THE COMPANIES ACT, 1994

[ACT NO 18 OF 1994]

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

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

It is hereby enacted as follows:

Part-I

Preliminary

- Short title and commencement— (1) This Act may be called the Companies Act, 1994.
 - (2) It shall come into force on such date as the Government may, by notification in the Official Gazette, appoint.

COMMENTARY: Previous Act: sec. 1

Companies Act an Cr. P. C:— How far Cr. P. C. applicable to the companies Act. The framers of the law did not exclude the operation of the Cr. P. C except for limited purpose, namely, that an offence under the companies Act will not be triable by a court interior to a magistrate of first class and that the offence under the Act shall be non cognizable.

If a procedure is provided in any special or lacal enactment for the trial of the offence under that Act. that procedure is to be observed if, however, there is no such procedure for the investigation, inquiry and trial of an offence then the one laid down in the Cr. P. C is to be observed [(1996) 21 DLR (WP) 204]

Registration Certificate to be evidence:— Registration of Mortgage, certificate of original certificate of registration of mortgage registered will Registrar, Jrint Stock Company calcutta can not be said to be landmissble in evidence [20 DLR 266 (1998)]

- 2. **Definitions.** (1) In this Act, unless there is anything repugnant in the subject or context,
 - a) "articles" means the articles of association of a company including, so far as they apply to the company, the regulations contained in Schedule I to this Act.:

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

- (b) "banking company" means a bank company as defined in section 5(9) of the Act, 1991 (Act No. 14 of 1991).
- "company" mes'ns a company formed and registered under this Act or an existing company;
 - (d) "The Court" means the Court having jurisdiction under this Act; a company, whether constituting a charge on the assets of company or not:
 - (e) "debenture" includes debenture stoer, bounds and any other securities of a company, whither constituting a charge on the assets of company or not;
 - (f) "director" includes any person occupying the position of director by whatever name called;
 - (g) "District Court" means the principal Civil Court of original jurisdiction in a district, but does not include the High Court Division, in the exercise of its ordinary civil jurisdiction;
 - (h) "existing company" means a company formed and registered under any law relating to companies in force at any time before the commencement of this Act, and is in operation after commement of this Act,

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

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

- (j) "insurance company" means a company that carries on the business of insurance either solely or in common with any other business or businesses;
- (k) "manager" means an individual who, subject to the superintendence, control and direction of the Board of Directors, has the management of the whole, or substantially the whole, of the affairs and business of a company, and includes a director or any other person occupying the position of a manager, by whatever name called, and whether under a contract of service or net;
- by whatever name called, who or which is entitled to the management of the whole affairs and business of a company by virtue of an agreement with the company, and under the control and direction of the director except to the extent, if any, otherwise provided for in the agreement;
- virtue of an agreement with the company or of a resolution passed by the company in its general meeting or by its directors or by virtue of its memorandum or articles of association, is entrusted with the substantial powers of management which would not otherwise be exeercisable by him and includes a director occupying the position of a managing director by whatever name called;

Provided that the powers to do administrative acts of a routine nature when so authorised by the directors such as the power to affix common seal of the company to any document or to draw and endorse any cheque on the account of the company in any bank or to draw and endorsed negotiable instrument or to sign any certificate of share or to direct within the substantial powers of management:

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

- (n) "memorandum" means the memorandum of association of a company as originally framed or as altered in pursuance of the provisions of this Act;
- (o) "officer" means a director, managing agent, manager secretary or any other officer of a company and also includes—
- (i) where the mnaging is a firm any partner in the firm;
- (ii) where the managing agent is a body corporate, any director or manager of the body corporate;
- (iii) where the secretary is a body corporate;

Provided that, except for the purposes of sections 331, 332 and 333, the Form "officer" shall not includue an auditor.;

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



"private company" means a company which by its

- (i) restricts the right to transfer its shares, if any;
- (ii) prohibits any invitation to the public to subscribe for its shares or debenture, if any;

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

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

- "public company" means a company incorporated under this Act or under any law at any time in forece before the commencement of this Act and which is not a private company;
- (s) "Registrar" means a Registrar or any other, by whatever designation, performing under this Act the duty of registration of companies;
- (t) "Schedule" means a schedule to this Act;
- "Secretary" means any idividual possessing the prescribed qualifications appointed to perform the duties which may be performed by a secretary under this Act and any other ministerial or administrative duties, and
 - (v) "Share" means a share in the capital of the company, and includes stock except when a distinction between stock and shares is expressed or implied.
- (2) For the purpose of this Act, a company shall subject to the provisions of sub-section (4), be deemed to be a subsidary of another, if-
 - (a) that other contracts the composition of Board of Directors of the fist mentioned company.
 - (b) the first mentioned company, bring an existing company, has before the commencement of this Act, issued preference shares the holders of which have the same voting right in all respects as the holders of equity shares and that other company exercises or controls more than half of the voting power the first mentoned company; or

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- (c) the first mentioned company is not a subsidiary within the meaning of clasue (b), but that other company holds more than half in nominal value of its equity share capital; or
- (d) the first mentional company is a subsifiary of a third company which is that other's subsidiary.
- (3) For the purposes of sub-section (2) the composition of a company's Board of Directors shall be deemed to be controlled by another company if, that other company, by the exercise of some power exercisable by it at its discretion without the consent or concurrence of any other person, can appoint or remove the holders of all or a majority of the director, and for the purposes of this sub-scetion that other company shall be deemed to have power to appoint to a directorship with respect to which any of the following conditions is satisfied, that is to say-
 - (a) that power of appointment cannot be execised execpt in favour of an individual,
 - (b) that an individuals appointment thereto follows necessarilly from his appointment as director, managing agent, secretary or manager of or to any other office of employment in, that other company; or
 - (c) that the directorship is held by and individual nominated by that other company or a subsidiary thereof.
- (4) In determining whether one company is a subsidiary of another the following conditions shall be applicable namely:-
 - (a) any shares held or power exercisable by that other company is a fiduciary capacity shall be treated as not held or exercisable by it,
 - (b) subject to the provisions of clauses (c) and (d) any shares held or power exercisable shall be deemed

to be the shares held or power exercisable by that other campany, if -

- (i) the shares are held or the power is exercisable by a person as a nominee and on behalf of that other company, but this clause shall not apply to the holding of such shares or to the exercise of such powers by such person where that other company is concerned in a fiduciary capacity;
- (ii) the shares are held or the power is exercisable by a subsidiary of that other company or by a nominee of such subsidiary, but this exercise of such powers by the subsidiary or by its niminee where the subsidiary is concerned in a fiduciary capacity;
- (c) any shares held power exercisable by any person by virtue of the provisions of any debentures of the first-mentioned company or of a trust deed for securing any issue of such debentures shall disregarded;
- (d) if any shares are held or power is exercisable, not being held of exercisable as mentioned in clause (c),-
- (i) by that other company or by its subsidiary or by a nominee of that other or its subsidiary as the case may be, and
- (ii) the ordinary business of that other company or as the case may be of its subsidiary includes the lending or money and such shares are held or the power is exercisable by way of security of the an [then such power shall not be treated as being held or exercisable by such company or its nominee.]
- 3. Jurisdiction of the Court: (1) The Court having jurisdiction under this Act shall be the High Court Division;

Provided that the Government may by notification in the Official Gazette and subject to such restrictions and conditions as it thinks fit, empower any District Court to exercise all or any of the jurisdiction by this Act conferred upon the Court, and in that case such District Court shall as regards the jurisdiction so conferred, be the Court in respect of all companies having their registered office in the district.

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

(2) Nothing in this section shall invalidate a proceeding by reason of its being Taken in a wrong count.

COMMENTARY: Previous Act.

In accordance with the provision of section 3 an application relating to a Company having its resistred office in mofussil should be made in the original side of the High court. Sub section (3) of section 3 will have on opplication where the objection to jurisdiction is taken at the every commencement of the proceeding or all proper time [8PLR (DAC.) 639]. Sction 3 only gives certain jurisdiction to Hegh Court in resolution of disputes and the Companies Act under its original jurisdiction [28 DLR 101 (1976)].

When a Cempany was voluntary wound up the Company's existence would continue for the purpose of winding up and not for any other purpose [PLR (Dac) 639].

Where the Rgistrar fails to discharge his duties section 3 does not been the jurisdiction of the High court to interfere under Art. 98 of the Constitution.

There is no remedy provided in the Companies Act for making the Registrar of joint stock Companiess discharge his duties praperly, therefore a wret can always be maintained against the registar where he has not acted in accordance with law.

If a certificate of incorporation is illegally granted it ear always be challenged by an appropriate proceding.

Ordinarily courts in execise of their write Jurisdiction will not interfere in cases where such statutory remedies are provided [20DLR (se) 355 (1968)].

Company Court Jurisdiction: Matters decided under the Companies Act are not under the constitutional jurisdiction of the High Court Division but under a social statutory jurisdiction conferred upon the High court Division by the Companies Act itself. [44DLR 452].

PART - II

CONSTITUTION AND INCORPORATION

- 4. Prohibition of partnership exceeding certain number:— (1) NO company, association or partnership consisting of more than ten persons shall be formed or a the purpose of carrying on the business of banking unless it is registered as a company under this Act or is formed by or under any other Act of Parliament.
- (2) No company association or partnership consisting more than twenty persons shall be formed for the purpose of carrying on any other business that has for its object the aquisition of gain by the company, association or partnership, or by the individual members thereof unless it is registered as a company under this Act or is formed by or under any other Act of Parliament.
- (3) This section shall not apply to joint family carrying on joint family business or trade.

Provided that for the purposes of this section, in computing the number of persons of a partnership association or company comprising two or more joint families, minor members of such families shall be excluded.

- (4) Every member of a company, association or partnership carrying on business in contravention of this section shall be personally liable for all liabilities incured in such business.
- (5) Any person who is a member of a company, association or partnership formed in contravention of this sction shall be punishable with fine not exceeding five thousand taka.

MEMORANDUM OF ASSOCIATION

- 5. Mode of forming incorporation company: Any seven or more persons or, where the company to be formed will be a private company, any two or more persons associated for any lawful purpose may, by subscribing their names to a memorandum of association and otherwise with the requirements of this Act in respect or registration form an incorporated company with or without limited liability, that is to say, either—
 - (a) a compay limited by shares, that is to say, a company having the liability of its member limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them; or
 - (b) a company limited by guarantee, that is to say a company having the liability of its members limited by the memorandum to such amount as the members may respectively thereby undertaken to contribute to the assets of the company on the event of its being wound up; or
 - (c) an unlimited company, that is to say, a company having no limit on the liability of its members.
- **6. Memorandum of company limited by sharees :-** In the case of a company limited by shares.-
 - (a) the memorandum shall state.-
 - (i) the name of the company, with "limited" as the last word in its name;
 - (ii) The address of the registered office;
 - (iii) the objects of the company, and, except in the case trading companies, the territories to which they extend;
 - (iv) that the liability of the members is limited;
 - (v) the amount of share capital with which the company proposes to be registered, and the division thereof into shares of a fixed amount:

- (b) each subscriber of the memorandum shall take at least one share:
- (c) each subscriber shall write opposite to his name the number of shares he takes.
- 7. Memirandum of company limited by guarantee.— In the case of a company limited by guarantee—
 - (a) the memorandum shall state-
 - (i) the name of the company, with "limited" as last word in its name:
 - (ii) the address of the registered office;
 - (iii) the objects of the company, and except in the case of trading companies, the territories to which they extend:
 - (iv) that the liability of the members is limited;
 - (v) that each member undertakes to contribute to the assets of the company in the event of its being would up while he is a member or within one year aftrerwards, for payment of the debts and liabilities of the company contracted before he ceases to be a member, and of the charges and expenses of winding up, and or adjustment of the rights of the contributories among themselves, such amount as my be required, not exceeding a specified amount;
 - (b) if the company has a share capital -
 - (i) the memorandum shall also state the amount of share capital with which the company proposes to be registered and the division thereof into shares of a fixed amount;
 - (ii) each subscriber of the memorandum shall take at least one share:
 - (iii) each subscriber shall write opposite to his name the number of shares he takes.

- 8. **Memorandum of unlimited company.** In the case of an unlimited company.
 - (a) the memorandum shall state.-
 - (i) the name of the company
 - (ii) the address of the registered office of the company;
 - (iii) the objects of the company and, except in the case of trading companies, the territories to which they extend.
 - (b) if the company has a share capital -
 - (i) each subscriber of the memorandum shall take at least one share;
 - (ii) each subscriber shall write opposite to his name the number of shares he takes.
- Printing and signature of memorandum. The memorandum of every company shall
 - (a) be printed;
 - (b) be divided into paragraphs numbered consecutively; and
 - (c) be signed by each subscriber, who shall add his address and description in the presence of at least two witnesses who shall attest the sginature.
- 10. Restriction on alteration of memorandum:- (1) A company shall not alter the conditions on conta ined in its memorandum except in the case and case and the mode and to the extent for which express provisions is made in the Act.
 - (2) Only those provisions which by any other specific provision contained in this Act, are required to be stated in the memorandum of the comp any concered shall be deemed to be the conditions contained in its memorendum.

- (3) Other provisions contained in the memorandum, including those relating to the appointment of a director managing agent or manager may be altered in the same manner as the articles of the company, but if there is any expres provision in this Act permitting the alteration of such provision in any other manner, they may also be altered in such other manner.
- (4) All references to the articles of a company in this Act shall be construed as including references to the other provisions contained in its memorandum as referred to in sub-section (3).

COMMENTARY: previous Act.

Sees. 10 and 12-void and voidable order-difference:- It was centended that the alterations of the Memorendum sought to be made by the company applying to the High court contravened section 10 and 12 of the companies Act and as such the High court confirming such contravention acted without jurisdiction

Heed: This contention cannot be accepted. An illegal proceding and anit it-is set aside, it can not be ignored [22 DLR (sc) 231 (1970]

- 11. Name of company and change of name. (1) A company shall not be registered by a name identical with that by which a company in existence is already registered, or so nearly resembling the name that there is likelihood of using the name to deceive, except where the company in existence is in the course of being dissolved and signifies its written consent in manner as the Registrar requires.
 - (2) If a company, through inadvertence or otherwise, is without the consent referred to in sub-section (1) registered by a name identical with that by which a company in existence is previously registered, or so nearly reasembling the name that there is likelihood of using the name to deceive, the first mentioned company shall, on the direction of the Registrar, change its name within a period of one hundred and twenty days.

- (3) If a company makes a defult in complying with the direction made under sub-section (2), the company shall be punishable with fine of five hundred taka for every day during which the default continues and every officer who is in default shall be punishable with fine of one hundred taka for every day during which the default continues.
- (4) Except with the previous consent in writing of the Government, no company shall be registered by a name which is declared by the Government by notification in the official Gazette, as undesirable:

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

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

- and any legal proceedings that might have been continued or commenced against it by its former name may be continued or commenced against it by its new name.
- (9) A company may, on payment of such fee as may be prescribed, apply to the Registrar for information whether any company is registered or proposed to be registered by a name specified in the application and the Registrar shall furnish the required information within a period of thirty days from the date of receipt of the application.

COMMENTARY: Previous Act.

Change of name of a Company which its identity as the same is possible only under s. (ii) of the comanies Act. after following the prescribed proedure for the purpose [20 DLR (Se) 173 [1968].

Registration of mortgage Cerfificate of orginal Certificate of registration of mortgage registered with Registrer, joint stock Company, Calcutta-cannot be said to be inadmissible in evedence [20 DLR 266(1968)].

Section II of the Companies Act providies that 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 [39 DLR (AD) 103]. Admission of a winding up application-creat care to be taken [39 DLR (Ad) 201].

Court inherent jurisdiction to stay proceedings when there is a bonafide despute bebt or malafide intention of the petitioner [39 DLR (AD) 201].

- 12. Alteration of memorandum: (1) Subject to the provisions of this Act. a company may, by special resolution, alter the provisions 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 operation : or
- (d) to carry on some business which, under the existing circumstances may conveniently or advantageously be combined with the business of the company; or
- (e) to restrict or abandon any of the objects specified in the memorandum; or
- (f) to sell or dispose of the whole or any part of the undertaking of the company; or
- (g) to amalgamate with any other company or body of persons.
- (2) The alteration shall not take effect until and except in so far is confirmed by the Court on petition.
- (3) Before confirming the alteration, the Court must be satisfied-
 - (a) that sufficient notice has been given to every holder of debentures of the company, and to any person, or class of persons whose interest will, in the option of the Court, be affected by the alteration; and
 - (b) that with respect to every creditor who in the 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 been determined, or has been secured to the satisfaction of the Court;

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

COMMENTARY: previous Act: S. 12

Change of the registered office of the company not permissible without High Court sanction-Notice of any change cannot be effected by collateral document. [(1962) 14 DLR 407].

What entitels a particular company to be treated as a person interested in the assets of another company so as to receive notice when the other company applies for alteration of its Memoradum of Association.

It will be seen that the property of the repondent Association would not devlove authomatically upon the appellant in case of winding up or dissolution of the respondent Association. In case of such winding up or dissolution the property of the Association can be had by the appellant. if the members of the Association so decide. The appellent. therefore, had no present right to get the property of the Association and, therefore, could not oppose any alteration of the Memoradum of Association. If the appellant had an existing right which was sought to be taken away by the special resolution then it could resist the confirmation of the resolution. [(1970) 22 DLR(SC) 237].

13. Power of Court when confirming alteration: The Court may make and 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.

COMMENTARY: Previous Act: S. 13

The transfer of shares by tailwa in favour of Sigma International Inc. is not attracted by the mischief of section 13(1)(b) or section 13(4) (a) or (b) of the Companes Act. [(1984) 36 DLR 316].

One foreigner owining a share in a Bangladesh company when transfers the said share to another non-resident foreigner-Section 13(1)(b) has no application. [Ibid].

The expression "a person resident outside Bangladesh" has territorial and extra-territorial application and includes a foreign national for the time being resident in Bangladesh. [Ibid].

14. Excercise if discretion by Court.— 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 directions and make such orders as it may think

expedient for lacilitating or carrying into effect any such arrangements;

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

15. Procedure on confirmation of the alteration: - A certifled copy of the order confirming the alteration, together with a printed copy of the memorandum as altered shall be filed by the company with the Registrar withing ninety days from the date of the order or within such time as may to be extended by the court, and the Registrar shall register the same, and shall certify the registration under his hand, and the certifate 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 henceforth the memorandum so altered shall be the memorandum of the company.

COMMENTARY: Previous Act: S. 15

S. 15 and proviso to s. 16- Altered memorandum of Association granted by the High court to be filed with the Registrar. Joint Stock Company within the time specified in section 15 (1) - Extension of time for filing such application may be granted under section 15(3) - Further time may be granted under the provsio to section 16-when all this not availed of-alteration of Memorandum becomes void. [(1969) 21 DLR 135].

16. Effect of faiure to register within extended time:

No such alteration shall have any operation until registration thereof has been duly effected in accordance with the provisions of section 15, and if such registration is not effected within the period specified in that section such alteration and the order of the Court-confirming the alteration, and all proceedings connected therewith shall, at the expiration of the period specified under that section become absolutely null and viod.

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

ARTICLES OF ASSOCIATION

- 17. Registration of articles:- (1) A company limited by guarantee and an unlimited company shall, and a company limited by shares may, have an articles of association wherein provision shall be made for regulating the affairs of the company; and the articles shall be signed by the subscribers of the memorandum and be registered together with the memorandum.
- (2) Articles of association may adopt all or any of the regulations contained in Schedule I, and shall in any event be deemed to contain regulations identical with or to the same effect as regulation 56, 66, 71, 78, 79, 80, 81, 82, 95, 97, 105, 108 112, 113, 114, 115 and 116 contained in that Schedule:

Provided that regulations 78, 79, 80, 81 and 82 shall not be deemed to be included in the articles of any private company except a private company which is the subsidiary company of a public company:

Provided further that regulation 108 shall be deemed to require that a statement of the reasons why of the whole amount of any item of expenditure which may in fairness be distributed over several years, only a portion thereof is charged against the income of the year, shall be shown in the profit and loss account, unless the company in general meeting shall determine otherwise.

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

COMMENTARY: Previous Act: S. 17

where the Articles of Association intended that service of notice was insalid unless it was by registered post. the Articles contravened Regulation 112 and the Article in question was invalid, though the use of the expressions "indentical with" and "to the same effect as" in sec. 17 is intended to dispense with the necessity of literal indentity and points to the sufficiency of substantial indetity between the Article and the Regulation.

An article providing that a notice should be deemded to have been served on, say, the fourth day after posting and thus contraventing Regulation 112 (2) which says that a notice should be deemded to have been served on the day on which it would reach the person concerned in the ordinary course of post is invalid [1956 PLR (Lah.) 1407].

18. Application of Schedule 1:- 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 modity the regulations in Schedule I, those regulations shall, so far as applicable be the regulations of the company in the same manner and to the same extent as if were contained in the duly registered articles.

19. From and signature of articles - Articles shall:-

- (a) be printed;
- (b) be divided into paragraphs numbered consecutively;
- (c) be signed by each subscriber of the memorandum, who shall add his address and description in the presence of at least two witness who shall attest the signature.
- 20. Altteration of articles by special resolution: Subject to the provisions of this Act and to the conditions contained in its memorandum, a company may by special resolution after, exclude from or add to its articles; and any alteration, exclusion or addition so made shall be as valid as if originally contained in the articles, and be subject in like manner to alteration exclusion or addition by special resolution.

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

GENERAL PROVISIONS

- 22. Effect of memorandum and articls:- (1) The memorandum and articles shall when registered bind the company and the memberst hereof to the 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 heris 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 one from to him the company.
- 23. Registation of memorandum and articles:- (1) The memorandum and articles if any shall be field with the Register who if satisfied that the requirements of this Act have been complied with shall retain and register them within thirty days from the date of their receipt and in the event of refusal he shall communicate the grounds there of within ten days after that period to the company.
- 2) Any person on being aggrieved by a refusal of the Registrar under sub-section (1) may make an appeal to the Government within thirty days of the receipt of the refusal order.
- (3) The petition of appeal shall be accompanied by a treasury chalan showing of a fee two of hundred fifty

- taka to be credited under the head of account specified in this behalf.
- 4) The decision of the Government in an appeal under this section shall be final.
- **24. Effect of registration**: (1) On the registration of the memorandum of a company the Registrar shall certify under his hand that the company is incorporated and in the case of a limited company that the company is limited.
- 2) From the date of incorporation mentioned in the certificate of incorporation the subscribers of the memorandum together with such other persons as may from time to time become members of the company shall be a body corporate by the name contained in the memorandum capable forthwith of exercising all the functions of an incorporated company and having perpetual succession and a common seal but with such liability on the part of the members to contribute to the assets of the company in the event of its being wound up as mentioned in this Act.

COMMENTARY: Previous Act: s. 23

- S. 23 & 24 Old company after compliance with the provisions of sections 23 and 24 becomes absolutely a new Company: It is of no consequence that the share-holders or members of the two associations (viz. Dacca Narayanganj Chamber of Commerce and Industry and Narayanganj Chamber of Commerce and Industry is utilising the premises and the other facilities of the Dacca Narayanganj Chamber of Commerce. It is difficult to appreciance as to how the Narayanganj Chamber of Commerce and Industry could after it is incorporated as a separate company be treated as even a "de facto successor" to the rights and liabilities of the Dacca-Narayanganj Chamber of Commerce. which has not yet beeh dissolved and in the eye of the law still continues to exist. [(1968) 20 DLR (SC) 173]
- **25.** Conclusiveness of certificate of incorporation: (1) A certificate of incorporation given by the Registrar in respect of any association shall be conclusive evidence

that all the requiements of this Act in respect of registration and of matters precedent and incidental there to have been complied with and that the association is a company authorised to the registered and duly registered under this Act.

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

COMMENTARY: Previous Act: S. 24

when obtained fraudulently: It is true that section 24 of the Companies Act a certificate of incorporation by the Registrar is conclusive evidence of the fact that the requirements of the Companies Act in respect of registration and matters precedent and incidental there to have been complied with and that the association is Company authorised to be registered under this Act. But this does not mean that even a certificate obtained fraudulently cannot be cancelled or set aside. This conclusiveness attaches only to a obtained certificate and not to any every kind of certificate granted by the Registrar. [(1968) 20 DLR (SC) 335].

- 26. Copies of memorandum and articles to be given to members: (1) Every member of a company may request for a copy of the memorandum, and also for a copy of the articles, if any, and if such request is made in writing alongwith a fee of taka fifty or such less fee as may fixed by the company, the company shall, within fourteen days from the date such request, send the copy to that member.
- (2) If a company makes defult in complying with the requirements of this section, it shall be liable for each offence to a fine not exceeding two hundred taka and every officer of the company who is knowingly and wilfully in default shall be liable to lke penalty.

- 27. Alteration of memorandum of articles to be noted in every copy: (1) Where an alteration is made in the memorandum or articles of a company, every copy of the memorandum or articles issued after the date of the alteration shall be in accordance with the alteration.
- 2) If, where any such alteration has been made, the company at any time after the date of the alteration, issues any copies of the memorandum or article which are not in accordance with the alteration, it shall be liable to a fine not exceeding one hundred taka for each copy so issued, and every officer of the company who is knowingly and wilfully in default shall also beliable to a like panalty.

ASSOCIATION NOT FOR PROFIT

- power to dispense with limited in name of 28. charitable and other companies :- (1) Where it is proved to the satisfaction of the Government that an association capable of being formed as a limited company has been or in about to be formed for promoting commerce, art, science religion, charity, or any other useful objects and applies or intends to apply its profits if any or other income in promoting its object and to prohibit the payment of any dividence to its members the Government may, by licence with approval of one of its Secretarise, direct that the association be registered as a company with limited liability, whihout the addition of the word "Limited" to its name, and the association may be registerted accordingly.
- (2) A licenec by the Government under this section may be granted on such conditions and subject to such restrictions as the Government thinks fit and those conditions and restrictions shall be binding on the association and shall if the Government so directs be inserted in the memorandum and articles or in one of those documents.

- (3) The association shall on registration enjoy all the 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 or of sending lists of members to the Registrar.
- (4) A licence under this section may at any time be cancelled by the Government and upon cancellation the Registrar shall enter the word "Limited" at the end of the name of the association upon the register and the association shall cease to enjoy the exemptions and privileges granted by this section:

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

Comanies Limited by Guarantee

- 29. Provision as to companies limited by guarantee: (1) In the case of company limited by guarantee and not having a share capital and registered after the commencement of this Act every provision in the memorandum or articles of or in any resolution of the company purporting to give any person a right to participate in the divisible profits of the company otherwise than as a member shall be void.
- (2) For the purpose of this section and the other provisions of this Act. relating to the memorandum of a company limited by guarantee every provision in the memorandum or articles, or in any resolution, of any company limited by guarantee and registered after the commencement of this Act. purporting to divide the undertaking of the company into shares or interests shall be treated as a provision for as share capital notwithstanding that the nominal amount or number of the shares or interests is not specified thereby.

PART III

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

Distribution of Share Capital

- **30. Nature of shares.** (1) The shares or other interests of any member in a company shall be deemed to be movable property and shall be transferable in manner provided by the articles of the company.
- (2) Each share in a compay having a share capital shall be distinguished by the appropriate number.
- 31. Certificate of shares or stock.— A certificate under the common seal of the company specifying any shares or stock held by any member shall be prima facie evidence of the title of the member to the shares or stock therein specified.
- 32. **Definition of Member**:— (1) Every subscriber of the memorandum of company shall be deemed to have agreed to become a member of the company and on its registration shall be entered as a member in its register of members.
- (2) Every other person who agrees to become a member of a company, and whose name is entered in its register of members shall be a member of the company.
- 33. Membership of holding company: (1) Except in the cases mentioned in this section a body corporate cannot be a member of a company which is its holding company and any allotment or transfer or shares in a company to its subsidiary shall be void.
- (2) Nothing in this section shall apply; namely-
 - (a) where the subsidiary is the legal representative of a deceased member of the holding company; or
 - (b) where the subsidiary is concerned as trustee unless the holding company or a subsidiary thereof is beneficially interested under the trust

and is not so interested only by way of security for the purposes of a transaction entered into by it in the ordinary course of business which includes the lending of money.

