Compromise, settlement or continuance of derivative action.

237. No proceedings brought by a shareholder or a director or in which a shareholder or a director intervenes, as the case may be, with leave of the court under section 234, may be settled or compromised or discontinued without the approval of the court.

RATIFICATION

Ratification of certain actions of directors.

238. (1) The purported exercise by a director or the board of directors of a company or of a power vested in the shareholders or any other person, may be ratified or approved by those shareholders or that person, in the same manner in which the power may be exercised.

(2) The purported exercise of a power that is ratified under subsection (1) is deemed to be and always to have been, a proper and valid exercise of that power.

(3) The ratification or approval under this section of the purported exercise of a power by director or the board of directors does not prevent the court from exercising a power which might, apart from the ratification or approval, be exercised in relation to the action of the director or the board.

PART VIII

AMALGAMATIONS

Amalgamations.

239. Two or more companies may amalgamate and continue as one company, which may be one of the amalgamating companies or may be a new company. Public notice of such amalgamation shall be given in accordance with the provisions of this Act.

Amalgamation proposal.

240. (1) Every company which proposes to amalgamate shall approve in accordance with the provisions of section

241 an amalgamation proposal setting out the terms of the amalgamation, and in particular —

(*a*) the name of the amalgamated company, if it is the same as the name of one of the amalgamating companies;

(*b*) the registered office of the amalgamated company;

(*c*) the full name and residential address of each of the directors of the amalgamated company;

(*d*) the full name and address of the secretary of the amalgamated company;

(*e*) the share structure of the amalgamated company, specifying—

(i) the number of shares of the company;

(ii) the rights, privileges, limitations, and conditions attached to each share of the company, if different from those set out in subsection (2) of section 49;

(*f*) the manner in which the shares of each amalgamating company are to be converted into shares of the amalgamated company;

(*g*) if shares of an amalgamating company are not to be converted into shares of the amalgamated company, any consideration that the holders of those shares are to receive in place of shares of the amalgamated company;

(*h*) any payment to be made to a shareholder or director of an amalgamating company, other than a payment of the kind described in paragraph (*g*) ;

(*i*) details of any arrangement necessary to complete the amalgamation and to provide for the subsequent management and operation of the amalgamated company;

(*j*) the date on which the amalgamation is intended to become effective.

(2) If the proposed articles of the amalgamated company are different from the model articles, a copy of the proposed articles shall be attached to and shall form part of the amalgamation proposal.

(3) Where shares of one of the amalgamating companies are held by or on behalf of another of the amalgamating companies, the amalgamation proposal—

(*a*) shall provide for the cancellation of those shares without payment or the provisions of other consideration when the amalgamation becomes effective ;

(*b*) shall not provide for the conversion of those shares into shares of the amalgamated company.

Approval of amalgamation proposal.

241. (1) Before an amalgamation proposal is put to the shareholders, the board of an amalgamating company shall resolve that—

(*a*) in its opinion the amalgamation is in the best interests of the company ; and

(*b*) it is satisfied that the amalgamated company will immediately after the amalgamation becomes effective, satisfy the solvency test.

(2) The directors who vote in favour of a resolution required under subsection (1) shall sign a certificate stating that in their opinion, the conditions set out in that subsection are satisfied and setting out the reasons for reaching that opinion.

(3) The board of each amalgamating company shall send to each shareholder of the company, not less than twenty working days before the amalgamation is proposed to take effect—

(*a*) a copy of the amalgamation proposal ;

(*b*) copies of the certificates given by the directors of each board ;

(*c*) a statement setting out the rights of shareholders under section 93 ;

(*d*) a statement of any material interests of any director in the proposal, whether in that capacity or otherwise ;

(*e*) such further information and explanation as may be necessary to enble a reasonable shareholder to understand the nature and implications for the company and its shareholders of the proposed amalgamation.

(4) The board of each amalgamating company shall, not less than twenty working days before the date on which amalgamation is intended to become effective—

(*a*) send a copy of the amalgamation proposal to every secured creditor of the company ; and

(*b*) give public notice of the proposed amalgamation, including a statement to the effect that—

(i) copies of the amalgamation proposal are available for inspection by any shareholder or creditor of an amalgamating company, or any person to whom an amalgamating company is under an obligation, at the registered offices of the amalgamating

companies and at such other places as may be specified, during normal business hours ; and

(ii) a shareholder or creditor of an amalgamating company or any person to whom an amalgamating company is under an obligation, is entitled to be supplied free of charge with a copy of the amalgamation proposal upon request made to an amalgamating company.

