liquidator shall, in lieu of such return, make a return that the meeting was duly summoned and that no quorum was present thereat, and upon such a return being made the provisions of this sub-section as to the making of the return shall, in respect of that meeting, be deemed to have been complied with.

(*4*) The Registrar on receiving the account and in respect of each such meeting either of the returns mentioned in sub-section (*3*) shall forthwith register them, and on the expiration of three months from the registration thereof the company shall be deemed to be dissolved :

Provided that, the Court may, on the application of the liquidator or of any other person who appears to the Court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the Court thinks fit.

(5) It shall be the duty of the person on whose application an order of the Court under this section is made, within ten days after the making of the order, to deliver to the Registrar a certified copy of the order for registration, and if that person fails to do so he shall be liable to a fine not exceeding fifty rupees for every day during which the default continues.

*Members' or Creditors' Voluntary Winding up.*

Provisions applicable to every voluntary winding up.

**210.** The provisions contained in sections 211 to 218, both inclusive, shall apply to every voluntary winding up, whether a members' or a creditors' winding up.

Distribution of property of company.

**211.** Subject to the provisions of this Act as to preferential payments, the property of a company shall, on its winding up, be applied in satisfaction of its liabilities *pari passu* and, subject to such application, shall, unless the articles otherwise provide, be distributed among the members according to their rights and interests in the company.

Powers and duties of liquidator in voluntary winding up.

**212.** (*1*) The liquidator may—

(*a*) in the case of a members' voluntary winding up, with the sanction of an extraordinary resolution of the company, and in the case of a creditors' voluntary winding up, with the sanction of either the Court or the committee of inspection, exercise any of the powers given by clauses (*d*), (*e*), (*f*) and (*h*) of section 179 to a liquidator in a winding up. The exercise by the liquidator of the powers given by this clause shall be subject to the control of the Court and any creditor or contributory may apply to the Court with respect to any exercise or proposed exercise of any of these powers;

(*b*) without the sanction referred to in clause (*a*), exercise any of the other powers by this Act given to the liquidator in a winding up by the Court;

(*c*) exercise the power of the Court under this Act of settling a list of contributories, and the list of contributories shall be *prima facie* evidence of the liability of the persons named therein to be contributories;

(*d*) exercise the power of the Court of making calls;

(*e*) summon general meetings of the company for the purpose of obtaining the sanction of the company by special or extraordinary resolution or for any other purpose he may think fit.

(*2*) The liquidator shall pay the debts of the company and shall adjust the rights of the contributories among themselves.

(*3*) When several liquidators are appointed, any power given by this Act may be exercised by such one or more of them as may be determined at the time of their appointment, or, in default of such determination, by any number not less than two.

Power of Court to appoint and remove liquidator in voluntary winding up.

**213.** (*1*) If from any cause whatever there is no liquidator acting, the Court may appoint a liquidator.

(*2*) The Court may, on cause shown, remove a liquidator and appoint another liquidator.

Notice by liquidator of his appointment.

**214.** (*1*) The liquidator shall, within twenty-one days after his appointment, deliver to the Registrar for registration a notice of his appointment in the form prescribed.

(*2*) If the liquidator fails to comply with the requirements of this section, he shall be liable to a fine not exceeding fifty rupees for every day during which the default continues.

Arrangement when binding on creditors.

**215.** (*1*) Any arrangement entered into between a company about to be, or in the course of being, wound up and its creditors shall, subject to the right of appeal under this section, be binding on the company if sanctioned by an extraordinary resolution, and on the creditors if acceded to by three-fourths in number and value of the creditors.

(*2*) Any creditor or contributory may, within three weeks from the completion of the arrangement, appeal to the Court against it, and the Court may thereupon, as it thinks just, amend, vary or confirm the arrangement.

Power to apply to Court to have questions determined or powers exercised.

**216.** (*1*) The liquidator or any contributory or creditor may apply to the Court to determine any question arising in the winding up of a company, or to exercise, as respects the enforcing of calls, staying of proceedings or any other matter, all or any of the powers which the Court might exercise if the company were being wound up by the Court.

(*2*) The liquidator or any creditor or contributory may apply for an order setting aside any attachment, distress or execution put into force against the estate or effects of the company after the commencement of the winding up.

Such application shall be made—

(*a*) if the attachment, distress or execution is levied or put into force by the High Court, to the High Court, and

(*b*) if the attachment, distress or execution is levied or put into force in any other Court, to the Court having jurisdiction to wind up the company.

(*3*) The Court, if satisfied that the determination of the question or the required exercise of power or the order applied for will be just and beneficial, may accede wholly or partially to the application on such terms and conditions as it thinks fit, or may make such other order on the application as it thinks just.

Cost of voluntary winding up.

**217.** All costs, charges and expenses properly incurred in the winding up, including the remuneration of the liquidator, shall, subject to the rights of pecured creditors, if any, be payable out of the assets of the company in sriority to all other claims.

Saving for rights of creditors and contributories.

**218.** The winding up of a company shall not bar the right of any creditor or contributory to have it wound up by the Court, but in the case of an application by a contributory the Court must be satisfied that the rights of the contributories will be prejudiced by a voluntary winding up.

**219.** * * * * *

Power of Court to adopt proceedings of voluntary winding up.

**220.** Where a company is being wound up voluntarily, and an order is made for winding up by the Court, the Court may, if it thinks fit, by the same or any subsequent order, provide for the adoption of all or any of the proceedings in the voluntary winding up.

*Winding up subject to Supervision of Court.*

Power to order winding up subject to supervision.

**221.** When a company has by special or extraordinary resolution resolved to wind up voluntarily, the Court may make an order that the voluntary winding up shall continue, but subject to such supervision of the Court, and with such liberty for creditors, contributories or others to apply to the Court, and generally on such terms and conditions as the Court thinks just.

Effect of petition for winding up subject to supervision.

**222.** A petition for the continuance of a voluntary winding up subject to the supervision of the Court shall, for the purpose of giving jurisdiction to the Court over suits, be deemed to be a petition for winding up by the Court.

Court may have regard to wishes of creditors and contributories.

**223.** The Court may, in deciding between a winding up by the Court and a winding up subject to supervision, in the appointment of liquidators, and in all other matters relating to the winding up subject to supervision, have regard to the wishes of the creditors or contributories as proved to it by any sufficient evidence.

Power for Court to appoint or remove liquidators.

**224.** (*1*) Where an order is made for a winding up subject to supervision, the Court may by the same or any subsequent order appoint any additional liquidator.

(*2*) A liquidator appointed by the Court under this section shall have the same powers, be subject to the same obligations, and in all respects stand in the same position as if he had been appointed by the company.

(*3*) The Court may remove any liquidator so appointed by the Court or any liquidator continued under the supervision order, and fill any vacancy occasioned by the removal or by death or resignation.

Effect of supervision order.

**225.** (*1*) Where an order is made for a winding up subject to supervision, the liquidator may, subject to any restrictions imposed by the Court, exercise all his powers without the sanction or intervention of the Court, in the same manner as if the company were being wound up altogether voluntarily.

(*2*) Except as provided in sub-section (*1*), and save for the purposes of section 196, any order made by the Court for a winding up subject to the supervision of the Court shall for all purposes, including the staying of suit

and other proceedings, be deemed to be an order of the Court for winding up the company by the Court, and shall confer full authority on the Court to make calls, or to enforce calls made by the liquidators, and to exercise all other powers which it might have exercised if an order had been made for winding up the company altogether by the Court.

(*3*) In the construction of the provisions whereby the Court is empowered to direct any act or thing to be done to or in favour of the official liquidator, the expression "official liquidator" shall be deemed to mean the liquidator conducting the winding up subject to the supervision of the Court.

Appointment in certain cases of voluntary liquidators to office of official liquidator.

**226.** Where an order has been made for the winding up of a company subject to supervision, and an order is afterwards made for winding up by the Court, the Court may, by the last-mentioned order or by any subsequent order, appoint the voluntary liquidators or any of them, either provisionally or permanently, and either with or without the addition of any other person, to be official liquidator in the winding up by the Court.

*Supplemental Provisions.*

Avoidance of transfers, etc., after commencement of windingup.

**227.** (*1*) In the case of voluntary winding up every transfer of shares, except transfers made to or with the sanction of the liquidator, and every alteration in the status of the members of the company, made after the commencement of the winding up, shall be void.

(*2*) In the case of a winding up by or subject to the supervision of the Court, every disposition of the property (including actionable claims) of the company, and every transfer of shares, or alteration in the status of its members, made after the commencement of the winding up, shall, unless the Court otherwise orders, be void.

Debts of all descriptions to be proved.

**228.** In every winding up (subject in the case of insolvent companies to the application in accordance with the provisions of this Act of the law of insolvency) all debts payable on a contingency, and all claims against the company, present or future, certain or contingent, shall be admissible to proof against the company, a just estimate being made, so far as possible, of the value of such debts or claims as may be subject to any contingency or for some other reason do not bear a certain value.

Application of insolvency rules in winding up of insolvent companies.

**229.** In the winding up of an insolvent company the same rules shall prevail and be observed with regard to the respective rights of secured and unsecured creditors and to debts provable and to the valuation of annuities and future and contingent liabilities as are in force for the time being under the law of insolvency with respect to the estates of persons adjudged insolvent; and all persons who in any such case would be entitled to prove for and receive dividends out of the assets of the company may come in under

the winding up, and make such claims against the company as they respectively are entitled to by virtue of this section.

Preferential payments.

**230.** (*1*) In a winding up there shall be paid in priority to all other debts—

(*a*) all revenue, taxes, cesses and rates, whether payable to the Government or to a local authority, due from the company at the date hereinafter mentioned and having become due and payable within the twelve months next before that date ;

(*b*) all wages or salary of any clerk or servant in respect of service rendered to the company within the two months next before the said date, not exceeding one thousand rupees for each clerk or servant ;

(*c*) all wages of any labourer or workman, not exceeding five hundred rupees for each, whether payable for time or piecework, in respect of services rendered to the company within the two months next before the said date ;

(*d*) compensation payable under the Workmen's Compensation Act in respect of the death or disablement of any officer or employee of the company ;

(*e*) all sums due to any employee from a provident fund, a pension fund, a gratuity fund or any other fund for the welfare of the employees maintained by the company ; and

(*f*) the expenses of any investigation held in pursuance of clause (iv) of section 138 of this Act.

(*2*) The foregoing debts shall—

(*a*) rank equally among themselves and be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportion ; and

(*b*) so far as the assets of the company available for payment of general creditors are insufficient to meet them, have priority over the claims of holders of debentures under any floating charge created by the company, and be paid accordingly out of any property comprised in or subject to that charge.

(*3*) Subject to the retention of such sums as may be necessary for the costs and expenses of the winding up, the foregoing debts shall be discharged forthwith so far as the assets are sufficient to meet them.

(*4*) In the event of a landlord or other person distraining or having distrained on any goods or effects of the company within three months next before the date of a winding up order, the debts to which priority is given by this section shall be a first charge on the goods or effects so distrained on, or the proceeds of the sale thereof :

Provided that in respect of any money paid under any such charge the landlord or other person shall have the same rights of priority as the person to whom the payment is made.

(*5*) The date hereinbefore in this section referred to is—

(*a*) in the case of a company ordered to be wound up compulsorily which had not previously commenced to be wound up voluntarily, the date of the winding up order; and

(*b*) in any other case, the date of the commencement of the winding up.

Disclaimer of property.

**230A.** (*1*) Where any part of the property of a company which is being wound up consists of land of any tenure burdened with onerous covenants, of shares or stock in companies, of unprofitable contracts, or of any other property that is unsaleable, or not readily saleable, by reason of its binding the possessor thereof to the performance of any onerous act, or to the payment of any sum of money, the liquidator of the company, notwithstanding that he had endeavoured to sell or has taken possession of the property, or exercised any act of ownership in relation thereto, may, with the leave of the Court and subject to the provisions of this section, by writing signed by him, at any time within twelve months after the commencement of the winding up or such extended period as may be allowed by the Court, disclaim the property:

Provided that, where any such property has not come to the knowledge of the liquidator within one month after the commencement of the winding up, the power under this section of disclaiming the property may be exercised at any time within twelve months after he has become aware thereof or such extended period as may be allowed by the Court.

(*2*) The disclaimer shall operate to determine, as from the date of disclaimer, the rights, interests, and liabilities of the company, and the property of the company, in or in respect of the property disclaimed, but shall not, except so far as is necessary for the purpose of releasing the company and the property of the company from liability, affect the rights or liabilities of any other person.

(*3*) The Court, before or on granting leave to disclaim, may require such notices to be given to persons interested, and impose such terms as a condition of granting leave, and make such other order in the matter as the Court thinks just.

(*4*) The liquidator shall not be entitled to disclaim any property under this section in any case where an application in writing has been made to him by any persons interested in the property requiring him to decide whether he will or will not disclaim, and the liquidator has not, within a period of twenty-eight days after the receipt of the application or such further period as may be allowed by the Court, given notice to the applicant that he intends to apply to the Court for leave to disclaim, and in the case of a contract, if the liquidator, after such an application as aforesaid, does not within the said period or further period disclaim the contract, the company shall be deemed to have adopted it.

(*5*) The Court may, on the application of any person who is, as against the liquidator, entitled to the benefit or subject to the burden of a contract made with the company, make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the

contract, or otherwise as the Court thinks just, and any damages payable under the order to any such person may be proved by him as a debt in the winding up.

(6) The Court may, on an application by any person who either claims any interest in any disclaimed property or is under any liability not discharged by this Act in respect of any disclaimed property, and on hearing any such persons as it thinks fit, make an order for the vesting of the property in or the delivery of the property to any persons entitled thereto, or to whom it may seem just that the property should be delivered by way of compensation for such liability as aforesaid, or a trustee for him, and on such terms as the Court thinks just, and on any such vesting order being made the property comprised therein shall vest accordingly in the person therein named in that behalf without any conveyance or assignment for the purpose :

Provided that, where the property disclaimed is of a leasehold nature, the Court shall not make a vesting order in favour of any person claiming under the company whether as under-lessee or as mortgagee except upon the terms of making that person—

(*a*) subject to the same liabilities and obligations as those to which the company was subject under the lease in respect of the property at the commencement of the winding up ; or

(*b*) if the Court thinks fit, subject only to the same liabilities and obligations as if the lease had been assigned to that person at that date ;

and in either event (if the case so requires) as if the lease had comprised only the property comprised in the vesting order, and any mortgagee or under-lessee declining to accept a vesting order upon such terms shall be excluded from all interest in and security upon the property, and, if there is no person claiming under the company who is willing to accept an order upon such terms, the Court shall have power to vest the estate and interest of the company in the property in any person liable, either personally or in a representative character, and either alone or jointly with the company, to perform the lessee's covenants in the lease, freed and discharged from all estates, incumbrances and interests created therein by the company.

(7) Any person injured by the operation of a disclaimer under this section shall be deemed to be a creditor of the company to the amount of the injury, and may accordingly prove the amount as a debt in the winding up.

Fraudulent preference.

**231.** (*1*) Any transfer, delivery of goods, payment, execution or other act relating to property which would, if made or done by or against an individual, be deemed in his insolvency a fraudulent preference, shall, if made or done by or against a company, be deemed, in the event of its being wound up, a fraudulent preference of its creditors, and be invalid accordingly.

(*2*) For the purposes of this section the presentation of a petition for winding up in the case of a winding up by or subject to the supervision of the Court, and a resolution for winding up in the case of a voluntary winding up, shall be deemed to correspond with the act of insolvency in the case of an individual.

(*3*) Any transfer or assignment by a company of all its property to trustees for the benefit of all its creditors shall be void.

Avoidance of certain attachments, executions, etc.

**232.** (*1*) Where any company is being wound up by or subject to the supervision of the Court, any attachment, distress or execution put in force without leave of the Court against the estate or effects, or any sale held without leave of the Court of any of the properties, of the company after the commencement of the winding up shall be void.

(*2*) Nothing in this section applies to proceedings by the Government.

Effect of floating charge.

**233.** Where a company is being wound up, a floating charge on the undertaking or property of the company created within three months of the commencement of the winding up shall, unless it is proved that the company immediately after the creation of the charge was solvent, be invalid except to the amount of any cash paid to the company at the time of, or subsequently to the creation of, and in consideration for, the charge, together with interest on that amount at the rate of five per cent. per annum.

General scheme of liquidation may be sanctioned.

**234.** (*1*) The liquidator may, with the sanction of the Court when the company is being wound up by the Court or subject to the supervision of the Court, and with the sanction of an extraordinary resolution of the company in the case of a voluntary winding up, do the following things or any of them :

(i) pay any classes of creditors in full ;

(ii) make any compromise or arrangement with creditors or persons claiming to be creditors or having or alleging themselves to have any claim, present or future, whereby the company may be rendered liable ;

(iii) compromise all calls and liabilities to calls, debts and liabilities capable of resulting in debts, and all claims, present or future, certain or contingent, subsisting or supposed to subsist, between the company and a contributory, or alleged contributory or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets or the winding up of the company, on such terms as may be agreed, and take any security for the discharge of any such call, debt, liability or claim, and give a complete discharge in respect thereof.

(*2*) The exercise by the liquidator of the powers of this section shall be subject to the control of the Court, and any creditor or contributory may apply to the Court with respect to any exercise or proposed exercise of any of these powers.

Power of Court to assess damages against delinquent directors, etc.

**235.** (*1*) Where, in the course of winding up a company, it appears that any person who has taken part in the formation or promotion of the company, or any past or present director, manager or liquidator, or any officer of the company has misapplied or retained or become liable or accountable for any money or property of the company, or been guilty of any misfeasance or breach

of truts in relation to the company, the Court may, on the application of the liquidator or of any creditor or contributory, made within three years from the date of the first appointment of a liquidator in the winding up, or of the misapplication, retainer, misfeasance or breach of trust, as the case may be, whichever is longer, examine into the conduct of the promoter, director, manager, liquidator or officer, and compel him to repay or restore the money or property or any part thereof respectively with interest at such rate as the Court thinks just, or to contribute such sum to the assets of the company by way of compensation in respect of the misapplication, retainer, misfeasance or breach of trust as the Court thinks just.

(*2*) This section shall apply notwithstanding that the offence is one for which the offender may be criminally responsible.

Penalty for falsification of books.

**236.** If any director, manager, officer or contributory of any company being wound up destroys, mutilates, alters or falsifies or fraudulently secretes any books, papers or securities, or makes, or is privy to the making of, any false or fraudulent entry in any register, book of account or document belonging to the company with intent to defraud or deceive any person, he shall be liable to imprisonment for a term which may extend to seven years, and shall also be liable to fine.

Prosecution of delinquent directors.

**237.** (*1*) If it appears to the Court in the course of a winding up by, or subject to the supervision of, the Court that any past or present director, manager or other officer, or any member, of the company has been guilty of any offence in relation to the company for which he is criminally liable, the Court may, either on the application of any person interested in the winding up or of its own motion, direct the liquidator either himself to prosecute the offender or to refer the matter to the Registrar.

(*2*) If it appears to the liquidator in the course of a voluntary winding up that any past or present director, manager or other officer, or any member, of the company has been guilty of any offence in relation to the company for which he is criminally liable, he shall forthwith report the matter to the Registrar and shall furnish to him such information and give to him such access to and facilities for inspecting and taking copies of any documents, being information or documents in the possession or under the control of the liquidator relating to the matter in question, as he may require.

(*3*) Where any report is made under sub-section (*2*) to the Registrar, he may, if he thinks fit, refer the matter to the President of the Union for further inquiry, and the President of the Union shall thereupon investigate the matter and may, if he thinks it expedient, apply to the Court for an order conferring on any person designated by the President of the Union for the purpose with respect to the company concerned all such powers of investigating the affairs of the company as are provided by this Act in the case of a winding up by the Court.

(*4*) If on any report to the Registrar under sub-section (*2*) it appears to him that the case is not one in which proceedings ought to be taken by him,

he shall inform the liquidator accordingly, and thereupon, subject to the previous sanction of the Court, the liquidator may himself take proceedings against the offender.

(*5*) If it appears to the Court in the course of a voluntary winding up that any past or present director, manager or other officer, or any member, of the company has been guilty as aforesaid, and that no report with respect to the matter has been made by the liquidator to the Registrar, the Court may, on the application of any person interested in the winding up or of its own motion, direct the liquidator to make such a report, and on a report being made accordingly the provisions of this section shall have effect as though the report has been made in pursuance of the provisions of sub-section (*2*).

(*6*) If, where any matter is reported or referred to the Registrar under this section, he considers that the case is one in which a prosecution ought to be instituted, he shall place the papers before the Attorney-General or the Public Prosecutor and if advised to do so institute proceedings, and it shall be the duty of the liquidator and of every officer and agent of the company past and present (other than the defendant in the proceedings) to give him all assistance in connection with the prosecution which he is reasonably able to give:

Provided that no prosecution shall be undertaken without first giving the accused person an opportunity of making a statement in writing to the Registrar and of being heard thereon.

For the purposes of this sub-section, the expression "agent" in relation to a company shall be deemed to include any banker or legal adviser of the company and any person employed by the company as auditor, whether that person is or is not an officer of the company.

(*7*) If any person fails or neglects to give assistance in manner required by sub-section (*6*), the Court may, on the application of the Registrar, direct that person to comply with the requirements of the said sub-section, and where any such application is made with respect to a liquidator, the Court may, unless it appears that the failure or neglect to comply was due to the liquidator not having in his hands sufficient assets of the company to enable him so to do, direct that the costs of the application shall be borne by the liquidator personally.

Penalty for false evidence.

**238.** If any person, upon any examination upon oath authorized under this Act, or in any affidavit, deposition or solemn affirmation, in or about the winding up of any company under this Act, or otherwise in or about any matter arising under this Act, intentionally gives false evidence, he shall be liable to imprisonment for a term which may extend to seven years, and also be liable to fine.

Penal provisions.

**238A.** (*1*) If any person, being a past or present director, managing agent, manager or other officer of a company which at the time of the commission of the alleged offence is being wound up, whether by or under the supervision of the Court or voluntarily, or is subsequently ordered to be

wound up by the Court or subsequently passes a resolution for voluntary winding up--

(*a*) does not to the best of his knowledge and belief fully and truly discover to the liquidator all the property, real and personal, of the company, and how and to whom and for what consideration and when the company disposed of any part thereof, except such part as has been disposed of in the ordinary way of the business of the company ; or

(*b*) does not deliver up to the liquidator, or as he directs, all such part of the real and personal property of the company as is in his custody or under his control, and which he is required by law to deliver up ; or

(*c*) does not deliver up to the liquidator, or as he directs, all books and papers in his custody or under his control belonging to the company and which he is required by law to deliver up ; or

(*d*) within twelve months next before the commencement of the winding up or at any time thereafter conceals any part of the property of the company to the value of one hundred rupees or upwards or conceals any debt due to or from the company ; or

(*e*) within twelve months next before the commencement of the winding up or at any time thereafter fraudulently removes any part of the property of the company to the value of one hundred rupees or upwards ; or

(*f*) makes any material omission in any statement relating to the affairs of the company ; or

(*g*) knowing or believing that a false debt has been proved by any person under the winding up, fails for the period of a month to inform the liquidator thereof ; or

(*h*) after the commencement of the winding up prevents the production of any book or paper affecting or relating to the property or affairs of the company ; or

(*i*) within twelve months next before the commencement of the winding up or at any time thereafter, conceals, destroys, mutilates or falsifies, or is privy to the concealment, destruction, mutilation, or falsification of, any book or paper affecting or relating to the property or affairs of the company ; or

(*j*) within twelve months next before the commencement of the winding up or at any time thereafter, makes or is privy to the making of any false entry in any book or paper affecting or relating to the property or affairs of the company ; or

(*k*) within twelve months next before the commencement of the winding up or at any time thereafter, fraudulently parts with, alters or makes any omission in, or is privy to the fraudulent parting with, altering or making any omission in, any document affecting or relating to the property or affairs of the company ; or

(*l*) after the commencement of the winding up or at any meeting of the creditors of the company within twelve months next before the commencement of the winding up, attempts to account for any part of the property of the company by fictitious losses or expenses ; or

(*m*) has within twelve months next before the commencement of the winding up or at any time thereafter, by any false representation or other fraud, obtained any property for or on behalf of the company on credit which the company does not subsequently pay for ; or

(*n*) within twelve months next before the commencement of the winding up or at any time thereafter, under the false pretence that the company is carrying on its business, obtains on credit, for or on behalf of the company, any property which the company does not subsequently pay for ; or

(*o*) within twelve months next before the commencement of the winding up or at any time thereafter, pawns, pledges or disposes of any property of the company which has been obtained on credit and has not been paid for, unless such pawning, pledging or disposing is in the ordinary way of the business of the company ; or

(*p*) is guilty of any false representation or other fraud for the purpose of obtaining the consent of the creditors of the company or any of them to an agreement with reference to the affairs of the company or to the winding up ;

he shall be punishable, in the case of the offences mentioned respectively in clauses (*m*), (*n*) and (*o*) of this sub-section, with imprisonment for a term not exceeding five years, and, in the case of any other offence, with imprisonment for a term not exceeding two years :

Provided that it shall be a good defence to a charge under any of clauses (*b*), (*c*), (*d*), (*f*), (*n*) and (*o*) if the accused proves that he had no intent to defraud, and to a charge under any of clauses (*a*), (*h*), (*i*) and (*j*) if he proves that he had no intent to conceal the state of affairs of the company or to defeat the law.

