

intention and shall afford the association or company an opportunity of being heard in opposition to the revocation.

(8) Where an association in respect of which a licence under this section is in force alters the provisions of its constitution with respect to its objects, the Registrar may, unless he sees fit to revoke the licence, vary, add to or alter the terms and conditions subject to which the license was granted.

Provisions  
which apply to  
companies  
limited by  
guarantee.

**35.** (1) The provisions contained in the list of sections of this Act specified in the Third Schedule hereto, shall not apply to and in respect of a company limited by guarantee.

(2) The provisions of this Act other than the sections referred to in subsection (1), shall apply to a company limited by guarantee with all necessary modifications, as if—

- (a) the company were a limited company ;
- (b) references to shareholders were references to members of the company ;
- (c) each member held one share in the company ; and
- (d) references to the share register were references to the register of members.

#### PART IV

#### SHARES AND DEBENTURES

#### PROSPECTUS

Dating of  
prospectus.

**36.** A prospectus issued by or on behalf of a company or in relation to a company to be formed shall bear a date, and such date shall unless the contrary is proved, be taken as the date of publication of such prospectus.

**37.** (1) Every prospectus issued by or on behalf of a company or by or on behalf of any person who is or has been engaged or interested in the formation of the company, shall contain the information specified in Part I of the Fourth Schedule hereto and set out the reports specified in Part II of that Schedule. The provisions of Parts I and II shall have effect, subject to the provisions contained in Part III of that Schedule.

Specific requirements as to particulars in prospectus.

(2) A condition requiring or binding an applicant for shares in or debentures of a company, to waive compliance with any requirement of this section, or purporting to affect him with notice of any contract, document, or matter not specifically referred to in the prospectus, shall be void.

(3) It shall not be lawful to issue any form for application for shares in or debentures of a company, unless the form is issued with a prospectus which complies with the requirements of this section :

Provided that the provisions of this subsection shall not apply, where it is shown that the form for application was issued either—

- (a) in connection with a *bona fide* invitation to a person to enter into an under-writing agreement with respect to the shares or debentures ;
- (b) in relation to shares or debentures which were not offered to the public ; or
- (c) in relation to issuance of commercial papers by a company listed on a stock exchange and offered to the public.

(4) Subject to the provisions of subsections (1) and (2), any person who acts in contravention of the provisions of subsection (3) shall be guilty of an offence and be liable on conviction to a fine not exceeding two hundred thousand rupees.

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

- (a) as regards any matter not disclosed he proves that he was not cognizant thereof ;
- (b) he proves that the non-compliance or contravention arose from an honest mistake of fact on his part ; or
- (c) the non-compliance or contravention was in respect of any matter which in the opinion of the court was immaterial or was otherwise such as ought, having regard to all the circumstances of the case, reasonably to be excused :

Provided that, in the event of failure to include in a prospectus a statement with respect to the matters specified in paragraph 17 of the Fourth Schedule hereto, no director or other person shall incur any liability in respect of the failure, unless it be proved that he had knowledge of the matters not disclosed.

(6) The provision of this section shall not apply to the issue to existing shareholders or debenture holders of a company, of a prospectus or form of application relating to shares in or debentures of the company, whether an applicant for shares or debentures shall or shall not have the right to renounce in favour of other persons. Save as aforesaid, the provisions of 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 a person may incur under any written law or under this Act (other than this section).

(8) Where a prospectus has been sent for registration in accordance with the provisions of section 40 and has been

registered by the Registrar, nothing in the preceding provisions of this section shall be deemed or construed to prohibit the issue or publication of any notice, circular or advertisement stating that the prospectus has been registered and issued and that copies thereof are available on application, if such notice, circular or advertisement does not contain any invitation to the public to subscribe for or purchase any shares in or debentures of a company.

**38.** (1) 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, shall not be issued, unless—

Expert's consent to issue of prospectus containing statement by him.

- (a) such expert has given and has not before delivery of a copy of the prospectus for registration, withdrawn his written consent to the issue thereof with the statement included in the form and context in which it is included ; and
- (b) a statement appears in the prospectus that such expert has given and has not withdrawn his consent as referred to in paragraph (a).

(2) Where any prospectus is issued in contravention of the provision of this section, the company and every person who is knowingly a party to the issue thereof, shall be guilty of an offence and be liable on conviction to a fine not exceeding two hundred thousand rupees.

(3) For the purpose of this section, the term “expert” includes an engineer, a valuer, an auditor, an accountant and any other person having similar professional qualifications.

**39.** (1) No bank shall be named as a company's banker in any prospectus inviting persons to subscribe for shares in or debentures of the company, unless such bank has given and has not before delivery of a copy of the prospectus for registration, withdrawn its written consent to the inclusion in such prospectus of its names as the company's banker :

Consent of bank or attorney-at-law or auditor necessary for inclusion of name in prospectus.

Provided that a bank shall not be deemed for the purposes of this Act to have authorised the issue of a prospectus, by reason only of it having given the consent to the inclusion in such prospectus of its name as the company's bankers.

(2) No attorney-at-law shall be named as a company's lawyer in a prospectus inviting persons to subscribe for shares in or debentures of the company, unless such attorney-at-law has given and has not before delivery of a copy of the prospectus for registration, withdrawn his written consent to the inclusion in such prospectus of his name as the company's lawyer :

Provided that an attorney-at-law shall not be deemed for the purposes of this Act to have authorised the issue of a prospectus, by reason only of his having given the consent to the inclusion in such prospectus of his name as the company's lawyer.

(3) No auditor shall be named as a company's auditor in a prospectus inviting persons to subscribe for shares in or debentures of the company, unless such auditor has given and has not before delivery of a copy of the prospectus for registration, withdrawn his written consent to the inclusion in such prospectus of his name as the company's auditor :

Provided that an auditor shall not be deemed for the purposes of this Act to have authorized the issue of a prospectus, by reason only of his having given the consent to the inclusion in such prospectus of his name as the company's auditor.

