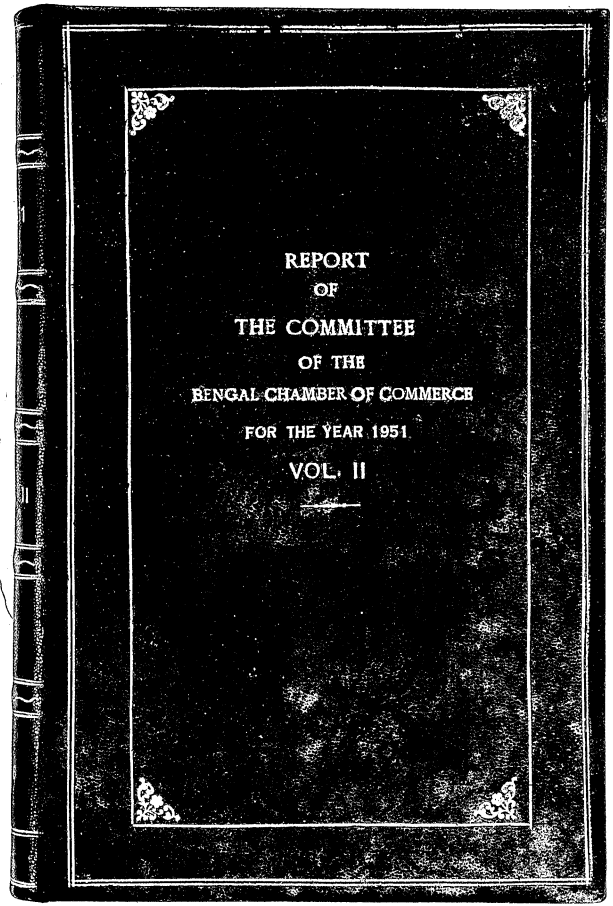
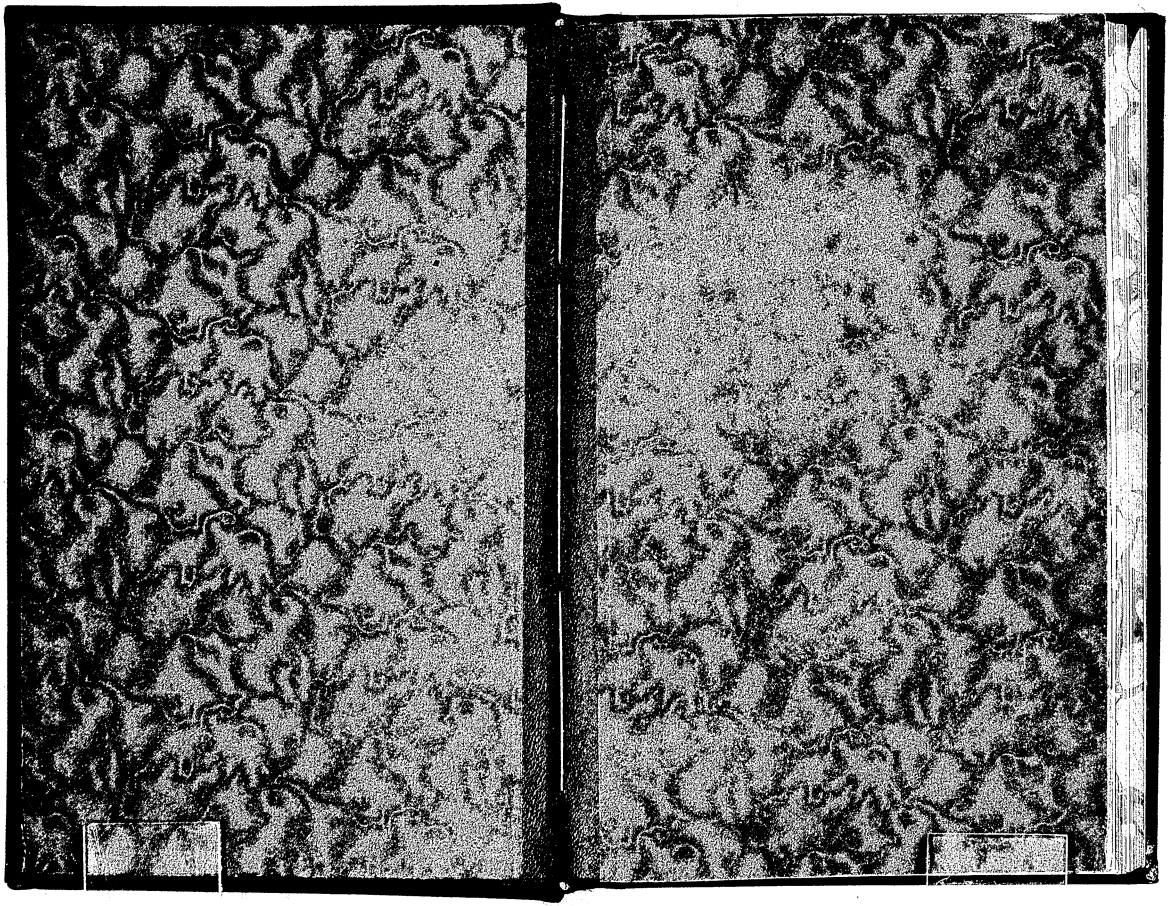