- (3) This section shall not prevent a subsidiary from continuing to be a member of its holding company if it was a member thereof either at the commencement of this Act or before becoming a subsidiary of the holding company; but except in the cases referred to in subsection (2) the subsidiary shall have no right to vote at meetings of the holding company or of any class of members thereof.
- (4) Subject of sub-section (2) sub-sections (1) and (3) shall apply in relation to a nominee for a body corporate which is a subsidiary as if reference in the said subsections (1) and (3) to such a body corporate and a subsidiary included reference to a nominee for it.
- (5) In relation to a holding company which is either a company limited by guarantee or an unlimited company the reference in this section to shares shall, whether or not the company has a share capital be construed as including a reference to the interest of its members as such whatever be the form of that interest.
- **34.** Register of member: (1) Every company shall keep in one on or more books o register of its members, and enter therein the following particulars:-
 - (i) the name and addresses, and the occupations, if any of the members;
 - (ii) in the case of a company having a share capital, a statement of the shares held by each member, distingushing each shre by its number, and of the amount paid or agreed to be considered as paid on the shares of each member;
 - (iii) the date at which each person was entered in the register as a member;

- (iv) the date at which any person ceased to be a member.
- (2) If a company makes default in complying with requirements of this section, it shall be liable to a fine not exceeding one hundred taka for everyday during which the default continues and every officer of the company who kowingly and wilfully authorise or permits the defauilt shall also be liable to a like penalty.
- 35. Index of members of company:— (1) Every company having more than fifty member shall, unless the register of members is in such a form as to constitue in itself an index, keep an index of the names of the members of the company and shall within fourteen days after the date on which any alteration is made in the register members make any necessary alteration in the index.
- (2) The index which may be in the form of a card index shall in respect of each member contain a sufficient indication to enable the account of that member to be readily found.
- (3) If default is made in conplying with the section the company shall be liable to a fine not exceeding five hundred taka and every officer of the company who is knowingly and wilfully in default shall be liable to a like penalty.
- 36. Annual list of members and summary:— (1) Every company having a share capital shall within eighteen months from its incorporation and thereafter once at least in every year make a list of all persons who on the day of the first or only ordinary general meeting in the year are members of the company, and of all persons who have ceased to be members since the date of the last return or in the case of the first return of the incorporation of the company.
- (2) The following shall be stated in the list namely:-

- (a) the names, addressess, nationality and occupation of all past and present members.
- (b) the number of shares held by each of the existing members at the date of raturn specifying the shares transferred since the date of last return or, in the case of first return, since the date of incorporation, by persons who are still members and by persons who have ceased to be members respectively and also the dates of registration of such transfer; and
- (c) a summary distinguishing between shares issued for cash and shares issued as fully or partly paid up otherwise than in cash and specifying the following:-
- (1) the amount of the share capital of the company, and the number of the shares into which it is divided;
- (2) the number of shares taken from the commencement of the company up to the date of the return;
- (3) the amount called up on each share;
- (4) the total amount of calls received;
- (5) the total amount of calls unpaid;
- (6) the total amount of the sums if any, paid by way of commission in respect of any share or debentures, or allowed by way of discount, in respect of any shares or debentures, since the date of the last return or so much thereof as has written of at the date of the return.
- (7) the total number of shares forfeited;
- (8) the total amount of shares or stock for which share warrants are outstanding at the date of the last return;
- (9) the total amount of share-warrants issued and surrendered respectively since the date of the last return;
- (10) the latest date on which the general meeting should have been held and whether it was actually so held;

- (11) the number of shares or amount of stock comprised in each sharewarrant;
- (12) the names and addresses of the persons who at the date of terurn are the directors of the company and of the persons, if any, who at the said date are the managers managing agents or auditors of the company, and the changes in the personnel of the directors, managers managing agents since the last return together with the dates on which the took place; and
- (13) the total amount of debt due from the company in respect of all mortgages and charges which are rquired 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 company general meeting in the year; and the company shall, within that pariod file with the Registrar a copy signed by two directors, including the managing director, or where there is no managing director, by a director, and managing agent or manager or secretary of the company together with a certificate from such persons that the list and summary state the facts as they stood on the day aforesaid.
- (4) A private company shall send with the annual return required by 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 subclause (ii) of clause (g) of sub-section (I) of section 2 are not be included in reckoning the number of fifty.

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

COMMENTARY - Previous Act : S. 32

Sections 32 and 131—No authority for the proposition that the Registrar can withhold acceptance of an annual return submitted by a company under section 32 of the Companies Act until it satisfies the Registrar the its annual general meeting was held within the scheduled period.

Registrar has no option but to accept the filing made by the company— In case of company's violating provisions of s. 76(1) he can initiate appropriate proceeding. [38 DLR 356].

- 37. Trust not to be entered on register: No notice of any trust, expressed, implied or constructive, shall be, entered on the register, or be receiveable by the Registrar.
- 38. Transfer of shares:- (1) An application for the registration of the transfer of shares in a company may be made either by the transferer or the transferer, provided where such application is made by the transferer no registration shall in case of party paid shares by effected unless the company gives notice of the application to the transferee and subject to the provisions of sub-section (7) the company shall, unless objection is made by the transferee two weeks from the date of receipt of the notice, enter in its register of members the name of the transferee in the same manner and subject to the same conditions as if the application for registration was made by the transferee.
- (2) For the purpose of sub-section (1) notice to the transferee shall be deemed to have been duly given if despatched by prepaid post to the transferee at the address given in the instrument of transfer and shall

- be deemed to have been delivered in the ordinary course of post.
- (3) It shall not be lawful for the company to register a transfer of share in or debentures of the company unless the proper instrument of transfer of share in or debentures of the company unless the proper instrument of transfer duly stamped and executed by the transferor and the transferee has been delivered to the company along with 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 transferor register the transfer on such terms as to indemnity as the directors may think fit.

- (4) If a company refuses to register the transfer of any shares or debentures; the company, shall, within one month from the date on which the instrument of transfer was lodged with the company, send to the transferee and the transferor notice of the refusal.
- (5) If default is made in complying with sub-section (4) of this section, the company shall be liable to a fine not exceeding one hundred taka for everyday during which the default continues and every director, manager secretary other officer who is knowing by a party to the default shall, be liable to a like penalty.
- (6) Nothing in sub-section (3) shall prejudice any power of the company to register as shareholder or debenture holder any person to whom the right to any shares in or debentures of the company has been transmitted by operation of law.
- (7) Nothing in this section shall prejudice any power of the company under its articles to refuse to register the transfer of any shares.

COMMENTARY: previous Act: s. 34

Document of transfer in fuvour of the respondent either than that of the appeliant Respondent also produced along with those documents share certificate claim of the respondent will overrade that of the oppellant even mough the latter oppetied for registera earlear. The appelant, who applied for registration earlier than the respondent, remained satisfied by merely requesting the company, by its letter to obtain the share cerificates from the State Bank of Pakistan with whom the transferor had deposited the same. Neither did he make any direct effort to obtain them from the State Bank of Pakistan nor was he able to produce them along with his instrument of transfer, as required by Article 38 of the Companies Articles. It would, therefore, seem a little difficult for us to hold that the document of transfer in favour of the respondent, being the first in point of time, shall not prevail over that of the appellant. Further, since the respondent not only possessed the instruments of transfer which, as would appear from the facts disclosed above, were executed earlier than that of the appellant, his right to registration cannot be defeated also on another ground. By obtaining the share certificates from the transferor he has acquired a legal and eqitable title without the risk of being defeated by any other person deriving title from a registered owner.

The title of the appelant who was an unregistered transferee is of a Ind which has been described by expressions such as "incomplete", "hidden" and "inchoat". This title is not, therefore, available against the claim to title by the respondent who had both documents of transfer and the share certificates at the time of consdering the appelant's claim for registration [(1974) 26 DLR 303].

Company on an application for registration does not perform a ministerial act— Company can make a decision whether there is a proper instrument of transfer or not.—Company, having regard to the provisions of section 34(3) of the Companies Act and Articles 38 and 39 of the Company's Articles of Association, was not merely required to perform a ministerial act on the presentation of an application for registration of the transferee's name. Under Article 38 which required a transferee of shares, before he applied for the registration of his name, to deliver to the company a proper instrument of transfer duly stamped and executed along with the share certificates, the company has clearly a right to consider who the proposed transferee is and may even, in an appropriate case, decline to register him as a shareholder and, in case of such refusal, the transferee has no right to compei the company to make him a share-holder. [Ibid].

The transfer of shares shall not be lawful without any instrument of transfer. [39 DLR 290].

Instrument of share transfer— Affixing of stamp—there is no time limit or any consequential if stamp is not affixed with the instrument of transfer. There is no penal provision either. Stamp may be paid even after submission of the instrument to the Company. In the facts of this case 26 DLR 303 held not applicable [43 DLR 329].

Section 34 & 38 — Maintainability of aapplication before the Company Court for rectification of share register — it is a discretion of the Court to see whether the point at issue relating to rectification of share register can be resolved on the basis of materials on record. If the case is complicated and very doubtful and if it appears that without resorting to some procedure other than the summary proceeding under section 38 of the Act a case cannot be disposed of, the Company Court should not interferee with such a matter. But if it is apparent on the face of the records that legal rights of the parties are clear and can be settled on the basis of the materials on record, the Company Court can exercise its jurisdiction in the matter. [44 DLR 48].

This provision makes it mandatory for a transfer of shares to be accompanied by an instrument of transfer. [47 DLR 462].

- 39. Certification of transfer.— The certification by a company of any instrument of transfer of shares in, or debentures of, the company, shall be taken as a representation by the company to any person acting on the faith of the certification that there have been produced to the company such documents as on the face of them show a prime facie title to the shares or debentures in the transferer named in the instrument of trnasfer, but not as a representation that transferor has complete title to the shares or debentures.
- (2) Where any person acts on the faith of an erroneous cerfification made by a company negligently the company shall be under the same liability to him as if the certification has been made fraudulently.
- (3) For the purposes of this section—
- (3) an instrument of transfer shall be deemed to be certificate if it bears the words "certificate lodged" or words to the like effect;

- (b) the certification of an instrument of transfer shall be deemed to be made by a company, if-
- (i) the person issuing the certificate instrument is a person authorise to issue such instruments of transfer on the company's behalf; and
- (ii) the certification is signed by any officer or servant of the company or any other person authorised to certificate transfers the company's behalf, or if a body corporate has been so authorised by any officer or servant of that body corporate;
- (c) a cerification shall be deemed to be signed by any person if it purports to be authenticated by his signature, unless it is shown that the signature was placed there neither by himself nor by any person authorised to use the signature for the purpose of certificating transfers on the company's behalf.
- 40. Transfer by legal representative:— A transfer of the share or other interest of a decease 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 excecution of the instrument of transfer.
- 41. Inspection of register of members:— (1) The register of members commencing from the date of the registration of the company and where sction 35 applies also the index of members shall be kept at the registered office of the company, and such register and index shall, except when closed under the provisions of this Act shall during business hours subject to such reasonable restrictions as the compny in general meeting impose, so that not less than two hours in each day be allowed for inspection, be kept open to the inspection of any member free of cost and to the inspection of any other person on payment of one hundred taka or such less sum as the company

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

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

- (3) If any inspection required under this section is refused or if any copy required under this section is not sent within the proper period the company and every officer of the company who is in default shall be liable in respect of each offence to a fine not exceeding one hundred taka and to a further fine not exceeding one hundred taka for everyday during which the refusal or default continuse, and the Court may by an order compel an immediate inspection of the register and index or direct that copies required shall be sent to the persons requiring them.
- 42. Power to clsoe register.— A company may giving seven day's previous notice by advertisement in some newspaper circulating in the district in which the registered office of the company is situated close the register of members for any time or times not exceeding in the whole forty-five days in each year but not exceeding thirty days at a time.

43. Power of Court to rectify register :- (1) If-

(a) the name of any person is without sufficient cause entered in or omitted form 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 haveing become, or ceased to be, a member,

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

- (2) The Court may either refuse the application, or may order rectification of the register and payment by the company of any damages sustained by any party aggrieved and may also make such order as costs as it may consider proper.
- (3) On any application under this sectin 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 form the register whether the question arises between members or alleged members or between members or alleged members on the one hand and the company on the other hand and generally may decide any question necessary or expedient to be decided for rectification of the register and may also decide any issue involing any question of law.

COMMENTARY -Previous Act

The provision of section 38 of the Act relating to rectification of a register of members are very wide and give the Judge wide discretion in the matter. The wide terms of sub-section (3) of the section are not to be limited by the terms of sub-sections (1) and (2) thereof, and the Court can grant appropriate relief and prevent harassment to parties in any case irrespective of any finding of fraud, error, mistake or default on the part of the company [7PLR (Dac.) 159].

Section 38 merely gives to the persons mentioned therein the right to apply to the Court for rectification of the register of members where the name of a person is fraudulently or without sufficient cause entered in or omitted from that register.

The question whether, during the hearing of such application, the ostensible owner of a share whose name is borne on the register of members may or may not vote at a general meeting of the company can neither be necessary nor exopedient to be decided for the

rectification of the register, the sole function of the Court called upon to decide an application of that nature being whether the register should or should not, after inquiry, be rectified in the manner sought [(1955) PLR (Lah) III].

Section's wide power intended to give relief in simple cases:— Court's discretion where the case is not a simple one. In a proceeding under section 38 a petitioner is not entitled to relief exodebitio justiciae and the Court has direction to refuse remedy if the matter is not a simple one. [(1982) 34 D.L.R. 345)].

Proceeding under section 38 of the Companies Act is a special proceeding before the Original Side of the High Court Divison. [(1981) 33 D.L.R. 49].

Under section 38 of the Companies Act the present applications for division of the shares held so long jointly in the Companies in question are maintainable only under the provisions of section 38 of the Companies Act and there is no other provision in law to do so. [Ibid].

A company or corporation is to be sued not in the name of its Directors but in the name of the company or the corporation —But where allegations in the plaint affect such executive members in their personal capacity it cannot be said that they have been wrongly impleaded. —To an application to the Court for rectification of the register of company's members under section 38 of the Companies Act the Directors are neither necessary nor proper parties.

A corporation or a registered company should be sued in its corporate name and not in the names of its agents or servants.

But where allegation casting aspersion of improper conduct upon the members of the Executive Committeee of A Company have been made in the plaint so as to afford them an opportunity to meet the same in order to forestall a likely argument that these allegations made behind their back merit little consideration, it cannot be said that they have been improperly impleaded. [(1966) 18 D.L.R. 109)].

Court is to decide the question of domicile of the company for ascertaining its own jurisdiction to deal with the matter under the section. [(1962) 14 D.L.R. 407)].

Members of the Board of Directors whose registered office is situate in Bangladesh but who are residents and nationals of India cannot function in Bangladesh on behalf of the Company. [(1976) 28 DLR. 313].

Appeal would lie to the High Court when an issue is to be tried in which a question of law may be raised even though the Company Judge did not do so, if actually such a question of law was to be tried. —Section 38 of the Act requires, in order to make an appeal against the order of the Court competent, that the Court is to direct an issue to be tried in which any question of law may be raised. If, however, the Court does not direct an issue to be tried by formally raising the same, though, in fact, a question of law has been decided the person aggrieved by the said order of the Court cannot be allowed to suffer by denying him the right of appeal under section 38 of the Act because of the failure on the part of the Court to follow the proper course contemplated in law. [(1974) 26 DLR 196].

Court under sec. 38 not bound by the obligations of sec. 34:— The obligation which is imposed on a company is not obligatory on the Court while administering the provision of sec. 38 of the Companies Act. Sub-section (2) of section 38 provides that the Court any either refuse the application or may order rectification of the share-register. The power of the Court under section 38 is wider than the obligation of the company under section 34. The obligation of a company under section 34 cannot be used as restriction upon the power of the court under section 38. [(1976) 28 DLR 31].

Application for entering respondent's name in the Share Register of the Company:— Respondent filed a petition before the learned Company Judge who directed the appellant to produce the document for inspection by the respondent. As against this order the appellant preferred a Letters Patent appeal.

Held: No final order was passed on the prayer of the respondent to rectify the Share Register. The direction for production of the document for inspection is nothing but a preliminary step for deciding the main issue of rectifying the Share Register. In that view of the matter taking the provision of section 38 of the Companies Act the appeal is incompetent; a mere direction to produce document for inspection cannot be regarded as a question of law for which the right of appeal is contemplated in section 38 of the Companies Act. [(1969) 21 DLR 186].

Petitioner while an Indian citizen purchased shares of a Pakistani Company and subsequently he became a Pakistani citizen. He is entitled to have his name entered in the Share Register of the Company. [(1968) 20 DLR 196].

Ss. 38, 153(7) and 202: Appeals from judgments and orders passed under the Act are governed by sections 38. 153(7) and 202 of

the Act. The Companies Act provides a complete code of procedure governing appeals and it has precluded appeals from judgment and orders made under the Act except those made under sections 38, 153 (7) and 202 of the Act. [(1974) 26 DLR 196].

Appeal lies only against judgment and orders made under section 38. 153(7) and 202.

The Companies Act provides a complete code of procedure governing appeal and it has preclude appeals from judgments and orders made under the said Act, except those made under sections 38, 153(7) and 202 of the Act. [(1968) 20 DLR 1206].

Powers of Court to rectify register.— The jurisdiction conferred on company court under section 38 is very wide and unlimited though it is discretion to grant or refuse such relief. It was not found that the Company Judge has acted illegally in allowigh such relief under section 38 of the Companies Act in the facts of the present case. Section 38 of our Companies Act is equivalent to section 155 of Indian Companies Act. In section 155 of the Indian Act, "the name of any person is fraudulently inserted or omitted" has been omitted: whereas in section 38 of the Companies Act it has been retained Thus the scope of section 38 of the Act is very wide and the Company judge has rightly passed the order of rectification of share registers of the Companies. [39 DLR 290].

Sectins 38 & 162.— Two prayers, one for windig up of the company, under section 162 and another for rectification of the share-register u/s. 38 of the Companies Act in the same application made before the Company Jude, cannot be entertained. [38 DLR (AD) 26].

Prayer for rectification of sharekregister— Where a winding up order is passed, rectification prayer must be refused. [38 DLR 26].

Although section 38 of the Companies Act empowers the Company Court to rectify share register it is well-settled that a suit is not barred thereby, especially when detailed evidence is to be taken to settle issue of fact. [43 DLR (AD) 89].

Section 6 of the Limitation Act does not bar an application under section 38 of the Companies Act within its ambit. The suit is restricted to a suit or proceeding to be instituted or application to be made by a person suffering from any legal disability. [43 DLR (AD) 34].

Rectification of shares.— When papers and documents filed by the parties are sufficient to settle their rights and interests, the

jurisdiction of the Company Court is sufficiently wide to resolve the question of rectification of shares. [44 DLR 371].

Rectification of share register.— It is not necessary to produce the script (orginal share certificate) before the Managing Director for transfer of the shares because he knew about the shares. In the facts of the present case, non-production of scripts will not debar the transferee from getting his name registered in the Company as its share-holder. [43 DLR 54].

Maintainability of an application for transfer of shares— If a dispute cannot be resolved without resorting to any other means excepting the papers and documents filed before the Court in that case the question may arise whether such an application will be maintainable or not. [43 DLR 54].

Rectification of share register— Rectification after renunciation of shares of individuals in favour of a corporation whether valid— It is not correct to say that shares can be transferred only to an individual national and not to any juristic person, because the latter is not a citizen. A legal and juristic person or body corporate is a person by fiction of law and some human being is entitled to Act on its behalf. Petitioner Investment Corporation of Bangladesh being a legal and juristic person is competent to purchase the shares. [43 DLR 487].

Rectification of share register:— When facts are not disputed or complicated, rather papers and documents filed by the parties are sufficient to settle their rights and interests, the jurisdiction of the Company Court is sufficiently wide to resolve the question of rectification. [43 DLR 329].

Sections 38 & 40— Share register is maintained under section 40 which is prima facie evidence of any matter to be inserted therein but where both parties have led all their evidence, the question of intitial presumption as contemplate in section 40 lost all its importance. When the facts involved are not complicated calaing for a detailed investigation in a separate form, applications for correction of share registers are quite maintainable. [43 DLR (AD) 34].

Sections 38 & 162— The Court is to examine the case as a whole on the basis of given materials. There is no scope for rectification of share register under section 38 of the Act as suggested on behalf of the respondent, when the petitioner has founded his case for winding up of the company. [43 DLR 99].

A person aggrieved by any ground specified in the section may apply to the Court for rectification of the register. It gives a wide

ranging power to the Court to either reject the application or order rectification. It also empowers the Court to decide the question of title of any other person with regard to the shares for the purpose of rectification or otherwise of the register. [47 DLR 423].

A finding of fact by the Company Court Judge is final and conclusive and the same cannot be assailed in an appeal under section 38 of the Companies Act. [47 DLR 423].

When a Single Company Judge of the High Court Division is exercising power under section 38 of the Companies Act an appeal from its decision has to be taken by way of leave to the Appellate Division under Article 103(1) of the Constitution. [48 DLR 82].

Judgment of a Division Bench of the High Court Division in an appeal aganist the Judgment of a Single Company Judge exercising power under section 38 is taken to be honest, having been passed completely without jurisdiction —a classic example of coram non judice. [48 DLR 82].

Sections 38 & 246— The rule making power of the Supreme Court does not extend to providing an appellate forum from the decision of a Single Compny Judge of the High Court Division acting under section 38 of the Act. [48 DLR 82].

- 44. Notice to Registerar for rectification of register.— In the case of a company required by this Act to file a list of its members with the Register, the Court when making an order for rectification of the register shall by its order direct notice of the rectification to be filed with the registrar within from the date of completion of the order.
- **45. Register to be evidence.** The register of members shall be primafacie evidence of any mater by this Act directed authorised to be inserted therein.

COMMENTARY: Previous Act: s. 40

Share-holders' Register, its evidentiary value — Under section 40 of the Companies Act the register of members shall be prima facie evidence on any matters by the Companies Act directed or authorised to be inserted therein. [(1984) 36 DLR 316].

46. Issue of Share warrants to bearer:— (1) A company limited by shares if so authorised by its articles may with respect to any fully paid-up shares or to stock

issue under its common seal a warrant stating that the bearer of the warrant is entitled to the shares on stock therein specified and may provide by coupons or otherwise for the payment of the future dividends on the shares or stock included in the warrant in this Act termed as share-warrant.

- (2) Nothing in this section shall apply to a private company.
- 47. Effect of sharewarrant. —A share warrant shall entitle the bearer thereof to the shares or stock therein specified and the shares or stock may be transferred by delivery of the warrant.
- 48. Registration of name of bearer of share warrant.—
 The bearer of a sharewarrant shall subject of 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 incurre by any person by reason of the company entering in its register the name of a bearer of a share-warrant in respect of the share of stock therin specified without the warrant being surrendered and cancelled.
- 49. Position of bearer of Share-warrant.— The bearer of a share warrant may, if the aricles of the company so provide be deemed to be a member of the company within the meaning of this Act either to the full extent or for any purpose defined in the articles except that he shall not be qualified in pespect of the shares or stock specified in the warrant for being a director or manager of the company in cases where such a qualification is required by the articles.
- 50. Entries in register when share-warrant issued.— (1) On the issue of share-warrant, the company shall strike out of its register of members the name of the member then entered therein as holding the shares or stock specified in the warrant, as if he had ceased to be a member and shall enter in the Rgister the following particulars namely:—

- (i) the fact the issue of the warrant;
- (ii) a statement of the shares or stock included in the warrant, distingishing each share by its number;
- (iii) the date of issue of the warrant.
- (2) If a company makes default in complying with the requirements of this section it shall be liable to a fine not exceeding two hundred taka for every day during which the default continues and every officer of the company who knowingly and wilfully continues or permits the default shall also be liable to a like penalty.
- 51. Surrendes of Share-warret.— Until the warrant is surrendered, the above particulars shall be deemed to be the particulars required by this Act to be entered in the register of members; and on the surrender the date of the surrender shall be entered as if it were the date at which a person ceased to be a member.
- **52.** Power of company to arrange for diferent amounts being paid on shares —A company, if so authorised by its articles may do any one or more of the following things, namely—
 - make arrangements on the issue of shares for a difference between the shareholders in the amounts and times of payment of calls on their shares;
 - (ii) accept from any member who assents thereto the whole or a part of the amount remaining unpaid on any shares held by him although no part of that amount has been called up;
 - (iii) pay dividend in proportion to the amount paid-up on each share where a larger amount is paid-up on some shares than on others.
- 53. Power of company limited by shares to alter its share capital.— (1) A company limited by shares if so

authorised by its articles may alter the conditions of its memorandum as follows that is to say it may—

- (a) increase its share capital by the issue of new shares of such amount as it thinks expedient:
- (b) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares;
- (c) convert all or any of its paid-up shares into stock and reconvert that stock into paid-up shares of any denomination.
- (d) sub-divide its shares, or any of them, into shares of smaller amount than is fixed by the memorandum, so that in the sub-division the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived;
- (e) cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the share so cancelled.
- (2) The powers conferred by this section can only be excercised by the company in its general meeting.
- (3) A cancellation of shares in pursuance of this section shall not be deemed to be a reduction of share capital within the meaning of the other provisions of the Act.
- (4) The company shall file with the Registrar notice of the exercise of any power referred to in clause (d) or clause (e), of sub-section (1) within fifteen days from the exercise thereof.
- 54. Notice to Registrar for consolidation of share capital, conversion of shares into stock etc. —(1) Where a company having a share capital has consolidated and divided its share capital into shares of larger amount than its existing shares or converted

any of the shares into stock or re-converted stock into shares, it shall within fifteen days of the consolidation and division, conversion or re-conversion, file notice with the Registrar of the same, specifying the share consolidated and divided, or converted or the stock re-converted.

- (2) If a company makes default in complying with the requirements of this section, it shall be liable to a fine not exceeding two hundred taka for everyday during which the default continues, and every officer of the company who knowingly and wilful authorises or permits the default shall also be liable to the like penalty.
- 55. Effect of conversion of shares into stock.— Where a company having a share capital has converted any of its shares into stock and filed notice of the conversion with the Register 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.
- Where a company having a share capital or of members.—
 Where a company having a share capital, whether its shares have or have not been converted into stock, has increased its share capital beyond the registered capital, and where a company not having a share capital has increased the number of its members beyond the registered number, it shall file with the Registrar, in the case of an increase of share capital, within fifteen days after the passing of the resolution authorising the increase and in the case of an increase of members within fifteen days after the increase was resolved on or took place, notice of the increase of cpaital or members, and the Registrar shall record the increase.

- (2) The notice under sub-section (1) shall include particulars of the classes of shares, affected and the conditions, if any, subject to which the new shares are to be issued.
- (3) If a company makes a default in complying with the requirements of this section, it shall be liable to a fine not exceeding two hundred taka for every day during which the default continues, and every officer of the company who knowingly and wilfully authorises or permits the default shall be liable to a like penalty.
- 57. Application of premiums received on issue of shares.— (1) Where a company issues shares at a premium, whether for cash or otherwise, a sum equal to the aggregate amount or value of the premiums on those shares, shall be transferred to an account, to be called "the share premium account" and the provisions of this Act relating to the reduction of the share capital of a company shall, except as provided in this section, apply as if the share premium account were paid-up share capital of the company.
- (2) The share premium account may be applied by the company—
 - (a) in paying up unissued shares of the company to be issued to member of the company as fully paid bonus shares;
 - (b) in writing of the preliminary expenses of the company;
 - (c) in writing off the expenses of, or the commission paid or discount allowed, on, any issue of shares or debentures of the company; or
 - (d) in providing for the premium payable on the redemption of any redeemable preference shares or of any debentures of the company.
- (3) Where is company has, before the commincement of this Act issued any shares at a premium this section

shall apply as if the shares nad been issued after the commencement of this Act:

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

REDUCTION OF SHARE CAPITAL

- 58. Restriction on purchase by company or loans by Company for purchase of its won shares:—(1) No company limited by shares shall have power to buy its own shares or the shares of a public company of which it is a subsidiary company, unless the consequent reduction of cpaital is effected and sanctioned in the manner provided by secitons 59 to 70.
- (2) No company limited by shares other than private company or a subsidiary company of a public company, shall give whether directly or indirectly, and whether by means of a loan, guarantee, the provision of security or otherwise any financial assistance for the purpose of or in connection with a purchase make or to be made by any person of any shares in the company:

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

- (3) If a company acts in contravention of this seciton, the company, and every officer of the company who is knowingly and wilfully in default shall be liable to a fine not exceeding five thousand taka.
- (4) Nothing in this section shall affect the right of a company to redeem any shares issued under section 154.