(4) Where the name of any bank, attorney-at-law or auditor is included in any prospectus of a company in contravention of the provisions of this section, the company and every person who is knowingly a party to the issue thereof, shall be guilty of an offence and be liable on conviction to a fine not exceeding two hundred thousand rupees.

**40.** (1) No prospectus shall be issued by or on behalf of a company or in relation to a company to be formed, unless on or before the date of its publication, there has been delivered to the Registrar for registration a copy of such prospectus signed by every person who is named in such prospectus as a director or proposed director of the company, or by his agent authorised in writing, and having endorsed thereon or attached thereto—

Registration of prospectus.

- (a) written consent from an expert to the issue of the prospectus as required by section 38 ;
- (b) a declaration made and subscribed to by every person who is named in such prospectus as a director or a proposed director of the company, to the effect that he has read the provisions of this Act relating to the issue of a prospectus and that those provisions have been complied with ; and
- (c) in the case of prospectus issued generally, where the persons making any report required by Part II of the Fourth Schedule hereto have made or have without giving the reasons, indicated in such prospectus any such adjustments as are mentioned in paragraph 30 of that Schedule, and a written statement signed by such person setting out the adjustments and giving the reasons therefor.

(2) Every prospectus shall on the face of it—

- (a) state that a copy has been delivered for registration as required by this section ; and
- (b) set out or refer to statements included in the prospectus which specify any documents required by this section to be endorsed on or attached to the copy so delivered.

(3) The Registrar shall not register a prospectus—

- (a) unless the copy thereof is signed in the manner required by this section ;
- (b) unless it has endorsed thereon or attached thereto the documents (if any) specified as aforesaid ;
- (c) unless it bears the date of the delivery of the copy thereof to the Registrar under this section, or it bears a future date to be inserted in such prospectus under the provisions of section 36 ; and
- (d) where it bears a future date as hereinbefore provided, unless that date has been confirmed or altered by notice served on the Registrar.

(4) Where a prospectus is issued without a copy thereof being delivered under this section to the Registrar or without a copy so delivered having been endorsed thereon or attached thereto the required documents referred to in subsection (1), the company and every person who is knowingly a party to the issue of the prospectus, shall be guilty of an offence and be liable on conviction to a fine not exceeding two hundred thousand rupees.

Civil liability for untrue in prospectus.

**41.** (1) Subject to the provisions of this section, where a prospectus invites persons to subscribe for shares in or debentures of a company, the following persons shall be liable to pay compensation to all persons who subscribe for any shares or debentures on the faith of the prospectus, for the loss or damage they may have sustained by reason of any untrue statement included in such prospectus, 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 as a director or as having agreed to become a director, either immediately or after an interval of time ;

- (c) every person being a promoter of the company ; and
- (d) every person who has authorised the issue of the prospectus :

Provided that, where under the provisions of section 38, the consent of any person is required to the issue of a prospectus and such person has given such consent, such person shall not by reason of his having given such consent, be liable under the provisions of this subsection as a person who has authorised the issue of the prospectus, except in respect of an untrue statement purporting to be made by him as an expert.

(2) No person shall be liable under the provisions of subsection (1), if he proves that—

- (a) 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 ;
- (b) 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 ;
- (c) after the issue of the prospectus and before allotment thereunder, he on becoming aware of any untrue statement in such prospectus, withdrew his consent thereto and gave reasonable public notice of the withdrawal and of the reasons therefor ; or
- (d) (i) as regards every untrue statement not purporting to be made on the authority of an expert or of a public official document or statement, he had reasonable ground to believe and did up to the time of the allotment of the shares or debentures, as the case may be, believed that the statement was true ;



- (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 extract from a report or valuation of an expert, it fairly represented the statement or was a correct and fair copy of or extract from the report or valuation, as the case may be, and he had reasonable ground to believe and did up to the time of the issue of the prospectus believed, that the person making the statement was competent to make it and that person had given the consent required under section 38 to the issue of the prospectus and had not withdrawn that consent before delivery of a copy of the prospectus for registration or to his knowledge, before allotment thereunder ; and
- (iii) as regards every untrue statement purporting to be a statement made by a person in his official capacity or contained in what purports to be a copy or extract from a public document issued officially, it was a correct and fair representation of the statement or copy or extract from the document :

Provided that the provisions of this subsection shall not apply in the case of a person liable, by reason of his having given the consent required under section 38, 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 apart from the provisions of this subsection, would under the provisions of subsection (1) be liable by reason of his having given the consent required under the provisions of section 38 as a person who has authorised the issue of a prospectus in respect of an untrue

statement purporting to be made by him as an expert, shall not be so liable, if he proves that —

- (a) having given his consent under the provisions of section 38 to the issue of the prospectus, he withdrew it in writing before delivery of a copy of the prospectus for registration ;
- (b) 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) 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, as the case may be, believed that the statement was true.

(4) Where—

- (a) the prospectus contains the name of a person as a director of the company or as having agreed to become a director of such company and he has not consented to become a director or has withdrawn his consent before the issue of the prospectus and has not authorised or consented to the issue of such prospectus ; or
- (b) the consent of a person is required under section 38 to the issue of the prospectus and he either has not given that consent or has withdrawn it before the issue of the prospectus,

the directors of the company, except any director without whose knowledge or consent the prospectus was issued, and any other person who authorised the issue of such prospectus,

shall be liable to indemnify the person named under paragraph (a), or whose consent was required under paragraph (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 inserted in the prospectus or of the inclusion therein of a statement purporting to be made by him as an expert, as the case may be, or in defending himself against any action or legal proceeding brought against him in respect thereof :

Provided that a person shall not be deemed for the purposes of this subsection to have authorised the issue of a prospectus, by reason only of his having given the consent required under section 38 to the inclusion in such prospectus of a statement purporting to be made by him as an expert.