REPORT
OF
THE COMMITTEE
OF THE
BENGAL CHAMBER OF COMMERCE
FOR THE YEAR 1951
VOL. II



REPORT

OF

THE COMMITTEE

OF

THE BENGAL CHAMBER OF COMMERCE

AND

INDUSTRY

FOR THE YEAR 1951.

VOL. II.

Documents & Correspondence

1952.

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AND
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REPORT

DETAILED CORRESPONDENCE

GENERAL

THE TERRITORIAL ARMY (AMENDMENT) BILL, 1952.

Bill No. 17 of 1952.

(AS INTRODUCED IN PARLIAMENT)

A

BILL

further to amend the Territorial Army Act, 1948.

BE it enacted by Parliament as follows :—

1. Short title.—This Act may be called the Territorial Army (Amendment) Act, 1952.

2. Insertion of new sections 7A and 7B in Act LVI of 1948.—After section 7 of the Territorial Army Act, 1948 (hereinafter referred to as the principal Act), the following sections shall be inserted, namely :—

"7A. *Reinstatement in civil employ of persons required to perform military service.*—(1) It shall be the duty of every employer by whom a person who is required to perform military service under section 7 was employed to reinstate him in his employment on the termination of the military service in an occupation and under conditions not less favourable to him than those which would have been applicable to him had his employment not been so interrupted :—

Provided that if the employer refuses to reinstate such person or denies his liability to reinstate such person, or if for any reason reinstatement of such person is represented by the employer to be impracticable, either party may refer the matter to the prescribed authority and that authority shall, after considering all matters which may be put before it and after making such further inquiry into the matter as may be prescribed, pass an order—

(a) exempting the employer from the provisions of this section, or

(b) requiring him to re-employ such person on such terms as he thinks suitable, or

(c) requiring him to pay to such person by way of compensation for failure to re-employ a sum not exceeding an amount equal to six months' remuneration at the rate at which his last remuneration was payable to him by the employer.

(2) If any employer fails to obey the order of any such authority as is referred to in the proviso to sub-section (1), he shall be punishable with fine which may extend to one thousand rupees, and the court by which an employer is convicted under this section may order him (if he has not already been so required by the said authority) to pay to the person whom he has failed to re-employ a sum not exceeding an amount equal to six months' remuneration at the rate at which his last remuneration was payable to him by the employer, and any amount so required to be paid either by the said authority or by the court shall be recoverable as if it were a fine imposed by such court.

(3) In any proceeding under this section it shall be a defence for an employer to prove that the person formerly employed did not apply to the employer for reinstatement within a period of two months from the termination of his military service.

(*d*) The duty imposed by sub-section (*1*) upon an employer to reinstate in his employment a person such as is described in that sub-section shall attach to an employer who, before such person is actually required to perform military service under section 7, terminates his employment in circumstances such as to indicate an intention to evade the duty imposed by that sub-section, and such intention shall be presumed until the contrary is proved if the termination takes place after the issue of orders requiring him to perform military service under this Act,

7B. *Preservation of certain rights of persons required to perform military service.*—When any person required to perform military service under section 7 has any rights under any provident fund or superannuation fund or other scheme for the benefit of employees maintained in connection with the employment he relinquishes, he shall continue, so long as he is engaged in military service under the provisions of this Act, to have in respect of such fund or scheme such rights as may be prescribed ".