- 59. Reduction of share cpital.— (1) Subject to confirmation by the Court, a company limited by shares, if so authorised by its articles, may by special resolution reduce its share capital in any way, and in particular the company may, as part of this general power—
 - (a) extinguish or reduce the liability on any of its shares in respect of share capital not paid-up;
 - (b) either with or without extingushing or reducing liability on any of its shares, cancel any paid-up share capital which is lost or presented by available assets:
 - (c) either with or without extingushing or reducing liability on any of its shares, pay off any paid-up share capital which is in excess of the wants of the company;
 - (d) so far as is necessary, alter its memorandum by reducing the amount of its share capital and of its shares accordingly.
 - (2) A special resolution under this section is in this Act called a resolution or reducing share capital.
 - 60. Application to Court for confirming of it: Where a company has passed a resolution for reducing share capital it shall apply by petition to the Court for an order confirming the reduction.
 - On and from the passing by a company of "and reduced".—
 On and from the passing by a company of a resolution for reducing share capital, or where the reduction does not involve either the diminution of any liability in respect of un-paid share capital or the payment to any share holder of any paid-up share capital, then on and from the making of the order by the court confirming by the reduction the company shall add to its name, until such date as the Cout may fix, the words "and reduced" as the last words in its name and those words shall until that date be deemed to be part of the name of the company:

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

- 62. Ofjection by creditors and settlement of list of objecting creditors:— (1) Where the proposed reduction of share capital involves either diminution of liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, without permission of the Court and in any other case if the Court so permits every creditor of the company, who at the date fixed by the Court is entitled to any debt or claim which if that date were the commencement of the winding up of the company would be admissible in proof against the company shall be entitled to object to the reduction.
- (2) The Court shall settle a list of creditors so entitle to object, and for that purpose shall ascertain as far as possible without requiring an application from any creditor the names those creditors and the nature and amount of their debts or claim and may issue notices fixing a day or days within which creditors not entered on the list are to claim to be so entered or to be excluded from the right of objecting to the reduction; and after considration such claim the Court shall finalise the list.
- 63. Power to dispense with consent of creditor on security being given for his debt:— Where a creditor entered on the list of creditors whose debt or claim is not discharged or determined does not consent to the reduction, the Court may, if it thinks fit dispense with the consent of the creditor on the company securing payment of his debt or claim by appropriating as the Court may direct the following amount that is to say—
 - (i) if the company admits the full amount of his debt or claim or though not admitting it is willing to

- provide for it then the full amount of the debt or calim;
- (ii) if the company does not admit or is not willing to provide for the full amount of the debt or claim, or if the amount is contingent or not ascertained, then an amount fixed by the Court after the like inquiry and adjudication as if the company were being wound up by the Court.
- 64. Order confirming reduction:— The Court if satisfied with respect to every crditor of the company who under this Act is entitled to object to the reduction, that either consent to the reduction has been obtained or his debt or claim has been discharged or has been determined or has been secured may make an order confirming the reduction on such terms and conditions as it thinks fit.
- **65.** Registration of order and minutes of reduction.— (1) The Registrar shall, on production to him, register the following documents, namely:—
 - (a) the certified copy of the order of the Court confirming the reduction of the share capital of a company.
 - (b) a copy of the minutes approved by the Court, showing the following:-
 - (i) the amount of the reduced share capital;
 - (ii) the number of shares into which it is to be divided;
 - (iii) the nominal value of each such share;
 - (iv) the amount, if any, at the date of registration, deemed to be paid up on each such share.
- (2) On the registration under sub-section (1), and not before, the resolution for reducing share capital as confirmed by the order so registered shall take effect.
- (3) Notice of the registration shall be published in such manner as the Court may direct.

- (4) The Registrar shall certify under his hand the registration of the order and minutes, and his certificate shall be conclusive evidence that all the requirements of this Act with respect to reduction of share capital have been complied with, and that the share capital of the company is such as is stated in the minute.
- 66. Minutes to form part of memorandum.— (1) The minutes when registered shall be deemed to be substituted for the corresponding part of the memorandum of the company, and shall be valid and alterable as if it had been originally contained therein, and it shall be embodied in every copy of the memorandum issued after its registration.
- (2) If a company makes defult in complying with the requirements of this section, it shall be liable to a fine not exceeding one hundred taka for each copy in respect of which default is made, and every officer of the company who knowingly and wilfully authorises or permits the default shall be liable to a like penalty.
- (1) member of the company, past or present, shall not be liable in respect of any share to any call or contribution exceeding in amount the difference, if any, between the amount paid, or, as the case may be, the reduced amount, if any, which is to be deemed to have been paid, on the share and the amount of the share as fixed by the minutes:

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

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

- (ii) if the company is wound up, the Court on the application of any such creditor and proof of his ignorance as aforesaid, may, if it thinks fit, settle accordingly a list of persons so liable to contribute, and make and enforce calls and orders on the contributors settle on the list as if they were ordinary contributories in a winding up.
- Nothing in this section shall after the rights of the contributories amount themselves.
- 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 cancealment or misrepresentation as aforesaid every such officer shall be punishable with imprisonment which may extend to two years, or with fine, or with both.
- 69. Publication of reasons for reduction:— In any case of reduction of shars capital, the Court may require the company to publish, as the Court directs, the reasons for reduction or such other information in regard thereto as the Court may think expedient with a view to giving proper information to the public, and, if the Court think fit, also causes which led to the reduction.
- 70. Increase and reduction of share capital of a company limited by guarantee:— A Company limited by guarantee and registered after the commencement of this Act may, if it has a share capital and is so authorised by its articles, increase or reduce its share capital in the same manner and subject to the same

conditions in and subject to which a company limited by shares may increase or reduce its share capital under the provisions of this Act.

VARIATION OF SHAREHOLDER'S RIGHTS

- Rights of holders of special classes of shares:— (1) If in the case of a company, the share capital of which is divided into different classes of shares, provision is made by the memorandum or articles authorising the variation of the rights attached to any class of shares in the company, subject to the consent of any specified proportion of the holders of the issued shares of that class or the sanction of a resolution passed at a separate meeting of the holders of those shares, and in pursuance of the said provision the rights attached to any class of shares are at any time varied, the holders of the less in the aggregate tham ten percent of the issued shares of that class, being persons who did not consent to or vote in favour of there solution for the variation, may apply to the Court to have the vaariation 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 under sub-section (1) must be made within fourteen days after the date on which the consent was given or the resolution was passed, as the case may be, under that sub-section and may be made on behalf of the shareholders entitled to make the application by such one or more of thier numbers as they may appoint in writing for the purpose.
- (3) On any such application, the Court, after hearing the applicant and any other persons who apply to the Court to be heard and appear to the Court to be interested in the application, may, if it is satisfied having regard to all the circumstances of the case that he variation would unfairly prejudice the shareholders of the class represented by the applicant, disallow the variation and shall, if not so satisfied, confirm the variation.

- (4) The decision of the Court on any such application shall be final.
- (5) The company shall, within fifteen days after the service on the company of any order made on any such application, forward a copy of the order to the Registrar, and if default is made in complying with this provision, the company shall be liable to a fine not exceeding two hundred taka and every officer of the company who is knowingly and wilfully in default shall be liable to a like penalty.
- (6) The expression "variation" in this section includes "abrogation" and the expression "varied" shall be construed accordingly.

REGISTRATION OF UNLIMITED COMPANY AS LIMITED

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

- 73. Power of unlimited company to provide for reserve share capital on registration.— (1) An unlimited company having a share capital may, by its resolution for registration as a limited comany in pursuance of this Act, do either or both of the following things, namely:—
 - (a) increase the nominal amount of its share capital by increasing the nominal amount of each of its shares, but subject to the condition that no part of the amount by which its capital is so increased shall be capable of being called up except in the event and for the purpose of the company being wound up;
 - (b) provide that a specified portion of its uncalled share capital shall not be capable of being called up except in the event and for the purpose of the company being wound up.
- (2) the portion of the share capital increased or specified under sub-section (1) shall be called the reserved share capital.

RESERVE CAPITAL OF LIMITED COMPANY

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

UNLIMITED LIABILITY OF DIRECTORS

75. Limited cmpany may have director with unlimited liablitlity:— (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 director 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 with be unlimited and the promoter and officers of the company or one of them shall, be fore the person accepts the office or acts therein give him notice in writing that his liability will be unlimited.
- (3) If any director or proposer makes default in adding a statement as required by sub-section (1), or if any promoter or officer of the company makes default in giving a notice as required by that sub-section, the shall be liable to a fine not exceeding five thousand taka and shall also fefiable for any damage which the person so elected or appointed may sustain from the default, but the liability of the person elected or appointed shall not be affected by the default.
- 76. Speical resolution of limited company making liability of directors unlimited.— (1) A limited company if so authorised by its articles may, by special resolution, alter its memorandum so as to render unlimited the liablity of its directors or of any director.
- (2) Upon the passing of any special resolution under subsection (1), the provision thereof shall be valid as if they had been originally contained in the memorandum.

PART IV

MANAGEMENT AND ADMINISTRATION

Office and Name

77. Registered office of company.— (1) A company shall as from the day on which it begins to carry on business, or as from the twenty-eight day after which

date of its incorporation, which ever is curlier have a registered office of which all communications and notices may be addressed.

- (2) Notice of the situation of the registered office and of any change therein shall be given within twenty-eight days after the date of the incorporation of the company or of the change, as the case may be, to the Registrar who shall record the same.
- (3) The inclusion in the annual return of a company of the statement as to the address of its registered office shall not be taken to satisfy the obligation imposed by this section.
- (4) If a company carries on business without complying with the requirements of this section, it shall be liable to a fine not exceeding two hundred taka for every day during which it so carries on business.

COMMENTARY: Previous Act: s. 72

Transference of a registered office of a Company from one sovereing state to another.— No provisions in the Act—Transference of the office from the jurisdiction of one High Court to that of another within the same State.

The Companies Act does not provide for the transference of the registered office of a company governmed by the provisions of the Companies Act from one companies Act permits is the movement of the registered office of the copmany within the same sovereing State from Province to Province or District to District.

If the removal of the registered office is from the jurisdiction of one High Court to the jurisdiction of another within the same country, the company has to obtain permission from the High Court within whose jurisdiction the registered office was situate. [(1962) 14 DLR 407].

Change of the registered office of the company not permissible without High Court sanction.

Notice of any change cannot be effected by collateral document. [Ibid].

78. Publication of name by a limited company :— Every limited company —

- (a) shall paint or affix, and keep painted or affixed, in letters casily legible and in Bengali or English characters, its name in a conspicuous position on the frontside of every office or place in which its business is carried on;
- (b) shall have its name engraven in legible characters on its seal;
- (c) shall have its name mentioned in legible Bangali or English characters in all bill-he dos, letter papers and in notices, advertisements and other official publications of the company, and in all bills of exchange, hundis, promissory notes, endorsements, cheques and orders for money or goods purporting to be singed by or on behalf of the company, and in all bills of parcels; invoices, receipts and letters credit of the company.
- 79. Penalties for non-publication of name— (1) If a limited company maines default in complying with the provisions of section 78 (a), it shall be liable to a fine not exceeding five hundred taka for everyday during which the default continues and every officer of the company, who knowingly and wilfully authorises or permits the default, shall be liable to a like penalty.
- (2) If any officer of a limited company, or any person on its behalf—
 - (a) uses or authorises the use of any seal of the company whereon its name is not engraven as required by section 78(b); or
 - (b) issues or authorises the issue or any bill-head, letter paper, notice, advertisement or other official publication of the company, or signs or authorises on be signed on behalf of the compay any bill of exchange hundi, promissory note, endorsement, cheque or order for money or goods, or issues or authorises to be issued any bill of parcels, invoice, receipt or letter of credit of the company, wherein its name is not mentioned as required by section 78(b);

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

- 80. Publication of authorised as well as subscribed and paid-up capital:— (1) Where any notice, advertisement or other official publication of a company contain a statement of the amount of the authorised capital of the company, such notice, advertisement or other official publication shall also contain a statement in an equally prominent position and in equally conspicuous characters of the amount of the capital which has been subscribed and the amount paid-up
- (2) Any company which makes in complying with the requirements of this section and every officer of the company who is knowingly a part to the default shall liable to a fine not exceeding five thousand taka.

MEETING AND PROCEEDING

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

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

Provided further that the Registrar may, on an application made by a company within thirty days from the date of expiry of the period specified for holding the annual general meeting as aforesaid, extend the time within which any annual general meeting, not being the first annual

general meeting shall be held, by a period not exceeding ninety days or not exceeding the 31st December of the calendar year in relation to which the annual general meeting is required to be held, whichever is earlier.

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

COMMENTARY: Previous Act: S. 76

Ss. 76(2) and 130(4)— Complaint for offences under section 76(2) made direct to the High Court cannot take cognizance of the offences. Some members of respondent (a registered Association) filed an application direct to the High Court alleging that the respondent Association had to call the general meeting of members for three years and therefore, committed an offence under S. 76(2) of the Companies Act. The said Association had also not maintained the books of account as required under section 130 of the Act.

In was contended that since the High Court has to determine the question of default, it alone could take cognizance of the offence under section 76(2) of the Act.

Held: The application made direct to the High Court for taking penal action was untenable and misconceived. The High Court would have jurisdiction to try the accused if the case is committed to the High Court under section 194(1) Cr.P.C. or if proceedings are started on an application of the Advcoat-General under section 195(2) Cr.P.C or are transferred to it under section 526 Cr. P.C. [(1969) 21 DLR (WO) 204].

Secs. 76(3) and 79(3) – These two sections are supplementary to each other.

High Court Division can in exercise of its powers u/s 79(3) of the Companies Act allow an annual general meeting of a company to be held within 15 months from the date of the previous annual general meeting. [(1975) 27 DLR 490].

The word "after the holding of the last preceeding general meeting" – mean actual holding of the meeting – Condination of delay

by the High Court's direction means a new schedule for holding such a meeting starts. [39 DLR 1].

Law does not authorise the Registrar to act as a mini-court—If the Registrar is of the opinion that any company violated the provisions of section 76(1) of the Companies Act, he can initate appropriate legal proceedings. [39 DLR 1].

Words "not more than 15 months after holding of the last preeceding general meeting" —to be interpreted in two different ways [39 DLR 1].

When the company has actually held its last preceding general meetig within the extended time granted by the High Court Division, the legal obligation to hold the next general meeting will start from the date when the meeting was held within time granted by the High Court Division. [39 DLR 1].

- 82. Penalty for default in complying with section 81—If default is made in holding a meeting of the company in accordance with sub-section (1) of section 81, or in complying with any directions of the Court under subsection (2) thereof, the company and every officer of the company who is in default, shall be punishable with fine which may extend to ten thousand taka and in case of a continuing default, with a further fine which may extend to two hundred fifty taka for every day after the first day during which such default continues.
- 83. Statutory meeting and statutory report of company.— (1) Every company Limited by shares and every company limited by guarantee and having a share capital shall, within a period of note less than one month and not more than six months from the date at which the company is entitled to commence business, hold a general meeting of the members of the company; in this Act such meeting is referred to as "the statutory meeting".
 - (2) The Board of Directors shall, in accordance with the other provision of this Act, prepare a report, in this Act referred to as "statutory report" and shall at least 21 days before the day on which the statutory meeting

is not be held, forward the report to very member of the company;

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

- (3) The statutory reports shall set out the following namely—
 - (a) the total number of shares allotted, distingushing the shares allotted as fully or partly paid-up, otherwise than in cash, and stating in the case of shares partly paid-up, the extent to which they are so paid up, and in either case, the consideration for which they have been allotted;
 - (b) the total amount of cash received by the company in respect of all the shares allotted, distingushed as aforesaid;
 - (c) showing under separate proper headings-
 - (i) an abstract of recepits of the company and of the payments made thereout up to a date within seven days prior to the date of the report;
 - (ii) the receipts of the company from the shares and debentures and other sources, the payments made thereout and particulars of the concerning balance remaining in hand;
 - (iii) any commission or discount paid or to be paid on the issue or sale of shares or debentures; and
 - (iv) an account or estimate of the preliminary expenses of the company;
 - (d) the names, addresses and occupations of the directors of the company and of its auditors; and also, if there be any, of its managing agent, manager and secretary, and the change, if any which have occurred in such names addresses in

- and occupations since the date of the incorporation of the company;
- (e) the particulars of any contract which, or the modification or the proposed modification of which is to be submitted to the meeting for its approval, together with the particulars of the modification or proposed modification of such contract;
- (f) the extent, if any to which each underwriting contract, if any, has not been carried out, and the reason therefor:
- (g) the arrears, if any, due on calls from every director, from managing agent, every partner of the managing agent, every firm in which the managing agent is a partner, and where the managing agent is a private company, every director thereof;
- (h) the particulars of any commission or brokerage paid or to be paid in connection with the issue or sale of shares or debentures to any director, or to the managing agent, any partner of the managing agent, any firm in which the managing agent is a partner and, where the managing agent is a private company, to any director thereof.
- (4) The statutory report shall be certified as correct by not less than two directors of the company, one of whom shall be the managing director where there is one.
- (5) After the statutory report has been certified as required by sub-section (4), the Board of Directors the company shall, in so far as the report relates to the shares allotted by the company, the cash received in respect of such shares and the receipts and payments of the company, get it certified as correct by the auditors of the company.
- (6) The Board of Director shall cause a copy of the statutory report certified as is required by this section to be delivered to the Registrar for registration

forthwith, after copies thereof have been sent to the members of the company.

- (7) The Board of Directors shall prepare a list showing the names, addresses and occupations of the members of the company, and the number of shares held by them respectively, to be produced at the commencement of the statutory meeting and to remain open and accessible to any member of the company during the continuance of the meeting.
- (8) The members of the company present at the meeting shall be at liberty to discuss any matter relating to the formation of the company or arising out of the statutory report, whether previous notice has been given or not; but no resolution may be passed of which notice has not been given in accordance with the provisions of this Act.
- (9) The meeting may adjourn from time to time and at any adjourned meeting any resolution of which notice has been given in accordance with the provisions of this Act, whether before or after the former meeting may be passed; and the adjourned meeting shall have the same powers as an original meeting.
- (10) If a petition is presented to the Court in the manner provided by Part V for winding up of the company on the ground of default in filing the statutory report or in holding the statutory meeting the Court may, instead of directing that the company be would up, give directions for the presentation of the report or for holding the meeting or make such other order as may be just.
- (11) If default is made in complying with the provisions of this section, every director or other officer of the company who is in default shall be punishable with fine which may extend to five thousand taka.
- (12) Nothing in this section shall apply to a private company.

Calling of extraordinary general meeting on requisitions:-

- (1) Notwithstanding anything contained in the articles, the directors of a company which has a share capital, shall on the requisition of the holders of not less than one tenth on the issued share capital of the company upon which all calls or other sums then due have been paid, forthwith proceed to call an extraordinary general meeting of the company, and in the case of a company not having a share capital the directors thereof shall call such meeting on the requisition of such members as have, on the date of submitting the requisition, not less than one tenth of the total voting power in relation to the issues on which the meeting is called.
- (2) The requisition must state the objects of the meeting and must be signed by the 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 directos do not, within twenty one days from the date of deposit of the requisition proceed duly to call a meeting on a day not later than forty-five days from the date of the deposit of the requisition, than the requisitionists, or a majority of than in value, may themselves call the meeting, but any meeting so called shall be held before the expiration of three months from the date of the deposit of the requisition.
- (4) Any meeting called under this section, by the requisitionists shall be called in the same manner, as nearly as possible, as that in which meetings are to be called by directors.
- (5) Any resonable expenses incurred by the requisitionsts by reason of the failure of the directors duly to call a meeting shall be repaid to the requisitionists by the company, and any sum so repaid shall be retained by the company, out of any sums due or to become due from the company by way of fees or other

remuneration for their services to such directors as were in default.

85. Provision as to meeting and votes:

- (1) The following provisions shall have effect with respect to meeting of a company notwithstanding any provisions made in the articles of association of the company in this behalf:
 - (a) an annual general meeting of a company be called by fourteen days notice in writing, and a meeting other than an annual general meeting or a meeting for the passing of a special resolution may be called by twenty one day's notice in writing:

Provided that a meeting may called by shorter notice than aforesaid, if it is so agreed in writing -

- (i) in the case of an annual general meeting, by all the members entitled to attend and vote thereat; and
- (ii) in the case of any other meeting by the members of the company holding, if the company has a share capital not less than 95 percent of such part of the paid-up share capital of the company as gives a right to vote at the meeting, or, having if the company has no share capital, not less than 95 percent of the total voting power exercisable at the meeting.
- (a) notice of the meeting of a company with the statement of the business to be transacted at the meeting shall be served on every member in the manner in which notice are required to be served by Schedule I; but accidental omission to give notice to, or the non-receipt of notice by, any members shall not invalidate the proceedings at any meeting;
- (c) five members present in person or by proxy, ot he chairman of the meeting, or any members holding not less than one-tenth of the issued capital which

carries voting rights shall be entitled to demand a poll;

Provided that 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 regulation as of Schdule I, shall not be questioned on the ground that if fails to comply with any special requirements specifid 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 name rights and be subject to the same liabilities as all other shareholders of the same class.
- (2) The following provisions shall have effect so far as the articles of the company do not make other provision in this behalf;
 - (a) two or more members holding not less than onetenth or the total share capital paid-up or, if the company has not a share capital, not less than five percent in number of the members of the company may call a meeting.
 - (b) in the case of a private company whose number of members does not exceed six, two members and if such number exceeds six, three members, and in the case of any other company five members personally present shall be a quorum;
 - (c) any member elected by the members present at a meeting may be chairman thereof.
 - (d) in the case of company having a share, capital every member shall one vote in respect of each, share or each hundred taka of stock held by him and in any other case, every member shall have one vote;

- (e) on a poll, votes may by given either personally or by proxy;
- (f) the instrument appointing a proxy shall be in writing under the hand or the appointor or of his attorney duly authorised in writing or of the appointor is a corporation or a company, either under seal or under the hands of an officer or an attorney duly authorised:

Provided that the appointment of proxy shall not be allowed in case of companies formed under section 28 and a proxy may or may not be a member of the company.

If for any reason it is impracticable to call a meeting of (3) a company in any manner in which meeting of that company may by 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 in given the Court 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.

COMMENTARY: Previous Act: S. 79

Court has power to direct the holding of annual meeting in the general interest of the public on its own motion or on the application of a Director or member of the company.

The legislature recognised that there may be circumstances in which the holding of the annual General Meeting could not be held within the prescribed period. The legislature has therefore bestowed on the court the power to direct that such a meeting of the Company be called, held and conduct in such a manner as the Court thinks fit. In this the Court can act not only on an application of any director of

the Company or of even of any member of the Company but also suo motu.

In directing the holding of such a meeting the court is to look to the general interest of the public and not to any individual consideration. [(1966) 18 DLR 506].

Misconduct and mis-doings do not fall within the provision of section 79(3). The main ground opposing the holding of the meeting appertaings to the alleged malafides and the alleged misdoing of the president. The court while adjudicating on application filed under section 79(3) is not required to adjudicate on these allegations. Ibid.

A member of a company which has separate legal entitle is entitled to apply to the Court under see. 79(3) for calling an annual general meeting. [1981) 33 DLR (AD) 315].

Powers conferred under sections 79(3) read with section 79(3) of the Companies Act to call a annual general meeting are execrable by the court in the circumstances stated therein. The Court may intervene by directing the holding of a meeting but exercise such powers sparingly in order to ensure neutrality and not seemed to have involved itself in the affairs of the Company [38 DLR (AD) 296].

When the Court may direct the calling of a Company's meeting. [38 DLR (AD) 296].

There remains no doubt about the powers of the Court to call a meeting of the Company when invoked by a share-holder or director of the Company under section 79(3) of the Act. [38 DLR (AD) 296].

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

87. Extraordinary and special resolution :-

(1) A resolution shall be an extraordinary resolution when it has been passed by a majority of not less than threefourths 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 has been duly give.

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

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

- (3) At any meeting at which an extraordinary resolution or a special resolution is submitted to be passed a declaration of the chairman on a show of hands that the resolution is carried shall, unless a poll is demanded, be conclusive evidence of the fact without proof of the number of proportion of the votes recorded in fabvour of or against the reslution.
- (4) At any meeting at which an extraodinary resolution or a special resolution is submitted to be passed a poll may be demanded.
- (5) Where a poll is demanded the poll may in accordance with the articles, be taken in such manner as the chariman may direct; and if the chairman so directs if be taken at the meeting at which it is demanded.
- (6) Where a poll is demanded in accordance with this section in computing the majority on the poll, reference shall be had to the number of votes to which each member is entitled by the articles of the company or under this Act.
- (7) For the purposes of this section, notice of a meeting shall be deemed to be duly given and the meeting to be duly held when the notice is given and the meeting held in manner prescribed by the articles or under this Act.

COMMENTARY : Previous Act : s. 81

Notice: Twenty one clear days- Taken to be exclusive of day of posting and day of receipt [(1956 PLR (Lah) 140]

A provision in the constitution of a company which provided for unanimity in every meeting of the shareholders is only partially illegal. [1bid].

Partial illegality consists in the fact that while it is not open to the company, in the case of a special resolution under sections 20 and 81 of the Companies Act. aiming at changing its Articles, to impose unanimity, or, for the matter of that to place any further restriction than is provided by section 81, making unanimity the basis of decision in other matters, would not be illegal. [Ibid].

Therefore. an Articles which provided that every question submitted to a meeting shall be deemed to have been decided only if such decision is unanimous, in so far as it applied to special and extraordiary resolution. offended against section 81 of the Companies Act and was illegal. but it would not be respect of ordinary resolutions. The whole Article was not void. Nor would the Article be void because requirement of unanimity might lead to a deadlock and thus interfere with the object and working of the Company. [1956 PLR (Lah) 1407].

Sections 81 (2) & 85 (3)— Where adjourned annual general meeting of the company could not be held within time as the balance sheet, profit and loss account were not ready to be laid in the meeting, the delay is condoned. [48 DLR 101].

83. Registration and coplies of special and extraordinary resolution:

- (1) A copy of every special and extraordinary resolution shall within fifteen days from the passing therefore, be printed or typewritten and duly certified under the signature of an officer of the company and filed with the Register who shall record the same.
- (2) Where articles have been registered, a copy every special resolution for the being force shall be embodied in or annexed to every copy of the articles issued after the date of the resolution.
- (3) Where articles have not been registered, a copy of every special resolution shall be forwarded in print to

any member at his request on payment of fifty taka or such less sum as the company direct.

- (4) If a company makes default in so filing with the registar copy of a special or extraordinary resolution it shall be liable to fire not exceeding one hundred taka for every day during which the default continues.
- (5) If a company makes default in embodying in complying with the provisions of sub-section (2) or (3), it shall be liable to a fine not exceeding fifty taka each copy in respect of which default is made.
- (6) Every officer of a company, who knowingly and wilfully authorise or permits any default by the company in complying with the requirement of this section shall be liable to the like penalty as is imposed by this section on the company for that default.

COMMENTARY: Previous Act: s. 82

The Registrar of Joint-Stock Companies has, in the matter of recording resolutions or amendments of the Articles of Association, a certain amount of discretion, the extent of which will depend upon the nature of each ease. [(1956) 8 DLR 202 = PLR (Dac.) 389]

89. Minutes of proceedings of general meeting and of its directors:-

- (1) Every company shall cause minutes of all proceedings of general meeting and meetings of its directors to be entered in books kept for that purpose.
- (2) Any scuh minute, if purporting to be signed by the chairman of the meeting at which the proceedings were had, or by the chairman of the next succeeding meeting shall be evidence of the proceedings.
- (3) Until the contrary is proved-
 - (a) a general meeting of the company or a meeting of its directors, in respect of the proceedings of which minutes have been made, shall be deemed to have been duly called and held: and
 - (b) the proceedings of such meeting shall be deemed to have been held as described in the minutes

and the appointments of directors or liquidators at such meeting shall be deemed to be valid.

- (4) The books containing the minutes of proceedings of any general meeting of a company shall be kept at the registered office of the company and shall during business hours a subject to such reasonable restrictions as the company may by its articles or in general impose so that no less than two hours in each day be allowed for inspection be open to the inspection of any member without charge.
- (5) Any member shall at any time after fourteen days from the meeting, be entitled to be furnished within seven days after he has made a request in that behalf to the company with a copy of any minutes referred to in sub-section (4) at a charge not exceeding ten taka for every hundred word.
- (6) If any inspection required under sub-section (4) is refused, on if any copy required under sub-section (5) is not furnished within the time specified in subsection (5), the company and every officer of the company who is knowingly and wifully in default or who a uthorises or permits default shall be liable in rspect of each offence to a fine not exceeding taka one hundred and to a further fine not exceeding one hundred taka for every day during which the default continues.
- (7) In the case of any such refusal or default the Registrar may by order compel an immediate inspection of the books in respect of all proceedings of general meeting or direct that the copies required shall be sent to the person requiring them.

COMMENTARY: Previous Act : S. 83

Under 6. 83(2) all proceedings of Annual General Meeting or of the Board of Directors as evidenced in the minutes are to be treated as duly conducted and any contention to the contrary by a party shall have to be established by that party [(1984) 36 DLR 316].

Application for copies of the proceedings of the meetings of the company made not at the Company's Registered Office at Dhaka but

at its head Office at Pabna-Application not properly made and hence no offence under s. 83 (6) committed. [(1976) 28 DLR 46].

Directors

90. Directors obligatory -

- (1) Every public company and a private company which is a subsidiary of a public company shall have at least three directors.
- (2) Every private company other than a private company mentioned in sub-section (1) shall have at least two directors.:
- (3) Only a natural person may be appointed a director.

91. Appointment of directors:-

- Notwithstanding anything contained in the articles of a company-
 - (a) the subscribers of the memorandum shall be deemed to be the directors of the company until the first director are appointed.
 - (b) the directors of the company shall be elected by the members from among their number in general meeting; and
 - (c) any casual vacancy occurring among the directors may be filled in by the other directors but the person the appointed shall be a person qualified to be elected a director under clause (b) and shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last appointed a director.
- (2) Notwithstanding anything contained in the articles of a company other than a private company not less than one third of the whole number of directors shall be persons whose period of office is liable to determination at any time by retirement of directors rotation.

(1)

92. Restrictions on appointment or advertisement of director-

- (1) A person shall not be capable of being appointed director of a company by the articles and shall not be named as a director or proposed director of a company in any prospectus issued by or on behalf of the company or in relation to any intended company or in any statement in lieu of prospectus filed by or on behalf of a compamy unless before the registration of the articles or the publication of the prospectus, or the flling of the statement in licu of prospectus, as the case may be, he has by himself or by his agent authorised in writing
 - (a) signed and filed with the Registrar a consent in writing to act as such director; and.
 - (b) in the case of companies a share capital -
 - (i) signed the memornadum for a number of shares not less than his qualification shares; or
 - (ii) Taken from the company and paid or agreed to pay for his qualification share; or
 - (iii) signed and filed with the registrar a contract in writing to take from the company and pay for his qualification shares; or
 - (iv) made and filed with the Registrar any affidavit to the effect that a number of shares not less than his qualifications share are registered in his name.
- (2) On the application for registration of the memorandum and articles, if any, of a compamy, the applicant shall file with the Rgistrar 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 two thousand taka:

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

93. Consent of candidate for directorship:—

- (1) Every person, proposed as a candidate for the office of a director shall sign, and file with the company, his consent in writing to act as a director, if appointed.
- (2) A person shall not act as a director of the company unless he has, within thirty days of his appointment, signed and field with the Registrar his conesnt in writing to act as such director.