(5) Every person who, by reason of his being a director or being named as a director or as having agreed to become a director or of his having authorised the issue of the prospectus or of the inclusion in such prospectus of a statement purporting to be made by him as an expert, becomes liable to make any payment under this section, may recover contribution as in cases of contract, from any other person who, if sued separately, would have been liable to make the same payment, unless the person who has become so liable was and that other person was not, guilty of fraudulent misrepresentation.

(6) For the purposes of this section—

(a) “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 persons engaged in procuring the formation of the company ; and

(b) “expert” has the same meaning as in section 38.

**42.** (1) Where a prospectus issued includes any untrue statement, any person who authorised the issue of the prospectus shall be guilty of an offence and be liable on conviction to a fine not exceeding five hundred thousand rupees or to imprisonment for a term not exceeding two years or to both to such fine and imprisonment, unless he proves either that the statement was immaterial or that he had reasonable ground to believe and up to the time of the issue of the prospectus did believe, that the statement was true.

Criminal liability for untrue statements in a prospectus.

(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 the consent required by the provisions of section 38, to the inclusion in such prospectus of a statement purporting to be made by him as an expert.

(3) No prosecution shall be instituted in respect of any offence under the provisions of subsection (1), except with the sanction of the Attorney-General.

**43.** (1) Where a company allots or agrees to allot any shares in or debentures of the company with a view to offering all or any of those shares or debentures 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 provisions of any written law which relates to the contents of prospectuses, liability in respect of statements in and omission from prospectuses or otherwise generally relating to matters dealing with or connected to prospectuses, shall apply and have effect accordingly, as if the shares or debentures has been offered to the public for subscription and as if persons accepting the offer in respect of any shares or debentures were subscribers for those shares or debentures, but without prejudice to the liability, if any, of the persons by whom the offer is made, in respect of untrue statements contained in the document or otherwise in respect thereof.

Document containing offer of shares or debentures for sale to be deemed a prospectus.

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

- (a) that an offer of the shares or debentures for sale to the public was made within six months after the allotment or agreement to allot ; or
- (b) that at the date when the offer was made, the whole consideration to be received by the company in respect of the shares or debentures had not been so received.

(3) The provisions of section 40 shall be applicable in relation to this section, as though the persons making the offer were persons named in a prospectus as directors of a company, and the provisions of section 37 shall be applicable in relation to this section, as if it required a prospectus to state, in addition to the matters required by that section to be stated in a prospectus—

- (a) the net amount of the consideration received by the company in respect of the shares or debentures to which the offer relates ; and
- (b) the place and time at which the contract under which the said shares or debentures have been or are to be allotted, may be inspected.

(4) Where a person making an offer to which this section relates is a company or a firm, it shall be sufficient if the document aforesaid is signed on behalf of the company or firm by two directors of the company or not less than half of the partners, as the case may be, and any such director or partner may sign through his agent authorised in writing.

**44.** For purposes of the preceding provisions of this Part of this Act—

Interpretation of provisions relating to prospectuses.

- (a) a statement included in a prospectus shall be deemed to be untrue, if it is misleading in the form and context in which it is included ; and
- (b) a statement shall be deemed to be included in a prospectus, if it is contained in or in any report or memorandum appearing on the face of, or by reference incorporated in, or issued with, such prospectus.

#### ALLOTMENT

**45.** (1) No allotment shall be made of any share capital of a company offered to the public for subscription, unless the amount stated in the prospectus as the minimum amount which in the opinion of the directors must be raised by the issue of share capital in order to provide for the particulars specified in paragraph 5 of the Fourth Schedule hereto has been subscribed, and the sum payable on application for the amount so stated, has been paid to and received by the company.

Prohibition of allotment unless minimum subscription is received.

For the purposes of this subsection, a sum shall be deemed to have been paid to and received by the company, if a cheque for that sum has been received in good faith by the company and the directors of the company have no reason for suspecting that the cheque may not be paid.

(2) Where the conditions set out in subsection (1) has not been complied with within the expiration of sixty days from the date of closing of the subscription lists, any money received from applicants for shares shall be forthwith repaid to them without interest, and if such money is not so repaid within seventy-five days from the date of closing of the subscription lists, the directors of the company shall be jointly

and severally liable to repay that money with interest at the legal rate, from the expiration of the seventy-fifth day :

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

(3) Any condition requiring or binding any applicant for shares to waive compliance with any requirement of this section, shall be void.

(4) The provisions of this section shall not apply to any allotment of shares subsequent to the first allotment of shares offered to the public for subscription.

Effect of  
irregular  
allotment.

**46.** (1) An allotment made by a company to an applicant in contravention of the provisions of section 45 shall be voidable at the instance of the applicant within one month from the date of the allotment, and shall be so voidable notwithstanding that the company is in the course of being wound up.

(2) Where any director of a company knowingly contravenes or permits or authorizes the contravention of any of the provisions of section 45, he shall be liable to compensate the company and the allottee respectively for any loss, damages, or costs which the company or the allottee may have sustained or incurred thereby:

Provided that no proceedings to recover any such loss, damages, or costs shall be commenced after the expiration of two years from the date of the allotment.

Applications  
for and  
allotment of  
shares and  
debentures.

**47.** (1) No allotment shall be made of any shares in or debentures of a company in pursuance of a prospectus issued generally and no proceedings shall be taken on applications made in pursuance of a prospectus so issued, until the commencement of the third day after the date on which the prospectus is first issued or such later time (if any) as may be specified in the prospectus, (hereinafter in this Act referred to as "the time of the opening of the subscription lists").

(2) The reference in subsection (1) to the day on which the prospectus is first issued generally shall be construed as referring to the date on which it is first issued as a newspaper advertisement :

Provided that, if it is not issued as a newspaper advertisement before the third day after the date on which it is first issued in any other manner, the said reference shall be construed as referring to the date on which it is first so issued in such manner.

(3) The validity of an allotment shall not be affected by any contravention of the preceding provisions of this section but, in the event of any such contravention—

- (a) the company shall be guilty of an offence and be liable on conviction to a fine not exceeding two hundred thousand rupees; and
- (b) every officer of the company who is in default shall be guilty of an offence and be liable on conviction to a fine not exceeding one hundred thousand rupees.