3. Amendment of section 14, Act LVI of 1948.--In sub-section, (2) of section 14 of the principal Act, after clause (*d*), the following clauses shall be inserted, namely :—

"(*dd*) specify the authority for the purpose of the proviso to sub-section (*1*) of section 7A and the manner in which any inquiry may be held by him ;

(*ddd*) define the rights under section 7B ;"

STATEMENT OF OBJECTS AND REASONS

The Territorial Army Act, 1948, does not at present contain any provision affording protection in civil employment to those who join the Territorial Army, with the result that some private employers have found it possible to refuse to allow their employees to retain a lien on their appointments while on duty with the Territorial Army. These difficulties were foreseen when the Territorial Army Act was enacted, but it was hoped at the time that employers would generally co-operate with Government in this national effort and voluntarily ensure that no person suffers either financially or otherwise by joining the Territorial Army.

2. Although many employers have treated their employees fairly, even generously, in this matter, experience has shown that there are many others who are not willing to act likewise. It has therefore become expedient to amend the Territorial Army Act to impose a statutory liability on the employers to afford necessary protection in civil employment to members of the Territorial Army and and the proposed legislation seeks to achieve this purpose.

BALDEV SINGH

NEW DELHI ;

The 9th February, 1952.

Recruitment.

Circular No. 159-51 Calcutta, 23rd July 1951.

From—Bengal Chamber of Commerce.

To—All members of the Chamber.

The Recruiting Officer, Calcutta H. Q. has asked for the Chamber's further co-operation in the recruitment of men for the Territorial Army by passing on to members the request for their assistance contained in the attached copy of his circular* letter. As an assurance is given in this that the training of recruits will not interfere with the normal office or workshop hours of staff members, the Chamber Committee recommend, as before, that, where possible, no obstacles be placed in the way of employees desiring to join the Territorial Army.

Concessions to staff joining the Territorial Army.

Circular No.28 Calcutta, 31st August 1950.

From—Bengal Chamber of Commerce.

To—Head of firms.

It will be recalled that in 1948 the Chamber issued recommendations to members on the subject of enrolment in the Territorial Army and suggested that employees should be encouraged to join by means of certain concessions suggested by the Government of India.

In the light of developments that have since taken place and of further correspondence which has been exchanged with the Defence Ministry of the Government of India, the Chamber Committee—on the advice of their Industrial Affairs Sub-Committee—now recommend that the policy of members in this matter should be guided by the following conventions which represent the nearest measure of common agreement acceptable to the major industries in the Calcutta area :—

*Not reproduced.

(1) *Extent of Enlistment*

(a) Individual employees to obtain the consent of the Management before enlistment.

(b) Subject to individual circumstances and to the discretion of individual employers, permission and encouragement to enlist ordinarily to be given up to 5% of the staff but not in the case of key men or essential personnel.

(2) *Ordinary Training*

Ordinary parades and other forms of routine training not to interfere in any way with normal mill, factory, workshop or office hours.

(3) *Camp Leave*

(a) Arrangements to be made with the Military Authorities for individual units to hold their annual camps as far as possible either (i) during the 10 days closure under the Factories Act in the particular industry or area from which the bulk of the recruits in the unit are drawn or (ii) during a recognised holiday period such as the Pujahs ;

(b) CAMP LEAVE—(four days) on pay and allowances to be deducted from paid leave, due under (a) above or otherwise, in the case of factory employees and, in the case of office staff, from casual or privilege leave due.

(4) *Calling Out In Aid of Civil Power*

Special leave to be granted with pay less any military pay and allowances.

(5) *Embodiment*

Special leave without pay.

(6) *Lien on Job*

Employees joining the T. A. to have a lien on their jobs when they are called out in aid of the civil power or embodied for any length of time and to be taken back on the same pay as they would have drawn according to their grades had they continued in the regular service of the employer. The period of service when called out or embodied not to be treated as a break in service for the purposes of any gratuity or retiring benefit scheme.

The Chamber has brought to the attention of the Defence Ministry the desirability of the Territorial Army arrangements for ordinary training and camps being brought into line with items (2) and (3) above.

Territorial Army.

Circular No. 259/231 Calcutta, 11th January 1952.

From—Bengal Chamber of Commerce.

To—The Secretary to the Government of India, Ministry of Defence.

I am directed to refer you to the letter No. 8590/O/D I(a) dated the 27th November, 1948, which the Ministry of Defence addressed to Chambers of Commerce in connection with recruitment into, and concessions allowed to employees of commercial and industrial concerns joining, the Territorial Army. As you know, employing interests were asked to agree to the following measures :—

(*i*) that the wages of the employees who join the Territorial Army will not be cut during the period they are on training ;

(*ii*) that when the civil pay of the employees exceeds the military pay and allowances, the employers will make good any difference between the two, when the men are called up in aid of civil power ; and

(*iii*) that all who wish to join the Territorial Army will be given an assurance that they will continue to have lien on their jobs when they are called up or embodied for any length of time and will be taken back when they are disembodied from the Territorial Army, without suffering in any way financially by their service with the Territorial Army.