(*2*) Where any person pawns, pledges or disposes of any property in circumstances which amount to an offence under clause (*o*) of sub-section (*1*), every person who takes in pawn or pledge or otherwise receives the property knowing it to be pawned, pledged or disposed of in such circumstances as aforesaid shall be punishable with imprisonment for a term not exceeding three years.

Meetings to ascertain wishes of creditors or contributories.

**239.** (*1*) Where by this Act the Court is authorized in relation to winding up to have regard to the wishes of creditors or contributories, as proved to it by any sufficient evidence, the Court may, if it thinks fit for the purpose of ascertaining those wishes, direct meetings of the creditors or contributories to be called, held and conducted in such manner as the Court directs, and may

appoint a person to act as chairman of any such meeting and to report the result thereof to the Court.

(*2*) In the case of creditors, regard shall be had to the value of each creditor's debt.

(*3*) In the case of contributories regard shall be had to the number of votes conferred on each contributory by the articles.

Documents of company to be evidence.

**240.** Where any company is being wound up, all documents of the company and of the liquidators shall, as between the contributories of the company, be *prima facie* evidence of the truth of all matters purporting to be therein recorded.

Inspection of documents.

**241.** After an order for a winding up by or subject to the supervision of the Court, the Court may make such order for inspection by creditors and contributories of the company of its documents as the Court thinks just, and any documents in the possession of the company may be inspected by creditors or contributories accordingly, but not further or otherwise.

Disposal of documents of company.

**242.** (*1*) When a company has been wound up and is about to be dissolved, the documents of the company and of the liquidators may be disposed of as follows (that is to say):—

(*a*) in the case of a winding up by or subject to the supervision of the Court, in such way as the Court directs;

(*b*) in the case of a voluntary winding up, in such way as the company by extraordinary resolution directs.

(*2*) After three years from the dissolution of the company, no responsibility shall rest on the company or the liquidators, or any person to whom the custody of the documents has been committed, by reason of the same not being forthcoming to any person claiming to be interested therein.

Power of Court to declare dissolution of company void.

**243.** (*1*) Where a company has been dissolved, the Court may at any time within two years of the date of the dissolution, on an application being made for the purpose by the liquidator of the company or by any other person who appears to the Court to be interested, make an order, upon such terms as the Court thinks fit, declaring the dissolution to have been void, and thereupon such proceedings may be taken as might have been taken if the company had not been dissolved.

(*2*) It shall be the duty of the person on whose application the order was made, within twenty-one days after the making of the order, to file with the Registrar a certified copy of the order, and if that person fails so to do he shall be liable to a fine not exceeding fifty rupees for every day during which the default continues.

Information as to pending liquidations.

**244.** (*1*) Where a company is being wound up, if the winding up is not concluded within one year after its commencement, the liquidator shall, once in each year and at intervals of not more than twelve months, until the winding up is concluded, file in Court or with the Registrar, as the case may be, a

statement in the prescribed form and containing the prescribed particulars with respect to the proceedings in and position of the liquidation.

(*2*) Any person stating himself in writing to be a creditor or contributory of the company shall be entitled, by himself or by his agent, at all reasonable times, on payment of the prescribed fee, to inspect the statement, and to receive a copy thereof or extract therefrom; but any person untruthfully so stating imself to be a creditor or contributory shall be deemed to be guilty of an offence under section 182 of the Penal Code, and shall be punishable accordingly on the application of the liquidator.

(*3*) If a liquidator fails to comply with the requirements of this section, he shall be liable to a fine not exceeding five hundred rupees for each day during which the default continues.

(*4*) When the statement is filed in Court a copy shall simultaneously be filed with the Registrar and shall be kept by him along with the other records of the company.

Payments of liquidator into bank.

**244A.** (*1*) Every liquidator of a company which is being wound up by the Court shall, in such manner and at such times as may be prescribed, pay the money received by him into a scheduled bank :

Provided that if the Court is satisfied that for the purpose of carrying on the business of the company or of obtaining advances or for any other reason it is for the advantage of the creditors or contributories that the liquidator should have an account with any other bank, the Court may authorize the liquidator to make his payments into or out of such other bank as the Court may select and thereupon those payments shall be made in the prescribed manner.

(*2*) If any such liquidator at any time retains for more than ten days a sum exceeding five hundred rupees, or such other amount as the Court may in any particular case authorize him to retain, then, unless he explains the retention to the satisfaction of the Court, he shall pay interest on the amount so retained in excess at the rate of twenty per cent. per annum and shall be liable to disallowance of all or such part of his remuneration as the Court may think just and to be removed from his office by the Court, and shall be liable to pay any expenses occasioned by reason of his default.

(*3*) A liquidator of a company which is being wound up shall open a special banking account and pay all sums received by him as liquidator into such account.

Court or person before whom affidavit may be sworn.

**245.**[1] (*1*) Any affidavit required to be sworn under the provisions or for the purposes of this Part may be sworn in the Union of Burma, or elsewhere, before any Court, Judge or person lawfully authorized to take and receive affidavits, or in any place outside the Union of Burma before any Consul, Vice-Consul or Ambassador of His Britannic Majesty or the Union of Burma.

(*2*) All Courts, Judges, Justices, Commissioners, and persons acting judicially in the Union of Burma shall take judicial notice of the seal or stamp

[1] Substituted by the Union of Burma (Adaptation of Laws) Order, 1948

or signature (as the case may be) of any such Court, Judge, person, Consul or [Vice-Consul or Ambassador][1], attached, appended or subscribed to any such affidavit or to any other document to be used for the purposes of this Part.

*Rules.*

Power of High Court to make rules.

**246.** (*1*) The High Court may, from time to time, make rules[2] consistent with this Act and with the Code of Civil Procedure concerning the mode of proceedings to be had for winding up a company in such Court and in the Courts subordinate thereto, and for voluntary winding up (both members' and creditors'), for the holding of meetings of creditors and members in connection with proceedings under section 153 of this Act, and for giving effect to the provisions hereinbefore contained as to the reduction of the capital and the sub-divisions of the shares of a company, and generally for all applications to be made to the Court under the provisions of this Act, and shall make rules providing for all matters relating to the winding up of companies which, by this Act, are to be prescribed.

(*2*) Without prejudice to the generality of the foregoing power, the High Court may by such rules enable or require all or any of the powers and duties conferred and imposed on the Court by this Act, in respect of the matters following, to be exercised or performed by the official liquidator and subject to the control of the Court, that is to say, the powers and duties of the Court in respect of—

(*a*) holding and conducting meetings to ascertain the wishes of creditors and contributories;

(*b*) settling lists of contributories and rectifying the register of members where required, and collecting and applying the assets;

(*c*) requiring delivery of property or documents to the liquidator;

(*d*) making calls;

(*e*) fixing a time within which debts and claims must be proved :

Provided that the official liquidator shall not, without the special leave of the Court, rectify the register of members, and shall not make any call without the special leave of the Court.

*Removal of defunct Companies from Register.*

Registrar may strike defunct company off register.

**247.** (*1*) Where the Registrar has reasonable cause to believe that a company is not carrying on business or in operation, he shall send to the company by post a letter inquiring whether the company is carrying on business or in operation.

(*2*) If the Registrar does not within one month of sending the letter receive any answer thereto, he shall within fourteen days after the expiration of the month send to the company by post a registered letter referring to the first letter, and stating that no answer thereto has been received and that, if an answer is not received to the second letter within one month from the date thereof, a notice will be published in the Gazette with a view to striking the name of the company off the register.

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[1] Substituted by the Union of Burma (Adaptation of Laws) Order, 1948.

[2] *See* High Court Rules and Orders, and *Burma Gazette* 1940, Part IV, page 1023.

(*3*) If the Registrar either receives an answer from the company to the effect that it is not carrying on business or in operation, or does not within one month after sending the second letter receive any answer, he may publish in the Gazette, and send to the company by post a notice that, at the expiration of three months from the date of that notice, the name of the company mentioned therein will, unless cause is shown to the contrary, be struck off the register and the company will be dissolved.

(*4*) If, in any case where a company is being wound up, the Registrar has reasonable cause to believe either that no liquidator is acting or that the affairs of the company are fully wound up, and the returns required to be made by the liquidator have not been made for a period of six consecutive months after notice by the Registrar demanding the returns has been sent by post to the company, or to the liquidator at his last known place of business, the Registrar may publish in the Gazette and send to the company a like notice as is provided in the last preceding sub-section.

(*5*) At the expiration of the time mentioned in the notice the Registrar may, unless cause to the contrary is previously shown by the company, strike its name off the register, and shall publish notice thereof in the Gazette, and, on the publication in the Gazette of this notice, the company shall be dissolved : Provided that the liability (if any) of every director and member of the company shall continue and may be enforced as if the company had not been dissolved.

(*6*) If a company or any member or creditor thereof feels aggrieved by the company having been struck off the register, the Court, on the application of the company or member or creditor, may, if satisfied that the company was at the time of the striking off carrying on business or in operation, or otherwise that it is just that the company be restored to the register, order the name of the company to be restored to the register, and thereupon the company shall be deemed to have continued in existence as if its name had not been struck off ; and the Court may by the order give such directions and make such provisions as seem just for placing the company and all other persons in the same position, as nearly as may be, as if the name of the company had not been struck off.

(*7*) A letter or notice under this section may be addressed to the company at its registered office, or, if no office has been registered, to the care of some director, manager or other officer of the company, or, if there is no director, manager or other officer of the company whose name and address are known to the Registrar, may be sent to each of the persons who subscribed the memorandum, addressed to him at the address mentioned in the memorandum.

## PART VI.

### Registration Office and Fees.

Registration offices.

**248.** (*1*) For the purposes of the registration of companies under this Act, there shall be offices at such places as the President of the Union thinks fit, and no company shall be registered except at an office within the Union of Burma.

(*2*) The President of the Union may appoint such Registrars and assistant Registrars as he thinks necessary for the registration of companies under this Act, and may make regulations with respect to their duties.

(*3*) The salaries of the persons appointed under this section shall be fixed by the President of the Union.

(*4*) The President of the Union may direct a seal or seals to be prepared for the authentication of documents required for or connected with the registration of companies.

(*5*) Any person may inspect the documents kept by the Registrar on payment of such fees as may be appointed by the President of the Union, not exceeding one rupee for each inspection ; and any person may require a certificate of the incorporation of any company, or a copy or extract of any other document or any part of any other document, to be certified by the Registrar on payment for the certificate, certified copy or extract, of such fees as the President of the Union may appoint, not exceeding three rupees for a certificate of incorporation, and not exceeding six annas for every hundred words or fractional part thereof required to be copied.

(*6*) Whenever any act is by this Act directed to be done to or by the Registrar it shall, until the President of the Union otherwise directs, be done to or by the existing Registrar of joint-stock companies, or in his absence to or by such person as the President of the Union may for the time being authorize ; but, in the event of the President of the Union altering the constitution of the existing registry offices or any of them, any such act shall be done to or by such officer and at such place with reference to the local situation of the registered offices of the companies to be registered as the President of the Union may appoint.

Fees.

**249.** (*1*) There shall be paid to the Registrar in respect of the several matters mentioned in Table B in the First Schedule the several fees therein specified, or such smaller fees as the President of the Union may direct.

(*2*) All fees paid to the Registrar in pursuance of this Act shall be accounted for to the Government.

Enforcing submission of returns and documents to Registrar.

**249A.** (*1*) If a company, having made default in complying with any provision of this Act which requires it to file with, deliver or send to the Registrar any return, account or other document, or to give notice to him of any matter, fails to make good the default within fourteen days after the service of a notice on the company requiring it to do so, the Court may, on an application made to the Court by any member or creditor of the company or by the Registrar, make an order directing the company and any officer thereof to make good the default within such time as may be specified in the order.

(*2*) Any such order may provide that all costs of and incidental to the application shall be borne by the company or by any officers of the company responsible for the default.

(*3*) Nothing in this section shall be taken to prejudice the operation of any enactment imposing penalties on a company or its officers in respect of any such default as aforesaid.

## PART VII.

### APPLICATION OF ACT TO COMPANIES FORMED AND REGISTERED UNDER FORMER COMPANIES ACTS.

Application of Act to companies formed under former Companies Acts.

**250.** In the application of this Act to existing companies, it shall apply in the same manner in the case of a limited company, other than a company limited by guarantee, as if the company had been formed and registered under this Act as a company limited by shares ; in the case of a company limited by guarantee, as if the company had been formed and registered under this Act as a company limited by guarantee ; and, in the case of a company, other than a limited company, as if the company had been formed and registered under this Act as an unlimited company :

Provided that—

(1) nothing in Table A in the First Schedule shall apply to a company formed and registered under Act XIX of 1857 [1] and Act VII of 1860 [1], or either of them, or under the Indian Companies Act, 1866 [1], or the Indian Companies Act, 1882 [1] ;

India X, 1866.
India VI, 1882.

(2) reference, express or implied, to the date of registration shall be construed as a reference to the date at which the company was registered under Act No. XIX of 1857 [1] and Act No. VII of 1860 [1], or either of them, or under the Indian Companies Act, 1866 [1], or the Indian Companies Act, 1882[1], as the case may be.

India X, 1866.
India VI, 1882.

Application of Act to companies registered but not formed under former Companies Acts.

**251.** This Act shall apply to every company registered but not formed under Act No. XIX of 1857 [1] and Act No. VII of 1860[1], or either of them, or under the Indian Companies Act, 1866[1], or the Indian Companies Act, 1882[1], in the same manner as it is hereinafter in this Act declared to apply to companies registered but not formed under this Act :

India X, 1866.
India VI, 1882.

Provided that reference, express or implied, to the date of registration shall be construed as a reference to the date at which the company was registered under the said Acts or any of them.

Mode of transferring.

**252.** A company registered under Act XIX of 1857 [1] and Act VII of 1860 [1], or either them, may cause its shares to be transferred in the manner hitherto in use, or in such other manner as the company may direct.

## PART VIII.

### COMPANIES AUTHORIZED TO REGISTER UNDER THIS ACT.

Companies capable of being registered.

**253.** (*1*) With the exceptions and subject to the provisions mentioned and contained in this section,—

(i) any company consisting of seven or more members, which was in existence on the first day of May, eighteen hundred and eighty-two,

[1] India Acts XIX of 1857 and VII of 1860 were repealed by India Act X of 1866. India Act X of 1866 was repealed by India Act VI of 1882, and the latter Act, in its turn, was repealed by India Act VII of 1913.

including any company registered under Act No. XIX of 1857 [1] and Act No. VII of 1860,[1] or either of them, and

(ii) any company formed after the date aforesaid, whether before or after the commencement of this Act, in pursuance of any Act of [Parliament of the United Kingdom of Great Britain and Ireland] [2] or other law in force in the Union of Burma or of Letters Patent, or being otherwise duly constituted according to law and consisting of seven or more members,

may at any time register under this Act as an unlimited company or as a company limited by shares, or as a company limited by guarantee ; and the registration shall not be invalid by reason that it has taken place with a view to the company being wound up :

(*2*) Provided as follows :—

(*a*) a company having the liability of its members limited by Act of [Parliament of the United Kingdom of Great Britain and Ireland] [2] or by any law in force in the Union of Burma or by Letters Patent, and not being a joint-stock company as hereinafter defined, shall not register in pursuance of this section ;

(*b*) a company having the liability of its members limited by Act of [Parliament of the United Kingdom of Great Britain and Ireland] [2] or by any law in force in the Union of Burma or by Letters Patent shall not register in pursuance of this section as an unlimited company or as a company limited by guarantee ;

(*c*) a company that is not a joint-stock company as hereinafter defined shall not register in pursuance of this section as a company limited by shares ;

(*d*) a company shall not register in pursuance of this section without the assent of a majority of such of its members as are present in person or by proxy (in cases where proxies are allowed by the articles) at a general meeting summoned for the purpose ;

(*e*) where a company not having the liability of its members limited by Act of [Parliament of the United Kingdom of Great Britain and Ireland] [2] or by any law in force in the Union of Burma or by Letters Patent is about to register as a limited company, the majority required to assent as aforesaid shall consist of not less than three-fourths of the members present in person or by proxy at the meeting ;

(*f*) where a company is about to register as a company limited by guarantee, the assent to its being so registered shall be accompanied by a resolution declaring that each member undertakes to contribute to the assets of the company, in the event of its being wound up while he is a member or within one

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[1] *See* footnote 1 on previous page.
[2] Substituted by the Union of Burma (Adaptation of Laws) Order, 1948.

year afterwards, for payment of the debts and liabilities of the Company contracted before he ceased to be a member, and of the costs and expenses of winding up, and for the adjustment of the rights of the contributories among themselves, such amount as may be required not exceeding a specified amount.

(*3*) In computing any majority under this section when a poll is demanded regard shall be had to the number of votes to which each member is entitled according to the articles.

Indi.a VI, 1882.

(*4*) A company registered under the Indian Companies Act, 1882,[1] shall not be registered in pursuance of this section.

Definition of "joint-stock company."

**254.** For the purposes of this Part as far as relates to registration of companies as companies limited by shares, a joint-stock company means a company having a permanent paid up or nominal share capital of fixed amount divided into shares, also of fixed amount, or held and transferable as stock, or divided and held partly in one way and partly in the other, and formed on the principle of having for its members the holders of those shares or that stock, and no other persons ; and such a company, when registered with limited liability under this Act, shall be deemed to be a company limited by shares.

Requirements for registration by joint-stock companies.

**255.** Before the registration in pursuance of this Part of a joint-stock company, there shall be delivered to the Registrar the following documents (that is to say) :—

(1) a list showing the names, addresses and occupations of all persons who on a day named in the list, not being more than six clear days before the day of registration, were members of the company, with the addition of the shares or stock held by them respectively, distinguishing, in cases where the shares are numbered, each share by its number ;

(2) a copy of any Act of [Parliament of the United Kingdom of Great Britain and Ireland],[2] law, Royal Charter, Letters Patent, deed of settlement, contract of co-partnery or other instrument constituting or regulating the company ; and

(3) if the company is intended to be registered as a limited company, a statement specifying the following particulars (that is to say) :—

(*a*) the nominal share capital of the company and the number of shares into which it is divided or the amount of stock of which it consists ;

(*b*) the number of shares taken and the amount paid on each share ;

(*c*) the name of the company, with the addition of the word "Limited" as the last word thereof ; and

(*d*) in the case of a company intended to be registered as a company limited by guarantee, the resolution declaring the amount of the guarantee.

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[1] Repealed by India Act VII of 1913.

[2] Substituted by the Union of Burma (Adaptation of Laws) Order, 1948.

Requirements for registration by other than joint-stock companies.

**256.** Before the registration in pursuance of this Part of any company not being a joint-stock company, there shall be delivered to the Registrar—

(1) a list showing the names, addresses and occupations of the directors of the company; and

(2) a copy of any Act of [Parliament of the United Kingdom of Great Britain and Ireland], [1] law, Letters Patent, deed of settlement, contract of co-partnery or other instrument constituting or regulating the company; and

(3) in the case of a company intended to be registered as a company limited by guarantee, a copy of the resolution declaring the amount of the guarantee.

Authentication of statement of existing companies.

**257.** The list of members and directors and any other particulars relating to the company required to be delivered to the Registrar shall be duly verified by the declaration of any two or more directors or other principal officers of the company.

Registrar may require evidence as to nature of company.

**258.** The Registrar may require such evidence as he thinks necessary for the purpose of satisfying himself whether any company proposing to be registered is or is not a joint-stock company as hereinbefore defined.

On registration of banking company with limited liability, notice to be given to customers.

**259.** (*1*) Where a banking company, which was in existence on the first day of May eighteen hundred and eighty-two, proposes to register as a limited company, it shall, at least thirty days before so registering, give notice of its intention so to register to every person who has a banking account with the company, either by delivery of the notice to him, or by posting it to him at, or delivering it at, his last known address.

(*2*) If the company omits to give the notice required by this section, then as between the company and the person for the time being interested in the account in respect of which the notice ought to have been given, and so far as respects the account down to the time at which notice is given, but not further or otherwise, the certificate of registration with limited liability shall have no operation.

Exemption of certain companies from payment of fees.

**260.** No fees shall be charged in respect of the registration in pursuance of this Part of a company if it is not registered as a limited company, or if before its registration as a limited company the liability of the shareholders was limited by some Act of [Parliament of the United Kingdom of Great Britain and Ireland] [1] or law in force in the Union of Burma or by Letters Patent.

Addition of "Limited" to name.

**261.** When a company is registered in pursuance of this Part with limited liability, the word "Limited" shall form and be registered as part of its name.

Certificate of registration of existing companies.

**262.** On compliance with the requirements of this Part with respect to registration, and on payment of such fees, if any, as are payable under Table B in the First Schedule, the Registrar shall certify under his hand that the company applying for registration is incorporated as a company under this Act, and in

[1] Substituted by the Union of Burma (Adaptation of Laws) Order, 1948.

the case of a limited company that it is limited, and thereupon the company shall be incorporated and shall have perpetual succession and a common seal.

Vesting of property on registration.

**263.** All property, moveable and immoveable, including all interests and rights in, to and out of property, moveable and immoveable, and including obligations and actionable claims as may belong to or be vested in a company at the date of its registration in pursuance of this Part, shall, on registration, pass to and vest in the company as incorporated under this Act for all the estate and interest of the company therein.

Saving of existing liabilities.

**264.** The registration of a company in pursuance of this Part shall not affect the rights or liabilities of the company in respect of any debt or obligation incurred or any contract entered into, by, to, with, or on behalf of, the company before registration.

Continuation of existing suits.

**265.** All suits and other legal proceedings which at the time of the registration of a company in pursuance of this Part are pending by or against the company, or the public officer or any member thereof, may be continued in the same manner as if the registration had not taken place; nevertheless execution shall not issue against the effects of any individual member of the company on any decree or order obtained in any such suit or proceeding; but, in the event of the property and effects of the company being insufficient to satisfy the decree or order, an order may be obtained for winding up the company.

Effect of registration under Act.

**266.** When a company is registered in pursuance of this Part—

(i) all provisions contained in any Act of [Parliament of the United Kingdom of Great Britain and Ireland],[1] law in force in the Union of Burma, deed of settlement, contract of co-partnery, Letters Patent, or other instrument constituting or regulating the company, including, in the case of a company registered as a company limited by guarantee, the resolution declaring the amount of the guarantee, shall be deemed to be conditions and regulations of the company, in the same manner and with the same incidence as if so much thereof as would, if the company had been formed under this Act, have been required to be inserted in the memorandum, were contained in a registered memorandum, and the residue thereof were contained in registered articles;

(ii) all the provisions of this Act shall apply to the company and the members, contributories and creditors thereof, in the same manner in all respects as if it had been formed under this Act, subject as follows (that is to say):—

(*a*) the regulations in Table A in the First Schedule shall not apply unless adopted by special resolution;

[1] Substituted by the Union of Burma (Adaptation of Laws) Order, 1948.