94. Disqualifications of directors:—

- (1) A person shall not be capable of being appointed director of a company. if
 - (a) he hs been found to be of unsound mind by a competent court and the finding is in force; or
 - (b) he is an undischarged insolvent; or
 - (c) he has applied to be adjudicated as an insolvent and his application is pending; or
 - (d) he has not paid any call in repect of shares of the company held by him, whether alone or jointly with others, and six months have elapsed from the last day fixed for the payment of the call; or
 - (e) he is a minor.
- (2) A company may in its articles provide additional grounds for disqualification of a director.
- 95. Notice of meeting: Notice of every meeting of the Board of Directors of a company shall be given in writing to every director for the time being in Bangladesh and at his address in Bangladesh.
- 96. Meeting of Board:— In the case of every company a meeting of its Borad of Divector shall be held at least once in every three and at least four such meeting shall be held in every year.

97. Qualification of Director :-

- (1) Without prejudice to the restrictions imposed by section 92, it shall be the duty of every director to hold qualification share to be specified in the articles and, if he is not already qualified, he shall obtain his qualification within sixty days after his appointment, or such shorter time as may be fixed by the articles.
- (2) If, after the expiration of the period mentioned in subsection (1) any unqualified person acts as a director of the company, he shall be liable to a fine not exceeding two hundred taka for every day between the expiration of the said period and the last day on which it is proved that he acted as a director (both days inclusive).
- **98.** Validity of act of director: The acts of a director shall be valid notwithstanding any defect that may afterwards be discovered in his appointment of qualification:

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

99. Ineligibility of brankrupt to act as director:

- (1) If any person being an undischareged insolvent acts as diector or managin agent or manager of any company, he shall be liable to imprisonment or a term not exceeding two years or to a fine not exceeding five thousand taka or to both.
- (2) In this section the expression "company" includes a company incorporated outside Bangladesh which has an established place of business within Bangladesh.
- **100. Probitition on assignment of office by director :** Any assignment of his office made after the commencement of this Act by any director shall void and shall be of no effect.

101. Appointment and terms and office of alternate directors:-

- (1) The Board of Directors of a company may, if so authorised by its articles or by a resolution passed by the company in general meeting, appoint an alternate director, to act for a director hereinafter in this section called the original director during his absence for a continuous period of not less than three months from Bangladesh.
- (2) An alternate director appointed under sub-section (1) shall not hold office as such for a period longer than that permissible to the original director in whose place he has been appointed and shall vacate the office, immediately after he receives information that the original director has returned to Bangladesh.
- (3) If the term of office of the original director is determined befor he so returns to Bangldesh any provision for automatic re-appointment of retiring directors in default of another appointment shall apply to the original and not to the alternate director.
- directors: Save as provided in this section, any provision, whether contained in the articles of a company or in any contract with a company or otherwise, hereafter in this section referred to as the said provision, or exempting any director, manager or officer of the company or any person, whether an officer of the company or not, employed by the company as auditor from, or for indemnifying him against any liability which by virtue of any rule of law would otherwise attach to him in respect of any negligence, default breach of duty or breach of trust of which he may be guilty in relation to the company shall be void;

Provided that -

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

(b) a company may, in pursuance of the said provision indemnify any such director, manager, officer or auditor against any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgment is given in his favor or in which he is acquitted or in connection with any application under section 396 of this Act in which relief is granted to him by the Court.

103. Loan of Director .-

- (1) No company hereinafter in this section referred to as; the lending company, shall make any loan or give any guarantee or provide any security in connection with a loan made by a third party to-
 - (a) any director of the lending company;
 - (b) any firm in which any director of the lending company is a partner;
 - (c) any private company of which any director of the lending company is a director or member; or
 - (d) any public company, the managing agent, manager or director where of is accustomed to act in accordance with the directions or instructions of any director of the lending company:

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

- (i) such compay is a banking compay or a private company not being a subsidiary of a public company, or if such company as a holding company makes the loan or gives the gurantee or provide the security to its subsidiary; and
- (ii) the loan is sanctioned by the Board of Directors of any company and approved by the general meeting and in the balance sheet, there is a specific mention of the loan, guarantee or security, as the cse may be:

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

- (2) In the event of any contravention of sub-section (1) every person who is a party to such contravention including in particular any person to whom a loan is made or on whose behalf a guarantee is given to or security provided shall be punishable with the fine which extend to five thousand taka or simple imprisonment for six months in lieu of fine and shall be liable jointly and severally to the lending company for the repayment of such loan or for making good any sum which the lending company may be called up to pay under the guarantee given or security provided by the lending company.
- (3) This section shall apply to any transaction represented by a book debt which was from its inception in the nature of a loan or an advance.
- 104. Director not to hold office of profit No director or firm of which such director is a partner of private company of which such director is a Director shall, without the consent of the company in general meeting, hold any office of profit under the company except that of a managing director or manager or a legal or technical adviser or a banker.

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

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

COMMENTARY : Previous Act S. 86F

Sec. 86F and 86(1), Clause (h) – Company. as licensed Provincial stock-holder of steel, delivering G.P. sheets to Director on production of permit issued by statutory authority- Transaction not within mischief of sections.

The combined effect of the two provisions of sections 86F and 86(l), clause (h) is that in the circumstances sppecified in the section a director of a company, automatically loses his position as such and this is penalty resonable in as much as a contract once entered upon attracts sanctions and may involve the company in penalties authoretically should the company attempt to escape the obligation incured under it. But in a case like this the company in penalties authoretically should the company attempt to escape the obligation incurred under it. But in a case like this Court will have to see that there was in actual fact an entry into a contract for the sale, purchase or supply of goods or materials with the company. The expression "contract or sale" must be understood within the definitions contained in the relevant laws, namely the Contract Act. 1872 and the Sale of Gods Act, 1930 1930 [(1960) 12 D.L.R. (SC) 181].

106. Removal of directors -

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

COMMENTARY: Previous Act S. 86G

Bangladesh Bank has not been invested with any power for removed of a Director of a Banking Company [(1984) 47 DLR 589].

- (2) A directer so removed shall not be re-appionted a director by the Board of Directors.
- 107. Restrictions on power of directors.— The director of a company or of a subsidiary company of a public company shall not, except with the consent of the company concerned in general meeting—
 - (a) sell or dispose of the undertaking of the company ;

- (b) remit any debt due by a director.
- 108. Vacation of office of director.— (1) The office of a director shall be vacant, if
 - (a) he fails obtain within the time specified in section 97 (1) or at any time thereafter ceases to hold, the qualification- shares, if any neessary for his appointment; or
 - (b) he is found to be of unsound mind by a competent court; or
 - (c) he is adjudged an insolvent; or
 - (d) he fails to pay calls made on him in respect of shares held by him within six months from the date of such calls being made; or
 - (e) he or any firm of which he is a partner or any private company of which he is a director, without the sanction of the company in general meeting accepts or holds any office of profit under the company other than that of a managing director or manager or a legal or technical adviser or a banker; or
 - (f) he absents himself from three consecutive meeting of the directors or from all meeting of the directors for a continous period of three months, whichever is the longer, without leave of absent from the Board of Directors; or
 - (g) he or any firm of which he is a partner or any private company of which he is a director accepts a loan or guarantee from the company in contravention of section 103; or
 - (h) he acts in contravention of section 105.
- (2) A company may provide by its articles that the office of director shall be vacated on grounds additional to those specified in sub-section (1)
- 109. Restriction on Managing Director.— (1) No. public company and on private company which is a

subsidiary of public company shall, after the commencement of this Act, appoint any person as managing director, if he is a managing director or manager of an other company.

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

- (2) Notwithstanding anything containded in sub-section (1) the Government may by order, permit any person to be appointment as a managing director of more than two companies if the Government is satisfied that is necessary that the companies should, for their proper working, function as a single unit and have a common managing director.
- 110. Managing director not to be appointed for more than five years at a time.— (1) No company shall, after the commencement of this Act. appoint or employ any individual as its managing director for a term exceeding five years at a time.
- (2) Any individual holding, at the commencement of this Act, the officer of the managing director in a company shall, unless his term expires earlier, be deemed of have vacated his office immediately on the expiry of five years from the commencement of this Act.
- (3) Nothing contained in sub-section (1) shall be deemed to prohibit the re-employment or the extension of the term of office of any person managing director for a further period not exceeding five years on each occasion.

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

Compensation for loss of office

111. Compensation for loss of office not permissible to managing or whole time directors or director who are managers.— (1) Payment may be made by a copany. except in the cases specified in sub-section (3)

and sbject to to the limit specified in sub-section (4), to a managing driector, or a director holding the office of manager or in the whole time employment of the company, by way of compensation for loss of office or as consideration for retirement from office, or in connection with such loss or retirement.

- (2) No payment mentioned in sub-section (1) shall be made by the company to any other director.
- (3) No payment shall be made to a managing or other director in pursuance of sub scetion (1) in the following cases, namely:-
 - (a) where the director resigns his office in view of the reconstruction of the company, or of its amalgamation with any other body corporate or bodies corporate, and is appointed as the managing director, managing agent, manager or other officer of the reconstructed company or of the body corporate resulting from the amalgamation;
 - (b) where the director regigns his office otherwise than on the reconstruction of the company or its amalgamation as aforesaid.
 - (c) Where the office of the director is vacated by virtue of any provision of this:
 - (d) where the company is being wound up, whether by or subject to the supervision of the Court or voluntarily. provided the winding up was due to the negligence or default or the director;
 - (e) where the director has been guilty of fraud or breach of trust in relation to or of gross negligence in, or gross mismanagement of, the conduct of the affairs of the company or any subsidiary or holding company thereof;
 - (f) where the director has instigated, or has taken part directly or indirectly in bringing about, the termination of his office.

- (4) Any payment made to a managing or other director in pursuance of sub-section (1) shall not exceed the remuneration which he would earned if he had been in office for the unexpired residue of his term or for three years, whichever is shorter, and such remuneration shall be calculate on the basis of-
 - (a) the average remuneration received by him during the period of three years immediately preceeding the date on which he acased to hold that office and
 - (b) where he held that office for period of less than three years, the overage remuneration received by him during the period for which he held the office:

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

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

amount shall be deemed to have been received by him in trust for the company.

- (3) Sub-sections (1) and (2) shall not affect in any manner the operation of section 111.
- 113. Payment to director for loss of office etc. in connection with transfer of shares.-
- (1) Where in connection with the transfer to any persons of all or any of the shares in a company, being a transfer resulting from-
 - (i) an offer made to the general body of shareholders;
 - (ii) an offer by or on behalf of some other body corporate with a view to the company becoming a subsidiary of such body corporate or a subsidiary of its holding company;
 - (iii) an offer made by or on behalf of an individual with a view to his obtaining the right to exercise, or control the exercise, of not less than one-third of the total voting power at any general meeting of the company; or
 - (iv) any other offer which is conditional on acceptance to given extent; and as a result of such transfer a director of the company losses his office or retires therefrom he shall not receive any payment by way of compensation for loss of office, or as consideration for retirement from office or in connection with such loss of retirement from the company of the transfere or from any other person.

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

(2) In the case refered to the proviso to sub-section (1) shall be the duty of the director concerned to take all reasonable steps to secure that particulars with respect to the payment proposed to be made by the transferee or other person including the amount

thereof are included in or sent with the notice required to sent under section 112 (2) to shareholders.

- (3) If-
- (a) any such director fails to take reasonable step in persuance of sub-section (2); or
- (b) any person who has been properly required by any such director to include the particulars referred to in sub-section (2), in such notice or to send them with such notice.

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

- (4) For the purpose of approving any payment referred to in the proviso to sub-section (1), the company shall call a meeting of the shareholders who were such holders on the date of the offer referred to that sub-section and also of the holders of the shares of the same class, in this meeting the person mking the said offer or his nominee, and if the offerer is a company the nominee of such company or of any of its subsidiary shall not be called; and if the payment is approved in the meeting the director shall be entitled to receive it.
- (5) If, at a meeting called for the purpose of approving any payment as required by sub-section (4), a quorum is not present and, after the meeting has been adjourned to a later date, a quorum is again not present, the payment shall, for the purpose of that sub-section, be deemed to have been approved.
 - (6) If-
 - (a) The concerned director fails to comply with the requirements of sub-section (2); 0r
 - (b) the said director receives the payment referred to in the proviso to sub-section (1), before it is approved under sub-section (4),

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

- 114. Provisions supplementary to section 111, 112 and 113.— (1) Where in proceedings for the recovery of any payment as having by virtue of sub-section (2) of section 112 or sub-section (4) of section 113 been received by any person in trust it is proved that—
 - (a) the payment was made in pursuance of any arrangement entered into as part of the agreement for the transfer in question, or within one year before, or within two years after, that agreement or the offer leading thereto; and
 - (b) the company or any person to whom the transfer was made privy to that arrangement.

the payment shall be deemed except on so far as the contrary is shown. to be on one to which that provision applies.

- (2) If, in connection wih any such transfer as is mentioned in section 112 or in section 113—
 - (a) the price to be paid to a director of the company whose office is to be abolished or who is to retire from office, for any shares in the company held by him is in excess of the price which could, at the time have been obtained by other holders of the like shares; or
 - (b) any valuable consideration is given to any such director.

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

(3) References in sections 111, 112 and 113 to payments made to any director of a company by way of compensation for loss of office, or as consideration for

retirement from office, or connection with such loss or retirement do not include any bonafide payment by way of damages for breach of contract or by way of pension in respect of past services, and for the purposes of this sub-section, the expression "pension includes any superannuation allowance, superannuation gratuity or similar payment.

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

115. Register of directors, managers and managing agents-

- (1) Every company shall keep at its registered office a register of its directors manager and managing agents containing with respect to each of them the following particulars that is to say-
 - (a) in the case of an individual, his present name in full any former name or surname in full, his usual residential address, his nationality and if that nationality is not the nationality of origin, his nationality of origin and his business, occupation, if any and if he holds any other directorship or directorships the particulars of such directorship or directorshipy
 - (b) in the case of a body eorporate its corporate name and registered or principal office, and the full name address and nationality of each of its directors; and
 - (c) in the case of a firm, the full name, address and nationality of each partner, and the date on which each became a partner.
- (2) The company shall within the periods specified below send to the Registrar a return in the prescribed form containing the particulars specified in the said register

and a notification in the prescribed form of any change among its directors managers or managing agents or in any of the particulars contained in the register—

- (a) in the case of the particulars specified in subsection (1), within a period of fourteen days from the appointment of the first directors of the company;
- (b) in the case of any change in such particulars, within a period of fourteen days from the day change takes place.
- (3) The register to be kept under this section shall during business hours and subject to such reasonable 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 person on payment of ten taka or such less sum as the company may impose or 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 five hundred taka.
- (5) In the case of any such refusal, the Court, on application made by the person to whom inspection has been refused and upon notice to the company, may, by order, direct an immediate inspection of the register.

MANAGING AGENT

116. Duration of appointment of managing agent. -

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

- (2) Notwithstanding anything to the contrary contained in the articles of a company or in any agreement with the company, a managing agent of a company appointed before the commencement of this Act shall not continue to hold office after the expiry of ten years from such commencement unless than reappointed thereto.
- (3) A managing agent whose office is terminated by virtue of the provisions of sub-section (2) shall, upon such termination be entitled to a charge upon the assets of the company by way of indemnity for all liabilities or obligations property incurred by the managing agent on behalf of the company subject to existing charges and encumbrance if any-
- (4) The termination of the office of a managing agent by virtue of the provisions of sub-section (2) shall not take effect until all moneys payable to the managing agent for loans made to or remuneration due up to date of such termination from 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.
- 117. Conditions applicable to managing agents.—

 Notwithstanding anything to the contrary contained in the articles of the company or in any agreement with the company—
 - (a) a company may, by resolution passed at a general meeting of which notice has been given to the managing agent in the same managers as to members of the company, remove a managing agent if he is convicted of an offence in relation to the affairs of the company and the offence is nonbilabial within the meaning of the provisions of the code of Criminal Procedure, 1898 (Act V of 1898):

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

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

- (b) the office of a Managing agent shall be deemed to be vacant if he is adjudged insolvent;
- (c) a transfer of his office by a managing agent shall be void unless approved by the company in general meeting provided that where a managing agent is a firm, a change in the partners thereof shall not be deemed to operate as a transfer of the office of managing agent, so long as one of the original partners shall continue to be a partner of the managing agent's firm;
- (d) a charge or assignment of his remuneration of any part thereof effected by a managing agent shall be void as against the company:
- (e) if a company is wounded 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

of managing agent and variation of a managing agent's contract of management shall not be valid unless approved by the company by a resolution at

a general meeting of the company notwithstanding anything to the contrary in section 104:

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

COMMENTARY: previous Act: s. 87B

Transfer of interest of the original partners to new-comers when will not be considered as transfer of the interest of the Managing Agents office.

Proviso to section 87B(e) of the Companies Act simply means that when (Managing) Agency happened to be a firm transfer of the interest of the original partners to new-comers shall not be considered as a transfer of the office of the Managing Agent so long as at least one of the original partners continue to be a partner of the Managing Agent's firm and there is no approval by the members of the managing agency by the Managing Agent's firm [(1968) 20 D.L.R. 1056].

In view of the provision of section 87B(1) of the Companies Act. the Board of Directors has authority to appoint a new firm of partners to continue the work of managing agents only by way of temporary arrangement.

Under the law of partnership every partner may act on behalf of the firm so as to bind the firm unless otherwise provided in the partnership deed. [Ibid].

- 118. Investigation of managing agents, etc.: (1) If the Government has reason to believe that the managing agent of a public company—
 - (a) has in connection with the conduct or management of the affairs of the company, been guilty of fraud, misfeasance or breach of trust; or
 - (b) has been conducting the affairs of the company for a fraudulent unlawful purpose; or
 - (c) has so conducted of managed the affairs of the company as to deprive the shareholders thereof of a reasonable return on their investment;

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

Explanation: The shareholders of a company shall be deemed to have been deprived of a reasonable return on their investment if, having regard to enterprises similarly placed, the company is unable to or does not declare any or an adequate dividend for a continuous period of three years.

- (2) The investigator appointed under sub-section (1)
 - (a) may at may time, for the purpose of making any inquiry which he considers necessary, enter the premises of the company or the office of the managing agent and may call for and inspect the books of accounts or documents in the possession of the company or managing agent and may seal or take into custody any books of accounts or documents for so long as may be necessary;
 - (b) shall have the same powers as are vested in a Court when trying a suit under the Code of Civil Procedure, 1908 (Act V of 1908) in respect of the following matters, namely:-
 - summoning and enforcing the attendance of any director or officer of the company or of the managing agent and examining him on oath or affirmation;
 - (ii) company the production of any books of accounts or documents; and
 - (iii) issuing commissions for the examination of witnesses;
- (3) Any proceeding before the investigator shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Penal Code (Act XLV of 1860)

- (4) If the Government after considering the report submitted under sub-section (1) is of opinion that it is necessary to do so in the interest of the efficient management of the affairs of the company, the Government may, without prejudice to any other action that may be taken under this Act or any other law, by order in writing-
 - (a) modify the terms of the managing agent's agreement of management with the company
 - (b) require the managing agent to carry out such changes in the management or accounting procedures, within such time, as may be specified in the order; or
 - (c) remove from office the managing agent or the director of the company nominated by the managing agent, or both the managing agent or the director so nominated:

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

- (5) A managing agent or director removed from office under sub-section (4) shall not be entitled to or be paid any compensation or damages for loss or termination of office.
- (6) A managing agent of a company who is removed from office under sub-section (4) shall not be appointed to such office of that company until after the expiration of a period of five years from the date of such removal.
- (7) Where the managing agent removed from office under sub-section (4) is a firm or a company no partner of such firm and no director of officer holding a general power of attorney from such company shall hold the office of a director or any other office connected with the conduct or management of the affairs of the company of which it was managing agent, until after the expiration of a period of five years from the date of such removal.

- (8) Where the managing agent of a company is removed office under sub-section (4) the Government may by order in writing, appoint an Administrator, hereinafter referred to as the Administrator, to manage the affairs of the company subject to such terms and conditions as may be specified in the order.
- (9) The Administrator shall receive such remuneration as the Government may determine.
- (10) The management of the affairs of the company shall, on and from the date of appointment of the Administrator, vest in him.
- (11) Where it appears to the Administrator that any purchase, sales or agency cotract has been entered into, or any employment given to benefit the managing agent or his nominees and to the detriment of the interest of the general shareholders, the Administrator may, with the previous approval in writing of the Government, terminate such contract or employment.
- (12) No person shall be entitled to or paid any compensation or damages for the termination of any contract or employment under sub-section (11).
- (13) If at any time it appears to the Government that the purpose of the order appointing the Administrator has been fulfilled, it may permit the company to appoint another person to the office of managing agent, and on the appointment of new managing agent, the Administrator shall cease to hold office.
- (14) Save as provided in sub-section (15), no suit, prosecution or other legal proceeding shall lie against the Administrator personally for anything which is in good faith done or intended to be done by him in pursuance of this section or of any rules made thereunder, and anything so done shall be deemed to have been done by the company.
- (15) Any person aggrieved by any order of the Government under sub-section (4) or of the Administrator under sub-section (11) may, within sixty days from the date

of the order, appeal against such order to the High Court Division.

- (16) If any person fails, without reasonable cause, to furnish any books of accounts or documents called for under clause (a) of sub-section (2) or to comply with any order under clause (a) or clause (b) sub-section (4) or contravenes the provisions of sub-section (6) or sub-section (7) the Government may, by order in writing direct that such person shall pay by way of penalty a sum which may extend to ten thousand taka, and in the case of a continuing failure or contravention, a further sum which may extend to one thousand taka for every day the first day during which the failure or contravention continues.
- (17) The Government may, by notification in the Gazette, direct that any power conferred upon it by this section shall, subject to such conditions, if any, as may be specified in the direction, be excercisable also by such person or authority as may be so specified.
- (18) The Government may, by notification in the official Gazette, make rules to carry out the purpose of this section.
- (19) The provisions of this section shall have effect notwithstanding anything contained in any other provision of this Act or any other law, contract, or the memorandum or articles of a company.
- 119. Remuneration of managing agent: (1) Where a company appoints a managing agent, it shall, in the documents of appointment specify the following—
 - (a) the remuneration of the managing agent which shall be a sum based on fixed percentage of the net annual profits of the company; and
 - (b) a minimum payment, in the case of absence or inadequacy of profits. together with office allwance.
- (2) Any stipulation for remuneration additional to, or in any from other than, the remuneration specified in

sub-section (1) shall be binding on the company unless sanctioned by a special resolution of the company.

- For the purpose of this section net profits means the profits of the company calculated after allowing for all the usual working charges, interest on loans and advances, repairs and outgoing, depreciation, bounties, or subsidies received from Government or from a public statutory 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, but without any deduction in respect of income-tax or super-tax, or any other tax or duty on income or for expenditure by way of intersection debentures or otherwise on capital account or on account of any sum which may be set aside in each year 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.
- **120.** Loans to managing agents: (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 member of director of the private company if the managing agent is a private company any loan out of moneys of the company or guarantee any loan made to a managing agent.
- (2) Nothing continued in this section shall apply to any credit held by a managing agent in current account maintained by the company with the managing agent of the purpose of the business of the company:

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

(3) In the event of any contravention of sub-section (1) any director of the company who is a party to the making of the loan or giving of the guarantee shall be punishable with fine which may extend to five

thousand taka and, if default is made in repayment of the loan or discharging the guarantee, shall be liable jointly and severally for the amount unpaid.

- (4) Nothing in this section apply a private company except a private company which is the subsidiary of a public company.
- (5) Except with the consent three-fourths of the present and entitled to vote on the resolution. a managing agent of the company, or the firm of which he is a partner or any partner of such firm or, if the managing agent is a private company a member or director thereof, shall not enter into any contract for the sale, purchase or supply for goods and materials with the company.
- 121. Loans to or by companies under the same management: (1) No company incorporated under this Act which is under the management of a managing agent shall make any loan to or guarantee any loan made any company under management of the same managing agent.

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

- (2) In the event of any contravention of the provisions of this section, any director or officer of the company making the loan or giving the guarantee who is knowing and willfully in default, shall be liable to a fine not exceeding five thousand taka and shall jointly and severally be libel for any loss incurred by the company in respect such of loan or guarantee.
- 122. Purchase by company of shares of company under same managing agent: A company other than an investment company, that is to say, a company whose

principal business is the acquisition and holding of shares. stocks, debentures or other securities, shall not purchase 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.

- 123. Restriction on managing agent's powers of management: A managing agent shall not exercise, in respect of any company of which be 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 by a company to a managing agent shall be void.
- 124. Managing agent not to engage in business competing with the business of managed company:

 A managing agent shall not on his own account engage in any business which is of the same nature as and directly competes with the business carried on by a company under his management or by a subsidiary company of such company.
- 125. Limit on number of director appointed by managing agent: Notwithstanding anything contained in the articles of a company other than a private company, the directors appointed by the managing agent shall not exceed in number one-third of the whole number of directors.

CONTRACTS

- 126. Validity of written and unwritten contracts: (1)
 Contracts on behalf of a company may by made as follow, that is to say-
 - (i) any written contract which, if made between individual, would be by law required to be in writing, signed by the parties to be charged therewith, may be made on behalf of the company in writing signed by any person acting under its

- authority, express of implied, and may in the same manner be varied or discharged; and.
- (ii) any contract which, if made between individuals, would by law be valid although made by only and not reduced into writing, may be made by parole 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 contract made according to this section shall be effectual in law and shall bind the company and its successors and all other parties thereto, their heirs or legal representatives, as the case may be.
- 127. Bills of exchange and promissory note: A bill of exchange, hundi or promissory note shall be deemed to have been made, drawn, accepted or endorsed on behalf of a company if made, drawn accepted or endorsed in the name of, or on behalf or on account of the company by any person acting its authority, express or implied.
- 128. Execution of deeds: A company may, by writing under its common seal empower any person either generally or in respect of any specified matters, as its attorney to execute deeds on its behalf in any place, either in or outside Bangladesh; and every deed signed by such attorney, on behalf of the company and under his seal, where sealing is required, shall bind the company and have the same effect as if it were under its common seal.
- 129. Power of company to have official seal for use abroad: (1) A company whose objects require or comprise the transaction of business beyond the limits of Bangladesh may, if authorised by its articles, have for use in any territory district or place not situated in Bangladesh, an official seal which shall be, facsimile of the common seal of the company with the addition on its face of the name of every territory, district of place where it is to be used.

- (2) A company having such an official seal may, by writing under its common seal, authorise any person appointed for the purpose in any territory, district or place not situated in Bangladesh to affix the same to any deed or other document to which the company is party in that territory, district or place and such person shall be the agent for purpose of using the said seal.
- (3) The authority of any such agent shall, as between the company and any person dealing with the agent continue during the period, if mentioned in the instrument conferring the authority, or if no period is here mentioned then until notice of the revocation or determination of the agent's authority has been given to the person dealing with him.
- (4) The person affixing any such official seal shall, by writing under his hand, on the deed or other document to which the seal is affixed certify the date and also the territory, district or place 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.
- 130. Disclosure of interest by director is respect of contract etc.: (1) Every director who is directly or indirectly concerned or interested in any contract or arrangement entered into by or on behalf company shall disclose the nature of his interest at the meeting of the directors at which the contract or arrangement is determined on, of his interest then exists, or, in any other case, at the first meeting of the director 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 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 n aning 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 subsection (1) shall be liable to a fine not exceeding five thousand taka.
- (3) A register shall be kept by the company in which shall be entered particulars of all contracts or arrangements to which sub-section (1) applies, and which shall be open to inspection by any member of the company at the registered office of the company during business hour.
- (4) Every officer of the company who knowingly and willfully acts in contravention of the provisions of subsection (2) shall be liable to a fine not exceeding one thousand taka.
- 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 contrivances the provision of subsection (1) shall be liable to a fine not exceeding five thousand taka.
- 3) This section shall not apply to a private company:

Provided that where a private company is 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.

- appointing a manager.—(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 the contract or the varying of the contract, send an abstract of the terms of such contract or variation as the case may be together with a memorandum, clearly indicating the nature of the interest of the director in such contract, or in such variation, to every member; and the contract shall be open to inspection of any member at the registered office of the company.
 - If a company makes default in complying with the requirements of sub-section (1), it shall be liable to a fine not exceeding five thousand taka; and every officer of the company, who is knowingly and willfully in default, shall be liable to the like penalty.
- is undisclosed principal.— (1) Every manager or other agent of a company other than a private company, not being the subsidiary company of a public company, who enters into a contract for or on behalf of the company in which contract the company is an undisclosed principal shall, at the time of entering into the contract, make a memorandum in writing of the terms of the contract, and specify therein the person with whom it has been made.
 - Every such manager or other agent shall forthwith deliver the memorandum aforesaid to the registered office of company and send copies to the directors, and such memorandum shall be filed in the office of the company and laid before the directors at the next directors meeting.
- If any such manager or other agent makes default in complying with the requirements of this section—

- (a) the contract shall, at the option of the company, be void as against the company; and
- (b) such manager or other agent shall be liable to a fine not exceeding five hundred taka.