(5) An amalgamation may be effected if the amalgamation proposal is approved—

(*a*) by a special resolution of the shareholders of each amalgamating company, in accordance with the provisions of section 92 ; and

(*b*) if a provision in the amalgamation proposal would, if contained in an amendment to an amalgamating company's articles or otherwise proposed in relation to that company, require the approval of an interest group, by a special resolution of that interest group.

(6) For the purposes of this section, the solvency test shall be applied without taking into account the stated capital of the amalgamated company.

(7) A director who fails to comply with the requirements of subsection (2) shall be guilty of an offence and be liable on conviction to a fine not exceeding two hundred thousand rupees.

(8) If the court is satisfied that giving effect to an amalgamation proposal would unfairly prejudice a creditor of an amalgamating company or a person to whom an amalgamating company is under an obligation, it may on application made in that behalf by that person made at any

time before the date on which the amalgamation becomes affective, make any order as it thinks fit in relation to the proposal, and may without limiting the generality of this subsection, make an order—

(*a*) directing that effect shall not be given to the proposal ;

(*b*) directing the company or its board to reconsider the proposal or any part of it.

(9) An order under subsection (8) may be made on such terms and conditions as the court thinks fit.

Short form amalgamation.

242. (1) A company and one or more other companies that are directly or indirectly wholly owned by it, may amalgamate and continue as one company (being the company first referred to) without complying with the provisions of section 240 and section 241, if—

(*a*) the amalgamation is approved by a resolution of the board of each amalgamating company ; and

(*b*) each resolution provides that—

(i) the shares of each amalgamating company, other than the amalgamated company, will be cancelled without payment or other consideration ;

(ii) the articles of the amalgamated company will be the same as the articles of the company first referred to ;

(iii) the board is satified that the amalgamated company will immediately after the amalgamation becomes effective, satisfy the solvency test ; and

(iv) the person or persons named in the resolution will be the director or directors of the new company.

(2) Two or more companies each of which is directly or indirectly wholly owned by the same company, may amalgamate and continue as one company without complying with the provisions of section 240 or section 241 if—

(*a*) the amalgamation is approved by a resolution of the board of each amalgamating company ;

(*b*) each resolution provides that—

(i) the shares of all but one of the amalgamating companies will be cancelled without payment or other consideration ;

(ii) the articles of the amalgamated company will be the same as the articles of the amalgamating company whose shares are not cancelled ;

(iii) the board is satisfied that the amalgamated company will immediately after the amalgamation becomes affective, satisfy the solvency test ; and

(iv) the person or persons named in the resolution will be the director or directors of the new company.

(3) The board of each amalgamating company shall, not less than twenty working days before the date on which the amalgamation is intended to become effective—

(*a*) give written notice of the proposed amalgamation to every secured creditors of the company ; and

(*b*) give public notice of the proposed amalgamation.

(4) The resolutions approving an amalgamation under this section shall, taken together, be deemed to constitute an amalgamation proposal that has been approved.

(5) The directors who vote in favour of a resolution required under subsection (1) or subsection (2), as the case may be, shall sign a cerificate stating that in their opinion, the conditions set out in subsection (1) or subsection (2) are satisfied, and setting out the reasons for reaching that opinion.

(6) For the purposes of this section, the solvency test shall be applied without taking into account the stated capital of the amalgamated company.

(7) A director who fails to comply with subsection (5) shall be guilty of an offence and be liable on conviction to a fine not exceeding two hundred thousand rupees.

Registration of amalgamation proposal.

243. For the purpose of effecting an amalgamation, the following documents shall be delivered to the Registrar for registration :—

(*a*) the approved amalgamation proposal ;

(*b*) any certificates required under subsection (2) of section 241 or subsection (5) of section 242 ;

(*c*) a certificate signed by the board of each amalgamating company stating that the amalgamation has been approved in accordance with the provisions of this Act and the articles of the company ;

(*d*) a consent from each of the persons named in the amalgamation proposal as a director of the amalgamated company, to act as a director of that company, as required by section 203 ; and

(*e*) a consent from each of the persons named in the amalgamation proposal as secretary of the amalgamated company, to act as secretary of that company, as required by subsection (2) section 221.

Certificate of amalgamation.