(*b*) the provisions of this Act relating to the numbering of shares shall not apply to any joint-stock company whose shares are not numbered ;

(*c*) subject to the provisions of this section, the company shall not have power to alter any provision contained in any Act of [Parliament of the United Kingdom of Great Britain and Ireland][1] or law in force in the Union of Burma relating to the company ;

(*d*) subject to the provisions of this section, the company shall not have power, without the sanction of the President of the Union, to alter any provision contained in any Letters Patent relating to the company ;

(*e*) the company shall not have power to alter any provision contained in a Royal Charter or Letters Patent with respect to the objects of the company ;

(*f*) in the event of the company being wound up, every person shall be a contributory, in respect of the debts and liabilities of the company contracted before registration, who is liable to pay or contribute to the payment of any debt or liability of the company contracted before registration, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members among themselves in respect of any such debt or liability, or to pay or contribute to the payment of the cost and expenses of winding up the company, so far as relates to such debts or liabilities as aforesaid ; and every contributory shall be liable to contribute to the assets of the company, in the course of the winding up, all sums due from him in respect of any such liability as aforesaid ; and in the event of the death or insolvency of any contributory, the provisions of this Act with respect to the legal representatives and heirs of deceased contributories, and with reference to the assignees of insolvent contributories, shall apply ;

(iii) the provisions of this Act with respect to—

(*a*) the registration of an unlimited company as limited ;

(*b*) the powers of an unlimited company on registration as a limited company to increase the nominal amount of its share capital and to provide that a portion of its share capital shall not be capable of being called up except in the event of winding up ;

(*c*) the power of a limited company to determine that a portion of its share capital shall not be capable of being called up except in the event of winding up :

shall apply notwithstanding any provisions contained in any Act of [Parliament of the United Kingdom of Great Britain and Ireland],[1] law in force in the Union of Burma, Royal Charter,

[1] Substituted by the Union of Burma (Adaptation of Laws) Order, 1948.

deed of settlement, contract of co-partnery, Letters Patent or other instrument constituting or regulating the company;

(iv) nothing in this section shall authorize the company to alter any such provisions contained in any deed of settlement, contract of co-partnery, Letters Patent or other instrument constituting or regulating the company, as would, if the company had originally been formed under this Act, have been required to be contained in the memorandum and are not authorized to be altered by this Act;

(v) nothing in this Act shall derogate from any lawful power of altering its constitution or regulations which may, by virtue of any Act of [Parliament of the United Kingdom of Great Britain and Ireland],[1] law in force in the Union of Burma, deed of settlement, contract of co-partnery, Letters Patent or other instrument constituting or regulating the company, be vested in the company.

Power to substitute memorandum and articles for deed of settlement.

**267.** (*1*) Subject to the provisions of this section, a company registered in pursuance of this Part may by special resolution alter the form of its constitution by substituting a memorandum and articles for a deed of settlement.

(*2*) The provisions of this Act with respect to confirmation by the Court and registration of an alteration of the objects of a company shall, so far as applicable, apply to an alteration under this section with the following modifications :—

(*a*) there shall be substituted for the printed copy of the altered memorandum required to be filed with the Registrar a printed copy of the substituted memorandum and articles ; and

(*b*) on the registration of the alteration being certified by the Registrar, the substituted memorandum and articles shall apply to the company in the same manner as if it were a company registered under this Act with that memorandum and those articles, and the company's deed of settlement shall cease to apply to the company.

(*3*) An alteration under this section may be made either with or without any alteration of the objects of the company under this Act.

(*4*) In this section the expression " deed of settlement " includes any contract of co-partnery or other instrument constituting or regulating the company, not being an Act of [Parliament of the United Kingdom of Great Britain and Ireland],[1] a law in force in the Union of Burma, a Royal Charter or Letters Patent.

Power of Court to stay or restrain proceedings.

**268.** The provisions of this Act with respect to staying and restraining suits and legal proceedings against a company at any time after the presentation of a petition for winding up and before the making of a winding up order

[1] Substituted by the Union of Burma (Adaptation of Laws) Order, 1948.

shall, in the case of a company registered in pursuance of this Part, where the application to stay or restrain is by a creditor, extend to suits and legal proceedings against any contributory of the company.

Suits stayed on winding up order.

**269.** Where an order has been made for winding up a company registered in pursuance of this Part, no suit or other legal proceeding shall be commenced or proceeded with against the company or any contributory of the company in respect of any debt of the company, except by leave of the Court and subject to such terms as the Court may impose.

## PART IX.

### WINDING UP OF UNREGISTERED COMPANIES.

Meaning of "unregistered company."

**270.** For the purposes of this Part, the expression "unregistered company" shall not include a railway company incorporated by Act of [Parliament of the United Kingdom of Great Britain and Ireland][1] or by a law in force in the Union of Burma, nor a company registered under the Indian Companies Act, 1866,[2] or under any Act repealed thereby, or under the Indian Companies Act, 1882,[3] or under this Act, but save as aforesaid, shall include any partnership, association or company consisting of more than seven members. India X, 1866. India VI, 1882.

Winding up of unregistered companies.

**271.** (*1*) Subject to the provisions of this Part, any unregistered company may be wound up under this Act, and all the provisions of this Act with respect to winding up shall apply to an unregistered company, with the following exceptions and additions:—

(i) the principal place of business of the company in the Union of Burma shall be deemed to be the registered office of the company;

(ii) no unregistered company shall be wound up under this Act voluntarily or subject to supervision;

(iii) the circumstances in which an unregistered company may be wound up are as follows (that is to say):—

(*a*) if the company is dissolved, or has ceased to carry on business or is carrying on business only for the purpose of winding up its affairs;

(*b*) if the company is unable to pay its debts;

(*c*) if the Court is of opinion that it is just and equitable that the company should be wound up;

(iv) an unregistered company shall, for the purposes of this Act, be deemed to be unable to pay its debts—

(*a*) if a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding five hundred

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[1] Substituted by the Union of Burma (Adaptation of Laws) Order, 1948.
[2] India Act X of 1866 was repealed by India Act VI of 1882.
[3] India Act VI of 1882 was repealed by India Act VII of 1913.

rupees then due, has served on the company, by leaving at its principal place of business, or by delivering to the secretary, or some director, manager or principal officer of the company, or by otherwise serving in such manner as the Court may approve or direct, a demand under his hand requiring the company to pay the sum so due, and the company has for three weeks after the service of the demand neglected to pay the sum, or to secure or compound for it to the satisfaction of the creditor;

(*b*) if any suit or other legal proceeding has been instituted against any member for any debt or demand due, or claimed to be due, from the company or from him in his character of member, and notice in writing of the institution of the suit or other legal proceeding having been served on the company by leaving the same at its principal place of business or by delivering it to the secretary, or some director, manager or principal officer of the company, or by otherwise serving the same in such manner as the Court may approve or direct, the company has not within ten days after service of the notice paid, secured or compuonded for the debt or demand, or procured the suit or other legal proceeding to be stayed, or indemnified the defendant to his reasonable satisfaction against the suit or other legal proceeding, and against all costs, damages and expenses to be incurred by him by reason of the same;

(*c*) if execution or other process issued on a decree or order obtained in any Court in favour of a creditor against the company, or any member thereof as such, or any person authorized to be sued as nominal defendant on behalf of the company, is returned unsatisfied; and

(*d*) if it is otherwise proved to the satisfaction of the Court that the company is unable to pay its debts.

(*2*) Nothing in this Part shall affect the operation of any enactment which provides for any partnership, association or company being wound up, or being wound up as a company or as an unregistered company under any enactment repealed by this Act, except that references in any such first-mentioned enactment to any such repealed enactment shall be read as references to the corresponding provision (if any) of this Act.

(*3*) Where a company incorporated outside the Union of Burma which has been carrying on business in the Union of Burma ceases to carry on business in the Union of Burma it may be wound up as an unregistered company under this Part, notwithstanding that it has been dissolved or otherwise ceased to exist as a company under or by virtue of the laws of the country under which it was incorporated.

Contributories in winding up of unregistered companies.

**272.** (*1*) In the event of an unregistered company being wound up, every person shall be deemed to be a contributory who is liable to pay or contribute to the payment of any debt or liability of the company, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members among themselves, or to pay or contribute to the payment of the costs and expenses of winding up the company, and every contributory shall be liable to contribute to the assets of the company all sums due from him in respect of any such liability as aforesaid.

(*2*) In the event of any contributory dying or being adjudged insolvent, the provisions of this Act with respect to the legal representatives and heirs of deceased contributories, and to the assignees of insolvent contributories, shall apply.

Power to stay or restrain proceedings.

**273.** The provisions of this Act with respect to staying and restraining suits and legal proceedings against a company at any time after the presentation of a petition for winding up and before the making of a winding up order shall, in the case of an unregistered company, where the application to stay or restrain is by a creditor, extend to suits and legal proceedings against any contributory of the company.

Suits stayed on winding up order.

**274.** Where an order has been made for winding up an unregistered company, no suit or other legal proceedings shall be proceeded with or commenced against any contributory of the company in respect of any debt of the company, except by leave of the Court, and subject to such terms as the Court may impose.

Directions as to property in certain cases.

**275.** If an unregistered company has no power to sue and be sued in a common name, or if for any reason it appears expedient, the Court may, by the winding up order or by any subsequent order, direct that all or any part of the property, moveable or immoveable, including all interests and rights in, to and out of property, moveable and immoveable, and including obligations and actionable claims as may belong to the company or to trustees on its behalf, is to vest in the official liquidator by his official name, and thereupon the property or the part thereof specified in the order shall vest accordingly; and the official liquidator may, after giving such indemnity (if any) as the Court may direct, bring or defend in his official name any suit or other legal proceeding relating to that property, or necessary to be brought or defended for the purposes of effectually winding up the company and recovering its property.

Provisions of this Part cumulative.

**276.** The provisions of this Part with respect to unregistered companies shall be in addition to, and not in restriction of, any provisions hereinbefore in this Act contained with respect to winding up companies by the Court, and the Court or official liquidator may exercise any powers or do any act in the case of unregistered companies which might be exercised or done by it or him in winding up companies formed and registered under this Act; but an unregistered company shall not, except in the event of its being wound up, be

deemed to be a company under this Act, and then only to the extent provided by this Part.

## PART X.

### COMPANIES ESTABLISHED OUTSIDE THE UNION OF BURMA.

Requirements as to companies established outside the Union of Burma.

**277.** (*1*) Every company incorporated outside the Union of Burma which has a place of business within the Union of Burma shall, within one month from the establishment of such place of business, or within six months from the date of separation,[1] as the case may be, file with the Registrar,—

(*a*) a certified copy of the charter, statutes or memorandum and articles of the company, or other instrument constituting or defining the constitution of the company, and, if the instrument is not written in the [Burmese][2] language, a certified translation thereof ;

(*b*) the full address of the registered or principal office of the company;

(*c*) a list of the directors and managers (if any) of the company ;

(*d*) the names and addresses of some one or more persons resident in the Union of Burma authorized to accept on behalf of the company service of process and any notices required to be served on the company ;

and, in the event of any alteration being made in any such instrument or in such address or in the directors or managers or in the names or addresses of any such persons as aforesaid, the company shall, within the prescribed time, file with the Registrar a notice of the alteration.

(*2*) Any process or notice required to be served on the company shall be sufficiently served if addressed to any person whose name has been so filed as aforesaid and left at or sent by post to the address which has been so filed.

(*3*) Every company to which this section applies shall in every year file with the Registrar—

(i) in a case where by the law for the time being in force of the country in which the company is incorporated such company is required to file with the public authority an annual balance-sheet,—a copy of that balance-sheet, and if the balance-sheet does not contain all the information provided for in the form marked H in the Third Schedule, such supplementary statements as shall furnish such information ; or

(ii) in a case where no such provision is made by the law for the time being in force of the country in which the company is incorporated,—such a statement in the form of a balance-sheet as such company would, if it were a company formed and registered under this Act, be required to file in accordance with the provisions of this Act.

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[1] *i.e.* the separation of Burma and India which took place on the 1st April, 1937.

[2] Substituted for the word "English" by the Union of Burma (Adaptation of Laws) Order, 1948.

(*4*) Every company to which this section applies and which uses the word "Limited" as part of its name, shall—

(*a*) in every prospectus inviting subscriptions for its shares or debentures in the Union of Burma state the country in which the company is incorporated; and

(*b*) conspicuously exhibit on every place where it carries on business in the Union of Burma the name of the company and the country in which the company is incorporated in letters easily legible in English characters and also, if any place where it carries on business is beyond the local limits of the ordinary original civil jurisdiction of the High Court, in the characters of one of the vernacular languages used in that place; and

(*c*) have the name of the company and of the country in which the company is incorporated mentioned in legible [Burmese][1] characters in all bill-heads and letter paper, and in all notices, advertisements and other official publications of the company.

(5) Every company to which this section applies shall, if the liability of the members of the company is limited, cause notice of that fact to be stated in legible characters in every prospectus inviting subscriptions for its shares, and in all bill-heads and letter paper, notices, advertisements and other official publications of the company in the Union of Burma, and to be affixed on every place where it carries on business.

(*6*) If any company to which this section applies fails to comply with any of the requirements of this section, the company, and every officer or agent of the company, shall be liable to a fine not exceeding five hundred rupees or, in the case of a continuing offence, fifty rupees for every day during which the default continues.

(*7*) For the purposes of this section—

(*a*) the expression "certified" means certified in the prescribed manner to be a true copy or a correct translation;

(*b*) the expression "place of business" includes a share transfer or share registration office;

(*c*) the expression "director" includes any person occupying the position of director, by whatever name called; and

(*d*) the expression "prospectus" means any prospectus, notice, circular, advertisement or other invitation, offering to the public for subscription or purchase any shares or debentures of the company.

(*8*) There shall be paid to the Registrar for registering any document required by this section to be filed with him a fee of five rupees or such smaller fee as may be prescribed.

[2] (*9*) * * * *

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[1] Substituted for the word "English" by the Union of Burma (Adaptation of Laws) Order, 1948.

[2] Omitted *ibid.*

Restriction on sale and offer for sale of shares.

**277A.** (*1*) It shall not be lawful for any person—

(*a*) to issue, circulate or distribute in the Union of Burma any prospectus offering for subscription shares in or debentures of a company incorporated or to be incorporated outside the Union of Burma, whether the company has or has not established, or when formed will or will not establish, a place of business in the Union of Burma, unless—

(i) before the issue, circulation or distribution of the prospectus in the Union of Burma a copy thereof, certified by the chairman and two other directors of the company as having been approved by resolution of the managing body, has been delivered for registration to the Registrar;

(ii) the prospectus states on the face of it that the copy has been so delivered;

(iii) the prospectus is dated; and

(iv) the prospectus otherwise complies with this Part; or

(*b*) to issue to any person in the Union of Burma a form of application for shares in or debentures of such a company or intended company as aforesaid, unless the form is issued with a prospectus which complies with this Part:

Provided that this provision shall not apply if it is shown that the form of application was issued in connection with a *bona fide* invitation to a person to enter into an underwriting agreement with respect to the shares or debentures.

(*2*) This section shall not apply to the issue to existing members or debenture holders of a company of a prospectus or form of application relating to shares in or debentures of the company, whether an applicant for shares or debentures will or will not have the right to renounce in favour of other persons, but, subject as aforesaid, this section shall apply to a prospectus or form of application whether issued on or with reference to the formation of a company or subsequently.

(*3*) Where any document by which any shares in or debentures of a company incorporated outside the Union of Burma are offered for sale to the public would, if the company concerned had been a company within the meaning of this Act, have been deemed by virtue of section 98A to be a prospectus issued by the company, that document shall be deemed to be, for the purposes of this section, a prospectus issued by the company.

(*4*) An offer of shares or debentures for subscription or sale to any person whose ordinary business or part of whose ordinary business it is to buy or sell shares or debentures, whether as principal or agent, shall not be deemed an offer to the public for the purposes of this section.

(*5*) Any person who is knowingly responsible for the issue, circulation or distribution of any prospectus, or for the issue of a form of application for shares or debentures, in contravention of the provisions of this section shall be liable to a fine not exceeding five thousand rupees.

(6) In this section and in section 277B, the expressions "prospectus," "shares" and "debentures" have the same meanings as when used in relation to a company incorporated under this Act.

Requirements as to prospectus.

**277B.** (1) In order to comply with this Part a prospectus, in addition to complying with the provisions of sub-clauses (ii) and (iii) of clause (*a*) of sub-section (1) of section 277A, must—

(*a*) contain particulars with respect to the following matters :—

(i) the objects of the company ;

(ii) the instrument constituting or defining the constitution of the company ;

(iii) the enactments or provisions having the force of an enactment, by or under which the incorporation of the company was effected ;

(iv) an address in the Union of Burma where the said instrument, enactments or provisions, or copies thereof, and if the same are in a foreign language a translation thereof in the English language certified in the prescribed manner, can be inspected ;

(v) the date on which and the country in which the company was incorporated ;

(vi) whether the company has established a place of business in the Union of Burma and, if so, the address of its principal office in the Union of Burma :

Provided that the provisions of sub-clauses (i), (ii) and (iii) of this clause shall not apply in the case of a prospectus issued more than two years after the date at which the company is entitled to commence business ;

(*b*) subject to the provisions of this section, state the matters specified in sub-section (1*A*) of section 93 and set out the reports specified in that section :

Provided that—

(i) where any prospectus is published as a newspaper advertisement, it shall be a sufficient compliance with the requirement that the prospectus must specify the objects of the company if the advertisement specifies the primary object with which the company was formed, and

(ii) in section 93 of this Act a reference to the articles of the company shall be deemed to be a reference to the constitution of the company.

(2) Any condition requiring or binding any applicant for shares or debentures to waive compliance with any requirement of this section, or purporting to affect him with notice of any contract, document, or matter not specifically referred to in the prospectus, shall be void.

(3) In the event of non-compliance with or contravention of any of the requirements of this section, a director or other person responsible for the

prospectus shall not incur any liability by reason of the non-compliance or contravention, if—

(*a*) as regards any matter not disclosed, he proves that he was not cognizant thereof, or

(*b*) he proves that the non-compliance or contravention arose from an honest mistake of fact on his part, or

(*c*) the non-compliance or contravention was in respect of matters which, in the opinion of the Court dealing with the case, were immaterial or were otherwise such as ought, in the opinion of that Court, having regard to all the circumstances of the case, reasonably to be excused :

Provided that in the event of failure to include in a prospectus a statement with respect to the matters specified in clause (*n*) of sub-section (*1*) of section 93, no director or other person shall incur any liability in respect of the failure unless it be proved that he had knowledge of the matters not disclosed.

(*4*) Nothing in this section shall limit or diminish any liability which any person may incur under the general law or this Act, apart from this section.

Restriction on canvassing for sale of shares.

**277C.** (*1*) It shall not be lawful for any person to go from house to house offering shares of a company incorporated outside the Union of Burma for subscription or purchase to the public or any member of the public.

(*2*) In this section the expression "house" shall not include an office used for business purposes.

(*3*) Any person acting in contravention of this section shall be liable to a fine not exceeding one hundred rupees.

Registration of charges.

**277D.** The provisions of sections 109 to 117, both inclusive, and 120 to 125A, both inclusive, shall extend to charges on properties in the Union of Burma which are created and to charges on property in the Union of Burma which is acquired after the 15th January, 1937,[1] by a company incorporated outside the Union of Burma which has an established place of business in the Union of Burma.

Notice of appointment of receiver.

**277E.** The provisions of sections 118 and 119 shall *mutatis mutandis* apply to the case of all companies incorporated outside the Union of Burma but having an established place of business in the Union of Burma, and the provisions of section 130 shall apply to such companies to the extent of requiring them to keep at their principal place of business in the Union of Burma the books of account required by that section with respect to money received and expended, sales and purchases made, and assets and liabilities in relation to its business in the Union of Burma.

[1] Date of commencement of the Indian Companies (Amendment) Act, 1936 (India Act XXII 1936).

## PART XA.

### BANKING COMPANIES.

Definition of banking company.

**277F.** A " banking company " means a company which carries on as its principal business the accepting of deposits of money on current account or otherwise, subject to withdrawal by cheque, draft or order, notwithstanding that it engages in addition in any one or more of the following forms of business, namely :—

(1) the borrowing, raising or taking up of money; the lending or advancing of money either upon or without security; the drawing, making, accepting, discounting, buying, selling, collecting and dealing in bills of exchange, hundis, promissory notes, coupons, drafts, bills of lading, railway receipts, warrants, debentures, certificates, scrips and other instruments, and securities whether transferable or negotiable or not; the granting and issuing of letters of credit, travellers cheques and circular notes; the buying, selling and dealing in bullion and specie; the buying and selling of foreign exchange including foreign bank notes; the acquiring, holding, issuing on commission, underwriting and dealing in stock, funds, shares, debentures, debenture stock, bonds, obligations, securities and investments of all kinds; the purchasing and selling of bonds, scrips or other forms of securities on behalf of constituents or others; the negotiating of loans and advances; the receiving of all kinds of bonds, scrips or valuables on deposit, or for safe custody or otherwise; the collecting and transmitting of money and securities;

(2) acting as agents for Governments or local authorities or for any other person or persons; the carrying on of agency business of any description other than the business of a managing agent, including the power to act as attorneys and to give discharges and receipts;

(3) contracting for public and private loans and negotiating and issuing the same;

(4) the promoting, effecting, insuring, guaranteeing, underwriting, participating in managing and carrying out of any issue, public or private, of State, municipal or other loans, or of shares, stock, debentures, or debenture stock of any company, corporation or association, and the lending of money for the purpose of any such issue;

(5) carrying on and transacting every kind of guarantee and indemnity business;

(6) promoting or financing or assisting in promoting or financing any business undertaking or industry, either existing or new, and developing or forming the same either through the instrumentality of syndicates or otherwise;

(7) acquisition by purchase, lease, exchange, hire or otherwise of any property immoveable or moveable and any rights or privileges which the company may think necessary or convenient to acquire, or the acquisition of which in the opinion of the company is likely to facilitate the realization of any securities held by the company or to prevent or diminish any apprehended loss or liability;

(8) managing, selling and realizing all property, moveable and immoveable, which may come into the possession of the company in satisfaction or part satisfaction of any of its claims;

(9) acquiring and holding and generally dealing with any property and, any right, title or interest in any property, moveable or immoveable, which may form part of the security for any loans or advance or which may be connected with any such security;

(10) undertaking and executing trusts;

(11) undertaking the administration of estates as executor, trustee or otherwise;

(12) taking or otherwise acquiring and holding shares in any other company having objects similar to those of the company;

(13) establishing and supporting or aiding in the establishment and support of associations, institutions, funds, trusts and conveniences calculated to benefit employees or *ex*-employees of the company or the dependents or connections of such persons; granting pensions and allowances and making payments towards insurance; subscribing to or guaranteeing moneys for charitable or benevolent objects or for any exhibition or for any public, general or useful object;

(14) the acquisition, construction, maintenance and alteration of any building or works necessary or convenient for the purposes of the company;

(15) selling, improving, managing, developing, exchanging, leasing, mortgaging, disposing of, or turning into account or otherwise dealing with all or any part of the property and rights of the company;

(16) acquiring and undertaking the whole or any part of the business of any person or company, when such business is of a nature enumerated or described in this section;

(17) doing all such other things as are incidental or conducive to the promotion or advancement of the business of the company.

Limitation of activities of banking company.

**277G.** (*1*) No company formed after the 15th January, 1937,[1] for the purpose of carrying on business as a banking company, or which uses as part of the name under which it proposes to carry on business the word "bank," "banker" or "banking," shall be registered under this Act unless the memorandum limits the objects of the company to the carrying on of the

[1] Date of commencement of the Indian Companies (Amendment) Act, 1936 (India Act XXII, 1936).

business of accepting deposits of money on current account or otherwise, subject to withdrawal by cheque, draft or otherwise, along with some or all of the forms of business specified in section 277F.