PROSPECTUS

- 134. Dating of prospectus.— A prospectus issued by or on behalf of a company or in relation to an intended company shall be dated, and that date shall, unless the contrary is proved, be taken as the date of publication of the prospectus.
- 135. Matters to be stated and reports to be set out in prospectus.— (1) Every prospectus issued by or on behalf of a company, or by or on behalf of any person who is or has been engaged or interested in the formation of a company shall state the matters and set out the reports specified in parts I and II respectively of schedule III; and the said parts I and II shall have effect subject to the provisions contained in Part III of the said schedule.
- (2) Where an applicant for shares in or debentures of a company is required to accept a condition which has the effect of waiving the compliance with any of the requirements of this section, or which purports to effect him with notice of any contract document of matter not specifically referred to in the prospectus such condition shall be void.
- (3) No person shall issue any form of application for shares in debentures of a company unless the form is accompanied by a prospectus which complies with the requirements of this section:

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

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

- (b) in relation to shares or debentures which were not offered to the public.
- (4) If any person acts in contravention of the provisions of sub-section (3) he shall be punishable with fine which may extend to five thousand taka.
- (5) A director or other person responsible for the prospectus shall not incur any liability by reason of any non compliance with, or contravention of, any of the requirements of this section, if—
 - (a) as regards any matter not disclosed, he proves that he had no knowledge thereof; or
 - (b) he proves that the non-compliance or contravention arose form an honest mistake of the 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 was otherwise such as ought, in the opinion of that court, having regard to all the circumstances of the case, reasonably to be excused:

Provided that no director or other person shall incur any liability in respect of the failure to include in a prospectus a statement with respect to the matters specified in clause 18 of Part I of Schedule III, unless it is proved that he had knowledge of the matters not disclosed.

- (6) This section shall not apply—
 - (a) to the issue to existing members or debentures holders of a company of a prospectus or form of application relating to shares in or debentures of the company, whether an applicant for shares or debenture will or will not have the right to renounce in favor of other persons: or
 - (b) to the issue of a prospectus or form of application relating to shares or debentures which are, or are to be, in all respects uniform with shares or debentures previously issued and for the time

being dealt in or quoted on a recognised stock exchange;

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

- (7) Nothing in this section shall limit or diminish any liability which any person may incur under any other law or under this Act apart from this section.
- 136. Expert to be unconnected woth formation or management of company— A prospectus inviting persons to subscribe for shares in or debentures of a company shall not include a statement purporting to be made by an export, unless the expert is a person who is not, and has not been, engaged or interested in the formation or promotion or management of the company.
- 137. Expert's consent to issue of prospectus containing statement by him.— A prospectus inviting persons to subscribe for shares in or debentures of a company and including a statement purporting to be made by an expert may be issued, if—
 - (a) he has given his written consent to the issue thereof, with the statement included in the form and context in which it is included, and has not withdrawn such consent before the delivery of a copy of the prospectus for registration; and
 - (b) another statement that he has given and has not withdrawn his consent as aforesaid paper's in the prospectus.
- 138. Registration of prospectus.— (1) No prospectus shall be issued by or on behalf of a company or in relation to an intended company unless, on or before the date of its publication, there has been delivered to the Registrar for registration a copy thereof signed by every person who is named therein as a director or

proposed director of the company, or by his agent authorised in writing.

- (2) The copy of the prospectus delivered to the Registrar for registration under sub-section (1) shall have endorsed thereon or attached thereto—
 - (a) any consent to the issue of the prospectus required by section 137 from any person as an expert; and
 - (b) in the case of a prospectus issued generally, also—
 - a copy of every contract specified in clause 16 of part of a Schedule III or in the case of a contract not reduced into writing a memorandum giving full particulars thereof; and
 - (ii) where the persons making any report required by Part II of that schedule have made therein, or have, without giving the reasons, indicated therein, any such adjustments as are mentioned in clause 32 of Part II of the Schedule, a written statement signed by those persons setting out the adjustments and giving the reasons therefor.
- (3) Every prospectus to which sub-section (I) applies shall, on the face of it—
 - (a) state that a copy has been delivered for registration as required by this section;
 - (b) specify any document required by this section to be endorsed on or attached to the copy so delivered; and
 - (c) a list of statements included in the prospectus.
- (4) The registrar shall not register a prospectus unless the requirements of section 134, 135, 136 and 137 and sub-section (1), (2) and (3) of this section have been complied with and the prospectus is accompanied by the consent in writing of the person, if any, named therein as the auditor, legal adviser, attorney, solicitor,

- banker or broker of the company or intended company, to act in that capacity.
- (5) No prospectus shall be issued more than ninety days after the date on which a copy thereof is delivered for registration, and if a prospectus is so issued, it shall be deemed to be a prospectus a copy of which has not been delivered under this section to the Registrar.
- (6) If a prospectus is issued without copy thereof being delivered under this section to the Registrar or without the copy so delivered having been endorsed thereon or attached thereto the required consent or documents, the company, and every person who is knowngly and willingly a party to the issue of the prospectus, shall be punishable with the fine which may extend to five thousand taka.
- 139. Penalty for contravention of section 136 and 137.— (1) If any prospectus is issued in contravention of sections 136 or 137, the company and every person, who is knowingly a party to the issue thereof, shall be punishable with fine which may exted to five thousand taka.
- (2) For the purposes of this section and section 136 and 137, the expression "expert" includes an engineer, a valuer, an accountant and any other person whose profession gives authority to a statement made by him.
- 140. Allotment of shares and debentures to be dealt in on stock exchange.— Where a prospecuts, whether issued generally or not, states that an application has been or will be made for permission for the shares or debentures offered thereby to be dealt in one or more recognised stock exchanges, such prospectus shall state the name of the stock exchange or, as the case may be, each such stock exchange, and any allotment made on an application in pursuance of the prospectus shall be void, if the permission has not been applied for before the tenth day after the first issue of the prospectus, or where such permission has been applied for before issue of prospectus, if the

permission has been granted by the stock exchange or each such stock exchange, as the case may by, within six weeks after the date of the closing of the subscription.

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

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

- (3) All moneys received as subscription for the allotment of shares or debentures shall be kept in a separate bank account and shall be repaid within the time and the manner specified in sub-section (2) and if default is made in complying with this sub-section the company and every officer of the company who is knowingly and wilfully in default shall be punishable with fine not exceeding five thousand taka.
- (4) Where an applicant for shares or debentures is required to accept a condition has the which has the effect of waiving compliance with any requirement of this section shall be void.
- (5) For the purposes of this section, permission shall not be deemed to be refused if it is intimated that the application for it will be given further consideration.
- (6) The other provisions of this section shall have effect—
 - (a) in relation to any shares or debentures agreed to be taken by a person underwriting an offer thereof

- by a prospectus, as if he had applied thereof in pursuance of the prospectus;
- (b) in relation to prospectus offering shares for sale, with the following modifications, namely:-
- (i) references in the said other provisions to sale shall be substituted for references to allotment;
- (ii) the persons by whom the offer is made, and not the company, shall be liable under sub-section (2), to repay money received from applicants, and references to the company's liability under that sub-section shall be construed accordingly; and
- (iii) for the reference in sub-section (3) to "the company" and "every officer of the company who is knowingly and wilfully in default," there shall be substituted a reference to "any person by or through whom the offer is made" and who is knowingly and wilfully guilty or, wilfully, authorises or permits, the defaults" respectively.
- (7) No prospectus shall state that application has been made for permission for the shares or debentures offered there by for being dealt in an stock exchange, unless it is a recognised stock exchange.
- 141. Obligations of companies where no prospectus issued.—(1) A company having a share capital which does not issue a prospectus on or with reference to its formation, on which has issued such a prospectus but has not proceeded to allot any of its shares or debentures offered to the public for subscription shall not allot any of its shares or debentures unless within three days after the first allotment of either shares or debentures, there has been delivered to the Registrar for registration a statement in lieu of prospectus, signed by every person who is named therein as director or proposed director of the company or his agent authorised in writing in the form and containing the particulars set out in part I of schedule IV and, in the cases mentioned in Part II of that schedule, setting out the reports specified therein, and the said Part I

and II shall have effect subject to the provisions contained in Part III of that schedule.

- (2) Every statement in lieu of prospectus delivered under sub-section (1) shall, where the persons making any such report as specified that sub-section have made therein, or have without giving the reasons indicated therein, any such adjustments as are mentioned in Part III of the schedule IV have endorsed thereon or attached there to a written statement signed by those person, setting out the adjustment and giving the reasons thereof.
- (3) This section shall not apply to a private company.
- (4) If a company acts in contravention of sub-section (1) or (2) the company and every director of the company who knowingly and willfully authoriser permits the contravention shall be punishable with fine which may extend to two thousand taka.
- (5) Where a statement in lieu of prospectus delivered to the Registrar under sub-section (1)includes any untrue statement, any person who authorised or permitted the delevery of the statement in liue of prospectus for registration shall be punishable with imprisonment for a term which may extend to two years or with fine which may extend five thousand taka or with both, unless he proves either that the statement was immaterial or that he had reasonable ground to belive, and did up to the time of the delivery for registration of the statement in lieu of prospectus believe, that the statement was true.
- (6) for the purpose of this section—
 - (a) a statsement included in a statement in liue of prospectus shall be deemed to be untrue if it, if is misleading in the form and context in which it is included; and
 - (b) where the omission from a statement in lieu of prospectus of any matter is calculated to mislead, the statement in lieu of prospectus shall be

- statement in lieu of prospectus containing an untrue statement,
- (7) for the purpose of sub-section (5) and clause (a) of sub-section (6) the expression "included", when used with reference to a statement in lieu of prospectus, means included in the statement in lieu of prospectus itself or contained in any report or memorandum appearing on the face thereof or by reference incorporated therein, or issued therewith.
- 142. Document containing offer of shares or debentures for sate to be deemed a prospectus.— (1) where a company allots or agrees to allot any shares in or debentures of the company with a view to all or any of those shares or debentures being offered for sale to the public, any document by which the offer for sale to the public is made shall, for all purposes be deemed to be a prospectus issued by the company, and all enactment's and rules of law as to the contents of prospectus and as to liability in respect of statements in and omissions from prospectus, or otherwise relating to prospectus, shall apply and have effect accordingly, if the shares or debentures had been offered to the public for subscription and as if the persons accepting the offer in respect of any shares or debentures wer subscribers for those shares or debentures but without prejudice to the liability, if any, of the persons by whom the offer is made in respect of misstatements contained in the document or otherwise in respect thereof.
- (2) For the purposes of this Act, it shall, unless the contrary is proved, be evidence that an allotment or an agreement to allot shares or debentures was made with a view to the shares or debentures being offered for sale to the public if it is shown—
 - (a) that an offer of the shares or debentures or of any of them for sale to the public was made within one hundred and eighty days, after the allotment or agreement to allot; or

- (b) that at the date when the offer was made, the whole consideration to be received by the company in respect of the shares or debentures had not been so received.
- (3) In case of the document, mentioned in sub-section (1), section 135 shall have effect as if it requrired a prospectus to state, in addition to the matters required by that section to be stated, in a prospectus—
 - (a) the net amount of the consideration received or to be received by the company in respect of the shares or debentures to which the offer relates; and
 - (b) the place and time at which the contract under which the said shares or debentures have been or are to be allotted may be inspected.
- (4) Section 138 shall apply to the person of persons making the offer mentioned in sub-section (1) as though they were person named in a prospectus as directors or proposed directors of a company.
- (5) Where the persons making an offer mentioned in subsection (1) is a company or firm, it shall be sufficent if the document referred in sub-section (1) is signed on behalf of the company or firm by two directors of the company or by not less than one-half of the partners in the firm, as the case may be, and any such director or partner may sign by his agent authorised in writing.
- 143. Interpretation of provisions relation to prospectus.— (1) For the purposes of the provisions relating to prospectus—
 - (a) a statement included in a prospectus shall be deemed to be untrue, if the statement is misleading in the form and context in which it is included; and
 - (b) where the omission from a prospectus of any matter is calculated to mistead, the prospectus

- shall be deemed in respect of such omission to be a prospectus containing untrue statement.
- (2) For the purposes of section 145, 146 and clause (a) of sub-section (1) of this section, the expression "included" when used with reference to a prospectus, means included in the prospectus itself or contained in any report of memorandum appearing on the face thereof or by reference incorporated therein or issued therewith.
- 144. Restriction on alteration of terms of prospectus or statement in lieu of prospectus.— A company shall not, at any time, vary the terms of a contract referred to in the prospectus or statement in lieu of prospectus, except with the approval of, or except under an authority given by, the company in general meeting.
- 145. Civil liability for misstatement in prospectus.—(1) Subject to the provisions of this section, where a prospectus invites members of the public to subscribe for shares in or debentures of a company, the following persons shall be liable to pay compensation to every person who subscribes for any shares or debentures on the faith of the prospectus for any loss or damage he may have sustained by reason of any untrue statement included therein, that is to say—
 - (a) every person who is a director of the company at the time of the issue of the prospectus;
 - (b) every person who has authorised himself to be named and is named in the prospectus either as a director, or as having agreed to become a director, either immediately or after an interval of some time;
 - (c) every person who is a promoter of the company; and
 - (d) every person who has authorised the issue of the prospectus:

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

- (a) that, having consented to become a director of the company, he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent; or
- (b) that the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue he forthwith gave reasonable public notice that it was issued without his knowledge or consent; or
- (c) that, after the issue of the prospectus and before allotment thereunder, he, on becoming aware of any untrue statement therein, withdrew his consent to the prospectus and gave reasonable public notice of the withdrawal and of the reason therefor; or
- (d) that—
- (i) as regards every untrue statement not purporting to be made on the authority of any expert or of a public official document or statement, he had reasonable ground to believe, nad did up to the time of the allotment of the shares or debentures, as the case may be, believe that the statement was true; and
- (ii) as regards every untrue statement purporting to be a statement by an expert or contained in what

purports to be a copy of or an extract from a report or valuation of an expert, it was a correct and fair presentation of the statement, or a correct copy of or a correct and fair extract from, the report and valuation; and he had reasonable ground to believe, and did up to the times of the issue of the prospectus believe, that the person making the statement was competent to make it and that person had given the consent required by section 137 to the issue of the prospectus and had not withdrawn that consent before delivery of a copy of the prospectus for registration or to the deferance knowledge, before allotment thereunder: and

(iii) as regards every 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, it was a correct and fair representation of that statement, or correct copy of or a correct and fair extract from, the document:

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

- (3) A person who, would under sub-section (1) be liable by reason of his having given a consent required of him by section 137 as a person who has authorised the issue of a prospectus in respect of an untrue statement purpoting to be made by him as an expert, shall not be so liable, if he proves—
 - (a) that having given his consent under section 137 to the issue of the prospectus, he withdrew it in writing before delivery of a copy of the prospectus for registration; or
 - that, after delivery of a copy of the prospectus for registration and before allotment thereunder, he,

on becoming aware of the untrue statement, withdrew his consent in writing and gave reasonable public notice of the withdrawal and of the reason therefor; or

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

(4) Where-

- (a) the prospectus specifies the name of a person as a director of the company, or as having agreed to become a director thereof. and he has not consented to become a director, or has withdrawn has consent before the issue of the prospectus, and has authorised or consented to the issued thereof; or
- (b) the consent of a person is required under section 137 to the issue of the prospectus and be either has not given that consent or has withdrawn it before issue of the prospectus.

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

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

(5) Every person who, becomes liable to make any payment by write of this section may recover

contribution, as in cases of contract, from any other person who, if issued separately, would have been liable to make the same payment, unless the former person was, and the later person was not guilty of fraudulent misrepresentation.

- (6) For purposes of this section—
 - (a) the expression "promoter" means a promoter who was a party to the preparation of the prospectus or of the portion thereof containing the untrue statement, but does not include any person by reason of his acting in a professional capacity for person engaged in procuring the formation of the company; and
 - (b) the expression "expert" has the same meaning as in section 139.

146. Penalty for untrue statement in prospectus.-

- (1) Where a prospectus issued after the commencement of this Act includes any untrue statement every person who authorised of the prospectus shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to five thousand taka or with both, unless he proves either that the statement was immaterial or that he had reasonable ground to believe, and did, up to the time of the issue of the prospectus, believe that the statement was true.
- (2) A person shall not be deemed for the purposes of this section to have authorised the issue of a prospectus by reason only of his having given—
 - (a) the consent required by section 137 to the inclusion therein of statement purporting to be made by him as an expert; or
 - (b) the consent requited by sbu-section (4) of section 138.
- 147. Penalty for fraudulently inducing persons to invest money.— Any person who either by knowingly or recklossly making any statement, promise or forecast

which is false, deceptive or misleading, or by any dishonest concealment of material facts, induces or attempts to induce another person to enter into, or to offer into-

- (a) any agreement for, or with a view to acquiring, disposing of, subscribing for, or underwriting shares or debentures; or
- (b) any agreement, the purpose or pretended purpose of which is to secure a profit to any of the parties from the yield of shares or debentures, or by reference to fluctuation in the value of shares or debenture.

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

- 148. Restriction as to allotment.— (1) No allotment shall be made of any share capital of a company offered to the public for subscription, unless the following amount and at least 5% of that amount have been paid in cash to the company, namely—
 - (a) the amount stated in the prospectus as the minimum amount which in the opinion of the directors, must be raised by the issue of share capital in order to provide for the matters specified in sub-section (2); or
 - (b) of any part of the minimum amount is to be defrayed in any other manner, the balance of the minimum amount after deducting the amount required to be so defrayed.
- (2) The matters for which provision for the raising of a minimum amount of share capital must be made by the directors are the following namely—
 - (a) the purchase price of any property purchased or to be purchased which is to be defrayed in while or in part put 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 or any shares in the company;
- (c) the repayment of any moneys borrowed by the company in respect of the foregoing matters; and
- (d) working capital.
- (3) The amount referred to in sub-section (1) as the amount stated 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.
- (4) All moneys received from applicants for shares shall be deposited and kept in a scheduled bank as defined in the Bangladesh bank Order, 1972 (PO No. 127 of 1972), until returned in accordance with the provisions of sub-section (7) or until the certificate to commence business is obtained under section 150(2).
- (5) In the event of any contravention of the provisions of sub-section (4) every promoter, director or other person knowingly responsible for such contravention shall be liable to a fine not exceeding five thousand taka.
- (6) The amount payable on application on each share shall not be less than five percent of the nominal amount of the share.
- (7) If the conditions aforesaid have not been complied with within a period not exceeding one hundred and eight days after the first issue of the prospectus. or within forty days from the closing date of subscription-list as specified in the prospectus, whichever is earlier, all moneys received from applicants for shares or debentures shall be forthwith repaid to them without interest and if any such money is not so repaid within the aforesaid period, the directors of the company, shall be jointly and severally liable to repay

that money with interest at the rate of five present above the bank rate after expire of the aforesaid period.

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

Provided that where, after a prospectus is first issued, a public notice is given by some person responsible under section 145 for the prospectus which has the effect of excluding, limiting or diminishing his responsibility, on allotment shall be made until the beginning of the eighth day after that on which such public notice is first given.

- (9) An application for shares in, or debentures of, a company, which is made in pursuance of a prospectus issued shall not be revocable until after the expiration of the eighth day after the time of the opening of the subscription list, or the giving, before the expiry of the said eighth day by some person responsible under section 145 for the prospectus, of a public notice having the effect under that section of excluding, limiting or diminishing the responsibility of the person giving it.
- (10) Where an applicant for shares or debentures is required to accept condition which has the effect of waiving compliance with any requirement of this section shall be void.
- (11) This section, except sub-section (6) thereof, shall not apply to any allotment of shares subsequent to the first allotment to shares offered to the public for subscription.
- (12) In the case of the first allotment of share capital payable in cash of any company which does not issue any invitation to the public to subscribe for its shares,

on allotment shall be made unless the minimum subscription, that is to say-

- (a) the amount, if any fixed by the memorandum or articles and named in the prospectus or in the statement in lieu of prospectus as the minimum subscription upon the director may proceed to allotment; or
- (b) if no amount is so fixed and named, the whole amount of the share capital other than that issued or agreed to be issued as fully or partly paid up othewise than in cash;

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

- (13) Sub-section (12) shall not apply to a private company or to a company which has allotted any shares or debentures before the commencement of this Act.
- 149. Effect of irregular allotment.— (1) An allotment made by a company to an applicant in contravention of the provision of section 141 or section 148 shall be voidable at the instance of the applicant within one month after the holding of the statutory meeting of the company and not later or, in any case where the company is not required to hold a statutory meeting, or where the allotment is made after the holding of the statutory meeting, witchin one month after the date of the allotment and not later, and shall be so avoidable notwithstanding that the company is in the course of being would up.
- (2) If any director of a company knowingly contravenes or permits or authorises the contravention of any of the provisions of section 141 or section 148 with respect to allotment, he shall be liable to compensate the company and the allottee for any toss damages or costs which the company or the allottee may have sustained or incurred thereby:

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

- 150. Restrictions or commencement of Business. (1)
 A company shall not commence any business or exercise any borrowing powers unless-
 - (a) shares held subject to the payment of the whole amount thereof in cash have been allotted to an amount not less in the whole than the minimum subscription; and
 - (b) Every director of the company has, out the shares taken or contracted to be taken by him, paid in cash on each of the shares.
 - (i) where the shares are offered for public subscription, an amount equal to the amount to be paid on application for shares by the members of the public; or
 - (ii) where the shares are not offered, an amount payable in cash by the director on such share;
 - (c) there has been field with the Registrar a duly verified declaration by the secretary or one of the directors in the prescribed from, 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 subsection (1) certify that the company is entitled to commence business, and that certificate shall be conclusive evidence that the company is so entitled:

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

(3) Any contract made by a company before the date at which it is entitled to commence business shall be provisional only, and shall mot be binding on the

company until date and on that date it shall become binding.

- (4) Nothing in this section shall prevent the simultaneous offer for subscription or allotment of any shares, and debentures or the receipt of any money payable on application for shares or debentures.
- (5) If any company commences business or exercises borrowing powers in contravention of this section, every person who is responsible for the contravention shall, without prejudice to any other liability, be liable to a fine not exceeding one thousand taka for every day during which the contravention continues.
- (6) Nothing in this section shall apply to a private company, or to a company which does not issue a prospectus inviting the public to subscribe for its shares, and the provision of this section in so far as they relate to shares, shall not apply to a company limited by guarantee and not having a share capital.
- **151. Return as to allotment.—** (1) Where a company having a share capital makes any allotment of its shares, the company shall within sixty days thereafter, file with Registrar the following documents, namely:-
 - (a) a return of the allotments, stating the number and nominal amount of the shares comprised in the allotment, the name address nationality and other descriptions of the allottees, and the amount, if any, paid or due and payable on each share, and
 - (b) in the case of shares allotted as fully or partly paid up other wise than in cash, the copies of the following agreements duly stamped and verified in the prescribed manner namely:-
 - vendor's agreement, that is the agreement which constitutes the title of the allotee to the allotment;
 and
 - (ii) the contract of sale or service or other consideration in respect of which the allotment was made;

- (c) the number and nominal value of the allotted shares referred to in clause (b); and
- (d) the deed of sale of any immovable property, if the consideration for allotment of shares referred to in clause (b) is sought to the paid by the allottee by way of transfer of such property.
- (2) Where a contract mentioned in sub-section (1) is not reduced to writing, the company shall within one month after the allotment, file with the Registrar the prescribed particulars of the contract stamped with the same stamp duty as would have been payable if the contract had been reduced to writing, and these Stamp Act, 1899 (II of 1899) and the Registrar may, as a condition of filing the particulars, require that the stamp duty payable thereon be adjudicate under section 31 of this Act.
- (3) If the Registrar is satisfied that in the circumstances of any particular case the period of sixty days specified in sub-sections (1) and (2) for compliance with the requirements of this section is inadequate, he may, on an application made by the company before expirys of the sixty days, extend that period as he thinks fit, and if he does so, the provisions of sub-section (1) and (2) shall have effect in that particular case as if for the extended period allowed by Registrar specified in those sub-sections.
- (4) If a company defaults in complying with the requirements of this section every officer of the company who is knowingly a party to the default shall be liable to a fine not exceeding one thousand taka for every day during which the default continues:

Provided that, in case of default in filling with the Registrar within the time specified in sub-sections (1) and (2) any document required to be filed by this section the company or any parson liable for the default may apply to the Court for relief, and the Court, if satisfied that the commission to file the document was accidental or due to inadvertence or that on other grounds it is just and

equitable to grant relief, may make an order extending the time for the filling of the document for such a period as the Court may thing proper.

COMMENTARY: Previous Act: S. 104

Filing of the vendor's agreement to the Registrar of Joint Stock Company - not necessary where bonus accrued to the share-holders are not paid in cash but adjusted by issue of shares of the like amount to the share-holders. [(1970) 22 D.L.R. 723]

Return of allotment of shares was filed with the Registrar of joint Stock Company in due time-Subsequent detection of mistake in the return in regard to the number of shares does not nullify the fact of filing the return in due time [Ibid].

S. 104(3) Delay in filing return of the allotment of shares to the Registrar within the time prescribed due to bonafide mistake and inadvertence without having any ulterior motive may be condoned and time may be extended by the High Court or filing such returns. [(1969) 21 D.L.R. 413]

COMMISSIONS AND DISCOUNTS

- 152. Restrictions on payment of commissions, Discounts, etc.— (1) It shall be lawful for a company to pay a commission to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares in the company, for procuring or agreeing to procure subscription, whether absolutely or conditionally for any shares in the company, if—
 - (a) the payment of the commission is authorised by the articles and the commission paid or agreed to be paid does not exceed the amount or rate so authorised; and
 - (b) if the amount or rate of percentage of the commission paid or agreed to be paid is -
 - (i) in the case of shares offered to the public for subscription, disclosed in the prospectus; and
 - (ii) in the case of shares not offered to the public for subscription, disclosed in the statement lieu of prospectus or in a statement in the prescribed

form signed in like manner as a statement in lieu of prospectus and filed with the Registrar and, where a circular or notice, not being a prospectus inviting subscription or the shares is issued, also disclosed in that circular or notice.

- Save as provided in sub-section (1) and section 153, (2) no company shall allot any of its shares or apply any of its moneys either directly or indirectly in payment of any commission, discount or allownces, 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 subscription, whether absolutely or conditionally, for any shares in the company, and the shares shall not be so allotted or the money ahsll not be so applied by adding to the purchase money of any property acquired by the company or the cintract price of any work to be executed for the company or the money to be paid out of the nominal purchase money or contract price, or otherwise.
- (3) Nothing in this section shall affect the power of any company to pay such brokerage as it has heretofore been lawful for a company to pay and a 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 leagal under this section.
- 153. Power to issues share at a discount.— (1) Subject to the provisions of this section, it shall be lawful for a company to issue at a discount shares in the company of a class already issued:

Provided that -

(a) the issued of the shares at a discount must be authorised by resolution passed in general meeting

of the company and must be sanctioned by the Court;

- (b) the resolution must specify the maximum rate of discount, not exceeding ten percent in any case, at which shares are to be issued;
- (c) not less than one year must at the date of issued have elapsed since the date on which the company was entitled to commence business:
- (d) the shares to be issued at a discount must be issued within six months after the date on which the issue is sanctioned by the Court or within s;uch extended time as the Court may allow.
- (2) Every prospectus relating to the issue of the shares and every balance sheet issued by the company; subsequently to the issue must contain particulars of the discount allowed on the issue of the shares or of so much of that discount as has not been written off at the date of the issue of the document in question.
- (3) If accmpany defaults in complying with sub-section (2) the company and also every officer of the company who is in default shall be liable to a fine not exceeding five hundred taka.
- 154. Issue of redeemable preference shares. (1) Subject to the provisions of this section, a company limited by shares may, if so authorisd its articles, issue preference shares which are, or at the option of the company are to be or liable to be redeemed:

Provided that -

- (a) no such shares shall be redeemed except out of profits of the company which would otherwise be avalilable 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 redemmed 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 avalilable for dividend, be transferred to a reserve fund, to be called "the capital redemption reserve fund" a sum equal to the amount apllied in redeeming the shares, and the provisions of this relating to the reduction of the shares capital of a company shall, except as provided in this section, apply if the capital redemption reserve fund were paid up share capital of the company;
 - (d) where any such shares are redeemed out of the proceeds of a fresh issue, the premium, if payable on redemption, must be provided for out of the profits of the company before the shares are redeemed.
- 2) In every balance-sheet of a company which has issued redeemable preferenced shares the following shall be included, namely:-
 - (a) a statement specifying what part of the issued capital of the company consists of such shares; and
 - (b) the date on or before which those shares are, or are to be, liable to be, redeemeed or where no definite date is fixed for redemption, the period of notice to be given for redemption.
 - S) Subject to the provisions of this section the redemption of preference shares may be effected on such terms and in such manner as may be provided by the articles of the company.
- Where in pursuance of this section a company has redeemed or is about to redeem any preference shares, it shall have power to issue shares up to the nominal amount of the shares redeemed or to be redeemed, as if those had never been issued, and accordingly the share capital of the company shall not, for the purpose of calculating ;the fees payable under section 384, be deemed to be increased by the issue, of shares in pursuance of this sub-section:

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

- (5) Notwithstanding anyting in the other provisions of this section, where redeemable prefrence shares deemed, under sub-section (4), to have never been issued are, or are to be, redeemed for the purpose of alloting them as fully paid up bouns shares to the members of the company, the redemption reserve fund may be applied by the company up to the nominal value of the new shares referred to in sub section (1) (c) for such redemption.
- (6) If a company defaults in complying with any of the provisions of this secion, the company and also every officer of the company who is in default shall be liable to a fine not exceeding two thousand taka.
- 155. Further issue of capital.— (1) Where the director decided to increase the subscribed capital of the company by issue of further shares within the limit of the authorised capital—
 - (a) such further shares shall be offered to the members in proportion, as nearly as circumstances admit, to the capital paid up on the exisisting share held by such member, irrespective of class, at the date of the offer;
 - (b) such offer shall be made by notice specifying the number of shares offered and specifying the time limit, not being less than fifteen days from the date of the offer, within which the offer if not accepted, will be deemed to have been declined;
 - (c) after the expiry of the time specified in the notice aforesaid, or on receipt of earlier intimation from the members to whom such notice is given that he declines to accept the shares offered, the directors may dispose of the same in such manner as they may think most beneficial to the company.