(4) In the application of this section to a prospectus offering shares or debentures for sale, the preceding subsections shall have effect with the substitution for a reference to allotment of a reference to sale and for the reference to the company and every officer of the company who is in default, of a reference to any person by or through whom the offer is made and who knowingly and willfully authorises or permits the contravention.

(5) An application for shares in or debentures of a company which is made in pursuance of a prospectus issued generally, shall not be revocable until after the expiration of the third day from the date of the opening of the subscription lists, or the giving before the expiration of the said third day, by some person responsible under the provisions of section 41 for the prospectus, of a public notice having the effect under that section of excluding or limiting the responsibility of the person giving it.



(6) In determining for the purposes of this section the third day after any day, any intervening day which is a bank holiday or a public holiday shall be disregarded and where the third day as so determined is itself a bank or a public holiday, there shall for the said purposes be substituted the first day thereafter which is not a bank holiday or a public holiday.

Construction  
of reference  
to offering  
shares or  
debentures to  
the public.

**48.** (1) Any reference in this Act to offering of any shares or debentures to the public shall, subject to any provision to the contrary contained therein, be construed as including a reference to offering them to any section of the public, whether selected as shareholders or debenture holders of the company concerned or as clients of the person issuing the prospectus or in any other manner, and references in this Act or in a company's articles to invitations to the public to subscribe for shares or debentures shall, subject to the preceding provisions, be similarly construed.

(2) The provisions of subsection (1) shall not be taken as requiring any offer or invitation to be treated as made to the public, if it can properly be regarded in all the circumstances as not being calculated to result directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation, or otherwise as being a domestic concern of the persons making and receiving it, and in particular—

- (a) a provision in a company's articles prohibiting invitation to the public to subscribe for shares or debentures shall not be taken as prohibiting the making to members or debenture holders of an invitation which can properly be regarded as aforesaid; and
- (b) the provisions of this Act relating to private companies shall be construed accordingly.

NATURE AND TYPES OF SHARES

- 49.** (1) A share in a company shall be movable property. Nature and types of shares.
- (2) Subject to the company's articles, a share in a company shall confer on the holder —
- (a) the right to one vote on a poll at a meeting of the company on any resolution;
  - (b) the right to an equal share in dividends paid by the company;
  - (c) the right to an equal share in the distribution of the surplus assets of the company on liquidation.
- (3) A company may issue different classes of shares, and in particular may issue shares which —
- (a) are redeemable;
  - (b) confer preferential rights to distributions; or
  - (c) confer special, limited or conditional voting rights or confer no voting rights.
- (4) No share in a company shall have a nominal or par value
- (5) A share in a company is transferable in the manner provided for by its articles and such articles may limit or restrict the extent to which a share is transferable.

ISSUE OF SHARES

- 50.** (1) Immediately following the incorporation of a company under section 5, the company shall issue to each shareholder named in the application for incorporation, the shares to which that person is entitled. Initial shares.

(2) Immediately following the issue of a certificate of amalgamation under section, 244, the amalgamated company shall issue to each person who is entitled to shares under the amalgamation proposal, the shares to which that person is entitled.

Issue of shares.

**51.** (1) Subject to the provisions of sections 52 and 53 and the company's articles, the board of a company may issue such shares to such persons as it considers appropriate.

(2) If the shares issued confer rights other than those set out in subsection (2) of section 49 or impose any obligation on the holder, the board shall approve terms of issue which will set out the rights and obligations attached to those shares.

(3) Terms of issue approved by the board under subsection (2) —

- (a) shall be consistent with the articles of the company, and to the extent that they are not so consistent, are invalid and of no effect ;
- (b) are deemed to form part of the articles, and may be amended in accordance with section 15.

(4) Within twenty working days of the issue of any shares under this section, the company shall —

- (a) give notice to the Registrar in the prescribed form of—
  - (i) the number of shares issued;
  - (ii) the amount of the consideration for which the shares have been issued or its value as determined by the board under subsection (2) of section 58; and
  - (iii) the amount of the company's stated capital following the issue of the shares;
- (b) deliver to the Registrar a copy of any terms of issue approved under subsection (2).

(5) Where a company fails to comply with requirements of subsection (4)—

- (a) the company shall be guilty of an offence and be liable on conviction to a fine not exceeding fifty thousand rupees; and
- (b) every officer of the company who is in default shall be guilty of an offence and be liable on conviction to a fine not exceeding fifty thousand rupees.

**52.** (1) Before issuing any shares, the board shall —

Consideration for issue of shares.

- (a) decide the consideration for which the shares will be issued; and
- (b) resolve that in its opinion that consideration is fair and reasonable to the company and to all existing shareholders.

(2) The consideration for which a share is issued may take any form, including cash, promissory notes, future services, property of any kind or other securities of the company.

(3) Upon receipt of the consideration, the company shall within a period of twenty days, make an allotment of the shares.

**53.** (1) Subject to the company's articles, where a company issues shares which rank equally with or above existing shares in relation to voting or distribution rights, those shares shall be offered to the holders of existing shares in a manner which would, if the offer was accepted, maintain the relative voting and distribution rights of those shareholders.

Pre-emptive rights to new issues.

(2) An offer which a company is required to make under subsection (1), shall remain open for acceptance for a reasonable period of time.

Method of  
issuing shares.

**54.** (1) A share is deemed to be issued when the name of the holder is entered on the share register, and such entry shall be made prior to compliance with subsection (4) of section 51.

(2) The issue by a company of a share which imposes a liability to the company on the holder shall be invalid and of no effect, until such time as the person to whom it is issued has consented in writing to become the holder of the share.

#### CALLS ON SHARES

Calls on shares.

**55.** (1) Where a call is made on a share or any other obligation attached to a share and is performed by the shareholder, the company shall within ten working days give notice to the Registrar in the prescribed form of—

- (a) the amount of the call or its value as determined by the board under subsection (3) of section 58; and
- (b) the amount of the stated capital of the company following the making of the call.