(*2*) No banking company, whether incorporated in or outside the Union of Burma, shall after the expiry of two years from the said date carry on any form of business other than those specified in section 277F:

Provided that the President of the Union may, by notification in the Gazette, specify in addition to the businesses set forth in clauses (1) to (17) of section 277F other forms of business which it may be lawful under this section for a banking company to engage in.

Banking company not to employ managing agent.

**277H**. No banking company shall after the expiry of two years from the 15th January, 1937,[1] employ or be managed by a managing agent other than a banking company for the management of the company.

Restriction on commencement of business by banking company.

**277I**. Notwithstanding anything contained in section 103, no banking company incorporated under this Act after the 15th January, 1937,[1] shall commence business unless shares have been allotted to an amount sufficient to yield a sum of at least fifty thousand rupees as working capital, and unless a declaration duly verified by an affidavit signed by the directors and the manager that such a sum has been received by way of paid-up capital has been filed with the Registrar.

Prohibition of charge on unpaid capital.

**277J**. No banking company shall create any charge upon any unpaid capital of the company, and any such charge shall be invalid.

Reserve fund.

**277K**. (*1*) Every banking company shall, after the 15th January, 1937,[1] maintain a reserve fund.

(*2*) Every banking company shall out of the declared profits of each year, and before any dividend is declared, transfer a sum equivalent to not less than twenty per cent. of such profits to the reserve fund until the amount of the said fund is equal to the paid-up capital.

(*3*) A banking company shall invest the amount standing to the credit of its reserve fund in [securities issued or guaranteed by the Union Government],[2] or keep it deposited in a special account to be opened by the company for the purpose in a scheduled bank [or in the Union Bank of Burma]:[3]

Provided that the provision of the sub-section shall not apply to a banking company incorporated before the 15th January, 1937,[1] till after the expiry of two years from the said date.

[3](*4*) Nothing in this section shall apply to a scheduled bank.

Penalties.

[2]**277L**. If default is made in complying with the requirements of section 277G, section 277H, section 277J, section 277K or section 277M, every

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[1] Date of commencement of the Indian Companies (Amendment) Act, 1936 (India Act XXII, 1936).

[2] Substituted by Act IX, 1952.

[3] Inserted *ibid*.

director or other officer of the company who is knowingly and wilfully a party to the default shall be liable to a fine not exceeding five hundred rupees for every day during which the default continues.

Restriction on nature of subsidiary companies.

**277M.** A banking company shall not form or hold shares in any subsidiary company, except a subsidiary company of its own formed for the purpose of undertaking and executing trusts, undertaking the administration of estates as executor, trustee or otherwise, and such other purposes set forth in section 277F as are incidental to the business of accepting deposits of money on current account or otherwise.

Power of Court to stay proceedings.

**277N.** (*1*) The Court may, on the application of a banking company which is temporarily unable to meet its obligations, make an order staying the commencement or continuance of all actions and proceedings against the company for a fixed period of time on such terms and conditions as it shall think fit and proper, and may from time to time extend the period.

(*2*) No such application shall be maintainable unless accompanied by a report of the Registrar :

Provided, however, the Court may, for sufficient reasons, grant interim relief even if the application is not accompanied by such report.

(*3*) The Registrar shall for the purposes of his report be entitled at the cost of the company to investigate the financial condition of the company, and for such purpose to have the books and documents of the company examined by an accountant holding a certificate issued under section 144.

## PART XI.

### SUPPLEMENTAL.

*Legal proceedings, offences, etc.*

Cognizance of offences.

**278.** (*1*) No Court inferior to that of a Magistrate of the first class shall try any offence against this Act.

(*2*) * * * *

(*3*) Notwithstanding anything in the Code of Criminal Procedure, every offence against this Act shall, for the purposes of the said Code, be deemed to be non-cognizable.

Application of fines.

**279.** The Court imposing any fine under this Act may direct that the whole or any part thereof be applied in or towards payment of the costs of the proceedings, or in or towards the rewarding of the person on whose information the fine is recovered.

Power to require limited company to give security for costs.

**280.** Where a limited company is plaintiff or petitioner in any suit or other legal proceeding, any Court having jurisdiction in the matter may, if it appears that there is reason to believe that the company will be unable to pay the costs of the defendant if successful in his defence, require sufficient security to be given for those costs, and may stay all proceedings until the security is given.

Power of Court to grant relief in certain cases.

**281.** (*1*) If, in any proceeding for negligence, default, breach of duty or breach of trust against a person to whom this section applies, it appears to the Court hearing the case that that person is or may be liable in respect of the negligence, default, breach of duty or breach of trust, but that he has acted honestly and reasonably, and that having regard to all the circumstances of the case, including those connected with his appointment, he ought fairly to be excused for the negligence, default, breach of duty or breach of trust, the Court may relieve him, either wholly or partly, from his liability on such terms as the Court may think fit.

(*2*) Where any person to whom this section applies has reason to apprehend that any claim will or might be made against him in respect of any negligence, default, breach of duty or breach of trust, he may apply to the Court for relief, and the Court on any such application shall have the same power to relieve him as under this section it would have had if it had been a Court before which proceedings against that person for negligence, default, breach of duty or breach of trust had been brought.

(*3*) The persons to whom this section applies are the following :—

(*a*) directors of a company ;

(*b*) managers and managing agents of a company ;

(*c*) officers of a company ;

(*d*) persons employed by a company as auditors, whether they are or are not officers of the company.

Penalty for false statement.

**282.** Whoever in any return, report, certificate, balance-sheet or other document, required by or for the purposes of any of the provisions of this Act, wilfully makes a statement false in any material particular, knowing it to be false, shall be punishable with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Penalty for wrongful withholding of propetry.

**282A.** Any director, managing agent, manager or other officer or employee of a company who wrongfully obtains possession of any property of a company, or having any such property in his possession wrongfully withholds it or wilfully applies it to purposes other than those expressed or directed in the articles and authorized by this Act, shall, on the complaint of the company or any creditor or contributory thereof, be punishable with fine not exceeding one thousand rupees, and may be ordered by the Court trying the offence to deliver up or refund, within a time to be fixed by the Court, any such property improperly obtained or wrongfully withheld or wilfully misapplied, or in default to suffer imprisonment for a period not exceeding two years.

Penalty for misapplication of securities by employers.

**282B.** (*1*) All moneys or securities deposited with a company by its employees in pursuance of their contracts of service with the company shall be kept or deposited by the company in a special account to be opened by the company for the purpose in a scheduled bank, and no portion thereof shall be utilized by the company except for the purposes agreed to in the contract of service.

(*2*) Where a provident fund has been constituted by a company for its employees or any class of its employees, all moneys contributed to such fund (whether by the company or by the employees) or accruing by way of interest or otherwise to such fund after the 15th January, 1937,[1] [shall be either deposited in a Post Office Savings Bank Account or invested][2] in securities mentioned or referred to in clauses (*a*) to (*e*) of section 20 of the Trusts Act, and all moneys belonging to such fund at the said date [which are not so deposited or invested shall be so deposited or invested][2] in such securities by annual instalments not exceeding ten in number and not less in amount in any year than one-tenth of the whole amount of such moneys.

(*3*) Notwithstanding anything to the contrary in the rules of any fund to which sub-section (*2*) applies or in any contract between a company and its employees, no employee shall be entitled to receive, in respect of such portion of the amount to his credit in such fund as is invested in accordance with the provisions of sub-section (*2*), interest at a rate exceeding the rate of interest yielded by such investment.

(*4*) An employee shall be entitled, on request made in this behalf to the company, to see the bank's receipt for any money or security such as is referred to in sub-section (*1*) and sub-section (*2*).

(*5*) Any director, managing agent, manager or other officer of the company who knowingly contravenes or permits or authorizes the contravention of the provisions of this section shall be liable on conviction to a fine not exceeding five hundred rupees.

Penalty for improper use of word "Limited."

**283.** If any person or persons trade or carry on business under any name or title of which "Limited" is the last word, that person or those persons shall, unless duly incorporated with limited liability, be liable to a fine not exceeding fifty rupees for every day upon which that name or title has been used.

Saving of pending proceedings for winding up.

**284.** The provisions of this Act with respect to winding up shall not apply to any company of which the winding up has commenced before the commencement of this Act, but every such company shall be wound up in the same manner and with the same incidents as if this Act had not been passed, and, for the purposes of the winding up, the Indian Companies Act, 1882, shall be deemed to remain in full force.

Saving of documents.

**285.** Every instrument of transfer or other document made before the commencement of this Act, in pursuance of any enactment hereby repealed, shall be of the same force as if this Act had not been passed, and for the purposes of that instrument or document the repealed enactment shall be deemed to remain in full force.

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[1] Date of commencement of the Indian Companies (Amendment) Act, 1936 (India Act XXII, 1936).

[2] Substituted by Act XXVII, 1950.

Former registration offices, registers and Registrars continued.

**286.** (*1*) The offices existing at the commencement of this Act for registration of joint-stock companies shall be continued as if they had been established under this Act.

(*2*) Registers of companies kept in any such existing offices shall respectively be deemed part of the registers of companies to be kept under this Act.

(*3*) The existing Registrars, assistant Registrars and officers in those offices shall, during the pleasure of the President of the Union, hold the offices and receive the salaries hitherto held and received by them, but subject to any regulations of the President of the Union with regard to the execution of their duties.

Savings for Life Assurance Companies Act and Provident Insurance Societies Act.

**287.** Nothing in this Act shall affect the provisions of the Life Assurance Companies Act or of the Provident Insurance Societies Act.

## SCHEDULES.

### THE FIRST SCHEDULE.

(*See* sections 2, 17, 18, 79, 266.)

### TABLE A.

REGULATIONS FOR MANAGEMENT OF A COMPANY LIMITED BY SHARES.

*Preliminary.*

1. In these regulations, unless the context otherwise requires, expressions defined in the Burma Companies Act, or any statutory modification thereof in force at the date at which these regulations become binding on the company, shall have the meanings so defined ; and words importing the singular shall include the plural, and *vice versa*, and words importing the masculine gender shall include females, and words importing persons shall include bodies corporate.

*Business.*

2. The directors shall have regard to the restrictions on the commencement of business imposed by section 103 of the Burma Companies Act, if, and so far as, those restrictions are binding upon the company.

*Shares.*

3. Subject to the provisions, if any, in that behalf of the memorandum of association of the company, and without prejudice to any special rights previously conferred on the holders of existing shares in the company, any share in the company may be issued with such preferred, deferred or other special rights, or such restrictions, whether in regard to dividend, voting, return of share capital, or otherwise, as the company may from time to time by special resolution determine, and any preference share may with the

sanction of a special resolution be issued on the terms that it is or at the option of the company is liable to be redeemed.

4. If at any time the share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may, subject to the provisions of section 66A of the Burma Companies Act, be varied with the consent in writing of the holders of three-fourths of the issued shares of that class, or with the sanction of an extraordinary resolution passed at a separate general meeting of the holders of the shares of the class. To every such separate general meeting the provisions of these regulations relating to general meetings shall *mutatis mutandis* apply, but so that the necessary quorum shall be two persons at least holding or representing by proxy one-third of the issued shares of the class.

5. No share shall be offered to the public for subscription except upon the terms that the amount payable on application shall be at least five per cent. of the nominal amount of the share; and the directors shall, as regards any allotment of shares, duly comply with such of the provisions of sections 101 and 104 of the Burma Companies Act as may be applicable thereto.

6. Every person whose name is entered as a member in the register of members shall, without payment, be entitled to a certificate under the common seal of the company specifying the share or shares held by him and the amount paid up thereon: Provided that, in respect of a share or shares held jointly by several persons the company shall not be bound to issue more than one certificate, and delivery of a certificate for a share to one of several joint-holders shall be sufficient delivery to all.

7. If a share certificate is defaced, lost or destroyed, it may be renewed on payment of such fee, if any, not exceeding eight annas, and on such terms, if any, as to evidence and indemnity as the directors think fit.

8. Except to the extent allowed by section 54A of the Burma Companies Act, no part of the funds of the company shall be employed in the purchase of, or in loans upon the security of, the company's shares.

*Lien.*

9. The company shall have a lien on every share (not being a fully-paid share) for all moneys (whether presently payable or not) called or payable at a fixed time in respect of that share, and the company shall also have a lien on all shares (other than fully-paid shares) standing registered in the name of a single person for all moneys presently payable by him or his estate to the company; but the directors may at any time declare any share to be wholly or in part exempt from the provisions of this clause. The company's lien, if any, on a share shall extend to all dividends payable thereon.

10. The company may sell, in such manner as the directors think fit, any shares on which the company has a lien, but no sale shall be made unless some sum in respect of which the lien exists is presently payable, nor until the expiration of fourteen days after a notice in writing, stating and demanding

payment of such part of the amount in respect of which the lien exists as is presently payable, has been given to the registered holder for the time being of the share, or the person entitled by reason of his death or insolvency to the share.

11. The proceeds of the sale shall be applied in payment of such part of the amount in respect of which the lien exists as is presently payable, and the residue shall (subject to a like lien for sums not presently payable as existed upon the shares prior to the sale) be paid to the person entitled to the shares at the date of the sale. The purchaser shall be registered as the holder of the shares, and he shall not be bound to see to the application of the purchase-money, nor shall his title to the shares be affected by any irregularity or invalidity in the proceedings in reference to the sale.

*Calls on Shares.*

12. The directors may from time to time make calls upon the members in respect of any moneys unpaid on their shares, provided that no call shall exceed one-fourth of the nominal amount of the share, or be payable at less than one month from the last call; and each member shall (subject to receiving at least fourteen days' notice specifying the time or times of payments) pay to the company at the time or times so specified the amount called on his shares.

13. The joint-holders of a share shall be jointly and severally liable to pay all calls in respect thereof.

14. If a sum called in respect of a share is not paid before or on the day appointed for payment thereof, the person from whom the sum is due shall pay interest upon the sum at the rate of five per cent. per annum from the day appointed for the payment thereof to the time of the actual payment, but the directors shall be at liberty to waive payment of that interest wholly or in part.

15. The provisions of these regulations as to payment of interest shall apply in the case of non-payment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the amount of the share or by way of premium, as if the same had become payable by virtue of a call duly made and notified.

16. The directors may make arrangements on the issue of shares for a difference between the holders in the amount of calls to be paid and in the times of payment.

17. The directors may, if they think fit, receive from any member willing to advance the same all or any part of the moneys uncalled and unpaid upon any shares held by him; and upon all or any of the moneys so advanced may (until the same would, but for such advance, become presently payable) pay interest at such rate (not exceeding, without the sanction of the company in general meeting, six per cent.) as may be agreed upon between the member paying the sum in advance and the directors.

*Transfer and Transmission of Shares.*

18. The instrument of transfer of any share in the company shall be executed both by the transferor and transferee, and the transferor shall be deemed to remain holder of the share until the name of the transferee is entered in the register of members in respect thereof.

19. Shares in the company shall be transferred in the following form, or in any usual or common form which the directors shall approve :—

I, *A B* of , in consideration of the sum of rupees paid to me by *C D* of (hereinafter called "the said transferee"), do hereby transfer to the said transferee the share [*or* shares] numbered in the undertaking called the Company, Limited, to hold unto the said transferee, his executors, administrators and assigns, subject to the several conditions on which I held the same at the time of the execution thereof, and I, the said transferee, do hereby agree to take the said share [*or* shares] subject to the conditions aforesaid. As witness our hands the day of .

Witness to the signatures of, etc.

20. The directors may decline to register any transfer of shares, not being fully paid shares, to a person of whom they do not approve, and may also decline to register any transfer of shares on which the company has a lien. The directors may also suspend the registration of transfers during the fourteen days immediately preceding the ordinary general meeting in each year. The directors may decline to recognize any instrument of transfer unless—

(*a*) a fee not exceeding two rupees is paid to the company in respect thereof ; and

(*b*) the instrument of transfer is accompanied by the certificate of the shares to which it relates, and such other evidence as the directors may reasonably require to show the right of the transferor to make the transfer.

If the directors refuse to register a transfer of any shares, they shall within two months after the date on which the transfer was lodged with the company send to the transferee and the transferor notice of the refusal.

21. The executors or administrators of a deceased sole holder of a share shall be the only persons recognized by the company as having any title to the share. In the case of a share registered in the names of two or more holders, the survivors or survivor, or the executors or administrators of the deceased survivor, shall be the only persons recognized by the company as having any title to the share.

22. Any person becoming entitled to a share in consequence of the death or insolvency of a member shall, upon such evidence being produced as may from time to time be required by the directors, have the right either to be registered as a member in respect of the share or, instead of being registered himself, to make such transfer of the share as the deceased or insolvent person

could have made ; but the directors shall, in either case, have the same right to decline or suspend registration as they would have had in the case of a transfer of the share by the deceased or insolvent person before the death or insolvency.

23. A person becoming entitled to a share by reason of the death or insolvency of the holder shall be entitled to the same dividends and other advantages to which he would be entitled if he were the registered holder of the share, except that he shall not, before being registered as a member in respect of the share, be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the company.

*Forfeiture of Shares.*

24. If a member fails to pay any call or instalment of a call on the day appointed for payment thereof, the directors may, at any time thereafter during such time as any part of such call or instalment remains unpaid, serve a notice on him requiring payment of so much of the call or instalment as is unpaid, together with any interest which may have accrued.

25. The notice shall name a further day (not earlier than the expiration of fourteen days from the date of the notice) on or before which the payment required by the notice is to be made, and shall state that, in the event of non-payment at or before the time appointed, the shares in respect of which the call was made will be liable to be forfeited.

26. If the requirements of any such notice as aforesaid are not complied with, any share in respect of which the notice has been given may at any time thereafter, before the payment required by the notice has been made, be forfeited by a resolution of the directors to that effect.

27. A forfeited share may be sold or otherwise disposed of on such terms and in such manner as the directors think fit; and at any time before a sale or disposition the forfeiture may be cancelled on such terms as the directors think fit.

28. A person whose shares have been forfeited shall cease to be a member in respect of the forfeited shares, but shall, notwithstanding, remain liable to pay to the company all moneys which, at the date of forfeiture, were presently payable by him to the company in respect of the shares, but his liability shall cease if and when the company received payment in full of the nominal amount of the shares.

29. A duly verified declaration in writing that the declarant is a director of the company, and that a share in the company has been duly forfeited on a date stated in the declaration, shall be conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the share, and that declaration, and the receipt of the company for the consideration, if any, given for the share on the sale or disposition thereof, shall constitute a good title to the share, and the person to whom the share is sold or disposed of

shall be registered as the holder of the share and shall not be bound to see to the application of the purchase-money (if any), nor shall his title to the share be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale or disposal of the share.

30. The provisions of these regulations as to forfeiture shall apply in the case of non-payment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the amount of the share or by way of premium, as if the same had been payable by virtue of a call duly made and notified.

*Conversion of Shares into Stock.*

31. The directors may, with the sanction of the company previously given in general meeting, convert any paid-up shares into stock, and may with the like sanction re-convert any stock into paid-up shares of any denomination.

32. The holders of stock may transfer the same, or any part thereof, in the same manner, and subject to the same regulations, as and subject to which the shares from which the stock arose might previously to conversion have been transferred, or as near thereto as circumstances admit ; but the directors may from time to time fix the minimum amount of stock transferable, and restrict or forbid the transfer of fractions of that minimum, but the minimum shall not exceed the nominal amount of the shares from which the stock arose.

33. The holders of stock shall, according to the amount of the stock held by them, have the same rights, privileges and advantages as regards dividends, voting at meetings of the company, and other matters, as if they held the shares from which the stock arose, but no such privilege or advantage (except participation in the dividends and profits of the company) shall be conferred by any such aliquot part of stock as would not, if existing in shares, have conferred that privilege or advantage.

34. Such of the regulations of the company (other than those relating to share-warrants), as are applicable to paid-up shares shall apply to stock, and the words "share" and "shareholder" therein shall include "stock" and "stockholder."

*Share-warrants.*

35. The company may issue share-warrants, and accordingly the directors may in their discretion, with respect to any share which is fully paid up, on application in writing signed by the person registered as holder of the share, and authenticated by such evidence (if any) as the directors may from time to time require as to the identity of the person signing the request, and on receiving the certificate (if any) of the share, and the amount of the stamp duty on the warrant and such fee as the directors may from time to time require, issue under the company's seal a warrant, duly stamped, stating

that the bearer of the warrant is entitled to the shares therein specified, and may provide by coupons or otherwise for the payment of dividends or other moneys on the shares included in the warrant.

36. A share-warrant shall entitle the bearer to the shares included in it and the shares shall be transferred by the delivery of the share-warrant, and the provisions of the regulations of the company with respect to transfer and transmission of shares shall not apply thereto.

37. The bearer of a share-warrant shall, on surrender of the warrant to the company for cancellation, and on payment of such sum as the directors may from time to time prescribe, be entitled to have his name entered as a member in the register of members in respect of the shares included in the warrant.

38. The bearer of a share-warrant may at any time deposit the warrant at the office of the company, and so long as the warrant remains so deposited, the depositor shall have the same right of signing a requisition for calling a meeting of the company, and of attending and voting and exercising the other privileges of a member at any meeting held after the expiration of two clear days from the time of deposit, as if his name were inserted in the register of members as the holder of the shares included in the deposited warrant. Not more than one person shall be recognised as depositor of the share-warrant. The company shall, on two days' written notice, return the deposited share-warrant to the depositor.

39. Subject as herein otherwise expressly provided, no person shall, as bearer of a share-warrant, sign a requisition for calling a meeting of the company, or attend, or vote or exercise any other privilege of a member at a meeting of the company, or be entitled to receive any notices from the company ; but the bearer of a share-warrant shall be entitled in all other respects to the same privileges and advantages as if he were named in the register of members as the holder of the shares included in the warrant, and he shall be a member of the company.

40. The directors may from time to time make rules as to the terms on which (if they shall think fit) a new share-warrant or coupon may be issued by way of renewal in case of defacement, loss or destruction.

### *Alteration of Capital.*

41. The directors may, with the sanction of the company in general meeting, increase the share capital by such sum, to be divided into shares of such amount, as the resolution shall prescribe.

42. Subject to any direction to the contrary that may be given by the resolution sanctioning the increase of share capital, all new shares shall, before issue, be offered to such persons as at the date of the offer are entitled to receive notices from the company of general meetings in proportion, as nearly as the circumstances admit, to the amount of the existing shares to which they are entitled. The offer shall be made by notice specifying the number of shares

offered, and limiting a time within which the offer, if not accepted, will be deemed to be declined, and after the expiration of that time, or on the receipt of an intimation from the person to whom the offer is made that he declines to accept the shares offered, the directors may dispose of the same in such manner as they think most beneficial to the company. The directors may likewise so dispose of any new shares which (by reason of the ratio which the new shares bear to shares held by persons entitled to an offer of new shares) cannot, in the opinion of the directors, be conveniently offered under this article.

43. The new shares shall be subject to the same provisions with reference is the payment of calls, lien, transfer, transmission, forfeiture and otherwise at the shares in the original share capital.

44. The company may, by ordinary resolution,—

(*a*) consolidate and divide its share capital into shares of larger amount than its existing shares ;

(*b*) by sub-division of its existing shares or any of them, divide the whole or any part of its share capital into shares of smaller amount than is fixed by the memorandum of association, subject, nevertheless, to the provisions of paragraph (*d*) of sub-section (*1*) of section 50 of the Burma Companies Act ;

(*c*) cancel any shares which, at the date of the passing of the resolution, have not been taken or agreed to be taken by any person.

44A. The company may, by special resolution, reduce its share capital on any manner, and with and subject to any incident authorized and consent required by law.

*General Meetings.*

45. The statutory general meeting of the company shall be held within the period required by section 77 of the Burma Companies Act.