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

COMMENTARY: Previous Act: S. 105C

Increase of share by the so-called additional special general meeting and distribution of the same amongst 3 members are illegal and unauthorised in as much as under the law this was the function of the Board of Directors. [44 DLR 371]

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

PAYMENT OF INTEREST

OUT OF CAPITAL

157. Power of company to pay interest out of capital in certain cases- Where any shares of a company are issued for the purpose of raising money to defray the expenses of the construction of any works or building or the provision of any plant which cannot be made proitable 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 charege the same to capital as part of the cost of construction of the work or building or the provision of plant:

Provided that-

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

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

Certificates of Shares, etc.

158. Limitation of time for issue of certificate (1) Every company shall, within ninety days after the allotment of any of its shares, debentures or debenture stock, and within ninety days after the registration of transfer of

any such shares, debentures or debenture-stock complete and have ready for delivery the certificates of all shares, debentures, and the dbenture-stock allotted or transferred unless the cinditions of issue of the shares, debentures or debenture- sctock otherwise provide.

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

Information as to Mortgages, Charges, etc.

- **159.** Certain mortgages and charges to be void if not registered (1) Every mortgage or charge created after the commencement of this Act by a company and being either -
 - (a) a mortgage or charge for the purpose of securing any issue of debentures; or
 - (b) a mortgage or charge on uncalled share capital of the company, or
 - (c) a mortgage or charge on any immovable property wherever situated or any interest therein, or
 - (d) a mortage or charge on any book debts or the company, or
 - (e) a mortgage or charge, not being a pledge on any moveable property of the company except stock intrade, or
 - (f) a floating charge on the undertaking or shall, so far as any property of the company, security on the company's property or undertaking is thereby conferred, be void against the liquidator and any creditor of the company, unless the prescribed particulars of the mortgage or charge, together with the instrument if any, by which the mortgage or charge is created or evidenced or a copy thereof

verified in the prescribed manner are filed with the Registrar for registration in manner required by this Act within twenty-one days after the date of its creation; put any contract or obligation for repayment of the money thereby secured shall not be prejudiced; and when a mortgage or charge becomes void under this section, the money secured thereby shall immediately become payable.

Provided that-

- (i) in the case a mortgages or charge created out of Bangladesh comprising solely property situate outside Bangladesh the said twenty one days shall be counted by excluding the period which would be necessary to receive the instrument in Bangladesh in due course had it been posted with due diligence; and
- (ii) where the mortgage or charge is created in Bangladesh, comprises property outside Bangladesh the instrument creating or purporting to create the mortgage or charge or a copy thereof verified in the prescribed manner may be filed for registration notwithstanding that further proceedings may be necessary to make the mortgage or charge valid or effectual according to the law of the country in which the property is situate; and
- (iii) where a negotiable instrument has been given to secure the payment of any book debts of a company, the deposit of the instrument for the purpose of securing an advance to the company shall not for the purposes of this section be treated as a mortgage or charge on those book debts; and
- (iv) the holding of debentures entitling the holder to a charge on immovable property shall not be deemed to be an interest in immovable property.

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 mirtgage or charge as from the date of such registration.

COMMENTARY: Previous Act: S. 109

The word "created" used in the section means registered" under the Registration Act – The petitioner, a limited company, executed a mortgage in respect of certain premises plonging to it in favour of an Insurance Company. The deed of mortgage was executed on 13. 7. 61 and was duly registered under the Registration Act on 2.9.61. and thereafter on 12.9.61 it was submitted to the respondent,. Registrar, joint Stock Companies for registration under section 109 of the Companies Act. but the respondent refused registration on the ground that the deed had been submitted more than 21 days after its creation as, in the opinion of the respondent, the time of 21 days mentioned in section 109 of the Companies Act will run from the date of the execution that being the date according to the respondent on which it was created and not from the date of its registration.

On behalf of the petitioner it was submitted that registration of the documents being compulsory in the present case under section 59 of the Transfer of Property Act the mortgage could not be said to have been 'created' until the document of mortgage had been registered.

Held: The word "created" used in relation to a mortgage or charge in section 109 of the Companies Act means "registered" under the provision of Registration Act. The mortgage mentioned in that section dose not come into existence until the deed of mortgage is registered.

Creation ordinarily means to bring into existence and so a mortage for Rs. 100/- or upwards which can be effected only by a registered instrument is created when the document relating to it is registered. [[(1963) 15 D.L.R 492].

Sections 109 and 120.– Extension of time for registration made where failure to register was through inadvertence and such omission caused no prejudice to the members of the Company or its creditors. [42 DLR 43].

160. Registration of charge on properties aquire subject to charge.—

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

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

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

161. Particulars in case of series of debentures entitling holders pari passu.—

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

- (b) the dates of the resolutions authorising the issue of the series and the date of the covering deed, if any, by which the security is created or defined;
- (c) a general description of the property charged;
- (d) the names of the trustees. if any, from the debenture-holders; and
- (e) the deed or a copy thereof verified in the prescribed manner containing the charge or if there is no such deed one of the debentures of the series:

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

- (2) The Registrar shall register the particulars and the deeds filed under sub section (1)
- 162. Particulars in case of commission, etc. on debentures.— Where any commission, allownce or discount has been paid or made either directly of indirectly by the company to any person in consideration of his subscribing of agreeing to subscribe, whether absolutely or conditionally, for any debentures of the company, or for procuring or agreeing to procure subscription, whether absolutely or conditionally for any such debentures, the particulars required to be filed for registration under sections 159 and 161 shall include particulars as to the amount or rate percent of the commission, discount or allowance so paid or made, but an ommission to do this shall not affect the validity of the debenture issued:

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

- 163. Registers of mortgages and charges.—(1) The registrar shall keep, with respect to each company a register in the prescribed form of all mortgages and charges created by the company after the commencement of this Act and requiring registration under section 159 and shall, on payment of the prescribed fee, enter in the register, with respect to every such mortgage or charge, the date of creation, the amount secured by it, short particulars of the property mortgaged or charged and the names of the mortages or the persons entitled to the charge.
- (2) After making the entry required by sub-section (1) the Registrar shall return the instrument, if any, or the verified copy thereof, as the case may be, filed in accordance with the provisions of section 159 or 161 to the person filling the same.
- (3) The register kept in pursuance of this section shall be open to inspection by any person on payment of the fee, as specified in Schedule II.
- 164. Index to register of mortgages and charges.— The Registrar shall keep a chronological index, in the prescribed form and with the prescribed particulars, of the mortgages and charges registered with him under this Act.
- a certificate of registration.— The Registrar shall give a certificate under his hand of the registration of any mortgage or charge registered in pursuance of section 159, stating the amount thereby secured, and the certificate shall be conclusive evidence that the requirements of sections 159 to 163 as to registration have been complied with.
- 166. Endorsement of certificate of registration on debentures or certificate of debenture-stock.-The company shall cause a copy of every certificate of registration, given under section 165 to be endorsed on every debenture or certificate of debenture-stock which is issued by the company, and the payment of

which is secured by the mortgage or charge so registere:

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

167. Duty of company and right of interested party as regards registration.—

- (1) Every company to file with the registrar for registration the prescribed particulars of every mortgage or charge created by the company and of the issues of debentures of a series, requiring registration under section 159, and registration of any such mortgage or charge may be also effected on the application of any person interested therein.
- (2) Where the registration is effected on the application of some person other than the company, that person shall be entitled to recover from the company the amount of any fees properly paid by him to the Register on the registration.
- (3) Whenever the terms of conditions or extent or operation of any mortgage or charge registered under this section are modified, it shall be the duty of the company to send to the Registrar the particulars of such modification and the provisions of this section as to registration of the mortgage or charge shall apply to such modification of the mortgage or charge as aforesaid.
- 168. Copy of instrument creating mortgage or charge to be kept at registered office.— Every company shall cause a copy of every instrument creating any mortgage or charge requiring registration under section 159 to be kept at the registered office of the company:

Provided that in the case of a series of uniform debentures, a copy of one such debenture shall be sufficient

- 169. Registration of appointment or receiver.— (1) If any person obtains an order for the appointment of a receiver of the property of a company or appoints such a receiver under any powers contained in any instrument, he shall, within fifteen days from the date of the order or of the appointment under the powers contained in the instrument, file notice of the fact with the Registrar and the Registrar, shall on payment of the prescribed fee, enter the fact in the register of mortgages and charges.
- (2) If any person makes default in complying with the requirements of this section, he shall be liable to a fine not exceeding two hundred taka for everyday during which the default continues.
- 170. Filling of accounts of Receivers.— (1) A receiver referred to in section 169 of any property who has taken possession shall for every financial year during such possession and also on ceasing to act as receiver, file with the Registrar an abstract in the prescrived from of his recipts and payment during the period to which the abstract relates and shall also, on ceasing to act as receiver, file with the Registrar, notice to that effect and the Registrar shall inter the notice in the register of mortgages and charges.
- (2) Where a receiver of the property of a company has been appointed, every invoice, order for goods, or business letter issued by or on behalf of the company, or the receiver of the company, being a document on or in which the name of the company appears, shall contain a statement that a receiver has been appointed.
- (3) For every default in complying with the requirements of this section, the company, and also every officer of receiver as the case may be of the company, who knowingly and wifully authorises or permits the

default, shall be liable to a fine not exceeding live hundred taka.

171. Rectification of register of mortgages.— (1) If the Court is satisfied that-

- (a) the omission to register a mortgage or charge within the time required by section 159, or the omission or mis-statement of any particular with respect to any such mortgage or charge, or the omission to give intimation to the Registrar of the payment or satisfaction of a debt from which the mortgage or charge was created, was accidental or due to inadvertence or to some other sufficient cause, or
- (b) the omission is not of a nature to prejudice the position of creditors or share-holders of the company, or
- (c) On other grounds it is just and equitable to grant to relief the court may, on the application of the company or any person interested and on such terms and conditions as seem to the court just and expedient, order that the time for registration be extended or, as the case may be, that the omission or mis statemant be rectified, and may make such order as to the costs to be paid to the applicant as it thinks fit.
- (2) Where the Court extends the time for the registration of a mortgage or charge, the order shall not prejudice any right as acquired in respect of the property concerned prior to the time when the mortgage, or charge is actually registered.

172. Registration of Satisfaction of mortgages and charges

(1) The company shall give intimation to the Registrar of the payment of satisfaction of any mortgage or charge required to be registered under section 159 within twenty-one days from the date of the payment or satisfaction thereof-

- The Registrar shall, on receipt on such intimation, cause a notice to be sent to the mortgage, calling upon him to show cause, within a time not exceeding fourteen days to be fixed by such notice, why the payment or satisfaction of the charge or mortgage should not be recorded.
 - (3) The Registrar shall if no cause is shown order that a momerandum 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.
 - 173. Penaltis. (1) If any company mkes 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 159 or section 160, or
 - (c) of the issue of debentures of a scries;
 - requiring registration with the Registrar under the foregoing provision of this Act, then unless the registration has been effected on the application of some other person, the company, and also every officer of the company or other person, who is knowingly a party to the default, shall on conviction be liable to a fine not exceeding one thousand taka for everyday during, which the default continues.
 - (2) Subject as aforesaid if any company makes default in complying with any of the requirements of this Act as to the registration with the Registrar of any mortgage or charge created by the company, the company, and also every officer of the company who is knowingly and willfully a party to the default shall without

- prejudice to any other liability, be liable on conviction to a fine not exceeding two thousand taka.
- (3) If any person knowingly and wifully authorises or permits the delivery of any debenture or certificate of debenture-stock requiring registration with the Registrar under the foregoing provision of this Act the certificate of registration being endorsed upon it as required by section 106, he shall, without prejudice to any other liability, be liable of conviction to a fine not exceeding two thousand taka.

174. Company's register of mortgages:

- (1) Every company shall keep register of mortgages and enter therein all mortgage and charges specifically affecting property of the company and all floating charge on the under taking or on any property of the company, giving in each case a short description of the property mortgaged or charged the amount of the mortgage or charge and, except in the case of securities to bearer, the name of the mortgages or persons entitled thereto.
- (2) If any director, manager or other officer of the company knowingly and wilfully authorises or permits the omission of any entry required to be made in pursuance of this section, he shall be liable to a fine not exceeding two thousand taka.

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

(1) The copies kept at the registered office of the company in pursuance of section 168 or instruments creating any mortgage or charge requiring registration under this Act with the Registrar and register of mortgages kept in pursuance of section 174, shall kept be open at all reasonable times to the inspections of any creditor or member of the company without fee, and the register of mortgages shall also be kept open to the inspection of any other person on payment of such

fee, not exceeding ten taka tor each inspection as the company may prescribe.

(2) If inspection of the said copies or register is refused the company shall be liable to a fine not exceeding one hundred taka for the first day and to a further fine not exceeding fifty taka for everyday during which the refusal continues, and every officer of the company, who knoingly authorises or permits the refusal, shall incure the like penalty, and in addition to the above penalty, the Court may by order compel an immediate inspection of the copies or register.

176. Right to inspect register of debenture-holders and to have copies of trust deeds:

(1) A company shall keep open every register of the debenture holders for the inspection its debenture-holders and share-holders and every such holder may require a copy of the register or part thereof on payment of fees specified in Schedule II:

Provided that -

- (a) the register shall not be inspected during such period or periods not exceeding in the whole thirty days in any year, as may be specified in the articles; and
- (b) subject to such reasonable restrictions as may be imposed by the general meeting, the register shall be kept open for inspection for at least two hours in a day during the permissible period.
- (2) A copy of any trust-deed for securing any issue of debentures shall be forwarded to every holder of any such debentures at his request on payment in the case of a printed trust deed of the sum of ten taka or such less sum as may be fixed by the company, or where the trust-deed is not printed, the fees specified in schedule-II
- (3) If inspection is refused or a copy is refused or not forwarded, the company shall be liable to a fine not exceeding one hundred taka for the first and to a

further fine not exceeding fifty taka for every day subsequently during which the refusal continues, and every officer of the company who knowingly authorises or permits the reusal shall incure the like penalty; and the Curt may by order compel an immediate inspection of the register.

DEBENTURE AND FLOATING CHARGES

- 177. Perpetual debentures: A condition contained in any debenture or in any deed for securing any debentures, whether issued or executed before or after the passing of this Act shall not be invalid by reason only that thereby the debentures are made irredeemable or redeemable only on the happening of a contingency, however, remote, or on the expiration of a period however long.
- 178. Power to re-issue redeemed debentures in certain cases:
- (1) Where either before or after the commencement of this Act. a company has redeemed any debenture previously issued, the company shall have right, and shall be deemed to have/had the right, to keep the debentures alive for the purposes of re-issue, unless-
 - (a) the articles of the conditions of issue expressly otherwise provides; or
 - (b) the debentures have 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.
- (2) In the exercise of the right under sub-section (1), the company shall have power, and shall be deemed always to have power, to ressue the debentures either by re-issuing the same debentures or by issuing other debentures in their place.
- (3) Upon such re-issue, the person entitled to the debentures shall have, and shall be deemed always to

have had, the same rights and priorities as if the debentures had not previously been issued.

- (4) Where with the object of keeping debentures alive for the purpose of re-issue they have either before or after the commencement of this Act, been transferred to a nominee of the company . a transfer from that nominee shall be deemed to be a re-issue for the purposes of this section.
- (5) Where a company has either before or after the commencement of this Act, deposited any of its debentures to secure advances from time to time on current account or otherwise the debenture shall not be deemed to have been redeemed by reason only of the account of the company having ceased to be in debt whilst the debentures remained so deposited.
- (6) The re-issue of a debenture or the issue of another debenture in its place under the power by this section given to, or deemed to have been possessed by a company, whether the re-issue to 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 its 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-issue 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 panalty 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 and shall be liable to pay the proper stamp-duly and penalty.

(7) Nothing in this section shall prejudice any power to issue debenture in place of any debenture paid off or otherwise satisfied or extinguished, reserved to a company by its debentures or the securities for the same.

- 179. Specific performance of contract to subscribe for debenture; A contract with a company to take up and pay for any debentures of the company may be enforced by a decree for specific performance.
 - 180. Payments of certain debts out of assets subject to floating charges in priority to claims under the charge:- (1)Where either a receiver is appointed on behalf of the holders of any debentures of a company secured by a floating charge, or possession is taken by or on behalf of those debenture-holders of any property comprised in or subject to the charge then if the company is not at the time is course of being wound up, the debt, which in every winding up are under the provisions of part V relating to preferential payments are to be paid in priority to all other debts shall be paid forthwith out of any assets coming to the heads of the receiver or the other person taking possession as aforesaid in priority to any claim for principal or interest in respect of the debentures.
 - (2) The periods of time mentioned in the said provisions of Part-V shall be reckoned from the date of the appointment of the receiver 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.

BALANCE -SHEET, STATEMENTS, BOOKS ETC.

181. Books to be kept by company and penalty for not keeping them.—

(1) Every company shall keep proper books of account

with respect to-

- (a) all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place:
- (b) all sales and purchases of goods by the company;
- (c) The assets and liabilities of the company: and
- (d) in the case of a company engaged in production, distribution, marketing, transpor-tation,

processing manufacturing, milling, extraction and mining activities, such particulars relating to utilisation of material. labour and other items of overhead cost.

- (2) For the purpose of sub-section (1), proper books of account shall not be deemed to be kept with respect to the matters specified therein if there are not kept such books as are necessary to give a true and fair view of the state of the affairs of the company and to explain its transaction.
- (3) The books of account shall be kept at the registered office of the company and shall at all times be open to inspection by directors during business hours;

Provided that all or any of the books of account may, for a period not exceeding six months, be kept at such other place in Bangladesh as the board of Directors may decide and when the board of Directors so decides, the company shall within seven days of the decision, file with the Registar a notice in writing giving the full address of that other place.

- (4) Where a company has a branch office, whether in or outside Bangladesh, the company shall be deemed to have complied with the provisions of sub-section (1) if proper books of account relating to the transactions effected at the branch office are kept at that office and proper summarised returns, made upto date at intervals of not more than three months, are sent by the branch office to the company at its registered office or the other place referred to in sub-section (3)
- (5) The books of account of every company relating to a period of not less than twelve years immediately proceeding the current year together with vouchers relevant to any entry in such books of account shall be preserved in good order:

Provided that in the case of a company incorporated less than twelve years before the current year, the books of account for the entire period preceding the current year,

together with the vouchers relevant to any entry in such books of account shall be so preserved.

- (6) If any of the persons referred to in sub-section (7) fails to take all reasonable stapes to secure compliance by the company with the requirements of this section, or has, by his own willful act, been the cause of any default by the company thereunder, he shall in respect of each offense, be punishable with imprisonment for a term which may extend to six months or with fine which may extend to five thousand taka or with both.
- (7) The person referred to in sub-section (6) are the following, namely:-
 - (a) where the company has a managing agent, managing director executive director, general manager or manager, such managing agent, managing director, executive director, general manager or manager and all officers but encluding the bankers, auditors and legal advisers;
 - (b) where such managing agent is a firm every partner in the firm;
 - (c) where such managing agent is a body corporate, every director of such body corporate;
 - (d) where the company has neither a managing agent nor managing director nor executive director nor general manager nor manager, every director of the company.

182. Inspection of books of account, etc. of companies:-

- (1) The books of account and other books and papers of every company shall be open to inspection during business hours by the Registar or by such other Government office as may be authorised by the Government in this behalf.
- (2) It shall be the duty of every director or other officer of the company to produce to the person making inspection under sub-section (1) in this section

referred to the inspecting person, all such books of account and other books and other papers of the company in his custody or control and to furnish him with any statement information or explanation relating to the affairs of the company as the inspecting person may require of him within such time and at such place as he may specify.

- (3) It shall also be the duty of every director and other officer of the company to give to the inspecting person all assistance in connection with the inspection which the company may be reasonable expected to give
- (4) The inspecting person may, during the course of inspection
 - (i) make or cause to be made copies of books of account and other books; and
 - (ii) place or cause to be placed any marks of identification thereon in taken of the inspection having been made.
- (5) Notwithstanding anything contained in any other law for the time being in force or any contract to the contrary, inspecting person shall have the same power as are Vested in a civil court under the Code of Civil Procedure, 1908 (Act V of 1908), While trying a suit, in respect of the following matters, namely:
 - the discovery and production of books of account and other documents, at such place and such time, as may be specified by such person;
 - (ii) Summoning and enforcing the attendance of person and examining them and oath.
 - (iii) Inspection of any books, registers and other documents of the company at any place.
- (6) Where an inspection of the books of account and other books and papers of the company has been made under this section, the inspecting person shall make a report to the Government.

- (7) The inspecting person under this section shall have all the powers that a Registrar has under this Act in relation to the making inquiries.
- (8) If default is made in complying with the provisions of this section every officer of the company who is in default shall be punishable with imprisonment for a term not exceeding one year and also with a five not exceeding ten thousand taka.
- (9) Where a director or another officer of a company has been convicted of an offence under this section, he shall and from the date on which he is so convicted, be deemed to have voted his office as such and on such vacation of office he shall be disqualified for holding such office in any company for a period of five years from such date.
- 183. Annual balance sheet:- (1) The Board of Directors of every company shall, at every annual general meeting held in pursuance of section 81, lay before the company a balance sheet together with the profit and loss account or in the case of a company not trading for profit, an income and expenditure account for the period specified in sub-section (2) of this section.
- (2) The said profit and loss account or the income and expenditure account shall be prepared for the following period, namely:-
 - (a) in the case of the first annual general meeting for the period beginning with the date of incorporation of the company and ending on a date which is within nine months preceding the date of the meeting; and
 - (b) in the case of any subsequent annual general meeting, for the period beginning with the date immediately after last account and ending on a date which is-
 - (i) a date within nine month preceding such meeting; or

- (ii) In the case of a company carrying or business or having interest outside Bangladesh a date within twelve month preceding the date of such meeting; or
- (iii) in a case where and extension of time has been granted for holding the meeting under section 81, a date within the said nine or twelve months, as the case may be, preceding the date of holding such meeting under that section.

Provided that date the Registrar may, on an application being made to less before the expire of the said nine or twelve months, extend the period by a period not exceeding three months.

- (3) The balance sheet and the profit and loss account or income and account shall be caused to be audited by the auditor of the company as in this Act provided, and the auditor's report shall be attached thereto or there shall be inserted at the foot thereof a reference to the report, and the report shall be read before the company in general meeting and shall be person to inspection by any member of the company.
- (4) The period to which the account aforesaid relates is referred to in this Act as a 'financial year' and it may be less or more than a calendar year, but shall not exceed fifteen months:

Provided that it may extend to eighteen months where special permission had been granted in that behalf by the Registrar.

- (5) If any person, being a director of a company, defaults in taking all reasonable to comply with the provision of this section then he shall in respect of each such offense, be punishable with fine with may extend to five thousand taka.
- (6) There shall be kept at the registered office of the company copy of the balance sheet including profit and loss account or income and expenditure, as the case may be, and the director's report for inspection of

the members and other categories of person as are entitled thereto for a period of at least fourteen days before the general meeting of the company.

- **184.** Boards report: (1) There shall be attached to every balance sheet laid before a company in general meeting a report by its Board of Directors, with respect to.
 - (a) the state of the company's affairs;
 - (b) the amount, if any, which the Board proposes to carry to any reserve in such balance sheet;
 - (c) the amount, if any which the Board recommends should be paid by way of dividend;
 - (d) material changes and commitments, if any, affecting the financial position of the company which have occurred between the end of the financial year of the company to which the balance sheet related and the date of the report.
- (2) The Board's report shall, so far as is material for the appreciation of the state of company's affairs by its members, deal with any changes which have occurred during the financial year:-
 - (a) in the nature of the company's business;
 - (b) in the company's subsidiaries or in the nature of the business carried on by them; and
 - (c) generally in the classes of business in which the company has an interest.
- (3) The Board shall also be bound to give the fullest information and explanations in its report aforesaid on every reservation, qualification or adverse remark contained in the auditor; 's report.
- (4) The Boards report and any addendum thereto shall be signed by its chairman if he is authorised in that behalf by the Board and where he is not so authorised and shall be signed by such number of director as are required to sign the balance sheet and the profit and

loss account or the income and expenditure account, of the company by virtue of sub-section (1) and (2) of section 189.

(5) If any person, being a director of a company, fails to take all reasonable steps to comply with the provisions of sub section (1) to (3) or being the chairman, signs the Boards report otherwise than in conformity with the provision of sub-section (4), he shall in respect of each offense, be liable to fine which may extend to five thousand taka.

COMMENTARY: Previous Act:S.13th

Provision of the section explained; All that section 131 lays down is that at the annual general meeting the accounts of the company is to be submitted and such accounts must be made upto date the not more then nine months previous to the date of the meeting that is to say whenever the meeting is held within the time specified in section 76. that is within 18 months from the date of first incorporation or within 15 months from the date of previous Annual General Meeting the accounts must be made up as near a date of the meeting as practicable and the account in any case must cover a period up to a date not earlier then the date of the meeting [(1968)20 DLR 1056].

185. Form and contents of balance sheet and profit and loss accounts:-(1) The balance sheet of a company shall contain a summery of the property and assets and of the capital and liabilities of the company giving a true and fair view of affairs as at the end of the financial year; and it shall, subject to the provisions of this section be in the form set out in part-1 of schedule .9, or as near thereto as circumstance admit or in such other form as may be approved by the Government either generally or in any particular case and in preparing the balance sheet due regard shall be had as far as may be, to the general instructions for preparation of balance sheet under the heading 'Notes' at the end of the part:

Provided that nothing contained in this sub-section shall apply to any insurance or banking company of any company engaged in the generation or supply of electricity or to any other class of company for which a form of balance sheet has been specified in or under the law governing such class of company.

(2) Every profit and loss account of a company shall gave a true and fair view of the profit and or loss of the company for the financial year and shall subject as aforesaid, comply with the requirements of part 11 of schedule X1 so far as applicable thereto:

Provided that nothing contained in this sub-section shall apply to any insurance or banking company or any company engaged in the generation or supply of electricity or to any other class of company for which a form of profit and loss account has been specified in or under the law governing such class of company.

- (3) The Government may by notification the official Gazette, except any class of companies from the requirements of schedule X1 if, in its opinion, it is necessary to grant the exemption in the public interest; and any such exemption may be granted either unconditionally or subject to such conditions as may be specified in the notification.
- (4) The Government may, on the application or with the consent of the Board of Directors of the company, by order, modify in relation to that company of the requirement of this Act as to the matters to be stated in the balance-sheet or profit and loss account for the purpose of adopting them to the circumstances of the company;
- (5) The balance sheet and the porfit and loss account of a company shall not be created as not disclosing a true and fair view of the state of affairs of the company merely be reason of the fact that they do not disclose—
 - in the case of an insurance company, any matters which are not required to be disclosed by the Insurance Act, 1938 (IV of 1938);

- (ii) in the case of a banking company, any matters which are not required to be disclosed by the bank company Act, 1991(XIV of 1991);
- (iii) in the case of a company engaged in the generation or supply of electricity, any matters which are not required to be disclosed by the Electricity Act, 1910 (IX of 1910);
- (iv) in the case of a company governed by any other law for the time being in force, any matters which are not require to be disclosed by such law;
- (v) in the case of any company, any matters which are not required to be disclosed by virtue of the provisions contained in schedule XI or by virtue of the notification issued under sub-section (3) or an order issued under sub-section (4).
- (6) For the purposes of this section, except where the context other wise requires any reference to balance-sheet or to profit and loss account shall include any notes hereon or documents annexed thereto, giving information required by this Act and allowed by this Act to be given in the form of such noted or documents.
- (7) If any such person as is referred to in sub-section (7) of section 181 fails to take all reasonable steps to secure compliance by the company, as regards any accounts laid before the company in general meeting, with this section and with the other requirements of this Act as to in the accounts, he shall, in respect of each offense, be punishable with imprisonment for a term which may extend to six months or with fine which may extend to five thousand taka or with both:

Provided that no person shall be sentenced to imprisonment for any such offense unless it was committed willfully.