(2) Where a company fails to comply with the requirement of subsection (1) —

- (a) the company shall be guilty of an offence and be liable on conviction to a fine not exceeding fifty thousand rupees; and
- (b) every officer of the company who is in default shall be guilty of an offence and be liable on conviction to a fine not exceeding fifty thousand rupees.

#### DISTRIBUTIONS TO SHAREHOLDERS

Distributions.

**56.** (1) Before a distribution is made by a company to any shareholder, such distribution shall —

- (a) be authorised by the board under subsection (2); and

- (b) unless the company's articles provide otherwise, be approved by the shareholders by ordinary resolution.

(2) The board of a company may authorise a distribution at such time and in such amount as it considers appropriate, where it is satisfied that the company will, immediately after the distribution is made satisfy the solvency test, provided that such board obtains a certificate of solvency from the auditors.

(3) The directors who vote in favour of a distribution shall sign a certificate setting that in their opinion, the company will satisfy the solvency test immediately after the distribution is made.

(4) In applying the solvency test for the purposes of this section, "debts" includes fixed preferential returns on shares ranking ahead of those in respect of which a distribution is made, except where the fixed preferential return is expressed to be subject to the power of the board to authorise distributions.

(5) 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.

**57.** (1) A company shall be deemed to have satisfied the solvency test, if— Solvency test.

- (a) it is able to pay its debts as they become due in the normal course of business; and
- (b) the value of the company's assets is greater than —
  - (i) the value of its liabilities; and
  - (ii) the company's stated capital.

(2) In determining whether a company satisfies the solvency test, the board—

- (a) shall take into account the most recent financial statements of the company prepared in accordance with section 151 of the Act ;
- (b) shall take into account circumstances the directors know or ought to know which affect the value of the company's assets and liabilities ;
- (c) may take into account a fair valuation or other method of assessing the value of assets and liabilities.

Stated capital.

**58.** (1) Subject to section 59, stated capital in relation to a company means the total of all amounts received by the company or due and payable to the company —

- (a) in respect of the issue of shares; and
- (b) in respect of calls on shares.

(2) Where a share is issued for consideration other than cash, the board shall determine the cash value of such consideration for the purposes of subsection (1).

(3) Where a share has attached to it an obligation other than an obligation to pay calls, and that obligation is performed by the shareholder—

- (a) the board shall determine the cash value, if any, of that performance; and
- (b) the cash value of that performance shall be deemed to be a call which has been paid on the share for the purposes of subsection (1).

**59.** (1) Subject to the provisions of subsection (3), a company may by special resolution reduce its stated capital to such amount as it thinks appropriate, in accordance with the provisions of this Act.

Reduction of  
stated capital.

(2) Public notice of a proposed reduction of a company's stated capital shall be given not less than sixty days before the resolution to reduce stated capital is passed.

(3) A company may agree in writing with a creditor of the company, that it will not reduce its stated capital below a specified amount without the prior consent of the creditor or unless specified conditions are satisfied at the time of the reduction. A resolution to reduce stated capital passed in breach of any such agreement, shall be invalid and of no effect.

(4) Where —

- (a) a share is redeemed at the option of the shareholder under section 68 or on a fixed date under section 69; or
- (b) the company purchases a share under section 95,

and the board is satisfied that as a consequence of the redemption or purchase, the company would but for this subsection, fail to satisfy the solvency test—

- (c) the board shall after obtaining the auditors certificate of solvency, resolve that the stated capital of the company shall be reduced by the amount by which the company would so fail to satisfy the solvency test; and
- (d) the resolution of the board shall have effect notwithstanding provisions contained in subsection (1) to subsection (3) of this section.

(5) A company which has reduced its stated capital shall within ten working days of such reduction, give notice of the reduction to the Registrar, specifying the amount of the reduction and the reduced amount of its stated capital.



(6) Where company fails to comply with requirements of subsection (2) or subsection (5)—

- (a) the company shall be guilty of an offence and be liable on conviction to a fine not exceeding fifty thousand rupees; and
- (b) every officer of the company who is in default shall be guilty of an offence and be liable on conviction to a fine not exceeding fifty thousand rupees.

Dividends.

**60.** (1) A dividend is a distribution out of profits of the company, other than an acquisition by the company of its own shares or a redemption of shares by the company.

(2) The board of a company shall not authorise a dividend in respect of some shares in a class and not others of that class or of a greater amount in respect of some shares in a class than other shares in that class, except where—

- (a) the amount of the dividend is reduced in proportion to any liability attached to the shares under the company's articles; or
- (b) a shareholder has agreed in writing to receive no dividend or a lesser dividend than would otherwise be payable.

Recovery of distributions.

**61.** (1) A distribution made to a shareholder at a time when the company did not, immediately after the distribution, satisfy the solvency test, may be recovered by the company from the shareholder, unless—

- (a) the shareholder received the distribution in good faith and without knowledge of the company's failure to satisfy the solvency test;
- (b) the shareholder has altered his position in relying on the validity of the distribution; and

- (c) it would be unreasonable in view of the circumstances to require repayment in full at all.

(2) Where in relation to a distribution to which subsection (1) applies, the procedure set out in section 56 has not been followed or reasonable grounds for believing that the company would satisfy the solvency test did not exist at the time the certificate was signed, every director who—

- (a) failed to take reasonable steps to ensure the procedure was followed; or
- (b) signed the certificate,

as the case may be, shall be personally liable to the company to repay to the company, so much of the distribution as the company is not able to recover from the shareholders.

(3) Where in an action brought against a director or a shareholder under this section, the court is satisfied that the company could by making a distribution of a lesser amount have satisfied the solvency test, the court may—

- (a) permit the shareholder to retain; or
- (b) relieve the director from liability in respect of,

an amount equal to the value of any distribution that could properly have been made.