46. A general meeting shall be held within eighteen months from the date of its incorporation and thereafter once at least in every year at such time (not being more then fifteen months after the holding of the last preceding general meeting) and place as may be prescribed by the company in general meeting, or, in default, at such time in the month following that in which the anniversary of the company's incorporation occurs, and at such place as the directors shall appoint. In default of a general meeting being so held, a general meeting shall be held in the month next following, and may be called by any two members in the same manner, as nearly as possible, as that in which meetings are to be called by the directors.

47. The above-mentioned general meetings shall be called ordinary meetings ; all other general meetings shall be called extraordinary.

48. The directors may, whenever they think fit, call an extraordinary general meeting, and extraordinary general meetings shall also be called on such requisition, or in default may be called by such requisitionists, as provided

by section 78 of the Burma Companies Act. If at any time there are not within the Union of Burma sufficient directors capable of action to form a quorum, any director or any two members of the company may call an extra-ordinary general meeting in the same manner, as nearly as possible, as that in which meeting may be called by the directors.

*Proceedings at General Meeting.*

49. Subject to the provisions of sub-section (*2*) of section 81 of the Burma Companies Act relating to special resolutions, fourteen days' notice at the least (exclusive of the day on which the notice is served or deemed to be served, but inclusive of the day for which notice is given) specifying the place, the day and the hour of meeting and, in case of special business, the general nature of that business, shall be given in manner hereinafter mentioned, or in such other manner, if any, as may be prescribed by the company in general meeting, to such persons as are, under the Burma Companies Act or the regulations of the company, entitled to receive such notices from the company; but the accidental omission to give notice to or the non-receipt of notice by any member shall not invalidate the proceedings at any general meeting.

50. All business shall be deemed special that is transacted at an extra-ordinary meeting, and all that is transacted at an ordinary meeting with the exception of sanctioning a dividend, the consideration of the accounts, balance-sheets and the ordinary report of the directors and auditors, the election of directors and other officers in the place of those retiring by rotation, and the fixing of the remuneration of the auditors.

51. No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business; save as herein otherwise provided, two members in the case of a private company and five members in the case of any other company personally present shall be a quorum.

52. If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if called upon the requisition of members, shall be dissolved; in any other case, it shall stand adjourned to the same day in the next week at the same time and place, and, if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the members present shall be a quorum.

53. The chairman, if any, of the board of directors shall preside as chairman at every general meeting of the company.

54. If there is no such chairman, or if at any meeting he is not present within fifteen minutes after the time appointed for holding the meeting, or is unwilling to act as chairman, the members present shall choose some one of their number to be chairman.

55. The chairman may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished

at the meeting from which the adjournment took place. When a meeting is adjourned for ten days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid, it shall not be necessary to give any notice of an adjournment or of the businees to be transacted at an adjourned meeting.

56. At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is (before or on the declaration of the show of hands) demanded by at least three members, and unless a poll is so demanded, a declaration by the chairman that a resolution has, on a show of hands, been carried, or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book of the proceedings of the company, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of, or against, that resolution.

57. If a poll is duly demanded, it shall be taken in such manner as the chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

58. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place, or at which the poll is demanded, shall be entitled to a second or casting vote.

59. A poll demanded on the election of a chairman or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairman of the meeting directs.

### *Votes of Members.*

60. On a show of hands every member present in person shall have one vote. On a poll every member shall have one vote in respect of each share or each hundred rupees of stock held by him.

61. In the case of joint-holders, the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint-holders ; and for this purpose seniority shall be determined by the order in which the names stand in the register of members.

62. A member of unsound mind, or in respect of whom an order has been made by any Court having jurisdiction in lunacy, may vote, whether on a show of hands or on a poll, by his committee or other legal guardian, and any such committee or guardian may, on a poll, vote by proxy.

63. No member shall be entitled to vote at any general meeting unless all calls or other sums presently payable by him in respect of shares in the company have been paid.

64. On a poll votes may be given either personally or by proxy: Provided that no company shall vote by proxy as long as a resolution of its directors in accordance with the provisions of section 80 of the Burma Companies Act is in force.

65. The instrument appointing a proxy shall be in writing under the hand of the appointor or of his attorney duly authorized in writing, or, if the appointor is a corporation, either under the common seal, or under the hand of an officer or attorney so authorized. No person shall act as a proxy unless he is a member of the company.

66. The instrument appointing a proxy, and the power-of-attorney or other authority (if any) under which it is signed, or a notarially certified copy of that power or authority, shall be deposited at the registered office of the company not less than seventy-two hours before the time for holding the meeting at which the person named in the instrument proposes to vote, and in default the instrument of proxy shall not be treated as valid.

67. An instrument appointing a proxy may be in the following form, or in any other form which the directors shall approve :—

Company, Limited.

"I of in the district of being a member of the Company, Limited, hereby appoint of as my proxy to vote for me and on my behalf at the (ordinary or extraordinary, as the case may be,) general meeting of the company to be held on the day of and at any adjournment thereof."

Signed this day of

*Directors.*

68. The number of the directors and the names of the first directors shall be determined in writing by a majority of the subscribers of the memorandum of association.

69. The remuneration of the directors shall from time to time be determined by the company in general meeting.

70. The qualification of a director shall be the holding of at least one share in the company, and it shall be his duty to comply with the provisions of section 85 of the Burma Companies Act.

*Powers and Duties of Directors.*

71. The business of the company shall be managed by the directors, who may pay all expenses incurred in getting up and registering the company, and may exercise all such powers of the company as are not, by the Burma Companies Act or any statutory modification thereof for the time being in force, or by these articles, required to be exercised by the company in general meeting, subject nevertheless to any regulation of these articles, to the provisions of the said Act, and to such regulations, being not inconsistent with the aforesaid regulations or provisions, as may be prescribed by the company in general meeting; but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if that regulation had not been made.

72. The directors may from time to time appoint one or more of their body to the office of managing director or manager for such term, and at such remuneration (whether by way of salary, or commission, or participation in profits, or partly in one way and partly in another), as they may think fit, and a director so appointed shall not, while holding that office, be subject to retirement by rotation, or taken into account in determining the rotation of retirement of directors, but his appointment shall be subject to determination *ipso facto* if he ceases from any cause to be a director, or if the company in general meeting resolve that his tenure of the office of managing director or manager be determined.

73. The amount for the time being remaining undischarged of moneys borrowed or raised by the directors for the purposes of the company (otherwise than by the issue of share capital) shall not at any time exceed the issued share capital of the company without the sanction of the company in general meeting.

74. The directors shall duly comply with the provisions of the Burma Companies Act or any statutory modification thereof for the time being in force, and in particular with the provisions in regard to the registration of the particulars of mortgages and charges affecting the property of the company or created by it, and to keeping a register of the directors, and to sending to the Registrar an annual list of members, and a summary of particulars relating thereto, and notice of any consolidation or increase of share capital, or conversion of shares into stock, and copies of special resolutions and a copy of the register of directors and notifications of any changes therein.

75. The directors shall cause minutes to be made in books provided for the purpose—

(*a*) of all appointments of officers made by the directors;

(*b*) of the names of the directors present at each meeting of the directors and of any committee of the directors;

(*c*) of all resolutions and proceedings at all meetings of the company and of the directors and of committees of directors;

and every director present at any meeting of directors or committee of directors shall sign his name in a book to be kept for that purpose.

*The Seal.*

76. The seal of the company shall not be affixed to any instrument except by the authority of a resolution of the board of directors, and in the presence of at least two directors and of the secretary or such other person as the directors may appoint for the purpose; and those two directors and secretary or other person as aforesaid shall sign every instrument to which the seal of the company is so affixed in their presence.

*Disqualifications of Directors.*

77. The office of director shall be vacated if the director—

(*a*) fails to obtain within the time specified in sub-section (*1*) of section 84 of the Burma Companies Act, or at any time thereafter ceases to hold, the share qualification, if any, necessary for his appointment; or

(*b*) is found to be of unsound mind by a Court of competent jurisdiction; or

(*c*) is adjudged insolvent; or

(*d*) fails to pay calls made on him in respect of shares held by him within six months from the date of such calls being made; or

(*e*) without the sanction of the company in general meeting accepts or holds any office of profit under the company other than that of a managing director or manager or a legal or technical adviser or a banker; or

(*f*) absents himself from three consecutive meetings of the directors or from all meetings of the directors for a continuous period of three months, whichever is longer, without leave of absence from the board of directors; or

(*g*) accepts a loan from the company; or

(*h*) is concerned or participates in the profits of any contract with the company; or

(*i*) is punished with imprisonment for a term exceeding six months:

Provided, however, that no director shall vacate his office by reason of his being a member of any company which has entered into contracts with, or done any work for, the company of which he is director, but a director shall not vote in respect of any such contract or work, and if he does so vote, his vote shall not be counted.

*Rotation of Directors.*

78. At the first ordinary meeting of the company, the whole of the directors shall retire from office, and at the ordinary meeting in every subsequent year one-third of the directors for the time being or, if their number is not three or a multiple of three, then the number nearest to one-third shall retire from office.

79. The directors to retire in every year shall be those who have been longest in office since their last election, but as between persons who became directors on the same day those to retire shall (unless they otherwise agree among themselves) be determined by lot.

80. A retiring director shall be eligible for re-election.

81. The company at the general meeting at which a director retires in manner aforesaid may fill up the vacated office by electing a person thereto.

82. If at any meeting at which an election of directors ought to take place the places of the vacating directors are not filled up, the meeting shall stand adjourned till the same day in the next week at the same time and place, and, if at the adjourned meeting the places of the vacating directors are not filled up, the vacating directors or such of them as have not had their places filled up shall be deemed to have been re-elected at the adjourned meeting.

83. Subject to the provisions of sections 83A and 83B of the Burma Companies Act, the company may from time to time in general meeting increase or reduce the number of directors, and may also determine in what rotation the increased or reduced number is to go out of office.

84. Any casual vacancy occurring on the board of directors may be filled up by the directors, but the person so chosen shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director.

85. The directors shall have power at any time, and from time to time, to appoint a person as an additional director who shall retire from office at the next following ordinary general meeting, but shall be eligible for election by the company at that meeting as an additional director.

86. The company may by extraordinary resolution remove any director before the expiration of his period of office, and may by an ordinary resolution appoint another person in his stead ; the person so appointed shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director.

*Proceedings of Directors.*

87. The directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings, as they think fit. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes, the chairman shall have a second or casting vote. A director may, and the secretary on the requisition of a director shall, at any time, summon a meeting of directors.

88. The quorum necessary for the transaction of the business of the directors may be fixed by the directors, and unless so fixed shall (when the number of directors exceeds three) be three.

89. The continuing directors may act notwithstanding any vacancy in their body, but, if and so long as their number is reduced below the number fixed by or pursuant to the regulations of the company as the necessary quorum of directors, the continuing directors may act for the purpose of

increasing the number of directors to that number, or of summoning a general meeting of the company, but for no other purpose.

90. The directors may elect a chairman of their meetings and determine the period for which he is to hold office; but if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the directors present may choose one of their number to be chairman of the meeting.

91. The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit; any committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed on them by the directors.

92. A committee may elect a chairman of their meetings; if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the members present may choose one of their number to be chairman of the meeting.

93. A committee may meet and adjourn as they think proper. Questions arising at any meeting shall be determined by a majority of votes of the members present, and, in case of an equality of votes, the chairman shall have a second or casting vote.

94. All acts done by any meeting of the directors or of a committee of directors, or by any person acting as a director, shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such directors or persons acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

*Dividends and Reserve.*

95. The company in general meeting may declare dividends, but no dividends shall exceed the amount recommended by the directors.

96. The directors may from time to time pay to the members such interim dividends as appear to the directors to be justified by the profits of the company.

97. No dividends shall be paid otherwise than out of profits of the year or any other undistributed profits.

98. Subject to the rights of persons (if any) entitled to shares with special rights as to dividends, all dividends shall be declared and paid according to the amounts paid on the shares, but if and so long as nothing is paid upon any of the shares in the company, dividends may be declared and paid according to the amounts of the shares. No amount paid on a share in advance of calls shall, while carrying interest, be treated for the purposes of this article as paid on the share.

99. The directors may, before recommending any dividend, set aside out of the profits of the company such sums as they think proper as a reserve or reserves which shall, at the discretion of the directors, be applicable for meeting contingencies, or for equalizing dividends, or for any other purpose to which the profits of the company may be properly applied, and pending such application may, at the like discretion, either be employed in the business of the company or be invested in such investments (other than shares of the company) as the directors may from time to time think fit.

100. If several persons are registered as joint-holders of any share, any one of them may give effectual receipts for any dividends payable on the share.

101. Notice of any dividend that may have been declared shall be given in manner hereinafter mentioned to the persons entitled to share therein.

102. No dividend shall bear interest against the company.

*Accounts.*

103. The directors shall cause to be kept proper books of account with respect to—

(*a*) all sums of money received and expended by the company and the matters in respect of which the receipts and expenditure take place;

(*b*) all sales and purchases of goods by the company;

(*c*) the assets and liabilities of the company.

104. The books of account shall be kept at the registered office of the company or at such other place as the directors shall think fit and shall be open to inspection by the directors during business hours.

105. The directors shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the company or any of them shall be open to the inspection of members not being directors, and no member (not being a director) shall have any right of inspecting any account or book or document of the company except as conferred by law or authorized by the directors or by the company in general meeting.

106. The directors shall, as required by sections 131 and 131A of the Burma Companies Act, cause to be prepared and to be laid before the company in general meeting such profit and loss accounts, balance-sheets, and reports as are referred to in those sections.

107. The profit and loss account shall, in addition to the matters referred to in sub-section (*3*) of section 132 of the Burma Companies Act, show arranged under the most convenient heads, the amount of gross income, distinguishing the several sources from which it has been derived, and the

amount of gross expenditure, distinguishing the expenses of the establishment, salaries and other like matters. Every item of expenditure fairly chargeable against the year's income shall be brought into account, so that a just balance of profit and loss may be laid before the meeting, and, in cases where any item of expenditure which may in fairness be distributed over several years has been incurred in any one year, the whole amount of such item shall be stated, with the addition of the reasons why only a portion of such expenditure is charged against the income of the year.

108. A balance-sheet shall be made out in every year and laid before the company in general meeting made up to a date not more than six months before such meeting. The balance-sheet shall be accompanied by a report of the directors as to the state of the company's affairs, and the amount which they recommend to be paid by way of dividend, and the amount (if any) which they propose to carry to a reserve fund.

109. A copy of the balance-sheet and report shall, seven days previously to the meeting, be sent to the persons entitled to receive notices of general meetings in the manner in which notices are to be given hereunder.

110. The directors shall in all respects comply with the provisions of sections 130 to 135 of the Burma Companies Act or any statutory modification thereof for the time being in force.

*Audit.*

111. Auditors shall be appointed and their duties regulated in accordance with sections 144 and 145 of the Burma Companies Act or any statutory modification thereof for the time being in force.

*Notices.*

112. (*1*) A notice may be given by the company to any member either personally or by sending it by post to him to his registered address or (if he has no registered address in the Union of Burma) to the address, if any, within the Union of Burma supplied by him to the company for the giving of notices to him.

(*2*) Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying and posting a letter containing the notice and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.

113. If a member has no registered address in the Union of Burma, and has not supplied to the company an address within the Union of Burma for the giving of notices to him, a notice addressed to him and advertised in a newspaper circulating in the neighbourhood of the registered office of the company shall be deemed to be duly given to him on the day on which the advertisement appears.

114. A notice may be given by the company to the joint-holders of a share by giving the notice to the joint-holder named first in the register in respect of the share.

115. A notice may be given by the company to the persons entitled to a share in consequence of the death or insolvency of a member by sending it through the post in a prepaid letter addressed to them by name, or by the title of representatives of the deceased or assignee of the insolvent, or by any like description, at the address (if any) in the Union of Burma supplied for the purpose by the persons claiming to be so entitled, or (until such an address has been so supplied) by giving the notice in any manner in which the same might have been given if the death or insolvency had not occurred.

116. Notice of every general meeting shall be given in some manner hereinbefore authorized to (*a*) every member of the company (including bearers of share-warrants) except those members who (having no registered address within the Union of Burma) have not supplied to the company an address within the Union of Burma for the giving of notices to them, and also to (*b*) every person entitled to a share in consequence of the death or insolvency of a member who but for his death or insolvency would be entitled to receive notice of the meeting. No other persons shall be entitled to receive notices of general meetings.

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## TABLE B.

(*See* sections 249 and 262.)

### TABLE OF FEES TO BE PAID TO THE REGISTRAR.

### *I.—By a company having a share capital.*

| | Rs. | A. | P. |
|---|---|---|---|
| 1. For registration of a company whose nominal share capital does not exceed Rs. 20,000, a fee of ... .. ... ... ... | 40 | 0 | 0 |
| 2. For registration of a company whose nominal share capital exceeds Rs. 20,000, the above fee of forty rupees, with the following additional fees regulated according to the amount of nominal capital (that is to say)— | | | |
| For every 10,000 rupees of nominal share capital, or part of 10,000 rupees, after the first 20,000 rupees up to 50,000 rupees ... ... ... | 20 | 0 | 0 |
| For every 10,000 rupees of nominal share capital, or part of 10,000 rupees, after the first 50,000 rupees up to 10,00,000 rupees ... ... | 5 | 0 | 0 |
| For every 10,000 rupees of nominal share capital, or part of 10,000 rupees, after the first 10,00,000 rupees ... ... ... ... | 1 | 0 | 0 |
| 3. For registration of any increase of share capital made after the first registration of the company, the same fees per 10,000 rupees, or part of 10,000 rupees, as would have been payable if such increased share capital had formed part of the original share capital at the time of registration : | | | |
| Provided that no company shall be liable to pay in respect of nominal share capital on registration, or afterwards, any greater amount of fees than 1,000 rupees taking into account, in the case of fees payable on an increase of share capital after registration, the fees paid on registration. | | | |
| 4. For registration of any existing company, except such companies as are by this Act exempted from payment of fees in respect of registration under this Act, the same fee as is charged for registering a new company. | | | |
| 5. For filing any document by this Act required or authorized to be filed, other than the memorandum or the abstract required to be filed with the Registrar by a receiver or the statement required to be filed with the Registrar by the liquidator in a winding up. ... ... ... ... | 5 | 0 | 0 |
| 6. For making a record of any fact by this Act authorized or required to be recorded by the Registrar, a fee of ... ... ... ... | 5 | 0 | 0 |

### *II.—By a company not having a share capital.*

| | | | |
|---|---|---|---|
| 1. For registration of a company whose number of members, as stated in the articles of association, does not exceed 20 ... ... ... | 40 | 0 | 0 |
| 2. For registration of a company whose number of members, as stated in the articles of association, exceeds 20, but does not exceed 100 ... ... | 100 | 0 | 0 |
| 3. For registration of a company whose number of members, as stated in the articles of association, exceeds 100, but is not stated to be unlimited, the above fee of Rs. 100 with an additional Rs. 5 for every 50 members, or less number than 50 members, after the first 100. | | | |
| 4. For registration of a company in which the number of members is stated in the articles of association to be unlimited, a fee of ... ... ... | 400 | 0 | 0 |
| 5. For registration of any increase on the number of members made after the registration of the company, the same fees as would have been payable in respect of such increase if such increase had been stated in the articles of association at the time of registration : | | | |
| Provided that no one company shall be liable to pay on the whole a greater fee than Rs. 400 in respect of its number of members, taking into account the fee paid on the first registration of the company. | | | |
| 6. For registration of any existing company, except such companies as are by this Act exempted from payment of fees in respect of registration under this Act, the same fee as is charged for registering a new company. | | | |
| 7. For filing any document by this Act required or authorized to be filed, other than the memorandum or the abstract required to be filed with the registrar by a receiver or the statement required to be filed with the registrar by the liquidator in a winding up. ... .. ... ... ... | 5 | 0 | 0 |
| 8. For making a record of any fact by this Act authorized or required to be recorded by the registrar, a fee of ... ... ... ... | 5 | 0 | 0 |

## THE SECOND SCHEDULE.

(*See* sections 98 and 154.)

### FORM I.

THE BURMA COMPANIES ACT.

### STATEMENT IN LIEU OF PROSPECTUS

filed by

.....LIMITED,

pursuant to section 98 of the Burma Companies Act.

Presented for filing by

| | |
|---|---|
| The nominal share capital of the company ... | Rs..... |
| Divided into ... ... ... ... | Shares of Rs.....each.<br>Shares of Rs.....each.<br>Shares of Rs.....each. |
| Amount (if any) of above capital which consists of redeemable preference shares. | Shares of Rs.....each. |
| The date on or before which these shares are, or are liable, to be redeemed. | |
| Names, descriptions and addresses of directors or proposed directors and managers or proposed managers, and any provision in the articles, or in any contract, as to appointment of and remuneration payable to directors or managers. | |
| If the share capital of the company is divided into different classes of shares, the right of voting at meetings of the company conferred by, and the rights in respect of capital and dividends attached to, the several classes of shares respectively. | |
| Number and amount of shares and debentures agreed to be issued as fully or partly paid up otherwise than in cash. | 1. —shares of Rs.....fully paid.<br>2. —shares upon which Rs..... per share credited as paid.<br>3. Debentures Rs.....<br>4. Consideration. |
| Names and addresses of vendors of property purchased or acquired, or proposed to be purchased or acquired by the company.<br><br>Amount (in cash, shares or debentures) payable to each separate vendor. | |
| Amount (if any) paid or payable (in cash or shares or debentures) for any such property specifying amount (if any) paid or payable for goodwill. | Total purchase price Rs.....<br>Cash Rs.....<br>Shares Rs.....<br>Debentures Rs.....<br>Goodwill Rs..... |

| | |
|---|---|
| Amount (if any) paid or payable as commission for subscribing or agreeing to subscribe or procuring or agreeing to procure subscriptions for any shares or debentures in the company ; or rate of the commission. | Amount paid.<br>Amount payable.<br>Rate per cent. |
| The number of shares, if any, which persons have agreed for a commission to subscribe absolutely. | |
| Estimated amount of preliminary expenses ... | Rs. ..... ..... |
| Amount paid or intended to be paid to any promoter ...<br>Consideration for the payment ... ... | Name of promoter.....<br>Amount Rs.....<br>Consideration. |
| Dates of and parties to every material contract (except contracts entered into in the ordinary course of the business intended to be carried on by the company, or contracts, other than contracts appointing or fixing the remuneration of a managing director or managing agent, entered into more than two years before the delivery of this statement). | |
| Time and place at which the contracts or copies thereof may be inspected. | |
| Names and addresses of the auditors of the company (if any). | |
| Full particulars of the nature and extent of the interest of every director in the promotion of or in the property proposed to be acquired by the company, or, where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares, or otherwise, by any person either to induce him to become, or to qualify him as, a director, or otherwise for services rendered by him or by the firm in connection with the promotion or formation of the company. | |
| If it is proposed to acquire any business, the amount, as certified by the persons by whom the amounts of the business have been audited, of the net profits of the business in respect of each of the three financial years immediately preceding the date of this statement : provided that in the case of a business which has been carried on for less than three years and the accounts of which have only been made up in respect of two years or one year the above requirement shall have effect as if references to two years or one year, as the case may be, were substituted for references to three years, and in any such case the statement shall say how long the business to be acquired has been carried on. | |

(Signatures of the persons above-named as directors or proposed directors or of their agents authorized in writing.) _____

_____

_____

Date

## FORM II.

### THE BURMA COMPANIES ACT.

### STATEMENT IN LIEU OF PROSPECTUS

filed by

.....LIMITED,

pursuant to sub-section (*1*) of section 154 of the Burma Companies Act.