186. Balance sheet of holding company to include certain particulars as to its subsidaries:— (i) There shall be attached to the balance sheet of a holding company

having a subsidiary or subsidiaries at the end of the financial year as at which the holding company's balance sheet is made out, the following documets in respect of such subsidiary or each such subsidiary, as the case may be—

- (a) a copy of the balance sheet of the subsidiary;
- (b) a copy of its profit and loss account;
- (c) a copy of the report of its Board of Directors;
- (d) a copy of the report of its auditors;
- (e) a statement of the holding company's interest in the subsidiary as specified in sub-section (6);
- (f) the statement referred to in sub-section (8), if any; and
- (g) the report referred to in sub-section (9), if any.
- (2) The balance sheet referred to in clause (a) of subsection (1) shall be made out in accordance with the requirement of this Act as at the end of the financial year of the subsidiary next before the day as at which the holding company's balance sheet is made out.
- (3) The profit and loss account and the reports of the Board of directors and of the auditors, referred to in clause (b), (c) and (d) of sub-section (1) shall be made out in accordance with the requirements of this Act for the financial year of the subsidiary referred to in subsection (2).
- (4) The financial year aforesaid of the subsidiary shall not end on a day which the holding company's financial year ends by more than six months.
- (5) Where the financial year of subsidiary is shorter in duration than that of its holding company, reference to the financial year of the subsidiary in sub-sections (2), (3) and (4) shall be construed as reference to two or more financial years of the subsidiary the duration of which, in the aggregate is not less than the duration of the holding company's financial year.

- (6) The statement referred to in clause (e) of sub-section (1) shall specify—
 - (a) the extent of the holding company's interest in the subsidiary at the end of the financial year or at the end of the last of the financial years of the subsidiary;
 - (b) the net aggregate amount so far as it concerns members of the holding company and is not dealt with in the company's accounts of the subsidiary profits after deducting its losses or vice-versa-
 - (i) for the financial year or years of the subsidiary as aforesaid; and
 - (ii) for the previous financial years of the subsidiary since it became the holding company's subsidiary;
 - (c) the net aggregate amount of the profits of the subsidiary after deducting its losses or vice-versa-
 - (i) for the financial year or years of the subsidiary as aforesaid; and
 - (ii) for the previous financial years of the subsidiary since it become the holding company's subsidiary;

so far as those profits are dealt with, or provision is made for those losses, in the company's accounts.

- (7) Cluses (b) and (c) of sub-section (6) shall apply only to profits and losses of the subsidiary which may properly be trated in the holding company's accounts as revenue profits or losses; and profits or losses attributable to any other of its subsidiaries shall not, for that or any other purpose, be treated as aforesaid so far as they are profits or loses; for the period before the date of or as from which the shares were acquired by the company or any of its subsidiaries, except that they may in a proper case be so treated where—
 - (a) the holding company is itself the subsidiary of another body corporate; and

(b) the shares were acquires from that body corporate or a subsidiary of this.

Explanation:– For the purpose of determining whether any profits or losses are to be treated as profits or losses for the said period the profits or loss for any financial year of the subsidiary may, if it isn't practicable to apportion it with reasonable accuracy by reference to the facts, be treated as accruing from day to day during that year and be apportioned accordingly.

- (8) Where the financial year or years of a subsidiery refered to in sub-section (5) do not coincide with the financial year of the holding company, a statement containing information on the following maters has also to be attached to the balance sheet of the holding company:-
 - (a) whether there has been any changes and, if so what change took place in the holding company's interest in the subsidiary between the end of the financial year or of the last of the financial years of the subsidiary and the end of the holding company's financial year;
 - (b) details of any material change, which have occurred between the end of the financial year or of the last of the financial years of the subsidiary and the end of the holding company's financial year in respect of –
 - (i) the subsidiary's fixed assets;
 - (ii) its investments;
 - (iii) the moneys borrowed by it for any purpose other than that of meeting cured liabilities.
 - (9) If, for any reason, the Board of Directors of the holding company is unable to obtain information of any of the matters requires to be specified by base (7) a report in writing to that effect shall be attached the balance sheet of the holding company.

- (10) The document referred to in clause (e), (f) and (g) of sub-section
 - (1) shall be signed by the persons by whom the balance sheet of the holding company is required to be signed.
- (11) The Government may on the application or with the consent of the Board of Directors of the company, direct that in relation to any subsidiary, the provisions of this section shall not apply, or shall apply only to such extent as may be specified in the direction.
- (12) If any such person as is referred to in sub-section (7) of section 181 fails to take all reasonable steps to comply with the provisions of this section, he shall, in respect of each offence, be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand taka, or with both:

Provided that in any proceedings against any person in respect of an offence under this sections, it shall be a defence to prove that a competent and reliable person was charged with the duty of seeing that the provisions of this section were complied with and that he was in a position to discharge that duty:

Provided further that no person shall be sentenced to imprisonment for any such offence unless it was committed wilfully.

187. Financial year of holding company and subsidiary.—

(1) Where it appears to the Government that it is dsirable for a holding company or a holding company's subsidiary to extend its financial year so that the subsidiary's financial year may end with that of the holding company and for that purpose to postpone the submission of the relevant account to a general meeting, the Government may, on the application or with the consent of the Board of Director of the company whose financial year is to be extended,

direct that in the case of that company the submission of accounts to a general meeting, the holding of a general meeting or the making of an annual return, shall not be required to be submitted or made earlier than the dates specified in the directon notwithstanding anything to the contrary in this Act. or in any other law for the time being in force.

- (2) The Government shall, on the application of the Board of directors of a holding company or a holding company's subsidiary, exercise the powers confereed on it by sub-section (1), if it is necessary to doing order to secure that the end of the financial year of the subsidiary does not precede the end of holding company's financial year by more than six months, where that is not the case at he commencement of his Act. or at the date on which the relationship of holding company and subsidiary comes into existence where that date is later than the commencement of this Act.
- 188. Rights of holding company's representatives and members:— (1) A holding company may, by resolution, authorise its representatives named in the resolution to inspect the books of account kept by any of its subsidiaries, and the books of account of any such subsidiary shall be open to inspection by those representatives at any time during business hours.
- (2) The rights conferred by section 195 upon members of a company may be exercised, in respect of any subsidiary, by such representative of the holding company as if they alone were members of the subsidiary.
- 189. Authentication of balance sheet, profit and loss account, etc: (1) Save asprovided by sub-section (2) every balance sheet, and every profit and loss account or income and expenditure account shall be signed on behalf of the Board of Directors-
 - (i) In the case of banking company by the manager, or managing agent, if any, and, where there are more than three directors of the company, by at

- least three of those directors or, where there are not more than three directors, by all the directors;
- (ii) in the case of any other company, by its managing agent, manager or secretary, if any, by not less than two directors of the company one of whom shall be the managing director where there is one.
- (2) When the total number of directors of the company for the time being in Bangladesh is less than the number of directors whose signatures are required by subsection (1), then the balance sheet and profit and loss account or the income and expenditure account shall be signed by all the directors for the time being in Bangladesh, or if there is only one director for the time being in Bangladesh, by such director but in such case, there shall be attached to the balance sheet, and the profit and loss account or the income and expenditure account a statement signed by such director or directors explaining the reason for non-compliance with the provisions of sub-section (1).
- (3) The balance sheet and the profit and loss account or income and expenditure account shall be approved by the board of Directors before they are signed on behalf of the Board in accordance with the provisions of this section and before they are submitted to the auditors for their report thereon.
- (4) If any copy of a balance sheet or profit and loss account or income and expenditure account which has not been signed as required by sub section (1) and (2) is issued, circulated or published or if any copy of a balance sheet is issued, circulated or published without these being annexed or attached hereto as the case may be, a copy of that account any accounts, reports or statements which by virtue of section 186 are required to be attached to the balance sheet the auditors, report and the Boards report reffered to in section 185 or if any defult is made in complying with other requirement of this section, the company and every office of the company who is in default shall be punishable with imprisonment for a term which may

extend to six months or with fine which may extend to two thousand taka or with both.

190. Copy of balance sheet etc.to be filed with Registrar:(1) After the balance sheet and profit and loss account or the income and expenditue account, as the case may be, have been laid before a company at an annual general meeting as aforesaid, there shall be filed with the Registrar, within thirty days from the date on which the balance sheet and the profit and loss accounts were so laid or where the annual general meeting of a company for any year has not been hel, there shall be filed with the Regitrar within thirty days from the last day on which that meeting should have been held in accordance with the provision of this Act, three copies of the balance sheet and of the profit and loss account or the income and expenditure account, as the case may be signed by the managing director, managing agent, manager or secretary of the company or if there be none of these, by a director of the company, together with three copies of all documents which are required by this Act to be annexed or, attached to such balance-sheet or profit and loss account or income and expenditure account:

Provided that in the case of a private company, copies of the balance sheet and copies of the profit and loss account shall be filed with the Registrar separately:

Provided further that in the case of a private company which is not an subsidiary of a public company, no person other than a member of the company shall be entitled to inspect or to obtain copies of the profit and loss account of that company.

(2) If the annual general meeting of a company before which a balance sheet is laid as aforesaid does not adopt the balance-sheet or, if the annual general meeting of a company for any year has not been held, a statement of that fact and of the reasons therefor shall be annexed to the balance sheet and to the copies thereof required to be filed with the Registrar.

- (3) If a company makes default in complying with the requirements of this section, it shall be liable to a fine not exceeding one hundred taka for every day during which the default continues, and every office of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty,
- 191. Rights of members to copies of account and report:- (1) A copy every balance sheet, including the profit and loss account, the auditors report or the income and expenditure account and every other document required by law to be annexed or attached, as the case may be to the balance sheet which is to be laid before a company in general meeting shall, not less than fourteen days before the date the meeting, be sent free of charge, to every member of the company, to every holder of debentures issued by the company, not being debentures which ex-facieo are payable to the bearer thereof, to every trustee for the holders of any debentures issued by the company whether such member, holder or trustee is or is not entitled to have notices of the general meeting of the company sent to him, and to all persons other than such members, holders or trustees being persons so entitled:

Provided that:

- (a) in the case of a company not having a share capital, this sub-section shall not require the sending of a copy of the document aforesaid to an member, or holder of debentures, of the company who is not entitled to have notices of general meetings of the company sent to him;
- (b) this sub-section shall not require a copy of the document aforesaid to be sent-
- to a member, or holder of debentures of the company who is not entitled to have notices of general meetings of the company sent to him and of whose address the company is unaware;

- (ii) to more than one of the joint holders of any shares or debentures none of whom is entitled to have such notices sent to him; or
- (iii) in the case of joint holders of any shares or debentures some of whom are and some of whome are not entitled to have such notes sent to them, to those who are not entitled; and
- (c) if the copies of the documents aforesaid are sent less than fourteen days before the date of the meeting, they shall not withstanding that fact, be deemed to have been duly sent to the members entitled to vote at the meeting if they do not raise any objection to such sending
- (2) Any member or holder of debentures of a company whether he is or is not entitled to have copies of the company's balance sheet sent to him, shall, on demand, be entitled to be furnish without charge, and any person from whom the company has accepted a sum of money by way of deposit shall, on demand accompanied by the payemt of fee of ten taka, be entitled to be furnished with a copy of the last balance sheet of the copmany and of every document required, by law to be annexed or attached thereto, including the profit and loss account and the auditor's report and such documents shall be delivered to him within seven days from such demand.
- (3) If default is made in complying with sub-sections (1) and (2), the company, and also every officer of the company who is in default, shall be punishable with fine which may extend to five hundred taka.
- (4) If, when a person makes a demand for a copy or any document with which he is entitled to be furnished by virtue of sub-section (2) default is made in complying with the demand within seven days after the making thereof, the company, and also every officer of the company who is in default, shall be punishable with fine which may extend to five hundred taka, unless it is proved that the person had already made a demand

for and been rurnished with copy of the document; and in case of such default, the Court, apart from imposing the penalty, may also, by order, direct that the copy demanded shall forthwith be furnished to the person concerned.

(5) Sub-section (1) to (4) shall not apply in relation to a balance sheet of a private company laid before it before the commencement of this Act and in such a case the right of any person to have sent to him or to be furnished with a copy of the balance sheet, and the liability of the company in respect of a failure to satisfy that right, shall be the same as they would have been it this Act be had not been passed.

Statement to be published by Banking and certain other Companies:-

- 192. Certain companies to publish statement in schedule: (1) Every company being a limited banking company or an insurance company 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 herein after referred to as the said statement in the form as in Schedule XII, or as near thereto as circumstances will admit.
- (2) A copy of the said statement together with a copy of the last audited balance sheet laid before the members of the company shall be displayed and, until the display of the next following statement, kept displayed in a conspicuous place in the registered office of the company, and in every branch office or place where the business of the company, is carried on.
- (3) Every member and every creditor of the company shall be entitled to a copy of the said statement on payment of a sum exceeding five taka.
- (4) If a company makes default in complying with the requirements of this section, it shall be liable to a fine not exceeding one hundred taka for everyday during

- which the default continues; and, also every officer of the company who knowingly and wifully authorises or permits the default shall be liable to the like penalty.
- (5) This section shall not apply to a life insurance company or provident insurance society, to which the provisions of the Insurance Act. 1938 (IV of 1938), or any other insurance law for the being in force as to the annual statement 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

- 193. Power of Registrar to call for information or explanation.— (1) Where the Registrar, on perusal of any document which a company is required to submit to him under the provisions of this Act, or on receipt of a written objection against an such documents from any member of the company, is of opinion that any information explanation is necessary in order that such document may afford full particulars of the matter to which it purports to relate he may, by a writen order, call on the company to furnish in writing such information or explanation or to produce such books or papers, as may be required by him within such time as he may specify in his order.
- (2) On the receipt of an order under sub-section (1), it shall be the duty of all persons who are or have been officer of the company to furnish such information or explanation (1) to the best of their power.
- (3) If an such person refuses or neglects to furnish any such information or explanation, he shall be liable to a fine not exceeding five hundred taka in respect of each offence and the court may, on the application of the Registrar and upon notice to the company ,make an order on the company for production of such document as in its opinion may reason able be Required by the registrar for his investigation and allow the Registrar inspection thereof on such terms and conditions as it thinks fit,

- (4) On receipt of such information or explanation, the Registrar may annex the same to the original document submitted to him and any additional document so annexed by the Registrar shall be subject to the like provisions as to inspection and the taking of copies as the original documents are subject.
- (5) If such information or explanation or additional document is not furnished within the time specified by the Court or the Registrar, or if after perusal of such information or explanation or additional document; the Registrar is of opinion that the document in question discloses an unsatisfactory state of affairs or that it does not disclose a full fair, and true, statement of the matters to which it purpose to relate, the Registrar may direct the company to correct the documents in the manner directed by him or may report in writing the circumstances of the case to the government.
- (6) If it is represented to the Registrar on materials placed before him by any member, contributory, creditor or any other person interested that the business of a company is being carried on in fraud of its members, creditors or persons dealing with the company or for a fraudulent purpose that the affairs of the company are not being managed in accordance with the provisions of this Act, he may, after giving the company an opportunity of being heard, by a written order, call on the company for information or explanation on matters specified in the order or require the company to procure any document within such time as he may specify in the order and the provision of sub-section (2),(3)and(5) of this section shall apply to such order.
- (7) If upon investigation, the Registrar is satisfied that any representation on which he has taken action under sub-section (6) is false, frivolous or vexatious, he shall disclose the identity of the information to the company,
- (8) The provisions of this section apply mutatis mutandis to documents which a liquidation is required to file under this Act,

- 194. Seizure off documents by Registrar.— (1) Where, upon any information, the Registrar has reasonable ground to believe that books and papers of or relating to and company or other body corporate or any managing agent or managing director or manager of such company or other body corporate, or any associate of such managing agent or managing director or manager may be destroyed, mutilated, falsified or secreted the Registrar may make an application to the Magistrate of the first class having jurisdiction for an order for the secure of such books and papers.
- (2) After considering the application and hearing the Registrar, if necessary, the Magistrate may be order, authorise the Registrar—
 - (a) to enter, with such assistance as may be required, the place or places where such books and papers are kept;
 - (b) to search that place or those places in these manner specified in the order; —
 - (c) to seize such books and papers as he considers necessary.
- (3) The Registrar shall return the books and papers seized under this section as soon as may be, and in any case not later than the thirteenth day, after such seizure, to the company, or the other body corporate, or as the case may be, to the managing agent or the associate of such managing agent or managing director or the manager or the associate of such managing agent or managing director or manager or any other person, form whose custody or power they were seized, and shall inform the Magistrate of such return;

Provided that the Registrar may, before returning such books and papers as aforesaid take copies of, or extracts from, them or place identification marks on them or any part thereof or ideal with them in such other manner as the considers necessary.—

(4) Save as otherwise provided in this section, every search or seizure made under this section shall be carried out in accordance with the provisions of the Code of Criminal procedure, 1898(Act V of 1898). relating to search or seizure, made under that Code.

INSPECTION AND AUDIT

- 195. Investigation of affairs of company by inspectors:

 The Government may appoint one or more competent inspectors to investigate the affairs of any company and to report thereon in such manner as the Government may direct—
 - (a) in the case of a company having a share capital, on the application of members holding not less them one-tenth of the shares issued;—
 - (b) in the case of a company not having a share capital on the application of not less than one- fifth in number of the person on the company is register of member;—
 - (c) in the case of any other company, on a report by the Registrar under section 193(5).—
- evidence:- An application by members of a company under section 195 shall be supported by such evidence as the Government may require for the purpose of showing that the applicants have good reason for requiring the investigation; and the Government may also, before appointing an inspector, require the applicants to give security for payment of the costs of the inquiry.
- 197. Inspection of books and examination of officers.—
 Without prejudice to its power under section 195, the
 Government-
 - (a) shall appoint one or more competent persons as inspectors to investigate the affairs of a company and to report thereon in such manner as the Government may direct, if the company, by a

special resolution or, the Court, by an order declares that the affairs of the company ought to be investigated by an inspector appointed by the Government; and;

- (b) may do so if, in the opinion of the Government, there are circumstances suggesting-
- (i) That the business of the company is being conducted with intent to defraud its creditors, members any other persons, or otherwise for a fraudulent or unlawful purpose, or in a manner oppressive of any of its members or that the company was formed for any fraudulent or unlawful purpose; or
- (ii) that persons concerned in the formation of the company or the management of its affairs have in connection therewith been guilty of fraud, misfeasance or other misconduct towards the company or towards may of its members; or
- (iii) that the members of the company have not been given all the information with respect to its affairs which they might reasonable expect.
- 198. Firm, body corporate or association not to be appointed inspector: No firm, body corporate or other association shall be appointed an inspector under section 195 or section 197.—
- 199. Powers of inspectors to carry, investigation into affairs of related companies or of managing agent or associate: (1) If any inspector appointed under section 195 or 197 to investigate the affairs of a company thinks it necessary, for the purposes of his investigation, to investigate also the affairs of
 - (a) any other body corporate which is, or was at any relevant time the company's subsidiary or holding company's or a subsidiary of its holding company, of a holding company,, of its subsidiary.
 - (b) an other body corporate which is to has at any relevant time been managed-

- (i) by any person as managing agent, or as managing director or as manager, who is, or was at the relevant time, either the managing agent or the managing director or the manager of the company; or—
- (ii) by any person who is or was at the relevant time. an associate the managing agent; or
- (iii) by any person of whom the managing agent is, or was at the relevant time, as associate; or
- (c) any other body corporate which is or was at any relevant time, managed by the company or whose Board of Directors comprises of nominees of the company or is accustomed to act in accordance with the directions of —
- (i) the company; or
- (ii) any of the directors of the company; or —
- (iii) any company whose directorship is held by the employees of nominees of those having the control and management or the first mentioned company; or—
- (d) any person, who is, or was at any relevant time, the company's managing agent, managing director or manager or an associates of such managing agent,

then the inspector shall, subject to the provision of sub-section (2) have power to investigate and shall report on the affairs of the other body copperplates, the managing agent, managing director, manager or associate of the managing agent, as far as he thinks that the results of his investigating thereof are relevant to the investigation of the affairs of the first-mentioned company.—

(2) In the case of any body corporate or person referred to in clause (b) (ii) (iii), (c) or (d) of sub-section (1), the inspector shall not exercise his affairs without first having obtained the prior approval of the government thereto:—

Provided that before according approval under this sub-section, the Government shall give the body corporate or person a reasonable opportunity to show cause as to why such approval shall not be accorded.

200. Production of documents and evidence .-

- (1) It shall be the duty of all officers and employees and agents of the company, and where the company is or was managed by a managing agent, of all officers and employees and agent of the managing agent, and where the affairs of any other body corporate or of a managing agent or of an associate of a managing agent are investigated by virtue of section 199, of all officers and employees and agents of such body corporate, managing agent or associate, and where such managing agent or associate is or was a firm, of all partners in the firm—
 - (a) to preserve and to produce to the inspector or any person authorised by him in this behalf with the previous approval of the government, all books and papers of, or relating to, the company or, as the case may be, of or relating to the other body corporate, managing agent or associate which are in their custody or powers; and
 - (b) otherwise to give to the inspector all assistance in connection with the investigation which they are reasonably able to give.
- (2) The inspector may, with the previous approval of the Government, require anybody corporate other than a body corporate referred to in sub-section (1) to furnish such information, or produce such books and papers before, him or any person authorised by him in this behalf with the previous approval of the Government as he may consider necessary, if the furnishing of such information or the production of such books and papers is relevant or necessary for the purposes of his investigation.

(3) The inspector may keep in his custody any books and papers produced under sub-section (1) or (2) for six months and thereafter shall return the same to the company, body corporate, firm or individual by whom or on whose behalf the books and papers are produced:

Provided that the inspector may again call for the books and papers they are needed again:

Provided further that if certified copies of the books and papers produced under sub-section (2), are Furnished to the inspector, he shall return those books and papers to the body corporate concerned.

- (4) An inspector may examine on oath any of the persons referred to in sub-section (1) or with the previous approval of the Government, any other person, in relation to the affairs of the company, other body corporate. managing agent or associate, as the case may be, and may administer oath accordingly an for that purpose may require any of those persons to appear before him personally.
- (5) If any person fails without reasonable cause or refuses-
 - (a) to produce to an inspector or an person authorise by him in this behalf with the previous approval of the Government any book or paper which it is his duty under sub-section (1) or (2) to produce; or
 - (b) to furnish any information which it is his duty under sub-section (2) to furnish; or
 - (c) to appear before the inspector personally when required to do so under sub-section (4) or to answer any question which is put to him by the inspector in pursuance of that sub-section; or
 - (d) to sign the notes of any examination referred to in sub-section (6),

he shall be punishable imprisonment for a term which may extend to six months, or with fine which may extend to

five thousand taka, or with both, and also with a further fine which may extend to give hundred taka for every day after the first during which the failure or refusal continues.

- (6) Notes of any examination under sub-section (4) shall be taken down in writing and shall be read ever to, or by, and signed by, the person examined, and may thereafter be used in evidence against him.
- (7) In this section-
 - (a) the expression "officers" in relation to any company or other body corporate, includes any trustee for the debenture holders such of company or body corporate;
 - (b) the expression "agent" in relation to any company, other body corporate or person, means, any one acting or purporting to act for or on behalf of such company, body corporate or person, and includes the bankers, and legal advisers of, and persons employed as auditors by such company, body corporate or person; and
 - (e) any reference to officers and employees, agents or partners shall be construed as a reference to past as well as present officers and other employees, agent or partners, as the case may be.
- 201. Seizure of document by inspectors.— (1) Where in the course of investigation under section 195 or 197, the inspector has reasonable ground to believe that the books and papers of, or relating to, any company or other body corporate or any managing agent or managing director or manager of such company or other body corporate, or any associate of such managing agent may be distorted, mutilated, altered, falsified or secreted, the inspector may make an application to the Magistrate of the First Class having jurisdiction for an order for the seizure of such books and papers.

- (2) After considering the application and hearing the inspector, if necessary, the Magistrate may be order authorize the inspector—
 - (a) to enter, with such assistance as may be required, the place, or
 - (b) to search that place or those places in the manner specified in the order; and
 - (c) to seize books and papers he considers necessary for purposes of his investigation.
- (3) The inspector may keep in his custody the books and papers seized under this section for such period not later than the conclusion of the investigation as he considers necessary and thereafter shall return the same to the company or the other body corporate or, as the case may be, to the managing agent or the associate of such managing agent or the managing director or the manager or any other person from whose custody or power they were seized and shall inform the Magistrate of such return:

Provided the inspector may, before returning such books and papers as aforesaid, place identification marks on them or any part thereof.

- (4) Save as otherwise provided in this section, every search or seize made under this section shall be carried out in accordance with the provisions of the Code of Criminal Procedure, 1898 (Act, v of 1898) relating to search or seizure made under the Code.
- 202. Inspector's report.— (1) Inspectors may, and if so directed by the Government shall, make interim reports to the Government, and on the conclusion of the investigation, shall make a final report to the Government; and any such report shall be written or printed, of the Government may direct.
- (2) The Government -
 - (a) shall forward a copy of the final report to the company at its registered office, and also to any

- other body, corporate, managing agent, or associate if dealt with in the report by virtue of section 199;
- (b) may, if it thinks, fit furnish a copy thereof, on request and on payment of the prescribed fee, to any person-
- (i) who is a member of the company or other body corporate including a managing agent or associate of a managing agent where such managing agent or associate is a body corporate dealt with in the report by virtue of section 199;
- (ii) who is a partner in the firm, where such managing agent or associate is a firm;
- (iii) whose interest as a creditor of the company, other body corporate, managing agent or associate aforesaid appears to the Government to be affected;
- (c) shall where the inspectors are appointed under clause (a) or (b) of section 195, furnish at the request of the applicants for the investigation a copy of the report of them;
- (d) shall where, the inspectors are appointed under clause (a) of section 197 in pursuance of an order of the Court, furnish a copy of the report to the Court; and
- (e) may also cause the report to be published.
- 203. Prosecution.— (1) If, from any report made under section 202 it appears to the Government that any person has, in relation to the company or in relation to any other body corporate, managing agent, or associate of other body corporate, managing agent, or associate of a managing agent whose affairs have been investigated by virtue of section 199, been guilty of any offence for which he is criminally liable, the Government may prosecutor such person for the offence; and it shall be the duty of all officer and employees and agents of the company, body corporate

- managing agent or associate, as the case may be, other than the accused proceedings, to give the Government all assistance in connection with the prosecution which they are reasonable to give.
- (2) Sub-section (7) of section 200 shall apply for the purpose of this section as it applies for the purposes of that section.
- 204. Application for winding up of company or an order in that behalf.— If any such company or other body corporate or any such managing agent, or associate, being a body corporate, as is mentioned in section 199, is liable to be wound up under this Act, and it appears to the Government from any such report as aforesaid that it is expendient so to do by reasons of any such circumstances as are referred to in sub clause (i) or (ii) of clause (b) of section 197, the Government may, unless the company, body corporate, managing agent or associate is already being would up by the Court, cause to be presented to the Court by the Registrar;
 - a petition for the winding up of the company, body corporate, managing agent, or associate on the ground that it is just and equitable that it should be wound up;
 - (b) an application for an order under section 233;
 - (c) both a petition and an applications as aforesaid.
- 205. Proceedings for recovery of damages or property.—
 (1) If from any report made under section 201 it appears to the Government that proceedings ought, in the public interest, to be brought by the company or anybody corporate whose affairs have been invested in pursuance of claues (a) (b) or (c) of section 199.
 - (a) for the recovery of damages in respect of any fraud, misfeasance or other misconduct in connection with the promotion or formation or the management of the affairs, or such company of body corporate; or

(b) for the necessary of any property of such company or body corporate, which has been misapplied or wrongfully retained:

the Government may itself bring proceedings for such purpose in the name of such company or body corporate.