**62.** (1) Where a company—

- (a) alters its articles; or
- (b) acquires shares issued by it or redeems shares under section 67,

Reduction of shareholder liability to be a distribution.

in a manner which cancels or reduces the liability of a shareholder to the company in relation to a share held prior to that alteration, acquisition, or redemption, as the case may

be, the cancellation or reduction of liability shall be treated, for the purposes of subsection (1) and subsection (3) of section 61, as if it were a distribution of the amount by which the liability was reduced.

(2) Where the liability of a shareholder of an amalgamating company to that company in relation to a share held before the amalgamation, is—

- (a) greater than the liability of that shareholder to the amalgamated company in relation to a share or shares into which that share is converted; or
- (b) cancelled by the cancellation of that share in the amalgamation,

the reduction of liability effected by the amalgamation shall be treated for the purposes of subsection (1) and subsection (3) of section 61, as a distribution by the amalgamated company to that shareholder of the amount by which that liability was reduced.

#### RE-PURCHASE OF SHARES

Company may acquire or redeem its own shares.

**63.** (1) A company may purchase or otherwise acquire any of its own shares —

- (a) under section 64 or section 67;
- (b) if the company is a private company, with the agreement or concurrence of all shareholders under section 31; or
- (c) in accordance with an order made by the court under this Act,

but not otherwise.

(2) A company may redeem a share which is a redeemable share, in accordance with the provisions of sections 66 to 69, but not otherwise.

(3) A share that is acquired or redeemed by the company shall be deemed to be cancelled immediately upon acquisition or redemption, as the case may be.

(4) Immediately following the acquisition or redemption of shares by the company, the company shall give notice to the Registrar of the number and class of shares acquired or redeemed, as the case may be.

(5) Where a company fails to comply with subsection (4) —

- (a) the company shall be guilty of an offence and be liable on conviction to a fine not exceeding fifty thousand rupees; and
- (b) every officer of the company who is in default shall be guilty of an offence and be liable on conviction to a fine not exceeding fifty thousand rupees.

**64.** (1) A company may agree to purchase or otherwise acquire its own shares if the articles of such company provide for it to do so, with the approval of the board.

Purchase of own shares.

(2) Before a company offers or agrees to purchase its own shares, the board of such company shall resolve that —

- (a) the acquisition is in the interests of the company;
- (b) the terms of the offer or agreement and the consideration to be paid for the shares is in the opinion of the company's auditors a fair value; and

- (c) it is not aware of any information that has not been disclosed to shareholders which is material to an assessment of the value of the shares, and as a result of which the terms of an offer or the consideration offered for the shares are unfair to shareholders accepting the offer.

(3) Before the company—

- (a) makes an offer to acquire shares other than in a manner which will if it is accepted in full, leave unaffected the relative voting and distribution rights of all shareholders; or
- (b) agrees to acquire shares other than in a manner which leaves unaffected the relative voting and distribution rights of all shareholders,

the board shall resolve that the making of the offer or entry into the agreement, as the case may be, is fair to those shareholders to whom the offer is not made or with whom no agreement is entered into.

Enforceability  
of contract to  
purchase  
shares.

**65.** (1) A contract with a company providing for the acquisition by the company of its shares shall be specifically enforceable against the company, except to the extent that the company would after performing the contract fail to satisfy the solvency test, and the burden of proving that after the performance of the contract it would be unable to satisfy the solvency test, shall be on the company.

(2) Until the company has fully performed a contract referred to in subsection (1), the other party to the contract retains the status of a claimant entitled to be paid as soon as the company is lawfully able to do so or, in the event of a liquidation, to be ranked subordinate to the rights of creditors, but in priority to the other shareholders.

## REDEMPTION OF SHARES

**66.** For the purposes of this Act, a share is redeemable if the articles of the company make provision for the redemption of that share by the company —

Meaning of  
“redeemable”.

- (a) at the option of the company;
- (b) at the option of the holder of the share; or
- (c) on a date specified in the articles,

for a consideration that is specified or to be calculated by reference to a formula or required to be fixed by a suitably qualified person who is not associated with or interested in the company.

**67.** (1) A company may exercise an option to redeem a share which is redeemable at the option of the company, if the board has previously resolved that the redemption is in the interest of the company.

Redemption  
option of  
company.

(2) A redemption of a share at the option of the company is deemed to be—

- (a) an acquisition by the company of the share, for the purposes of subsection (3) of section 64; and
- (b) a distribution for the purposes of section 56.

**68.** (1) Where a share is redeemable at the option of the holder of the share and the holder gives proper notice to the company requiring the company to redeem the share—

Redemption at  
the option of the  
shareholder.

- (a) the company shall redeem the share on the date specified in the notice or if no date is specified, on the date of receipt of the notice;
- (b) the share is deemed to be cancelled on the date of redemption; and

- (c) from the date of redemption, the former shareholder ranks as an unsecured creditor of the company for the sum payable on redemption.

(2) A redemption under this section is not a distribution for the purposes of section 56, but is deemed to be a distribution for the purposes of subsection (1) and subsection (3) of section 61.

Redemption on fixed date.

**69.** (1) Where a share is redeemable on a specified date —

- (a) the company shall redeem the share on that date;
- (b) the share is deemed to be cancelled on that date; and
- (c) from that date, the former shareholder ranks as an unsecured creditor of the company for the sum payable on redemption.

(2) A redemption under this section is not a distribution for the purposes of section 56, but is deemed to be a distribution for the purposes of subsection (1) and subsection (3) of section 61.

#### FINANCIAL ASSISTANCE IN CONNECTION WITH PURCHASE OF SHARES

Restrictions on giving financial assistance.

**70.** (1) A company shall not give financial assistance directly or indirectly for the purpose of or in connection with the acquisition of its own shares, other than in accordance with this section.

(2) Notwithstanding the provisions of subsection (1), a company may give financial assistance for the purpose of or in connection with the acquisition of its own shares, if the board has previously resolved that —

- (a) giving such assistance is in the interest of the company;

- (b) the terms and conditions on which the assistance is given are fair and reasonable to the company and to any share holders not receiving that assistance; and
- (c) immediately after giving the assistance, the company will satisfy the solvency test.