Presented for filing by

| | |
|---|---|
| The nominal share capital of the company . | Rs..... ..... |
| Divided into ... ... ... ... ... | Shares of Rs..... each.<br>Shares of Rs.....each.<br>Shares of Rs ..... ...each. |
| Amount (if any) of above capital which consists of redeemable preference shares. | Shares of Rs.....each. |
| The date on or before which these shares are, or are liable, to be redeemed. | |
| Names, descriptions and addresses of directors or proposed directors and managers or proposed managers, and any provision in the articles, or in any contract, as to appointment of and remuneration payable to directors or managers. | |
| If the share capital of the company is divided into different classes of shares, the right of voting at meetings of the company conferred by and the rights in respect of capital and dividends attached to several classes of shares respectively. | |
| Number and amount of shares and debentures issued within the two years preceding the date of this statement as fully or partly paid up otherwise than for cash or agreed to be so issued at the date of this statement. | 1. Shares of Rs..... ...fully paid.<br>2. Shares upon which Rs..... per share credited as paid.<br>3. Debentures Rs.....<br>4. Consideration. |
| Names and addresses of vendors of property (1) purchased or acquired by the company within the two years preceding the date of this statement or (2) agreed or proposed to be purchased or acquired by the company. | |
| Amount (in cash, shares or debentures) payable to each separate vendor. | |
| Amount (if any) paid or payable (in cash or shares or debentures) for any such property specifying amount (if any) paid or payable for goodwill. | Total purchase price Rs.... ..... ...<br>Cash Rs.....<br>Shares Rs.....<br>Debentures Rs.... . .....<br>Goodwill Rs..... |
| Amount (if any) paid or payable as commission for subscribing or agreeing to subscribe or procuring or agreeing to procure subscriptions for any shares or debentures in the company; or rate of the commission. | Amount paid.<br>Amount payable.<br>Rate per cent. |
| The number of shares, if any, which persons have agreed for a commission to subscribe absolutely. | |

| | |
|---|---|
| Unless more than two years have elapsed since the date on which the company was entitled to commence business ;—<br>Estimated amount of preliminary expenses.<br>Amount paid or intended to be paid to any promoter.<br>Consideration for the payment. | Rs.....<br>Name of promoter.....<br>Amount Rs.....<br>Consideration. |
| Dates of, and parties to every material contract (except contracts entered into in the ordinary course of the business intended to be carried on by the company, or contracts, other than contracts appointing or fixing the remuneration of a managing director or managing agent, entered into more than two years before the delivery of this statement). | |
| Times and place at which the contracts or copies thereof may be inspected. | |
| Names and addresses of the auditors of the company. | |
| Full particulars of the nature and extent of the interest of every director in the promotion of or in the property purchased or acquired by the company within the two years preceding the date of this statement or proposed to be acquired by the company, or where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares, or otherwise, by any person either to induce him to become, or qualify him as, a director, or otherwise for services rendered by him or by the firm in connection with the promotion or the formation of the company. | |
| If it is proposed to acquire any business, the amount, as certified by the persons by whom the accounts of the business have been audited, of the net profits of the business in respect of each of the three financial years immediately preceding the date of this statement: provided that in the case of a business which has been carried on for less than three years and the accounts of which have only been made up in respect of two years or one year the above requirements shall have effect as if references to two years or one year, as the case may be, were substituted for references to three years, and in any such case the statement shall say how long the business to be acquired has been carried on. | |
| (Signatures of the persons above-named as directors or proposed directors or of their agents authorized in writing.) | |

*Dated the day of*

## THE THIRD SCHEDULE.

### FORM A.

(*See* sections 6 and 151.)

MEMORANDUM OF ASSOCIATION OF A COMPANY LIMITED BY SHARES.

*1st.*—The name of the company is " The Eastern Steam Packet Company, Limited."

*2nd.*—The registered office of the company will be situate in the Union of Burma.

*3rd.*—The objects for which the company is established are "the conveyance of passengers and goods in ships or boats between such places as the company may from time to time determine, and the doing all such other things as are incidental or conducive to the attainment of the above object."

*4th.*—The liability of the members is limited.

*5th.*—The share capital of the company is two hundred thousand rupees, divided into one thousand shares of two hundred rupees each.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

| Names, addresses and descriptions of subscribers. | Number of shares taken by each subscriber. |
|---|---|
| 1. A.B. of , merchant ... ... ... ... ... ... | 200 |
| 2. C.D. ,, , ,, ... ... ... ... ... ... | 25 |
| 3. E.F. ,, , ,, ... ... ... ... ... ... | 30 |
| 4. G.H. ,, , ,, ... ... ... ... ... ... | 40 |
| 5. I. J. ,, , ,, ... ... ... ... ... ... | 15 |
| 6. K.L. ,, , ,, ... ... ... ... ... ... | 5 |
| 7. M.N. ,, , ,, ... ... ... ... ... ... | 10 |
| TOTAL SHARES TAKEN ... | 325 |

*Dated the day of 19*

Witness to the above signatures.

X. Y. of

## FORM B.

(*See* sections 7 and 151.)

MEMORANDUM AND ARTICLES OF ASSOCIATION OF A COMPANY LIMITED BY GUARANTEE, AND NOT HAVING A SHARE CAPITAL.

*Memorandum of Association.*

*1st.*—The name of the company is "The Mutual Rangoon Marine Association, Limited ".

*2nd.*—The registered office of the company will be situate in Rangoon.

*3rd.*—The objects for which the company is established are "the mutual insurance of ships belonging to members of the company, and the doing all such other things as are incidental or conducive to the attainment of the above object."

*4th.*—The liability of the members is limited.

*5th.*—Every member of the company undertakes to contribute to the assets of the company in the event of its being wound up while he is a member,

or within one year afterwards, for payment of the debts and liabilities of the company contracted before he ceases to be a member, and the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves, such amount as may be required not exceeding one hundred rupees.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company in pursuance of this memorandum of association.

*Names, Addresses and Descriptions of Subscribers.*

"1. A. B. of
"2. C. D. of
"3. E. F. of
"4. G. H. of
"5. I. J. of
"6. K. L. of
"7. M. N. of

*Dated the* *day of*

Witness to the above signatures.
X. Y. of

ARTICLES OF ASSOCIATION TO ACCOMPANY PRECEDING MEMORANDUM OF ASSOCIATION.

*Number of Members.*

1. The company for the purpose of registration is declared to consist of five hundred members.

2. The directors hereinafter mentioned may, whenever the business or the association requires it, register an increase of members.

*Definition of Members.*

3. Every person shall be deemed to have agreed to become a member of the company who insures any ship or share in a ship in pursuance of the regulations hereinafter contained.

4. The first general meeting shall be held at such time not being less than one month nor more than three months after the incorporation of the company, and at such place, as the directors may determine.

5. A general meeting shall be held once in every year at such time (not being more than fifteen months after the holding of the last preceding general meeting) and place as may be prescribed by the company in general meeting, or, in default, at such time in the month following that in which the anniversary of the company's incorporation occurs, and at such place, as the directors shall appoint. In default of a general meeting being so held, a general meeting shall be held in the month next following, and may be called by any two members in the same manner, as nearly as possible, as that in which meetings are to be called by the directors.

6. The above-mentioned general meetings shall be called ordinary meetings; all other general meetings shall be called extraordinary.

7. The directors may, whenever they think fit, and shall, on a requisition made in writing by any five or more members, call an extraordinary general meeting.

8. Any requisition made by the members must state the object of the meeting proposed to be called, and must be signed by the requisitionists and deposited at the registered office of the company.

9. On receipt of the requisition the directors shall forthwith proceed to call a general meeting; if they do not proceed to cause a meeting to be held within twenty-one days from the date of the requisition being so deposited, the requisitionists or any other five members may themselves call a meeting.

*Proceedings at General Meetings.*

10. Fourteen days' notice at the least, specifying the place, the day and the hour of meeting, and in case of special business the general nature of the business, shall be given to the members in manner hereinafter mentioned, or in such other manner (if any) as may be prescribed by the company in general meeting; but the non-receipt of such a notice by any member shall not invalidate the proceedings at any general meeting.

11. All business shall be deemed special that is transacted at an extraordinary meeting, and all that is transacted at an ordinary meeting, with the exception of the consideration of the accounts, balance-sheets and the ordinary report of the directors and auditors, the election of directors and other officers in the place of those retiring by rotation, and the fixing of remuneration of the auditors.

12. No business shall be transacted at any meeting except the declaration of a dividend, unless a quorum of members is present at the commencement of the business. The quorum shall be ascertained as follows (that is to say):— if the members of the company at the time of the meeting do not exceed ten in number, the quorum shall be five, if they exceed ten, there shall be added to the above quorum one for every five additional members with this limitation, that no quorum shall in any case exceed ten.

13. If within one hour from the time appointed for the meeting a quorum of members is not present, the meeting, if called on the requisition of the members, shall be dissolved; in any other case it shall stand adjourned to the same day in the following week at the same time and place, and if at such adjourned meeting a quorum of members is not present, it shall be adjourned *sine die*.

14. The chairman (if any) of the directors shall preside as chairman at every general meeting of the company.

15. If there is no such chairman, or if at any meeting he is not present at the time of holding the same, the members present shall choose some one of their number to be chairman of that meeting.

16. The chairman may, with the consent of the meeting, adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

17. At any general meeting, unless a poll is demanded by at least three members, a declaration by the chairman that a resolution has been carried, and an entry to that effect in the book of proceedings of the company, shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

18. If a poll is demanded in manner aforesaid, the same shall be taken in such manner as the chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

*Votes of Members.*

19. Every member shall have one vote and no more.

20. If any member is a lunatic or idiot, he may vote by his committee or other legal guardian.

21. No member shall be entitled to vote at any meeting unless all moneys due from him to the company have been paid.

22. On a poll votes may be given either personally or by proxy : Provided that no company shall vote by proxy as long as a resolution of its directors in accordance with the provisions of section 80 of the Burma Companies Act is in force. A proxy shall be appointed in writing under the hand of the appointor, or, if such appointor is a corporation, under its common seal.

23. (*1*) No person shall act as a proxy unless he is a member, or unless he is appointed to act at the meeting as proxy for a corporation.

(2) The instrument appointing him shall be deposited at the registered office of the company not less than forty-eight hours before the time of holding the meeting at which he proposes to vote.

24. Any instrument appointing a proxy shall be in the following form :—

Company, Limited.

I, , of , being a member of the Company, Limited, hereby appoint of as my proxy, to vote for me and on my behalf at the [ordinary or extraordinary, as the case may be,] general meeting of the company to be held on the day of and at any adjournment thereof.

Signed this day of 19

*Directors.*

25. The number of the directors and the names of the first directors shall be determined by the subscribers of the memorandum of association.

26. Until directors are appointed, the subscribers of the memorandum of association shall, for all the purposes of the Burma Companies Act, be deemed to be directors.

*Powers of Directors.*

27. The business of the company shall be managed by the directors, who may exercise all such powers of the company as are not by the Burma Companies Act, or by any statutory modification thereof for the time being in force, or by these articles, required to be exercised by the company in general meeting; but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if that regulation had not been made.

*Elections of Directors.*

28. The directors shall be elected annually by the company in general meeting.

*Business of Company.*

(Here insert *rules as to mode in which business of insurance is to be conducted.*)

*Audit.*

29. Auditors shall be appointed and their duties regulated in accordance with sections 144 and 145 of the Burma Companies Act, or any statutory modification thereof for the time being in force, and for this purpose the said sections shall have effect as if the word "members" were substituted for "shareholders," and as if "first general meeting" were substituted for "statutory meeting."

*Notices.*

30. A notice may be given by the company to any member either personally or by sending it by post to him to his registered address.

31. Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying and posting a letter containing the notice and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.

*Names, Addresses and Descriptions of Subscribers.*

"1. A. B. of
"2. C. D. of
"3. E. F. of
"4. G. H. of
"5. I. J. of
"6. K. L. of
"7. M. N. of

*Dated the* *day of* *19*

Witness to the above signatures.

X.Y., of

## FORM C.

(*See* sections 7 and 151.)

MEMORANDUM AND ARTICLES OF ASSOCIATION OF A COMPANY LIMITED BY GUARANTEE, AND HAVING A SHARE CAPITAL.

*Memorandum of Association.*

*1st.*—The name of the company is " The Snowy Range Hotel Company, Limited. "

*2nd.*—The registered office of the company will be situate in the Union of Burma.

*3rd.*—The objects for which the company is established are " the facilitating travelling in the Snowy Range by providing hotels and conveyances by sea and by land for the accommodation of travellers and the doing all such other things as are incidental or conducive to the attainment of the above object. "

*4th.*—The liability of the members is limited.

*5th.*—Every member of the company undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before he ceases to be a member, and the costs, charges and expenses of winding up the same, and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required not exceeding fifty rupees.

*6th.*—The share capital of the company shall consist of five hundred thousand rupees, divided into five thousand shares of one hundred rupees each.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

| Names, addresses and descriptions of Subscribers. | Number of shares taken by each Subscriber. |
|---|---|
| " 1. A. B. of ... ... ... ... ... ... ... | 200 |
| " 2. C. D. of ... ... ... ... ... ... .. | 25 |
| " 3. E. F. of ... ... ... ... ... ... ... | 30 |
| " 4. G H. of ... .. ... ... ... ... ... | 40 |
| " 5. I. J. of ... ... ... ... ... ... ... | 15 |
| " 6. K. L. of ... ... ... ... ... ... ... | 5 |
| " 7. M. N. of ... ... ... ... ... ... ... | 10 |
| Total shares taken ... | 325 |

*Dated the* *day of* *19*

Witness to the above signatures.

X.Y., of

*Articles of Association to accompany preceding Memorandum of Association.*

1. The share capital of the company is five hundred thousand rupees, divided into five thousand shares of one hundred rupees each.

2. The directors may, with the sanction of the company in general meeting, reduce the amount of shares in the company.

3. The directors may, with the sanction of the company in general meeting, cancel any shares belonging to the company.

4. All the articles of Table A of the Burma Companies Act shall be deemed to be incorporated with these articles and to apply to the company.

*Names, Addresses and Descriptions of Subscribers.*

"1. A. B. of merchant.
"2. C. D. of
"3. E. F. of
"4. G. H. of
"5. I. J. of
"6. K. L. of
"7. M. N. of

*Dated the* *day of* *19*

Witness to the above signatures.

X.Y., of

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## FORM D.

(*See* sections 8 and 151.)

### MEMORANDUM AND ARTICLES OF ASSOCIATION OF AN UNLIMITED COMPANY HAVING A SHARE CAPITAL.

*Memorandum of Association.*

*1st.*—The name of the company is " The Patent Stereotype Company.

*2nd.*—The registered office of the company will be sutuate in the Union of Burma.

*3rd.*—The objects for which the company is established are " the working of a patent method of founding and casting stereotype plates of which method P.Q., of Rangoon, is the sole patentee."

We, the several persons whose names are subscribed, are desirous of being formed into a company in pursuance of this memorandum of association

and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

| Names, addresses and descriptions of Subscribers. | Number of shares taken by each Subscriber. |
|---|---|
| " 1. A. B. of ... ... ... ... ... ... ... | 3 |
| " 2. C. D. of ... ... ... ... ... ... ... | 2 |
| " 3. E. F. of ... ... ... ... ... ... ... | 1 |
| " 4. G. H. of ... ... ... ... ... ... ... | 2 |
| " 5. I. J. of ... ... ... ... ... ... ... | 2 |
| " 6. K. L. of ... ... ... ... ... ... ... | 1 |
| " 7. M. N. of ... ... ... ... ... ... ... | 1 |
| Total shares taken ... | 12 |

*Dated the* *day of* *19* .

Witness to the above signatures.

X.Y., of

*Articles of Association to accompany the preceding Memorandum of Association.*

1. The share capital of the company is twenty thousand rupees, divided into twenty shares of one thousand rupees each.

2. All the articles of Table A of the Burma Companies Act shall be deemed to be incorporated with these articles and to apply to the company.

*Names, Addresses and Descriptions of Subscribers.*

" 1. A. B. of , merchant.
" 2. C. D. of
" 3. E. F. of
" 4. G. H. of
" 5. I. J. of
" 6. K. L. of
" 7. M. N. of

*Dated the* *day of* *19*

Witness to the above signatures.

X,Y., of

## FORM E.

### AS REQUIRED BY PART II OF THE ACT.

(*See* section 32.)

Summary of Share Capital and Shares of the Company, Limited, made up to the day of 19 (being the day of the first ordinary general meeting in 19 ).

Nominal share capital Rs. divided into [1] } shares of Rs. each. shares of Rs. each.

Total number of shares[1] taken up to the day of 19 which number must agree with the total shown in the list as held by existing members ... ... ... ... ... ... ... ... ... ...

Number of shares issued subject to payment wholly in cash ... ... ...

Number of shares issued as fully paid up otherwise than in cash ... ...

Number of shares issued as partly paid up to the extent of per share otherwise than in cash ... ... ... ... ... ... ...

[2] There has been called upon each—of shares ... ... ... ... ... Rs.

There has been called upon each—of shares ... ... ... ... ... Rs.

There has been called up on each—of shares ... ... ... ... ... Rs.

[3] Total amount of calls received, including payments on application and allotment ... ... ... ... ... ... ... ... ... ... Rs.

Total amount (if any) agreed to be considered as paid on shares which have been issued as fully paid up otherwise than in cash ... ... ... ... Rs.

Total amount (if any) agreed to be considered as paid on shares which have been issued as partly paid up to the extent of per share ... ... Rs.

Total amount of calls unpaid ... ... ... ... ... ... ... Rs

Total amount (if any) of sums paid by way of commission in respect of shares or debentures or allowed by way of discount since date of last summary ... Rs

Total amount (if any) paid on [4] shares forfeited ... ... ... ... ... Rs

Total amount of shares and stock for which share-warrants are outstanding... Rs

Total amount of share-warrants issued and surrendered respectively since date of last summary ... ... ... ... ... ... ... ... Rs.

Number of shares or amount of stock comprised in each share-warrant ... Rs.

Total amount of debt due from the company in respect of all mortgages and charges which are required to be registered with the Registrar under this Act ... ... ... ... ... ... ... ... ... ... ... Rs.

---

[1] When there are shares of different kinds or amounts (*e.g.*, Preference and Ordinary of Rs. 200 or Rs. 100) state the numbers and nominal values separately.

[2] Where various amounts have been called or there are shares of different kinds, state them separately.

[3] Include what has been received on forfeited as well as on existing shares.

[4] State the aggregate number of shares forfeited.

List of Persons holding shares in the Company, Limited, on the day of 19 , and of persons who have held shares therein at any time since the date of the last return, showing their names and addresses and an account of the shares so held.

| Folio in register ledger containing particulars. | Names, Addresses and Occupations. | | | | Account of Shares. | | | | | Remarks. |
|---|---|---|---|---|---|---|---|---|---|---|
| | Name in full. | Father's name. | Address. | Occupation or caste. | [1] Number of shares held by existing members at date of return. | [4] Particulars of shares transferred since the date of the last return by persons who are still members. | | [4] Particulars of shares transferred since the date of the last return by persons who have ceased to be members. | | |
| | | | | | | Number.[2] | Date of registration of transfer. | Number.[3] | Date of registration of transfer. | |
| | | | | | | | | | | |

[1] State the aggregate number of shares forfeited (if any).

[2] The aggregate number of shares held, and not the distinctive numbers, must be stated and the column must be added up throughout so as to make one total to agree with that stated in the summary to have been taken up.

[3] When the shares are of different classes, these columns may be sub-divided so that the number of each class held or transferred may be shown separately.

[4] The date of registration of each transfer should be given as well as the number of shares transferred on each date. The particulars should be placed opposite the name of the transferor and not opposite that of the transferee, but the name of the transferee may be inserted in the remarks column immediately opposite the particulars of each transfer.

Names and addresses of the persons who are the Directors of the Limited, on the day of 19

| Names. | Addresses. |
|---|---|
| | |

Names and addresses of the persons who are the managers of the Limited, on the day of 19 .

| Names. | Addresses. |
|---|---|
| | |

NOTE.—Banking companies must add a list of all their places of business.

I, , do hereby certify that the above list and summary truly and correctly states the facts as they stood on day of 19

(Signature)..... ..... .....

(State whether Director, Manager or Secretary.)

## FORM F.

(*See* section 132.)

.....LIMITED.

*Balance-Sheet as at.....19*

| CAPITAL AND LIABILITIES. | | PROPERTY AND ASSETS. | |
|---|---|---|---|
| CAPITAL— | | FIXED CAPITAL EXPENDITURE— | |
| Authorized Capital.....shares of Rs.....each | | (Distinguishing as far as possible between expenditure upon goodwill, land, buildings, lease-holds, railway sidings, plant, machinery, furniture, development of property, patents, trade marks and designs, interest paid out of capital during construction, etc., and stating in every case the original cost and the additions thereto and deductions therefrom during the year, and the total depreciation written off under each head. Where sums have been written off on a reduction of capital or a revaluation of assets every balance-sheet after the first balance-sheet subsequent to the reduction or revaluation shall show the reduced figures, with the date of and the amount of the reduction made). | |
| (Distinguishing between the various classes of Capital.) Issued Capital.....shares of Rs.....each... | | | |
| (i) Shares issued as fully paid up pursuant to any contract without payments being received in cash .....shares of Rs.....each. | | | |
| (ii) Shares issued for payments in cash.....shares of Rs.....each. | | | |
| Subscribed Capital.....shares of Rs.....each ... | | | |
| Amount called up at Rs.....per share ... ... | | PRELIMINARY EXPENSES ... ... ... ... | |
| *Less*—Calls upaid— | | COMMISSION OR BROKERAGE ... ... .. | |
| (i) due from Managing Agents ... ... | | (Commission or Brokerage paid for underwriting or placing or subscribing shares or debentures until written off.) | |
| (ii) due from others ... ... ... | | | |
| *Add*—Forfeited shares (amount paid up). | | DISCOUNT ALLOWED on the issue of shares or so much as has not been written off at the date of the balance-sheet. | |
| *Note.*—Where circumstances permit issued and subscribed capital and amount called up may be shown as one item, *e g.*, | | | |
| Issued and Subscribed Capital.....shares of Rs.....each, Rs.....paid up ... ... ... ... | | STORES AND SPARE PARTS ... ... ... | |
| RESERVES ... ... ... ... ... | | LOOSE TOOLS ... ... ... ... ... | |
| DEBENTURES stating the nature of security ... ... | | LIVE-STOCK AND VEHICLES ... ... ... | |
| ANY SINKING FUND ... ... ... | | STOCK IN TRADE ... ... ... ... | |
| ANY OTHER FUND CREATED OUT OF NET PROFITS, including any development fund ... ... | | (Stating mode of valuation, *e.g.*, cost or market value.) | |
| ANY PENSION OR INSURANCE FUND ... ... | | BILLS OF EXCHANGE ... ... ... ... | |
| PROVISION FOR BAD AND DOUBTFUL DEBTS ... ... | | BOOK DEBTS ... ... .. ... ... | |

| CAPITAL AND LIABILITIES. | | PROPERTY AND ASSETS. | |
|---|---|---|---|
| LOANS— | | (Distinguishing between those considered good and in respect of which the company is fully secured and those considered good for which the company holds no security other than the debtor's personal security, and distinguishing between debts considered good and debts considered doubtful or bad. Debts due by directors or other officers of the company or any of them either severally or jointly with any other persons to be separately stated.) | |
| (*a*) Secured— | | | |
| (i) loans on mortgages or fixed assets ... ... | | | |
| (ii) loans on debentures ... ... ... | | | |
| (iii) loans from banks stating the nature of security ... | | | |
| (iv) liabilities to subsidiary companies ... ... | | | |
| (v) other secured loans, stating the nature of security ... | | | |
| (vi) interest accrued on mortgages, debentures or other secured loans ... ... ... ... | | | |
| (*b*) Unsecured— | | | |
| (i) loans from banks ... ... ... | | | |
| (ii) fixed deposits ... ... ... ... | | | |
| (iii) short term loans... ... ... ... | | | |
| (iv) advance by directors or managers and managing agents ... ... ... ... | | | |
| (v) interest accruing but not due and interest accrued and due ... ... ... ... | | | |
| (vi) liabilities to subsidiary companies ... ... | | | |
| UNCLAIMED DIVIDENDS ... ... ... ... | | ADVANCES ... ... ... ... ... | |
| LIABILITIES— | | (Recoverable in cash or in kind or for value to be received, *e.g.*, Rates, Taxes, Insurance, etc., showing separately— | |
| For Goods supplied ... ... ... ... | | (i) loans given to subsidiary companies, | |
| For Expenses ... ... ... ... | | (ii) loans including temporary advances made at any time during the year to directors or managers of the company.) | |
| For Acceptances ... ... ... ... | | | |
| For Other Finance ... ... ... ... | | | |
| ADVANCE PAYMENTS AND UNEXPIRED DISCOUNTS ... ... | | INVESTMENTS ... ... ... ... | |
| (For the portion for which value has still to be given, *e.g.*, in the case of the following classes of companies:— Newspaper, Fire Insurance, Theatre, Club, Banking, Steamship Companies, etc.) | | [Showing nature of investments and mode of valuation, *e.g.*, cost or market value and distinguishing— | |
| | | (i) investments in Government or trust securities, | |
| | | (ii) investments in shares, debentures or bonds (showing separately shares fully paid up and partly paid up), | |
| | | (iii) investments in shares, debentures or bonds of subsidiary companies, | |
| | | (iv) immovable properties]. | |
| | | INTEREST ACCRUED ON INVESTMENTS ... | |
| | | CASH AND OTHER BALANCES ... ... ... | |
| | | Amount in hand ... ... ... ... | |
| | | Balances with Agents and Bankers (in detail showing whether on deposit or current account, etc.) ... | |
| PROFIT AND LOSS ... ... ... ... | | Profit and Loss ... ... ... ... | |
| CONTINGENT LIABILITIES— | | | |
| Claims against the company not acknowledged as debts | | | |
| Money for which the company is contingently liable ... | | | |
| (Showing separately the amount of any guarantees given by the company on behalf of directors or officers of the company.) | | | |
| Arrears of Cumulative Preference Dividends ... | | | |

The information required to be given under any of the items or sub-items in this Form, if not included in the Balance-Sheet itself, shall be furnished in a separate Schedule or Schedules to be attached to and to form part of the Balance-Sheet.