- (2) The Government shall indemnify such company or body corporate against any costs or expenses incurred by it in, or in connection with any proceedings brought by virtue sub-section (1) if such proceedings is found to be frivolous.
- 206. Expenses of investigation.— (1) The expenses of and incidental to an investigation by an inspector appointed by the Government under section 195 or 197 shall be defrayed in the first instance appointed by the Government; but the following persons shall, to the extent mentioned below, be liable to reimburse the Government in respect of expenses of such investigation:—
 - (a) any person who is convicted on a prosecution instituted in pursuance of section 203, and who is ordered to pay damages or restore any property in the proceedings brought by virtue of section 205, may in the same proceedings be ordered to pay the said expenses to such extent as may be specified by the Court convicting such person, or ordering him to pay such damages or restore such property, as the case may be;
 - (b) in any company or body corporate in whose name proceedings are brought under section 205 (1) shall be liable to pay the cost of the investigation but not exceeding the amount or value of any sums or property recovered by it as a result of the proceedings; and
 - (c) unless, as a result of the investigation, a prosecution is instituted in pursuance of section 203–

- (i) any company, body corporate, managing agent, associate, managing director or manager dealt with by report of the inspector shall be liable to reimburse the government in respect of the whole expenses, unless and except in so far as the Government otherwise directs; and
- (ii) the application for the investigation, where the inspector was appointed under clause (i) and (ii) of the section 195, shall be liable to such extent, if any, as the government may direct.
- (2) Any amount for which a company or body corporate is liable by virtue of clause (b) of sub-section (I) shall be a first charge on the sums or property mentioned in that clause.
- (3) The amount of expenses in respect of which any company, body corporate, managing agent associate, managing director or manager is liable under subclause (i) of clause (c) of sub-section (1) to reimburse the Government, shall be recoverable from that company, body corporate, managing agent, associate, managing director or manager, as an arrears of land revenue.
- (4) For the purposes of this section any costs or expenses incurred by the Government in or in connection with proceedings brought by virtue section 205 including expenses incurred by virtue of sub-section (2) thereof shall be treated as expenses of the investigation giving rise to the proceedings.
- (5) Any liability to reimburse the Government imposed by clauses (a) and (b) of sub-section (1) shall subject to satisfaction of the right of the Government to reimbursement, be a liability also to indemnify all persons against liability under clause (c) of that subsection.
- (6) Any such liability imposed by clause (a) of sub-section (1) shall, subject to the right of the Government as to reimbursement, be a liability also to indemnify all

- pesons aginst liabilty under cluse (b) of the said subsection.
- (7) Any person liable under the clause (a) or (b) or (c) of sub-section (1) shall be entitled to contribution from any other person liable under the same clause or claises as the case may be according to the amount of their respective liabilities thereunder.
- (8) In so far as the expenses to be defrayed by the Government under this section are not recovered thereunder, they shall be paid out of moneys provided by Parliament.
- 207. Power of company to appoint inspectors. (1) A company may, by a special resolution, appoint inspectors to investigate its affairs.
- (2) Inspectors so appointed shall have the same powers and duty as inspectors appointed by the Government, except that, instead of reporting to the government they shall report in such manner and to such persons as the company in general meeting may direct.
- (3) All persons who are or were officers of the company shall incur the penalties in case of refusal to produce any book or document required to be produced to inspectors so appointed, or to answer any question, as they would have incurred if the inspectors had been appointed by the Government.
- 208. Report of the inspector to be evidence. A copy of the report of any inspector 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 inspector in relation to any matter contained in the report.
- 209. Saving for legal adviser and bankers.— Nothing in section 193 to 206 shall require the disclosure to the Registrar or to the Government or to any inspector appointed by the Government—

- (a) by a legal adviser of any privileged communication made to him in that capacity except as respect the name and address of his client; or
- (b) by the bankers of any company, other body corporate, managing agent, or associate of the managing agent or managing director or manager referred to in the section aforesaid, as such banker, or any information as to the affair of any there customers
- 210. Appointment and remuneration of auditors.— (1) Every company shall, at each annual general meeting appoint an auditor or auditors to hold office from the conclusion of that meeting until the next annual general meeting and shall within seven days of the appointment, give intimation thereof to every auditor so appointed:

Provided that no person can be appointed auditor of any company unless his written consent has been obtained prior to such appointment or re-appointment.

- (2) Every auditor appointed under sub-section (1) shall, within thirty days of the receipt from the company of the intimation of his appointment, inform the Registrar in writing that he has accepted, or refused to accept, the appointment.
- (3) At any annual general meeting a retiring auditor, by whatsoever authority appointed, shall be reappointed, unless
 - (a) he is not qualified for reappointment; or
 - (b) he has given the company notice in writings of his unwillingness to be re-appointed; or
 - (c) a resolution has been passed at that meeting appointing somebody else instead of him or providing expressly that he shall not be reappointed:

Provided that for the purpose of passing a resolution under clause (c) a notice thereof shall in accordance with

section 211 be issued prior to the meeting, and such resolution cannot be passed except on the ground of death, incapacity or dishonesty or disqualification of the retiring auditor.

- (4) If an appointment of an auditor is not made at an annual general meeting, the Government may appointment a person to fill the vacancy.
- (5) The company shall, within seven days of the Governments power under sub-section (4) becoming exercise able, give notice of that fact to the Government; and, if a company fails to give such notice, the company, and also every officer of the company who is in devaluate, shall be punishable with which may extend to one thousand taka.
- (6) The first auditor or auditors of a company shall be appointed by the Board of Directors within one month of the date of Registration of the company, and the auditor or auditors so appointed shall hold office until the conclusion of the first annual general meeting:

Provided that -

- (a) the company may at a general meeting remove any such auditor or all or any of such auditors and appoint in his or their place any other person or persons who have been nominated for appointment by any member of the company, and or whose nomination notice has been given to the members of the company not less than fourteen days before the date of the meeting; and
- (b) if the Board of Directors fails to exercise its powers under this sub-section, the company in a general meeting, may appoint the first auditor or auditors.
- (7) The Board may fill any causal vacancy in the office of any auditor, but while any such vacancy continues, the remaining auditor or auditors, if any, may act:

Provided that where such vacancy is caused by the resignation of an auditor, the vacancy shall only be filled by the company in general meeting.

- (8) Any auditor appointed in a casual vacancy shall hold office until the conclusion of the next annual general meeting.
- (9) Except as provided in the process pursuant to subsection (7) any auditor appointed under this section may be removed from office before the expire of his term only by a special resolution of the company in the general meeting.
- (10) The remuneration of the auditors of a company-
 - (a) in the case of an auditor appointed by the Board or the Government shall be fixed by the Board or the Government respectively; and
 - (b) subject to clause (a), shall be fixed by the company in the general meeting or in such manner as the company in the general meeting may determine.
- (11) For the purposes of sub-section (10) any sums paid by the company in respect of the auditors expenses shall be deemed to be included in the expression "remuneration"
- 211. Provisions as to resolutions for appointing or removing auditors.— (1) Special notice shall be required for a resolution at an annual general meeting appointing as auditor a person other than a retiring auditor, or providing expressly that a retiring auditor shall not be re-appointed.
- (2) On receipt of such notice the company shall forthwith send a copy thereof to the returning auditor,
- (3) Where such notice is given and the retiring auditor makes with respect thereto representation in writing to the company and requests their notification to members of the company, the company shall, unless the representations are received by it too late for it to do so

- (a) in any notice of the resolution given to members of the company, state the fact if the representation having been made; and
- (b) send a copy of the representation to every member of the company to whom notice of the meeting is sent, whether before or after the receipt of the representation by the company, and if a copy of the representation is not sent as aforesaid because the were received too late or because of the companies default, the auditor may, without prejudice to his right to be heard orally, require that the representation shall be read out at the meeting.

Provided that copies of the representations need not be sent out and the representations need not be read out at the meeting if, on the application either of the company or of any other person who claims to be aggrieved the court is satisfied that the rights conferred by this sub-section are being abused to secure needless publicity for defamatory matter; and the Court may order the company's costs on such an application to be paid whole or in part by the auditor, notwithstanding that he is not a party to the application.

- (4) Sub-sections (2) and (3) shall apply to a resolution it remove the first auditors or any of them under subsection (6) of section 210 or to the removal or any auditor or auditors under sub-section (8) of that section as they apply in relation to are solution that a retiring auditor shall not be re-appointed.
- 212. Qualification and disqualification of auditors.— (1)

 No person shall be appointed an auditor of any company unless he is a "chartered accountant" within the meaning of the Bangladesh Chartered Accountants Order, 1973, (P.O. No. 2 of 1973):

Provided that a firm whereof all the partners practicing in Bangladesh are qualified for appointment as aforesaid may be appointed by its firm name to be auditor of company in which case any of the auditors so practicing may act in the name of the firm.

- (2) None of the following persons shall be qualified for appointment as auditor of a company namely-
 - (a) an officer or employee of the company;
 - (b) a person who is partner or who is in the employment of an officer or employee of the company;
 - (c) a person who is indebted to the company for an amount exceeding one thousand taka, or who has given any guarantee or provided any security in connection with the indebtedness of any third person to the company for an amount exceeding one thousand taka:
 - (d) a person who is a director or member of a private company, or a partner of a firm, which is the managing agent of the company;
 - (e) a person who is a director, or the holder of shares exceeding five present in nominal value of the subscribed capital, of any body corporate which is the managing agent of the company

Provided that where any shares held by a person as nominee or trustee for any third person and in which the holder has no beneficial interest such shares shall be excluded in computing the extent of the subscribed capital for the purpose of this clause.

Explanation: For the purposes of this sub-section the word "officer" or employee" shall not in include an auditor.

- (3) A person shall not be qualified for appointment as an auditor of a company, if—
 - (a) he, according to sub-section (2) is disqualified for appointment as auditor of any other body corporate which is that company's subsidiary or holding company or a subsidiary of that company's holding company's;

- (b) he would be disqualified for such appointment, had the said body corporate been a company.
- (4) If an auditor becomes subject, after his appointment to any of the disqualification's specified in sub-sections (2) and (3) he shall be deemed to have vacated his office as such.
- 213. Powers and duties of auditors. :- (1) Every auditor of a company shall have a right of access at all times to the books and accounts and vouchers of the company, whether kept at the head office of the company or elsewhere of shall be entitled to require from the officers of the company such information and explanation as the auditor may think necessary for the performance of his duties as auditor.
- (2) Without prejudice to the provisions of sub-section (1), the auditor shall, in particular inquire into following namely:-
 - (a) Whether loans and advances made by the company on the basis of security have been properly secured and whether the terms on which they have been made are not prejudicial to the interests of the company or its members:
 - (b) Whether transactions of the company which are represented merely as book-entries are prejudicial to the interests of the company;
 - (c) where the company is not an investment company or a banking company, whether so much of the assets of the company as consist of shares, debentures and other securities, have been sold at a price less than at which they were purchased by the company;
 - (d) whether loans and advances made by the company have been shown as deposits;
 - (e) whether personal expenses have been charged to revenue account;
 - (f) where it is stated in the books and paper of the company that any shares have been allotted for

cash, whether cash has actually been received, in respect of such allotment, and if no cash has actually been so received, whether the position as state in the account books and balance sheet is correct regular and not misleading.

- (3) The auditor shall make a report to be presented in the annual general meeting of the company on the accounts examined by him, and on every balance sheet and profit and loss account and on every other document declared by this Act to be part of or annexed to the balance sheet or profit and loss accounts which are laid before the company in general meeting during his tenure of office and the report shall state whether, in his opinion and to the best of his information and according to the explanation given to said Accounts give the information required by this Act in the manner so required and give a true and fair view-
 - (a) in the case of the balance sheet of the state of the company's affairs as at the end of its financial year;
 - (b) in the case of the profit and loss account, of the or loss for its financial year.
- (4) The auditors report shall also state-
 - (a) whether he has obtained all the information and explanation which to the best of his knowledge and behalf were necessary for the purposes of his audits;
 - (b) whether, in his opinion proper books of account as required by law have been kept by the company so far as appears from his examination of those books and proper returns adequate for the purposes of his audit have received from branches not visited by him.
 - (c) Whether the company's balance sheet and profit and loss account dealt with by the report are in agreement with the books of account and returns.

- (5) There any of the matters referred to in clause(a) and (b) of sub-section (3) or in clauses (a), (b) and (c) of sub-section (4) are answered in the negative or with a qualification, the auditors report shall state these reason for the answer.
- (6) The Government may, be general or special order direct that in the case of such class or description of companies as may be specified in the order, the auditors report shall also include a statement on such matters as may be specified therein,
- (7) The accounts of a company shall not be deemed as not having been and the auditors report shall not state that those accounts have not been, properly drawn up on the ground merely that the company has not disclosed certain matters of -
 - (a) these matters are such as the company is not required to disclose by virtue of any provision contained in this Act or any other law for the time being in force; and
 - (b) Those provisions are specified in the balance sheet and profit and loss account of the company.
- 214. Audit of accounts of branch office of company.- (1)

 Where a company has a branch office, the accounts of that office shall, be audited by the companies auditors at their option, or where the branch office is situated in a country outside Bangladesh, the accounts of the office shall be audited either by the company's auditor or by a person duly qualified to act as an auditor of the accounts of the branch office in accordance with the law of that country, if so decided by the shareholders in a general meeting.
- (2) Where the accounts of any branch office are audited by a person other than the company's auditor, the company's auditor—
 - (a) shall be entitled to visit the branch office, if he deems it necessary to do so for the performance of his duties as auditor; and

(b) shall have a right of access at all times to be books and accounts and vouchers of the company maintained at the branch office;

Provided that in the case of a banking company having a branch office outside Bangladesh is shall be sufficient if the auditor is allowed access to such copies of, and extracts from the books and accounts of the branch as have been transmitted to the principal office of the company in Bangladesh.

- 215. Signature of audit report, etc.- Only the person appointed as auditor of the company or where a firm is so appointed in pursuance of the proviso to subsection (1) of section 212 only a partner in the firm practicing in Bangladesh shall put his signature on the auditor's report or any other document required of the company by law to be signed or authenticated by the auditor.
- **216.** Reading and inspection of auditor's report.- The auditors report shall be read before the company in general meeting and shall be open to inspection by any member of the company.
- 217. Right of auditor to attend general meeting. All notices of and other communication relating to any general meeting of a company which any member of the company is entitled to have sent to him shall also be forwarded to the auditor of the company, and the auditor shall be entitled to attend any general meeting and to be heard at any general meeting which he attends on any part of the business which concerns him as auditor.
- 218. Penalty for non-compliance with section 211 to 217.— If default is made by a company in complying with any of the provisions contained insertion 211 to 217, the company, and also every officer of the company who is in default, shall be punishable with fine with which may extend to one thousand taka.

- 219. Penalty for computance by auditor with section 213 and 215 If any auditors report is made or any document of the company is signed or authenticated otherwise than in conformity with the requirement of sections 231 215, the auditor concerned, and any other person, who signs the report or signs or authenticates the document, shall if the default is willful, punishable with fine which may extend to one thousand taka.
- **220.** Audit of certain matters by Cost and Management Accountants.- (1) where in the opinion of the Government, it is necessary to do in relation to any company required under clause (d) of sub-section (1) of section 181 to include in its books of accounts the particular referred to therein the Government may, by order, direct that an audit of cost accounts of the company shall be conducted in such manner as may be specified in the order by an auditor who shall be a cost and management accountant" within the meaning of the Cost and Management Accountants Ordinance 1977 (LIII of 1977).
- (2) An audit conducted by an auditor under this section shall be in addition to an audit conducted by an auditor appointed under section 210.
- (3) The provisions relating to audit of a company specified in this Act mutatis mutandis, and so far as they are applieable, apply to an audit conducted under this section.
- 221. Right of preference shareholder and debenture holders as to receipts and inspection of reports, etc.:— (1) Holders of prefernce shares debenture holders of a company shall have the same right to receive and inspect the balance sheets and profit and loss account of the company and the reports of the auditors and other reports as is possessed by the holders of ordinary shares in the company.

(2) This section shall not apply to a private company nor to a company registered before the commencement of this Act:-

Provided that in the case of any public company whether registered before on after the commencement of this Act the trustees for holders of debentures shall have the right conferred sub-section (1).

CARRYING ON BUSINESS WITH LESS THAN THE LEGAL MINIMUM OF MEMBERS.

222. Liability for carrying on business with fewer than seven or, in the case of a private company, two members :- If at any time the number of members of a company is reduced, in the case of a private company, below two or, in the case of any other company, below seven and it carries on business for more than six month, while the number is so reduced every person who is a member of the company during the time that it so carries or business during that periods and is contingent of the fact that it is carrying on business with fewer than two members or seven members, as the case may be, shall be individually liable for the payment of the whole debts of the company contracted during that time and may be used for the same without joinder in the suit of any other member.

SERVICE AND AUTHENTICATION OF DOCUMENTS

- 223. Service of documents on company.— A document may be served on a company by leaving it at, or sending it by post to, the registered office of the company.
- **224.** Service of documents of Registrar:— A document may be served on the Registrar by sending it to him by post, or delivering it to him, or by leaving it for him, at his office.
- **225.** Authentication of documents:— A document or proceeding requiring authentication by a company may be signed by a director, secretary or other authorsied

officer of the company, and need not be under its common seal.

SCHEDULES AND RULES AS TO PRESCRIBED MATTERS

- 226. Application and alteration of schedules and power to make rules as to prescribed matters:—(1) The forms specified in Schedules VI to XII or forms as near thereto as circumstances admit shall be used in all matters to which those forms refer.
- (2) The Government may alter any of the Schedules except schedule II.
- (3) Any alteration made under sub-section (2) shall be published in the official Gazatte and on such publication the Schedules so altered shall have effect as if enacted in this Act, but no alteration made by the Government in schedule I, shall affect any company registered before the alteration as respects that company or any portion of that Schedule.
- (4) In addition to the powers herein before conferred by this section, the Government may make rules providing for all or any maters which by this Act are to be prescribed by its authority.
- (5) Every such rule shall be published in the official Gazatte, and on such publication shall have effect as if enacted in this Act.

ARBITRATION AND COMPROMISE

- 227. Power of companies to refer matters to arbitration.— (1) A company may by written agreement, refer to arbitration, in accordance with the arbitration Act, 1940 (X of 1940), on existing or future difference between itself and any other company or person.
- (2) Companies may delegate to the arbitrator power to settle any terms or to determine any matter capable of being lawfully settled or determined by the companies themselves, or by their director or other managing body.

(3) The provision of the Arbitration Act, 1940 (X of 1940), shall apply to all arbitration's between companies and persons in pursuance of this Act.

COMMENTARY: Previous Act: S. 152

Arbitration clause "that the dispute referred to arbitrators shall be subject to the rule of conciliation and arbitration of the International Chamber of Commerce"- not violative of section 152 of the Companies Act although section 152 provides that all arbitrations shall be subject to the Arbitration Act. 1940. [(1970) 22 DLR (WP) 33].

- 228. Power to compromise with creditrs and members.— (1) Where a compromise or arrangement is proposed between a company and its creditors or any class of them, or between the company its members or any class of them, the Court may, on the application in summary way of the company or of any creditor or member of the company or, in the case of a company being wound up, of the liquidator, order a meeting of the creditors or class of creditors, or the members of the company or class of members, as the case may be, to be called, held and conducted in such manner as the Court directs.
- (2) If a majority in member representing three-fourths in value of creditors, or of members as the case may be, present either in person or by proxy at the meeting, agree to any compromise or arrangement, the compromise or arragement shall if sanctioned by the Court be binding on all the creditors or the class of creditors, on or all the members or class of members, as the case may be, and also on the company, in the case of a company in the course of being wound up, on the liquidator and contributories of the company.
- (4) An order made under sub-section (2) shall have no effect until a certified copy of the order has been filed with the Registrar, and copy of every such order shal 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.
- (5) If a company makes default in complying with subsection (3), the company and also every officer of the company, who is knowingly and wilfully in default, shall be liable to a fine not exceeding fifty taka for each copy in respect of which the default is made.
- (6) 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.
- (7) In this section, the expression "company" means any company liable to be wound up under this Act and the expression "arrangement" includes a recognisation of the share capital of the company by the consolidation of shares of different classes or by the division of shares into shares of different classes or by both, those methods and, for the purposes of this section unsecured creditors who may have filed suits or obtained decrees shall be deemed to be of the same class as other unsecured creditors.
- (8) An appeal shall lie from any order made by the Court exercising original jurisdiction under this section to the authority authorised to hear appeals from the decision of the Court.

COMMENTARY: Previous Act : s. 153

Modification of scheme of arrangement under the Act.—Where a scheme which is not of the kind mentioned in section 153A or 158B is sanctioned otherwise than in the course of a winding up, the Court sanctioning the scheme has no further scisin of the scheme and has no jurisdiction or power as the Company Court to entertain any application for modifying the scheme. and this jurisdiction cannot be conferred on the Court even by providing in the scheme for reservations of powers to the Court to entertain such subsequent applications.

Any application for the modification of scheme sanctioned under section 153 of the Companies Act must be treated in the same manner as if it is a fresh application for sanction of a scheme under section 153 of the Act and all the requirements of the section must be duly satisfied before such modification can be sanctioned [6 PLR(Dac.) 1055].

An application for sanctioning of a scheme of arrangement under section 153 in the High Court at Dhaka in respect of a company having its registered office in Calcutta cannot be entertained by the High Court at Dhaka which has no jurisdiction to pass any orders on the application. [(53 CWN (I DR) 85]; [(1950) 2 DLR 181; 54 CWN (2 DR) 201].

Such a company is not a company within section 2(2) and, therefore, not a company to which section 153 applies. Also the High Court of Dhaka being a Court of a Dominion in which the registered office of the company is not registered is not a Court within the defintion of section 2(3) read with section 3 and it is, therefore, not a Court which can exercise power under section 153. [lbid].

But where a petitioner for sanctioning of a scheme of arrangement under section 153 of the Act has previously been presented in the Court of the country where the company is registered, the Court in the other Dominion has jurisdiction to pass orders of ancillary nature. [lbid].

A proceeding under section 153 cannot properly be regarded as a winding-up [lbid].

The expression "liable to be wound up" used in sub-section (6) of section 153 of the Companies Act means "exposed to the contingency of being wound up". The Court which can deal with an application for winding up of an unregistered company can also entertain an application under section 153 in respect of such company.

The word "include" in sub-section (6) of section 153 of the Act embraces other kinds of re-organisations than those mentioned in that sub-section and the description is only explanatory and not exhaustive. [(1955) 7DLR 325].

229. Provisions for facilitating arrangements and compromises.— (1) Where an application is made to the Court under section 228 for the sanctioning of a compromise or arrangement proposes between a company and any such persons as are mentioned in that section, and it is shown to the court that the

compromise or arrangement has been proposed for the purposes of, or in connection with, a scheme for the reconstruction of any company or companies to the amalgamation of any two or more companies, and that under the scheme the whole or any part of the undertaking and the property of any company concerned in the scheme, in this section referred to as a transferor company, is to be transferred to another company in this section referred to as the transferee company, the Court may, either by the order sanctioning the compromise or arragement or by any subsequent order, make provisoin 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 alloting or appropriation by the transferre company of any shares, debentures, policies, or other like interests in that company which under the compromise or arrangement are to be alloted or appropriated by that company to or for any person;
- (c) the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company;
- (d) the dissolution, without winding up, of any transferor company;
- (e) the provision to be made for any person who, within such time and in such manner as the Court directs, dissents from the compromise or arrangement;
- (f) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation shall be fully and effectively carried out.
- (2) Where an order under this section provides for the transfer of property or liabilities, that property shall by

virtue of the order, be transferred to and vest in, and those liabilities shall by virtue of the order trasnferred to and become the liabilities of the transferee company, and in the case of any property, if the order so directs, it shall be freed from any charge which is, by virtue of the compromise or arrangement or cease to have effect.

- (3) Where an order is made under this section, every company in relation to which the order is made shall cause a certified copy thereof to be dilivered to the Registrar for registration within fourteen days after the completion of the order, and if, default is made in complying with the sub-section, the company and also every officer of the company who is knowingly and wifully in default, shall be liable to a fine not exceeding two hundred taka.
- (4) In this section, the expression "property" includes property, rights and powers of every description, and the expression "liabilities" includes duties.
- (5) Notwithstanding the provisions of sub-section (6) of section 228, the expression "company" in this section does not include any company other than a company within the meaning of this Act.

230. Power to acquire shares of shareholders dissenting from schemes of contract approved by majority:—

- (1) Where-
 - (a) a scheme or contract involves the transfer of shares or any class of shares in a company, in this section referred to as the transferor company, to another company, whether a company within the meaning of this Act or not, in this section referred to as the transferee company; and
 - (b) within one hundred and twenty days after the making of the offer in that behalf by the transferee company, the offer has been approves by the holders of not less than three-fourths in value of the shared affected, the transferee company may,

at any time within sixty days after the expiration of the said one hundred and twenty days, give notice in the prescribed manner to any dissenting shareholder that it desires to acouire his shares.

- (2) Where such a notice is given under sub-section (1), the transferee company shall unless on an application made by the dissenting shareholder within thirty days from the date on which the notice was given the Court thanks fit to order otherwise; be entitled and bound to acquire those shares on the terms on which under the scheme or contract the shares of the approving share holders are to be transferred to the transferee company.
- (3)Where a notice has been given by the transferee company under sub-section (1) and the Court has not, on an application made by the dissenting shareholder, ordered to the contrary, the transferor company shall, or the expiration of one month from the date on which the notice has been given, or, if an application to the Court by the dessenting shareholder it 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 transfer on company the amount or other consideration rerpresenting the price payable by the transferee company for the shares which by virtue of this section that company is entitled to acquire, and the transferor company shall thereupon register the transferee company as the holder of those shares.
- (4) Any sums received by the transferor company under this section shall be paid 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.
- (5) 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 AND VICE-VERSA.

- 231. Conversion of private company into public company.— (1) If a company being a private company having at least seven members after its articles such manner that they no longer include the provisions which, under clause of sub-section (1) of section 2 of this Act, are required to be included in the articles of a company in order to constitute it a private company, the company—
 - (a) shall as on the date of the alteration cease to be a parivate company; and
 - (b) shall within a period of this thirty days after the said date file with the Registrar either a prospectus or a statement in lieu of prospectus containing the particulars set out in Part 1 and the reports specified in Part II of schedule IV and the said Part I and II shall have effect subject to the provisions contained in Part III of that schedule.
- (2) If default is made in complying with sub-section (1) the company, and also every officer of the company who is in default, shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to five thousand taka, or with both.
- (3) Where any prospectus or statement in lieu of prospectus filed under this section includes any untrue statement, any person who authorised the filing of such prospectus or statement shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to five thosuand taka, or with both, unless he proves either that the statement was immaterial or that he had reasonable ground to believe, and did up to the time of the filing of the prospectus or statement believe that the statement was true.

- (4) for the purposes of this section—
 - (a) a statement included in a prospectus or a statement in lieu of prospectus shall be deemed to be untrue if it is misleading in the form and context in which it is included; or
 - (b) where the omission from prospectus or a statement in lieu of prospectus of any matter is calculated to mislead, the prospectus or statement in lieu of prospectus shall be deemed, in respect of such omission, to be a prospectus or a statement in lieu of prospectus in which an untrue statement is included.
- (5) For the purposes of sub-section (3) and clause (a) of sub-section (4) the expression "included" when used with reference to a prospectus or statement in lieu of prospectus, means included in the prospectus or statement in lieu of prospectus itself or contained in any report or memorandum appearing on the face thereof, or by reference incorporated therein.
- 232. Amendment of articles for conversion of a public company into private company.—(1) A public company, having not more than fifty members at the time of conversion, may be converted into a private one by passing a special resolution altering its articles so as to exclude provisions, if any, in the articles of association applicable to public company and include therein provisions applicable to a private company.
- (2) If the company has secured creditions, their wittren consent shall have to be obtained before passing a resolution as per provision of sub-section (1) and the shares enlisted with the stock Exchange shall have to be delisted.

PROTECTION OF MINORITY INTEREST

233. Power of Court to give directions for protectiong interest of the minerity.—(1) Subject to fulfilement of the conditions of the required minimum as specified in section 195 (a) and (b) any member or debentureholder

of a company may either individually or jointly bring to the notice of the court by application that—

- (a) the affairs of the company are being conducted or the powers of the directors are being exercised in a manner prejudicial to one or more of its members or debenture holders or in disregard of his or their interest; or
- (b) the company is acting or is likely to act in a manner which discriminated or is likely to discriminate the interest of any member or debenture holder;
- (c) a resolution of the members, debenture holders or any class of them has been passed or is likely to be passed which discriminates or is likely to discriminate the interest of one or more of the members or likely to debenture holder;

And pray for such order, as in his or their opinion, would be necessary for safeguarding his or their interest and also the interest of any other member or debenture holder.

- (2) The Court shall, on receipt of an application under sub-section (1) send a copy thereof to the Board and fix a date for hearing the application.
- (3) If after hearing the parties present on the date so fixed, the Court is of opinion that the interest of the applicant or applicants has been or is being or is likely to be prejudicially affected for reasons specified in the application, it may make such order as prayed for or such other order as it deems fit including a direction—
 - (a) to cancel or modify any resolution or transaction; or
 - (b) to regulate the conduct of the company's affairs in futute in such manner as is specified therin.
 - (c) to amend any provision of the memorandum and articles of the company.

- (4) Where by an order of the Court, any amendment is made in the memorandum or articles of the company, the company shall not, without leave of the Court, make any amendment therein or take any action which is inconsisten with the direction contained in the order.
- (5) A company shall, within fourteen days from the making of an order under this section, inform the Registrar in writing of such order and send him a copy thereof, and if the company makes default in complying with this sub-section the company, and also every officer of the company who is in default, shall be liable to a fine not exceeding one thosuand taka.

PART V

WINDING UP

Preliminary

- **234.** Mode of winding up.— (1) The winding up of a company may be either—
 - (i) by the Court; or
 - (ii) voluntary; or
 - (iii) subject to the supervision of the Court.
- (2) The propvisions of this Act with respect to winding up shall apply, to the winding up of a company in any of these modes, unless anything contrary appears.

CONTRIBUTORIES

235. Liability as contributories of present and past members.—(1) In the event of a company being wound up, every present and past members shall subject to the provisions of this section, be liable to contribute to the assets of the company to an amount sufficient for payment of its debts and liabilities and the coasts, 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:—