244. (1) The Registrar shall forthwith after receipt of the documents required under section 243—

(*a*) if the amalgamated company is the same as one of the amalgamating companies, issue a certificate of amalgamation in the prescribed form ; or

(*b*) if the amalgamated company is a new company—

(i) enter particulars of the company on the Register ; and

(ii) issue a certificate of amalgamation in the prescribed form together with a certificate of incorporation in the prescribed form.

(2) If an amalgamation proposal specifies a date on which the amalgamation is intended to become effective, and that date is the same as or later than the date on which the Registrar receives the documents, the certificate of amalgamation, and any certificate of incorporation shall be deemed to have affect on the date specified in the amalgamation proposal.

(3) Notice of completion of such amalgamation shall be given to the public by the company.

Effect of certificate of amalgamation.

245 On the date shown in a certificate of amalgamation—

(*a*) the amalgamation becomes effective ;

(*b*) if it has the same name as of one of the amalgamating companies, the amalgamated company shall have the name specified in the amalgamation proposal ;

(*c*) the Registrar shall remove all particulars relating to the amalgamating companies, other than the amalgamated company, from the Register ;

(*d*) the amalgamated company succeeds to all the property, rights, powers, and privileges of each of the amalgamating companies ;

(*e*) the amalgamated company succeeds to all the liabilities and obligations of each of the amalgamating companies ;

(*f*) proceedings pending by or against an amagamating company may be continued by or against the amalgamated company ;

(*g*) a conviction, ruling, order, or judgment in favour of or against an amalgamating company, may be enforced by or against the amalgamated company ;

(*h*) the stated capital of the amalgamated company shall be the sum certified by the auditor of the amalgamated company ; and

(*i*) any provisions of the amalgamation proposal that provide for the conversion of shares or rights of shareholders in the amalgamating companies, shall have effect according to their tenor.

Power to acquire shares of shareholders dissenting from scheme or contract approved by majority.

246. (1) Where any person pursuant to an offer made to the holders of voting rights of a company acquires not less than ninety *per centum* of the voting rights of such company, such person may within three months of such acquisition give notice in the prescribed manner to all the shareholders holding the outstanding shares carrying voting rights, the desire to acquire such shares, and unless the court thinks fit to order otherwise, upon an application made by any shareholder to the court within fourteen days of the receipt of

such notice for the acquisition of his shares, shall be entitled to acquire such shares on terms not less favourable than the terms made under the aforementioned offer.

(2) A copy of the notice in relation to the acquisition referred to in subsection (1) shall be forwarded to the company, the shares of which are to be so acquired.

(3) Where any person has given notice under the provisions of subsection (1), on the expiration of one month from the date on which such notice was given, such person shall forward the due consideration to the company, the shares of whcih are to be so acquired and the company secretary of such company shall register such acquirer as the holder of all such shares.

(4) Any consideration received by the company shall be held by the company on trust for the person or persons entitled to the shares in respect of which the sum or other consideration was received. The company secretary of such company shall forward such consideration due, to all shareholders without any undue delay.

(5) Where after reasonable inquiry is made at such intervals and the publication of notices in all three languages in daily newspapers, the person entitled to any consideration cannot be found and six years have elapsed since the consideration has been received or the company is wound up, the consideration together with any interest, dividend or other benefit that has accrued from it, shall be paid by the company to the Public Trustee.

(6) In the case where the company is wound up—

(*a*) the trust shall terminate ;

(*b*) the company or, as the case may be, the liquidator shall sell the consideration other than cash and any benefit other than cash that has accrued from the consideration ; and

(*c*) a sum representing ;

(i) the consideration so far as it is cash,

(ii) the proceeds of any sale under sub-paragraph (*b*) above ; and

(iii) any interest, dividend or other benefit that has accrued from the consideration,

shall be deposited in the name of the Public Trustee.

(7) The expenses of any such inquiry and press notices as is mentioned above shall be defrayed out of the money or other property held in trust referred to in subsection (4) above.

PART IX

COMPROMISES WITH CREDITORS

Interpretation.

247. In this Part of this Act, unless the context otherwise requires—

"compromise" means a compromise between a company and its creditors, including a compromise—

(*a*) cancelling all or part of any debt of the company ;

(*b*) varying the rights of its creditors or the terms of a debt ;

(*c*) relating to an alteration of a company's articles that affects the likelihood of the company's ability to pay a debt;

"creditor" includes a person who in a liquidation, would be entitled to claim in accordance with the provisions of section 357, that a debt is owing to that person by the company ; and