## FORM G.

(*See* section 136.)

FORM OF STATEMENT TO BE PUBLISHED BY BANKING AND INSURANCE COMPANIES AND DEPOSIT, PROVIDENT, OR BENEFIT SOCIETIES.

[1] The share capital of the company is Rs. divided into shares of Rs. each.
The number of shares issued is . Calls to the amount of Rs. per share have been made, under which the sum of Rs. has been received.
The liabilities of the company on the thirty-first day of December (or thirtieth of June) were—

Debts owing to sundry persons by the company ;
Under decree, Rs.
On mortgages or bonds, Rs.
On notes, bills or hundis, Rs.
On other contracts, Rs.
On estimated liabilities, Rs.

The assets of the company on that day were—

Government securities [stating them], Rs.
Bills of exchange, hundis and promissory notes, Rs.
Cash at the Bankers, Rs.
Other securities, Rs.

## FORM H.

(*See* section 277.)

INFORMATION TO BE SUPPLIED IN OR IN ADDITION TO THE INFORMATION CONTAINED IN THE BALANCE-SHEET OF A COMPANY REFERRED TO IN PART X.

*Liabilities.*

1. Summary of Authorized Share Capital and Issued Share Capital.
2. Redeemable Preference Shares, stating date on or before which the shares are or are liable to be redeemed.
3. Debentures stating the nature of the security.
4. Redeemed debentures which the company has power to re-issue.
5. Loans (*a*) secured, stating the nature of the security ; (*b*) unsecured.
6. Loans from Banks :—
   (*a*) Secured, stating nature of security ;
   (*b*) Unsecured.
7. Profit and Loss Account, showing (unless disclosed in a separate account) :—
   Balance as per previous Balance-Sheet.
   Appropriation thereof.
   Profit since last Balance-Sheet.
8. Contingent liabilities.
9. Arrears of Cumulative Preference Dividends.

*Assets.*

1. Fixed Assets, with sufficient particulars to disclose their general nature, and stating how their values are arrived at.
2. Preliminary expenses, so far as not written off.

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[1] If the company has no capital divided into shares, the portion of the statement relating to capital and shares must be omitted.

3. Any expenses incurred in connection with any issue of Share Capital or Debentures, so far as not written off.

4. If it is shown as a separate item in or is otherwise ascertainable from the books of the company, or from any contract for the sale or purchase of any property to be acquired by the company, or from any documents in the possession of the company relating to the stamp duty payable in respect of any such contract or the conveyance of any such property, the amount of the good-will and of any patents and trade marks as so shown or ascertained.

5. Interest paid on capital, so far as not written off, showing the Share Capital on which and the rate at which interest has been paid out of capital during the period to which the accounts relate.

6. Discount allowed on shares issued, so far as not written off.

7. Commission paid or allowed in respect of any shares or debentures, so far as not written off.

8. Loans outstanding to enable employees or trustees on their behalf to purchase shares in the company.

9. Particulars showing :—

(*a*) the amount of any loans which during the period to which the accounts relate have been made either by the company or by any other person under a guarantee from or on a security provided by the company to any director or officer of the company, including any such loans which were repaid during the said period ;

and

(*b*) the amount of any loans made in manner aforesaid to any director or officer at any time before the period aforesaid and outstanding at the expiration thereof ;

and

(*c*) the total of the amount paid to the directors as remuneration for their services, inclusive of all fees, percentages, or other emoluments, paid to or receivable by them by or from the company or by or from any subsidiary company.

NOTE (1).—There shall not be required to be shown :—

(*a*) in the case of a company the ordinary business of which includes the lending of money, loans made by the company in the ordinary course of its business ;

(*b*) loans made by the company to any employee of the company if the loan does not exceed twenty thousand rupees and is certified by the directors of the company to have been made in accordance with any practice adopted or about to be adopted by the company with respect to loans to its employees.

NOTE (2).—The foregoing shall not apply in relation to a managing director of the company, and in the case of any other director who holds any salaried employment or office in the company there shall not be required to be included in the said total amount any sums paid to him except sums paid by way of directors' fees.

(Where a company is a holding company then the Balance-Sheet shall disclose the particulars required by section 132A.)

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## THE COMPANIES FOREIGN INTERESTS ACT.

[INDIA ACT XX. 1918.] (26th September, 1918.)

1. * * * *

Definitions.

2. (*1*) In this Act—

[1] (*a*) the expression "citizen of the Union" has the meaning assigned to it in the Constitution but shall include any person who holds a certificate of naturalization as a citizen of the Union under any law for the time being in force in the Union and any association incorporated in the Union.

(*b*) the expression "restrictive provision" means any provision in the articles of association of a company which, in the opinion of the President of the Union, is designed to restrict or limit or has the effect of restricting or limiting the share or shares or interest which may be held, or the rights, powers or authority which may be conferred upon or exercised by or on behalf of persons other than [citizens of the Union] [1] in the company, or in respect of the control, management or direction of the affairs thereof.

(*2*) All words and expressions used in this Act and defined in the Burma Companies Act shall be deemed to have the meanings respectively attributed to them by that Act.

Application of Act.

3. This Act shall apply to such companies as the President of the Union may, by notification in the Gazette, declare to be companies with restrictive provisions, and any such notification shall specify the restrictive provisions.

Alterations in restrictive provisions and winding up.

4. So long as a notification issued under section 3 is in force in respect of any company, notwithstanding anything to the contrary in any other Act,—

(1) no alteration of the articles of association of the company affecting either directly or indirectly any restrictive provision shall be of any effect until it has received the consent in writing of the President of the Union ;

(2) a resolution for the voluntary winding up of the company shall be of no effect unless the President of the Union authorizes or ratifies it by a written consent ;

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[1] Substituted by the Union of Burma (Adaptation of Laws) Order, 1948.

(3) any Court which has jurisdiction to wind up the company may in its discretion refuse to make a winding up order. In the exercise of its discretion the Court shall be guided by the consideration whether the winding up is *bonâ fide* with a view to the discontinuance of the undertaking or is with a view to continuing the undertaking freed either wholly or in part from any restrictive provision ;

(4) the President of the Union in giving consent, or the Court in making a winding up order, as the case may be, may impose such terms or conditions for giving effect to the purposes of this Act as he or it thinks fit.

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# THE COMPANIES (WAR-TIME PROVISIONS) ACT, 1945.

CONTENTS.

PART I.

*Preliminary.*

1. Short-title, commencement and duration.
2. Definitions.
3. Court having jurisdiction under Act.
4. Registrar to give effect to all orders and directions of Court.

PART II.

*Relief to Companies affected by war circumstances.*

5. Restriction on execution of decrees.
6. Power to Court to afford relief to companies affected by war circumstances.
7. Date of operation, and terms and conditions of direction under Act.
8. Claims against company not to be extinguished.

PART III.

*Adjustment of Liabilities.*

9. Company may apply for scheme of arrangement.
10. Circumstances under which application under section 9 may be entertained.
11. Procedure on application for scheme of arrangement.

12. What a scheme of arrangement may provide for.
13. Extension or revocation of scheme when creditor not served with notice.
14. Enforcement of scheme.
15. Revocation of scheme.
16. Revocation not to affect new scheme.
17. Government to be bound by this Part.
18. Exemptions from stamp duty.

## PART IV.

*Reconstruction of Records.*

19. Company may reconstruct record damaged, lost or destroyed.
20. Validity of reconstructed record.
21. Decision of dispute whether document has been damaged, lost or destroyed.

## PART V.

*Transfer of Shares.*

22. Power of company to decline to register transfer of shares and to refer matter to decision of Registrar.
23. Subsequent transfers of shares how to be dealt with.

## PART VI.

*Miscellaneous.*

24. False statement or omission by director, etc.
25. Fraudulently disposing of property after approval of scheme.
26. Costs of proceedings under Act.
27. Company not to be compelled to give effect to transfer of shares or to pay dividends.
27A. Re-registration under Burma Companies Act of companies previously registered in Burma but subsequently registered in the United Kingdom or India or in any British Dominion, etc.
28. Power to President to make rules.
29. Power to High Court to make rules.
30. Bar to jurisdiction of civil Court.
31. Saving of right of suit.
32. Protection for acts done in good faith.
33. Definition of " Company " as respects certain sections of this Act.

# THE COMPANIES (WAR-TIME PROVISIONS) ACT, 1945.*

[BURMA ACT XXV, 1945.] (1st August, 1946.)

WHEREAS it is expedient to make temporary provision for affording relief to companies adversely affected by war circumstances ;

* * * *

It is hereby enacted as follows :—

## PART I.

### *Preliminary.*

Short title, commencement and duration.

**1.** (*1*) This Act may be called the Companies (War-Time Provisions) Act, 1945.

(*2*) It shall come into force on such date as the President of the Union may, by notification, appoint and different dates may be appointed for different parts or sections of the Act.[1]

(*3*) It shall remain in force until the President of the Union, by notification, declares it to be no longer in force.

Definitions.

**2.** In this Act, unless there is anything repugnant in the subject or context,—

(i) " authorized officer " of a company means any director, managing agent, manager or secretary or other person empowered under the charter, articles of association, regulations, bye-laws or other instrument relating to the constitution of the company, or by a special resolution of the company, to give directions in regard to the business of the company, but does not include an auditor ;

(ii) " company " means a company as defined in the Burma Companies Act ;

(iii) " the Court " means the Court having jurisdiction under this Act ;

(iv) " prescribed " means prescribed by rules made under this Act ;

(v) " Registrar " means the Registrar of Companies appointed under the Burma Companies Act, and includes any other person appointed by the President of the Union to perform any of the duties of the Registrar under this Act ;

(vi) " war circumstances " means circumstances directiy or indirectly attributable to any war in which His Britannic Majesty may be or has been engaged after the first day of September 1939 ;

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* Published in Commerce and Supply Department Notification No. 12, dated the 13th October, 1945, and republished in *Burma Gazette*, 1946, Part I, page 154.

[1] Parts I, II, III, IV and VI of the Act came into force in the whole of Burma on 1st August, 1946—See *Burma Gazette*, 1946, Part, I, page 462 ; and Part V of the Act came into force in the whole of Burma on 1st August, 1917.—See *Burma Gazette*, 1947, Part I, page 367.

(vii) Expressions used but not defined in this Act and defined in the Burma Companies Act have the meanings assigned to them in that Act.

Court having jurisdiction under Act.

**3.** (*1*) The Court having jurisdiction under this Act shall be the High Court :

Provided that the President of the Union may, by notification and subject to such restrictions and conditions as he thinks fit, empower any District Court to exercise all or any of the jurisdiction by this Act conferred upon the Court, and in that case such District Court shall, as regards the jurisdiction so conferred, be the Court in respect of all companies having their registered offices in the district.

(*2*) Nothing in this section shall invalidate any proceeding by reason of its being taken in the wrong Court.

Registrar to give effect to all orders and directions of Court.

**4.** The Registrar shall be bound to give effect to all orders passed and all directions given by the Court under this Act as if they were part of the Burma Companies Act.

## PART II.

*Relief to Companies affected by war circumstances.*

Restriction on execution of decrees.

**5.** Part II of the Liabilities (War-Time Adjustment) Act, 1945, with the exception of section 8, shall apply to companies in the same way as it applies to other debtors, with the following modifications :—

(i) " the Court " shall mean the Court having jurisdiction under this Act, and

(ii) in section 6 for the word " insolvency " the words " winding up " shall be substituted.

Power to Court to afford relief to companies affected by war circumstances.

**6.** The Court may, on the application of any company which finds itself unable by reason of war circumstances to comply with any of the provisions of the Burma Companies Act or of the charter, memorandum and articles of association, regulations or bye-laws of the company or of any other law or instrument which is binding on the company, and after due notice of such application to all persons interested in such manner as may be prescribed, give directions modifying or suspending the provisions of any law, charter, memorandum and articles of association, regulations, bye-laws or other instrument as to the constitution of the company or as to the discharge of any of the powers, duties or functions of the company.

Date of operation and terms and conditions of direction under Act.

**7.** (*1*) Any direction given in pursuance of the powers conferred by section 6 may provide that such direction shall have effect from such date as may be specified therein, not being earlier than the eighth day of December, 1941, and any direction so given shall be in force for such period and shall be subject to such terms and conditions as the Court may in each case provide.

(*2*) Any direction given in pursuance of this Part may be varied or revoked by a subsequent direction made in like manner.

**8.** Nothing contained in this Part shall be deemed to authorize the Court to pass any order for the extinguishment of any claim against a company. Claims against company not to be extinguished.

## PART III.

### *Adjustment of Liabilities.*

**9.** Any company which is in financial difficulties owing to war circumstances may apply to the Court for the settlement of an equitable and reasonable scheme of arrangement with its creditors under this Part : Company may apply for scheme of arrangement.

Provided that an application shall not be made by a company under this Part unless a special resolution within the meaning of the Burma Companies Act has been passed by the company resolving that the application be made.

**10.** No application for a scheme of arrangement under this Part shall be entertained unless the Court is satisfied that principal object of the company is to carry on a business for profit, and that the object of the application is to enable the company to carry on or recover that business ; and the Court shall, in considering whether it is practicable and proper to deal with the affairs of a company under this Part, have regard to the constitution and history of the company and the means of the members and officers thereof. Circumstances under which application under section 9 may be entertained.

**11.** (*1*) Where a company makes an application under this Part for a scheme of arrangement and the Court is satisfied that— Procedure on applicatoin for scheme of arrangement.

(*a*) the company is unable to pay its accrued debts or will be unable after payment of its accrued debts (if any) to meet, as they fall due, any future liabilities in respect of obligations already incurred, or is in such a position that, if it is required to pay the accrued debts and to meet any such future liabilities as they fall due, it would have no reasonable prospect of preserving or recovering the business of the firm, and (*a*) the position of the company is due to war circumstances, the Court shall cause notice of the application to be served on all the creditors of the company, who have debts provable in a winding-up of the company by the Court, in such manner as may be prescribed, and

(i) if the company and a majority in number and value of such creditors assent to a scheme framed for the purpose, shall approve the same ;

(ii) when no scheme to which the company and a majority in number and value of such creditors assent can be affected, the Court may approve any scheme which appears to it to be equitable and reasonable.

(*2*) A scheme approved under sub-section (*1*) shall, subject to the following provisions of this Part, be binding on the company and on all the creditors on whom notice was served under sub-section (*1*) :

Provided that where any of the said creditors has a debt which would be entitled to priority if the company were wound-up, a scheme of arrangement

shall not be approved unless the creditor assents thereto or the scheme secures the payment of the debt with the like degree of priority.

What a scheme of arrangement may provide for.

**12.** A scheme of arrangement approved under this Part may provide for the composition of debts, the postponement of payment of debts, the assignment or charging of any property of the company in favour of the creditors, and the management of the company's business or the disposal of any part of its property, and may, with the assent of the other parties thereto, vary the terms of any lease, mortgage or contract to which the company is a party.

Extension or revocation of scheme when creditor not served with notice.

**13.** Where it appears that a scheme of arrangement approved under this Part is not binding on any creditor by reason of the fact that he has not received due notice of the application under sub-section (*1*) of section 11, that creditor or any creditor who is bound by the scheme may apply to the Court to extend the scheme, with such variations as may be necessary, to the creditor not bound thereby, or to revoke the scheme, and the Court may, if it thinks fit, extend or revoke the scheme accordingly.

Enforcement of scheme.

**14.** Any scheme of arrangement approved under this Part may be enforced by the Court on the application of the company or of any creditor bound thereby, and any disobedience of an order of the Court made on any such application shall be deemed to be a contempt of Court and shall be punishable accordingly.

Revocation of scheme.

**15.** If the company fails to comply with an approved scheme, or if it appears to the Court that the scheme cannot for any sufficient reason proceed without undue delay or without injustice to the creditors or to the company, or that the company is guilty of any act or omission which would constitute an offence under this Act or has in any respect failed to act in complete good faith towards its creditors, the Court may, if it thinks fit, on the application of any creditor bound by the scheme or, if the ground is injustice to the company, on the application of the company, revoke the scheme, but without prejudice to the validity of anything done in the meantime.

Revocation not to affect new scheme.

**16.** The revocation of an approved scheme by the Court shall be without prejudice to the making of a new scheme of arrangement, and the Court may give such directions as it thinks fit with respect to the making of a new scheme.

Government to be bound by this Part.

**17.** This Part shall, subject to such exceptions and modifications as may be prescribed by the President of the Union by notification in this behalf, apply in relation to debts and liabilities due to or incurred towards the Government, property in which the Government has an interest, leases, mortgages and contracts entered into with the Government, proceedings by the Government, and the exercise of remedies by the Government, in the same manner as it applies to subjects :

Provided that nothing in this section shall be taken as affecting the prosecution of any criminal proceeding.

**18.** Where a scheme of arrangement is approved under this Part, every deed, conveyance, assignment or other instrument relating solely to property which was the property of the company on the date of the approval of the scheme and which, after the execution of the instrument, is or remains the property of the company or the property of a trustee appointed for the purposes of the scheme, shall be exempt from stamp duty. **Exemptions from stamp duty.**

## PART IV.

### *Reconstruction of Records.*

**19.** (*1*) Where any document or record pertaining to a company has been damaged, lost or destroyed in Burma through war circumstances, it shall be lawful for the company or an authorized officer thereof to take such measures as it or he may deem necessary or expedient for the purpose of reconstructing such document or record from such information as may be available. **Company may reconstruct record damaged, lost or destroyed.**

(*2*) For the purpose of reconstructing any document or record within the meaning of sub-section (*1*) the company or authorized officer thereof shall have power to call for any document or any information from any person, and may require that any such information shall be given in the form of an affidavit.

(*3*) If any person refuses to produce or furnish any document or information in his possession or to swear any affidavit in connection therewith, when required so to do under the provisions of sub-section (*2*) by any company or authorized officer thereof he shall, notwithstanding anything contained in this Act, be precluded subsequently from questioning in any manner the correctness of any document or record which has been reconstructed under the provisions of this Part in so far as it affects his interest in the company.

**20.** (*1*) Any document or record which has been reconstructed in pursuance of this Part shall be submitted to the Registrar for his approval. **Validity of reconstructed record.**

(*2*) On such approval being obtained the document or record so reconstructed shall, except as otherwise provided by this Act, be deemed to be a correct copy of the original document or record, and may be used for all purposes for which the original might have been used ; and any action taken or any payment made thereunder shall be deemed to be as valid and effectual as if such action or payment had been taken or made under the original document or record.

**21.** If any question arises as to whether a document or record has been damaged, lost or destroyed as the result of war circumstances the question shall be referred to the Registrar and his decision thereon shall be final. **Decision of dispute whether document has been damaged, lost or destroyed.**

## PART V.

### *Transfer of Shares.*

**22.** (*1*) Where on an application for the registration of a transfer of shares in a company the company has reason to believe that such alleged transfer is not a genuine transfer of the right to the shares, or is fraudulent or **Power of company to decline to register**

transfer of shares and to refer matter to decision of Registrar.

collusive or is open to suspicion on any other ground, or where the information given to the company by the parties to the transfer is insufficient to enable the company to effect the registration thereof, the company may decline to register the transfer; and in all cases where it so declines to register a transfer it shall refer the matter with a statement of the facts of the case and its own opinion thereon to the Registrar for his decision:

[1] Provided that where the impediment to registration of the transfer of shares is due to omissions or mistakes which do not raise any suspicion of fraud or collusion and which are capable of rectification by the parties to the transfer, it shall be lawful for the company to return the application for rectification without reference to the Registrar, but the return of such application for rectification shall not be delayed for more than three months from the date of the receipt of the application without the previous sanction of the Registrar.

(*2*) Any order passed by the Registrar in any matter referred to him in pursuance of sub-section (*1*) shall be binding on the company and on all persons interested in the transfer.

Subsequent transfers of shares how to be dealt with.

**23.** Where the transfer of a share in a company has been registered in pursuance of this Part, nothing in this Act shall apply to a subsequent transfer of the said share effected after the date of such registration and any application for the registration of such subsequent transfer shall be disposed of as if this Act had not been passed.

## PART VI.

### *Miscellaneous.*

False statement or omission by director, etc.

**24.** If any director, managing agent, manager, or other officer of a company knowingly makes any false statement, or omits to state any material fact, for the purpose of securing the assent of the creditors to a scheme of arrangement under Part III or the exercise in favour of the company of any power of the Court under this Act, he shall be liable on conviction to imprisonment for a term which may extend to two years, or to a fine which may extend to two thousand rupees, or to both.

Fraudulently disposing of property after approval of scheme.

**25.** If any company, after the approval of a scheme of arrangement, fraudulently sells, removes or disposes of any part of its property, every director, managing agent, manager or other officer of the company who knowingly and wilfully carries out, authorizes, permits or connives at such sale, removal or disposal shall be liable on conviction to imprisonment for a term which may extend to two years, or to a fine which may extend to two thousand rupees, or to both.

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[1] This proviso was inserted by Act XIX, 1948.

Costs of proceedings under Act.

**26.** The costs of any proceedings under this Act before the Court or the Registrar shall be in the discretion of the Court or the Registrar, as the case may be:

[1] Provided that neither the Court nor the Registrar shall make an order for costs against a company except costs for advertisements in the newspapers unless, in the opinion of the Court or the Registrar, as the case may be, the company has without due cause or justification attempted to avail itself of the provisions of this Act.

Company not to be compelled to give effect to transfer of shares or to pay dividends.

**27.** During such period as may be prescribed by the President of the Union by notification in this behalf, nothing contained in the Burma Companies Act or in this Act or in any other law for the time being in force shall require any company to give effect to any transfer of shares therein or to make payment of any dividend that has fallen due.

Re-registration under Burma Companies Act of companies previously registered in Burma but subsequently registered in the United Kingdom, or India or in any British Dominion, etc.

[2]**27A.** (*1*) Any company which was, prior to the 31st day of December, 1941, registered under the law in Burma and which, after the aforesaid date, was subsequently registered in the United Kingdom, or India, or in any British Dominion or Colony or in any British Protectorate or in any Territory in respect of which a mandate on behalf of the League of Nations has been accepted by His Britannic Majesty and is being exercised by His Britannic Majesty's Government in the United Kingdom, may apply to the Registrar appointed under the Burma Companies Act for the re-registration of the company under the Burma Companies Act; and where any such company is re-registered in accordance with the provisions hereof, such company shall, for the purposes of the Burma Companies Act, be deemed to have been duly registered from the date on which it was originally registered in Burma prior to its registration in the United Kingdom or India, or in any British Dominion or Colony or any British Protectorate or in any Territory in respect of which a mandate on behalf of the League of Nations has been accepted by His Britannic Majesty and is being exercised by His Britannic Majesty's Government in the United Kingdom, as the case may be.