2. The Chamber gave its full support to these recommendations at the time and has on all occasions since then indicated to its members, and to the trade and industrial Associations attached to it, the Chamber's agreement with requests made by the Army Authorities for their co-operation in encouraging recruitment and making reasonable provision for absences of employees from work to attend parades and training camps for the required period

3. When orders for the embodiment of men in certain Territorial Army units were issued during 1951, the Chamber decided, as a special case, to recommend the grant to these men of special leave and payment of difference between their civil and military pay and allowances, notwithstanding the fact that Government's proposal as quoted under (*ii*) above was in respect of men called up *in aid of the civil power* and that in the case of those embodied the assurance required under (*iii*) was only that they should have a lien on their jobs.

4. As it happened, the period of embodiment was far in excess of the Chamber's expectations or of the apparent necessity; moreover many employers were approached during this time by the Ministry for categorical assurances to their embodied employees not only that they would allow them to retain a lien on their posts but would also make good the difference between their civil and army rates of pay, indicating to the Ministry that this would be done. Very naturally, many employers so addressed desired to know the implications of this commitment, particularly as time progressed and their employees were not released.

5. After long and careful consideration the Chamber has decided on behalf of the interests it represents that it cannot in the future undertake, as an obligation, the making up of pay to embodied employees, irrespective of the circumstances of the emergency or the period of embodiment, although each such occasion will be considered on its merits. In the light of the foregoing, Government will readily appreciate this attitude. The fact that the Chamber, on its own initiative, decided last August to facilitate Government's embodiment arrangements by recommending such payments to affected employees cannot be regarded as a precedent which the Chamber will be willing to uphold in any circumstances, or that employers as a whole would be willing to accept. As stated, each such occasion would need to be considered on its merits and circumstances.

Territorial Army.

Letter No. 259/554 Calcutta, 22nd January 1952.

From—Bengal Chamber of Commerce.

To—The Secretary to the Government of India,
Ministry of Defence.

Further to my letter No. 259/238 of the 11th January concerning the embodiment of members of the Territorial Army, I am directed to bring to your notice the following terms of a notice served by the Officer Commanding, 925 E & M Coy. (T. A.), Dhanbad, on the Manager of Messrs. The Tata Iron & Steel Co.'s Digwadih Colliery :—

Subject :—*Courses and Attachment of Territorial Army Recruits.*

Further to this office No 1028A/6/925A date 30th July '51 the position is clarified.

(a) While on course and attachments—Government will meet all expenditures, lodging, boarding, clothing, Travelling expenses, etc.

(b) Desirable that colliery managements grant them exttaordinary leave of absence and make up any difference of pay between Army and Civil rates.

(c) Periods of absence is 2 to 3 weeks.

(d) Colliery managements ensure continuity of service while on Army course and attachments for purpose of bonus and other facilities".

It will be seen that a demand has been made firstly for extraordinary leave of two or three weeks, during which continuity of service is maintained for the purpose of bonus and other facilities; and secondly for the employer to make up the difference between army and civil rates of pay.

The coal industry, as represented by the Indian Mining Association—one of the major industrial Associations connected with the Chamber—agreed some time ago to the grant of 5 days

leave with pay in the case of employees ordered to attend the annual camps, a principle which has been accepted by all the industrial interests in the Chamber. But the notice cited above refers to courses and attachments of Territorial Army recruits to units of the regular army. This is a new development entailing further absences from work and payments to absent employees which the Chamber would like to have clarified. The main question arising is whether these courses and attachments are in lieu of the annual camp. If so, the period of absence notified is longer than that spent at the annual camp; but in any case employers could not be expected to grant leave for more than the agreed period—in this instance 5 days paid leave with casual leave for the remaining period and an assurance that employees absent on courses or attachments will have a lien on their jobs.