(3) Where the amount of any financial assistance approved under subsection (2) together with the amount of any other financial assistance given by the company which is still outstanding, exceeds ten *per centum* of the company's stated capital, the company shall not give the assistance unless it first obtains from its auditor or if it does not have an auditor from a person qualified to act as its auditor, a certificate to the effect that—

- (a) he has inquired into the state of affairs of the company; and
- (b) he is not aware of anything to indicate that the opinion of the board that the company will, immediately after giving the assistance satisfy the solvency test, is unreasonable in all the circumstances.

(4) The giving of financial assistance under this section is not a distribution for the purposes of section 56.

(5) Where a company acts in contravention of the provisions of this section, every officer of the company who is in default shall be guilty of an offence and be liable on conviction to a fine not exceeding one million rupees or to a term of imprisonment not exceeding five years or to both such imprisonment and fine.

**71.** (1) The provisions of section 70 shall not apply to the giving of financial assistance by a company for the purpose of or in connection with the acquisition of its own shares, if—

Transactions not prohibited by section 70.

- (a) the company's principal purpose in giving the assistance is not to give it for the purpose of that



acquisition or the giving of the assistance is an incidental part of any other larger purpose of the company; and

- (b) the assistance is given in good faith in the interest of the company.

(2) The provisions of section 70 shall also not apply in respect of—

- (a) a distribution to a shareholder approved under section 56;
- (b) the issue of shares by the company;
- (c) a repurchase or redemption of shares by the company;
- (d) anything done in terms of a compromise reached under the provisions of Part IX or a compromise or arrangement approved under the provisions of Part X;
- (e) the lending of money by a company in the ordinary course of business, where the ordinary business of the company includes the lending of money;
- (f) the provision by a company in good faith in the interest of the company, of financial assistance for the purposes of an employees' share scheme;
- (g) the granting of loans by a company to its employees other than directors in good faith in the interest of the company, with a view to enabling those persons to acquire beneficial ownership of shares in the company.

CROSS-HOLDINGS

**72.** (1) A company which is a subsidiary of another company (referred to in this section as the “holding company”)—

Restriction on subsidiary holding shares in holding company.

- (a) shall not acquire shares in the holding company;
- (b) may continue to hold any shares in the holding company acquired by the subsidiary before it became a subsidiary of the holding company, but may not exercise any right to vote which is attached to those shares.

(2) Nothing in subsection (1) shall apply to a company which —

- (a) holds shares in the holding company only as a trustee or legal representative and has no beneficial interest in the shares; or
- (b) holds an interest in shares in the holding company by way of security for the purposes of a transaction entered into by it in the ordinary course of business and on usual terms and conditions.

(3) Where a body corporate—

- (a) became a holder of shares in the holding company before the commencement of this Act, it may continue to be a member of that company, but it has no right to vote in respect of those shares at any meetings of the company; and
- (b) is permitted to continue as a member of the holding company by virtue of paragraph (b) of subsection (1) and paragraph (a) of this subsection, an allotment of fully paid shares in the company may be validly made by way of capitalisation of reserves of the company, which shares also will have no right to vote.

(4) The provisions of subsections (1), (2) and (3) shall apply in relation to a nominee for a company which is a subsidiary, as if a reference to the company were a reference to the nominee.

TRANSFER OF SHARES AND DEBENTURES, EVIDENCE OF TITLE &C.

Transfer not to be registered except on production of instrument of transfer.

**73.** Notwithstanding anything to the contrary in the articles of a company, it shall not be lawful for the company to register a transfer of shares in or debentures of the company, unless a proper instrument of transfer has been delivered to the company:

Provided that, nothing in this section shall affect any power of the company to register as shareholder or debenture holder, any person to whom the right of any shares in or debentures of the company has been transmitted by operation of law.

Transfer by legal representative.

**74.** A transfer of the shares or other interests of a deceased shareholder of a company made by his legal representative shall, although the legal representative is not himself a shareholder of the company, be as valid as if he had been such a shareholder at the time of the execution of the instrument of transfer.

Registration of transfer at the request of transferor.

**75.** On the application of the transferor of any share or other interest in a company, the company shall enter in its share register the name of the transferee in the same manner and subject to the same conditions, as if the application for the entry were made by the transferee.

Notice of refusal to register transfer.

**76.** (1) Where a company refuses to register a transfer of any shares or debentures, the company shall within two months from the date on which the transfer was lodged with the company, send to the transferee a notice of such refusal.

(2) Where a company fails to comply with the provisions of subsection (1)—

- (a) the company shall be guilty of an offence and be liable on conviction to a fine not exceeding fifty thousand rupees; and

- (b) every officer of the company who is in default shall be guilty of an offence and be liable on conviction to a fine not exceeding fifty thousand rupees.

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

Certification of transfers.

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

(3) For the purposes of this section —

- (a) an instrument of transfer shall be deemed to be certified 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, where —
  - (i) the person issuing the instrument is a person authorised to issue certificated instruments of transfer on the company’s behalf; and
  - (ii) the certification is signed by a person authorised to certify transfers on the company’s behalf or by an officer or servant either of the company or of a body corporate so authorised ;
- (c) a certification shall be deemed to be signed by any person where —
  - (i) it purports to be authenticated by his signature or initials, whether handwritten or not; and

- (ii) it is not shown that the signature or initials was or were placed there neither by himself nor by any person authorised to use the signature or initials for the purpose of certifying transfers on the company's behalf.

Duties of company with respect to issue of certificates.

**78.** (1) Every company shall within two months from the date of allotment of any of its shares, debentures or debenture stock and within two months from the date on which a transfer of any such shares, debentures or debenture stock, is lodged with the company, complete and have ready for delivery the certification of all shares, the debentures, and the certificates of all debenture stock allotted or transferred, unless the conditions of issue of the shares, debentures, or debenture stock provide otherwise.