(*2*) The President of the Union may prescribe the circumstances and conditions under which the re-registration of a company may be effected, and where the circumstances or conditions have been so prescribed, the re-registration shall be made only when such conditions and circumstances are properly conformed to.

Power to President to make rules.

**28.** The President of the Union may make rules determining the manner in which and the conditions subject to which the Registrar shall exercise his powers under this Act.

Power to High Court to make rules.

**29.** (*1*) The High Court may make rules for carrying into effect the provisions of this Act.

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[1] Substituted by Act XIX, 1948.
[2] Inserted by Act XXIX, 1946.

(*2*) In particular, and without prejudice to the generality of the foregoing power, such rules may provide—

(*a*) for the form and contents of applications under section 6 or section 9;

(*b*) for the giving of notice to creditors and others and the form and contents of such notices;

(*c*) for the manner of proof of debts and the method of valuing securities, debts and liabilities, including future and contingent liabilities;

(*d*) for the fees to be paid on applications in connection with proceedings on applications; and

(*e*) generally for the procedure to be adopted in proceedings under this Act.

Bar to jurisdiction of civil Courts.

**30.** Except as otherwise provided in this Act, no civil Court shall have jurisdiction in any matter which the Registrar is empowered by or under this Act to determine or shall take cognizance of the manner in which the Registrar exercises any power vested in him by or under this Act.

Saving of right of suit.

**31.** Except as provided by Parts II and III, nothing contained in this Act and nothing done under or in accordance with this Act shall be deemed to preclude any person from instituting a suit or other proceeding in any competent Court under any law for the time being in force for establishing any right or claim against any company to which such person may deem himself to be presently entitled.

Protection for acts done in good faith.

**32.** Except as provided by this Act, no suit or other legal proceeding shall lie against any company or any person in respect of anything which is in good faith done or intended to be done under the provisions of this Act.

Definition of "Company" as respects certain sections of this Act.

[1] **33.** The definition of "Company" in section 2 shall, as respects sections 2, clause (i), 3, 5 to 8, 19 to 21, 26 and 28 to 32, be deemed to include a society registered under the Societies Registration Act and a Provident Insurance Society registered under the Provident Insurance Socieies Act;

and in the application of section 6 to such societies, th words "the Burma Companies Act" therein shall be construed as meaning the Societies Registration Act or the Provident Insurance Societies Act, as the case may be.

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အထူးကုမ္ပဏီအက်ဥပဒေ။

[၁၉၅၀ ပြည့်နှစ်၊ အက်ဥပဒေအမှတ် ၅၄။] (၁၉၅၀ ပြည့်နှစ်၊ နိုဝင်ဘာလ ၁၀ ရက်။)

မြန်မာနိုင်ငံကုမ္ပဏီ အက်ဥပဒေရှိ အချို့သော ပြဋ္ဌာန်းချက်များနှင့် အကြောင်းအားလျော်စွာ လိုအပ်လျှင်၊ မသက်ဆိုင်သော ကုမ္ပဏီမျိုးဖွဲ့စည်းရန်ရည်ရွယ်သည်တကြောင်း၊

ထိုကုမ္ပဏီကို ဖွဲ့စည်းရန်ကိစ္စနှင့် အခြား ကိစ္စများအတွက် ပြဋ္ဌာန်းရန် လိုအပ်သည်လည်း တကြောင်း၊

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[1] Inserted by Act XL, 1947.

ထိုအကြောင်းများကြောင့် အောက်ပါအတိုင်း အက်ဥပဒေအဖြစ် ပြဋ္ဌာန်းလိုက်သည်။

၁။ ။(၁) ဤအက်ဥပဒေကို၊ ၁၉၅၀ ပြည့်နှစ်၊ အထူးကုမ္ပဏီအက်ဥပဒေဟုခေါ်ရမည်။
(၂) ဤအက်ဥပဒေသည်၊ အမိန့် ကြော်ငြာစာဖြင့် နိုင်ငံတော်သမတ သတ်မှတ်သည့် နေ့[၁]တွင် အာဏာတည်ရမည်။

၂။ ။ဤအက်ဥပဒေတွင်—

(က) "သင်းဖွဲ့စည်းမျဉ်းများ" ဆိုသည်မှာ၊ နိုင်ငံတော်သမတက မူလသဘောတူညီထားသည့် ကုမ္ပဏီ၏ သင်းဖွဲ့စည်းမျဉ်းများနှင့် နောက်ထပ်ပြင်ဆင်ချက်များ၊ သို့တည်းမဟုတ် ပြောင်းလဲချက်များကိုဆိုလိုသည်။
(ခ) "ကုမ္ပဏီ" ဆိုသည်မှာ၊ ဤအက်ဥပဒေအရ၊ ဖွဲ့စည်းမည့်ကုမ္ပဏီကိုဆိုလိုသည်။
(ဂ) "သင်းဖွဲ့မှတ်တမ်း" ဆိုသည်မှာ၊ နိုင်ငံတော်သမတက မူလသဘောတူညီထားသည့် ကုမ္ပဏီ၏ သင်းဖွဲ့မှတ်တမ်းနှင့် နောက်ထပ် ပြင်ဆင်ချက်များ၊ သို့တည်းမဟုတ် ပြောင်းလဲချက်များကိုဆိုလိုသည်။

၃။ ။မြန်မာနိုင်ငံကုမ္ပဏီအက်ဥပဒေရှိပြဋ္ဌာန်းချက်များအနက် ဤအက်ဥပဒေကဖြစ်စေ၊ သင်းဖွဲ့စည်းမျဉ်းကဖြစ်စေ၊ သင်းဖွဲ့မှတ်တမ်းကဖြစ်စေ အတည့်အလင်းသော်၎င်း၊ သဘောအဓိပ္ပါယ်အရသော်၎င်း ပယ်ဖျက်ခြင်းမပြုသော၊ သို့တည်းမဟုတ် မသက်ဆိုင်ရာဟု တားမြစ်ခြင်းမပြုသော ပြဋ္ဌာန်းချက်များသာလျှင်၊ ကုမ္ပဏီနှင့်သက်ဆိုင်ရမည်။

၄။ ။နိုင်ငံတော်သမတသည်၊ အမိန့်ကြော်ငြာစာဖြင့်—

(က) ကုမ္ပဏီ၏ အမည်ကိုဎ်း၊ အခါအားလျော်စွာ အမည်ပြောင်းလဲခြင်းကိုဎ်း ပြဋ္ဌာန်းနိုင်သည်။
(ခ) မည်သူတို့သည်၊ ကုမ္ပဏီ၏ ပဌမအဖွဲ့ဝင်များဖြစ်ရမည်ဟု သတ်မှတ်နိုင်သည်။
(ဂ) မည်သူတို့သည်၊ ဆိုခဲ့သည့် ပဌမအဖွဲ့ဝင်များအဖြစ်၊ သို့တည်းမဟုတ် ထိုသူတို့ကိုယ်စားဆောင်ရွက်လျက် ကုမ္ပဏီ၏သင်းဖွဲ့မှတ်တမ်းကို လက်မှတ်ရေးထိုးခြင်းဖြင့် သင်းဖွဲ့မှတ်တမ်းတွင် ဖော်ပြထားသည့်အတိုင်း တာဝန်ကန့်သတ်၍ ကုမ္ပဏီဖွဲ့စည်းသည်ဟု သတ်မှတ်နိုင်သည်။
(ဃ) သင်းဖွဲ့မှတ်တမ်းနှင့်သင်းဖွဲ့စည်းမျဉ်းများကို သဘောတူညီနိုင်သည်။ ထို့ပြင် ထိုသင်းဖွဲ့မှတ်တမ်းနှင့် သင်းဖွဲ့စည်းမျဉ်းများ၏ ပြောင်းလဲချက်၊ သို့တည်းမဟုတ် ဖြည့်စွက်ချက် တခုခုကို သဘောတူညီချက် ရရှိရန် ကုမ္ပဏီက လျှောက်ထားသည့်အခါ အခါအားလျော်စွာ သဘောတူညီနိုင်သည်။

၅။ ။ကုမ္ပဏီသည်၊ သင်းဖွဲ့မှတ်တမ်း၏၊ သို့တည်းမဟုတ် သင်းဖွဲ့စည်းမျဉ်းများ၏ ပြင်ဆင်ချက်၊ သို့တည်းမဟုတ် ဖြည့်စွက်ချက်တခု ခုကို နိုင်ငံတော်သမတ၏သဘောတူညီချက်ရရှိရန် သင်းဖွဲ့စည်းမျဉ်းများတွင် ပြဋ္ဌာန်းထားသည့်နည်းလမ်းအတိုင်း နိုင်ငံတော်သမတထံလျှောက်ထားရမည်။

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[၁] ၁၉၅၀ ပြည့်နှစ်၊ နိုဝင်ဘာလ ၁၀ ရက်။ ။မြန်မာနိုင်ငံပြန်တမ်း၊ ၁၉၅၀ ပြည့်နှစ်၊ အဋိုင်း ၁၊ စာမျက်နှာ ၇၅၉ တွင်ကြည့်။

၆။ ။သင်းဖွဲ့မှတ်တမ်းနှင့် သင်းဖွဲ့စည်းမျဉ်းများကိုသော်၎င်း၊ ထိုသင်းဖွဲ့ မှတ်တမ်းနှင့် သင်းဖွဲ့စည်းမျဉ်းများ၏ နောက်ထပ်ပြင်ဆင်ချက်၊ သို့တည်းမဟုတ် ဖြည့်စွက်ချက်တခုခုကိုသော်၎င်း၊ နိုင်ငံတော်သမတက သဘောတူညီကြောင်း အမိန့်ကြော်ငြာစာ ထုတ်ပြန်ကျေညာသည့်အခါ၊ သင်းဖွဲ့ မှတ်တမ်းနှင့် သင်းဖွဲ့စည်းမျဉ်းများရှိ ပြဋ္ဌာန်းချက်အသီးသီးသည်၊ သို့တည်းမဟုတ် ထိုသင်းဖွဲ့မှတ် တမ်းနှင့် သင်းဖွဲ့စည်းမျဉ်းများ၏ နောက်ထပ်ပြင်ဆင်ချက်၊ သို့တည်းမဟုတ် ဖြည့်စွက်ချက်တခုခုရှိ ပြဋ္ဌာန်းချက်အသီးသီးသည်၊ မြန်မာနိုင်ငံကုမ္ပဏီ အက်ဥပဒေတွင်သော်၎င်း၊ တည်ဆဲအခြားဥပဒေ တရပ်ရပ်တွင်သော်၎င်း၊ မည်သို့ပင်ဆိုထားစေကာမူ၊ ကိစ္စဟူသမျှအတွက်တရား၀င်ရမည်။

၇။ ။(၁) မြန်မာနိုင်ငံ ကုမ္ပဏီအက်ဥပဒေအရ၊ကုမ္ပဏီများမှတ်ပုံတင်သော တာ၀န် ၀တ်တရားကို ဆောင်ရွက်သည့်မှတ်ပုံတင်အရာရှိထံတွင် ကုမ္ပဏီကို ''အထူးကုမ္ပဏီ'' အဖြစ်ဖြင့် မှတ်ပုံတင်ရမည်။

(၂) မြန်မာနိုင်ငံကုမ္ပဏီအက်ဥပဒေရှိ ပြဋ္ဌာန်းချက်များသည်၊ ဤအက်ဥပဒေရှိ၊သို့တည်း မဟုတ် သင်းဖွဲ့မှတ်တမ်းရှိ၊ သို့တည်းမဟုတ် သင်းဖွဲ့စည်းမျဉ်းများရှိ ပြဋ္ဌာန်းချက်များနှင့် မဆန့်ကျင်လျှင်၊ ကုမ္ပဏီကိုမှတ်ပုံတင်ခြင်းနှင့်သက်ဆိုင်ရမည်။

၈။ ။(၁) ဘားမားကော်ပိုရေးရှင်း လီမိတက်၏ သင်းဖွဲ့စည်းမျဉ်းများ၏ စည်းမျဉ်း ၁၆၅ သည်၊ ဤအက်ဥပဒေ အာဏာတည်သည့်နေ့မှစ၍ ပျက်ပြယ်သည့်ပြင်၊ တရားဥပဒေအဖြစ် အကျိုးသက်ရောက်ခြင်းမရှိဟုမှတ်ယူရမည်။

(၂) ဆိုခဲ့သည့်နေ့မှစ၍၊ဆိုခဲ့သည့်သင်းဖွဲ့စည်းမျဉ်းများ၏စည်းမျဉ်း ၇၄ ကို အောက်ပါ အတိုင်းပြင်ဆင်သည်ဟုမှတ်ယူရမည်။

> ''အစုများထုတ်ပေးခြင်း၊ သို့တည်းမဟုတ် ဆိုင်ရာအချိန်၌ လက်ရှိထားခြင်းနှင့်စပ် လျဉ်း၍ သတ်မှတ်ထားသည့် မဲဆန္ဒပေးခြင်း ဆိုင်ရာ အထူးစည်းကမ်းချက် များနှင့်မဆန့်ကျင်စေဘဲ၊ အဖွဲ့ဝင်တိုင်းမှာ လက်ပြ၍ မဲဆန္ဒပေးရသည့်အခါ၊ မဲဆန္ဒတခုကျ ပေးနိုင်ခွင့်ရှိရမည်။ မဲပြားဖြင့် မဲဆန္ဒပေးရသည့်အခါ အဖွဲ့ဝင် တိုင်းမှာ မိမိပိုင် အစုတခုလျှင် မဲပြားတခုကျပေးနိုင်ခွင့်ရှိရမည်။''

၉။ ။နိုင်ငံတော်သမတသည်၊ ဤအက်ဥပဒေပါ ကိစ္စအားလုံးကိုဖြစ်စေ၊ ကိစ္စတခုခုကို ဖြစ်စေ၊ ဆောင်ရွက်ရန်အလို့၄ါ နည်းဥပဒေများပြဋ္ဌာန်းနိုင်သည်။ ထိုနည်းဥပဒေများသည်၊ ဤအက် ဥပဒေတွင် ပြဋ္ဌာန်းထားတိသကဲ့သို့ အကျိုးသက်ရောက်ရမည်။

၁၀။ ။ဤအက်ဥပဒေရှိ ပြဋ္ဌာန်းချက်များအတိုင်း အထမြောက်အောင် ဆောင်ရွက်ရေး အတွက် လိုအပ်သည့်ငွေများကို ပြည်ထောင်စုနိုင်ငံ၏ အခွန်တော်ငွေများမှ ထုတ်ပေးနိုင်သည်။

# INDEX TO VOLUME IX.

## အတွဲ ၉ ၏ အညွှန်း။


| | PART အပိုင်း။ | PAGE စာမျက်နှာ။ |
|---|---|---|
| Accidents Act, Fatal ... ... ... ... ... | X | 1 |
| Administration of Public Funds Act ... ... ... ... | XIII | 147 |
| Assurance Companies Act, Life ... ... ... ... | XII | 59 |
| Attorney Act, Powers of ... ... ... ... ... | XIII | 109 |
| Burma Companies Act ... ... ... ... ... | XIV | 210 |
| Charitable Endowments Act ... ... ... ... | XIII | 157 |
| Charitable and Religious Trusts Act ... ... ... ... | XIII | 161 |
| Companies Act, Burma ... ... ... ... ... | XIV | 210 |
| Companies Foreign Interests Act ... ... ... ... | XIV | 406 |
| Companies Act, Life Assurance ... ... ... ... | XII | 59 |
| Companies (War-Time Provisions) Act, 1945 ... ... ... | XIV | 407 |
| Contract Act ... ... ... ... ... ... | XI | 3 |
| Contributory Provident Funds Act ... ... ... ... | XII | 98 |
| Co-operative Societies Act ... ... ... ... ... | XIV | 195 |
| Endowments Act, Charitable ... ... ... ... | XIII | 157 |
| Fatal Accidents Act ... ... ... ... ... | X | 1 |
| Foreign Interests Act, Companies ... ... ... ... | XIV | 406 |
| Insurance Companies Act ... ... ... ... ... | XII | 56 |
| Insurance Societies Act, Provident ... ... ... ... | XII | 88 |
| Life Assurance Companies Act ... ... ... ... | XII | 59 |
| Mussalman Wakf Act ... ... ... ... ... | XIII | 164 |
| Official Trustees Act ... ... ... ... ... | XIII | 138 |
| Partition Act ... ... ... ... ... ... | XIV | 169 |
| Partnership Act ... ... ... ... ... ... | XIV | 171 |
| Powers of Attorney Act ... ... ... ... ... | XIII | 109 |
| Provident Funds Act ... ... ... ... ... | XII | 94 |
| Provident Funds Act, Contributory ... ... ... ... | XII | 98 |
| Provident Insurance Societies Act ... ... ... ... | XII | 88 |
| Public Funds Act, Administration of ... ... ... ... | XIII | 147 |
| Registration Act, Societies ... ... ... ... ... | XIV | 191 |
| Religious Societies Act ... ... ... ... ... | XIII | 154 |
| Societies Act, Co-operative ... ... ... ... ... | XIV | 195 |
| Societies Act, Provident Insurance ... ... ... ... | XII | 88 |
| Societies Registration Act ... ... ... ... ... | XIV | 191 |
| Societies Act, Religious ... ... ... ... ... | XIII | 154 |
| Trusts Act ... ... ... ... ... ... | XIII | 110 |
| Trusts Act, Charitable and Religious ... ... ... ... | XIII | 161 |
| Trustees Act, Official ... ... ... ... ... | XIII | 138 |
| Wakf Act, Mussalman ... ... ... ... ... | XIII | 164 |
| (War-Time Provisions) Act, Companies ... ... ... ... | XIV | 407 |
| ကုမ္ပဏီအက်ဥပဒေ၊ အထူး ... ... ... ... ... | ၁၄ | ၄၁၆ |
| ပြည်ထောင်စု အာမခံစံနှုန်းအဖွဲ့ အက်ဥပဒေ ... ... ... ... | ၁၂ | ၁၀၀ |
| ဗိုလ်ချုပ် ရံပုံငွေ အက်ဥပဒေ ... ... ... ... ... | ၁၃ | ၁၄၉ |
| အထူး ကုမ္ပဏီ အက်ဥပဒေ ... ... ... ... ... | ၁၄ | ၄၁၆ |
| အာဇာနည်ဗိမာန် အက်ဥပဒေ ... ... ... ... ... | ၁၃ | ၁၅၁ |
| အာမခံကုမ္ပဏီများကို နိုင်ငံပိုင်ပြုလုပ်ခြင်း အက်ဥပဒေ ... ... ... | ၁၂ | ၁၀၇ |
| အာမခံစံနှုန်းအဖွဲ့ အက်ဥပဒေ၊ ပြည်ထောင်စု ... ... ... ... | ၁၂ | ၁၀၀ |


ပမာဗစ၊—အမှတ် ၁၂၀၊ တရားရေးဝန်ကြီးဌာန၊ ၇-၁-၅၉—၅,၀၀၀—ခ။

# CORRIGENDA

*Page 32.*—*Illustration* (*d*), second line, *for* " p ice " *read* " price ".

*Page 34.*—Section 75, *Illustration*, second line, *for* " du ing " *read* " during ", and third line *for* " pe formance " *read* " performance ".

*Page 35.*—Section 124, *Illustration*, first line, *for* " inde mnify " *read* " indemnify ".

*Page 35.*—Section 127, *Illustration* (*c*), second line, *for* " or " *read* " for ".

*Page 37.*—Section 134, marginal caption, *for* " discharge principal of " *read* " discharge of principal ".

*Page 37.*—Section 134, *Illustration* (*c*), first line, *for* " as tipulated " *read* " a stipulated ".

*Page 41.*—Footnote, *for* " Earriers " *read* " carriers ".

*Page 43.*—Section 171, first line, *for* " tactors " *read* " factors ", and second line, *for* " policy-brkers " *read* " policy-brokers ".

*Page 48.*—Section 200, *Illustration* (*b*), *for* " no ice " *read* " notice ".

*Page 49.*—Section 205, third line, *for* " or " *between* " compensation " and " the agent " *read* " to ".

*Page 50.*—Section 211, *Illustration* (*a*), first line, *for* " inves " *read* " invest ".

*Page 76.*—Second Schedule, head-line, *for* " YFAR " *read* " YEAR ".

*Page 79.*—Footnote, *for* " Fir " *read* " First ".

*Page 80.*—Note 4, last line, *for* " businese " *read* " business ".

*Page 90.*—Section 7, first line, *for* " In urance " *read* " Insurance ".

*Page 135.*—Chapter IX, head-line, *for* " THF " *read* " THE ".

*Page 147.*—Section 30, marginal caption, *for* " Ruels " *read* " Rules ".

*Page 169.*—Section 4, sub-section (*1*), fifth line, *for* " ransferee " *read* " transferee ".

*Page 181.*—Section 34, marginal caption, *for* " Insolveney " *read* " Insolvency ".

*Page 184.*—Section 50, proviso, first line, *for* " bough " *read* " bought ".

*Page 188.*—Section 69, sub-section (*4*), clause (*a*), *for* " partnersi n " *read* " partners in ".

*Page 200.*—Section 23, marginal caption, *for* " expelied " *read* " expelled ", and *for* " reslgned " *read* " resigned ".

*Page 204.*—Section 41, marginal caption, *for* " Contributio " *read* " Contribution ".

*Page 205.*—Section 44A, *insert* " Supersession of Managing Committee " as marginal caption.

*Page 232.*—Section 22, marginal caption, *for* "Registrati n" *read* "Registration".

*Page 239.*—Section 41, sub-section (*2*), fourth line, *insert* a comma *after* "discontinuance".

*Page 241.*—Section 47, sub-section (*1*), top line, *for* "egister" *read* "register".

*Page 298.*—Section 137, sub-section (*6*), third line from bottom, *for* "hat" *read* "that".

*Page 301.*—Last line, *for* "otbe" *read* "to be".

*Page 305.*—Section 153A, marginal caption, *for* "conpromises" *read* "compromises".

*Page 309.*—*For* section "**8**" *read* "**158**".

*Page 309.*—Section 160, marginal caption, *for* "n ember" *read* "member".

*Page 315.*—Section 177B, marginal caption, *for* "Statemnet" *read* "Statement".

*Page 316.*—Section 177B, sub-section (*1*), clause (*a*), first line, *for* "any" *read* "and".

*Page 321.*—Section 195, marginal caption, *for* "suspted" *read* "suspected".

*Page 321.*—Section 196, marginal caption, *for* "premoters" *read* "promoters".

*Page 326.*—Section 208E, sub-section (*4*), proviso, second line, *for* "orde" *read* "order".

*Page 330.*—Section 212, marginal caption, *for* "Powe s" *read* "Powers".

*Page 331.*—Section 217, third line, *for* "pecured" *read* "secured", and fourth line, *for* "sriority" *read* "priority".

*Page 338.*—First line, *for*, "truts" *read* "trust".

*Page 343.*—Section 244, sub-section (*2*), fifth line, *for* "imself" *read* "himself".

*Page 374.*—Regulation 36, second line, *for* "ad" *read* "and".

*Page 375.*—Regulation 43, second line, *for* "is" *read* "to", and third line, *for* "at" *read* "as".

*Page 375.*—Regulation 44A, second line, *for* "'on" *read* "in".

*Page 383.*—Regulation 107, second line, *insert* a comma *after* "show":

*Page 397.*—Form D, second paragraph, *for* "sutuate", *read* situate".

*Page 405.*—Note (1), *insert* "or" *between* clause (*a*) and clause (*b*) at the centre.

*Page 416.*—Section 33, fifth line, *for* "th words" *read* "the words".