For the purposes of this subsection the expression “transfer” means a transfer duly stamped and otherwise valid and does not include a transfer which the company is for any reason entitled to refuse to register and does not register.

(2) Where a company fails to comply with the requirements of subsection (1)—

- (a) the company shall be guilty of an offence and be liable on conviction to a fine not exceeding fifty thousand rupees ; and
- (b) every officer of the company who is in default shall be guilty of an offence and be liable on conviction to a fine not exceeding fifty thousand rupees.

(3) Where any company on whom a notice has been served requiring the company to make good any default in complying with the provisions of subsection (1), fails to make good the default within ten days from the date of service of the notice, the court may on the application of the person entitled to have the certificates or the debentures delivered to him, make an order directing the company and any officer

of the company, to make good the default within such time as may be specified in the order and any such order may provide that all costs of and incidental to the application shall be borne by the company or any officer of the company responsible for the default.

**79.** A certificate signed under the name of the company by a director and secretary of the company specifying any shares held by any shareholder, shall be *prima facie* evidence of the title of the shareholder to the shares.

Certificate to be evidence of title.

**80.** The production to a company of any document which by law is sufficient evidence of probate of a will or of letters of administration of the estate or confirmation as executor of a deceased person having been granted to some person, shall be accepted by the company notwithstanding anything in its articles, as sufficient evidence of the grant.

Evidence of grant of probate, &c.

#### SPECIAL PROVISIONS AS TO DEBENTURES

**81.** (1) Every company which has issued debentures shall maintain a register of holders of debentures of the company. The register shall, except when duly closed (but subject to such reasonable restrictions the company may impose at a general meeting so that not less than two hours in each day shall be allowed for inspection), be opened for the inspection by the registered holder of any such debentures or any holder of shares in the company without a fee, and by any other person on payment of a fee of ten rupees or such lesser sum as may be specified by the company.

Right of debenture holders and shareholders to inspect register of debenture holders and to have copies of any trust deed.

(2) For the purposes of subsection (1), a register shall be deemed to be duly closed if closed in accordance with the provisions contained in the company's articles or in the debentures, or in the case of debenture stock, in the stock certificates or in the trust deed or other document securing the debentures or debenture stock, during such period or periods not exceeding in the whole thirty days in any year, as may be therein specified.

(3) Any registered holder of the debentures or holder of shares as aforesaid or any other person, may require a copy of the register of the holders of debentures of the company or any part thereof to be furnished on payment of a sum not exceeding ten rupees for every page required to be copied.

(4) A copy of any trust deed for securing an 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 rupees or such lesser sum as may be specified by the company, or where the trust deed has not been printed, on payment of a sum not exceeding one rupee for every hundred words required to be copied.

(5) Where inspection of the register is refused or a copy as aforesaid is refused or not forwarded—

- (a) the company shall be guilty of an offence and be liable on conviction to a fine not exceeding fifty thousand rupees; and
- (b) every officer of the company who is in default shall be guilty of an offence and be liable on conviction to a fine not exceeding fifty thousand rupees.

(6) Where a company is in default as referred to in subsection (5), the court may also by order compel an immediate inspection of the register or direct that any copy required as aforesaid shall be sent to the person requiring them.

Directors  
prohibited from  
acting as  
trustees.

**82.** A director of a company shall not be capable of being appointed as a trustee for the holders of debentures of the company :

Provided that the provisions of this section shall not apply to any director of a company who holds office as a trustee for the holders of debentures of the company, by virtue of an appointment made on or before July 2, 1982, and accordingly any such director may continue in office as trustee until the termination of that appointment.

**83.** A condition contained in any debentures or in any deed for securing any debentures whether issued or executed before or after the appointed date, shall not be invalid by reason only of the fact that the debentures are thereby made irredeemable or redeemable only on the happening of a contingency, however remote, or on the expiration of the period, however long.

Perpetual  
debentures.

**84.** (1) Where a company has redeemed any debentures previously issued, then—

Power to reissue  
redeemed  
debentures in  
certain cases.

- (a) unless any provision to the contrary, whether express or implied, is contained in the company's articles or in any contract entered into by the company; or
- (b) unless the company has by passing a resolution to that effect or by some other act, manifested its intention that the debentures shall be cancelled,

the company shall have and shall be deemed always to have had, power to reissue the debentures, either by reissuing the same debentures or by issuing other debentures in their place.

(2) On a reissue of redeemed debentures, the person entitled to the debentures shall have and shall be deemed always to have had the same priorities as if the debentures had never been redeemed.

(3) Where a company has deposited any of its debentures to secure advances from time to time on current account or otherwise, the debentures shall not be deemed to have been redeemed by reason only of the account of the company having ceased to be in debit, whilst the debentures remained so deposited.

(4) The reissue 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, shall be treated as the issue of a new debenture for the purposes of



stamp duty. But it shall not be so treated for the purposes of any provision limiting the amount or number of debentures to be issued :

Provided that any person lending money on the security of a debenture reissued under the provisions of this section which appears to be duly stamped, may give the debenture in evidence in any proceedings for enforcing his security without payment of the stamp duty or any penalty in respect thereof, unless he had notice or but for his negligence might have discovered, that the debenture was not duly stamped. In any such case the company shall be liable to pay the proper stamp duty and penalty.

(5) The re-issue after the appointed date of debentures redeemed before that date, shall not prejudice any right or priority which any person would have had under or by virtue of any mortgage or charge created before that date.

Specific performance of contracts to subscribe for debentures.

**85.** A contract with a company to take up and pay for any debentures of the company may be enforced by an order for specific performance.

## PART V

### SHAREHOLDERS AND THEIR RIGHTS AND OBLIGATIONS

Meaning of “shareholder”.

**86.** (1) In this Act, the term “shareholder” means—

- (a) a person whose name is entered in the share register as the holder for the time being of one or more shares in the company ;
- (b) until a person’s name is entered in the share register, a person named as a shareholder in an application for incorporation of a company at the time of registration of the company ;