As indicated in the Chamber's previous letter, the acceptance of the conditions enumerated in the Defence Ministry's letter of the 27th November, 1948 and the Chamber's agreement to the payment of the amount of employees' pay and allowances in excess of Army pay, appears to have created the impression that employers would be prepared to agree to this arrangement on all occasions and for any length of time wherein the army authorities decide to order employees in the Territorial Army away from their normal vacations. For reasons which will be obvious to Government, industry and commerce could not commit themselves to such a wide undertaking. In the instance under discussion, the number of men required to be released for attendance at courses and attachments is small and unlikely to interfere with the working of the colliery. That, however, might not always be the case. It is, in consequence, important to the Chamber and its associated industrial interests that Government should understand the employers' point of view and appreciate that there must be a limit to the concessions they can grant to their employees in the Territorial Army, however much they may desire to encourage recruitment. For instance, in the case of the coal industry the benefits of its statutory bonus and provident fund scheme are

obtained by workers putting in the requisite number of attendances, so that if the request of the Commanding Officer 925 E. & M. Coy. (T. A.) is complied with, the employee concerned would qualify for bonus payments as well as the statutory allowances made for leave under section 6 of the Coal Mines Bonus Scheme.

The Chamber desires to co-operate with Government on all occasions of national emergency and in preparations for such emergencies; but would like to have an assurance that the workings of industry and commerce and the heavy commitments which employing interests have to meet will also be given due consideration.

LAW & LEGISLATION—GENERAL

PROPOSED AMENDMENTS TO THE INDIAN COMPANIES ACT.

Circular No. 112—1951 Calcutta, 7th May 1951.

From—Secretary, Bengal Chamber of Commerce.

To—All Members of the Chamber.

MEMO :—The attached Supplementary Memorandum which the Chamber has submitted to the Company Law Expert Committee, following the evidence given by representatives of the Chamber before the Expert Committee on the 15th March, is issued for the information of members.

Supplementary Memorandum to the Company Law Expert Committee on points which the Chamber undertook to consider or reconsider when oral evidence was given by the Chamber's representatives before the Expert Committee on 15th March 1951.

General : Supplementary Note on the provisions which it is recommended should be introduced into the Indian Companies Act in respect of the enforcement of legal proceedings (Annexure II), Investigation (Annexure III), Protection of Minorities (Annexure XI) and Administration (Annexure XVI).

It will be recalled that at the hearing of the Chamber's evidence on the 15th March, the Chamber's representatives advocated the introduction into the Indian Act of provisions on the lines of Sections 164 to 175 and Sections 210 of the English Act, suitably adapted to conditions here. They suggested, and the Chamber still strongly urges, action on these broad lines because of the apparent impracticability of any attempt, by means of detailed specific legislation, to close for the future the loopholes which exist and must always exist for the dishonest entrepreneur without making the Act a source of continual and unnecessary harassment for the honest majority of those engaged in company management and promotion. It is desirable at the outset of this supplementary memorandum to explain what the Chamber has in view.

Briefly, what is recommended is—*firstly*—much wider powers on the lines of the English Act for High Courts, or if necessary for special Company Courts, to intervene in company affairs, in which connection the Chamber representatives on the 15th March deprecated any suggestion that District Courts should have these powers of investigation for which they are not sufficiently experienced and competent.

Secondly, what is visualised is a Central Government establishment or Commission, under the charge of a Registrar-General, the functions of which would be to investigate complaints or offences relating to the management of companies, where necessary to institute proceedings in the High or special Company Courts mentioned above and generally to deal with matters not within the scope of the Registrars in the various States. The latter, in the Chamber's view, should ordinarily confine themselves to the work of registration and filing because (though with notable exceptions) they do not usually have the very wide experience and qualifications necessary in the Chamber's view for the heavy responsibilities which would attach under these proposals to the Registrar-General's establishment. Nor are the offices of the State Registrars sufficiently staffed as a rule to cope with these responsibilities. It is, however, accepted that pending the training of the staff which would be required for the Registrar-General's establishment, the Registrars in the States could carry out much of the preliminary and more routine enquiries and investigations on behalf of the Registrar-General in cases where complaints are made by an aggrieved minority of shareholders.

Thirdly, it was suggested by the Chamber's representatives that, on the lines of Section 210 of the U. K. Act, an aggrieved minority should have the direct right of application to the Court, such right of application lying with a minimum number of shareholders (say 200 or 10% of the total number of shareholders) or with those holding a specified percentage, which it was recommended should be 10% of the issued share capital of the company.

Fourthly, the Chamber recommended that the Central Government Authority referred to in 'secondly' above should in all cases work in close consultation with an Advisory Board consisting wholly or predominantly of those directly concerned with and experienced in company management. In that connection the point was made by a member of the Expert Committee, at the hearing of the Chamber's evidence, that prior consultation with the Advisory Board might stultify the whole investigation owing to leakage of information or an unsympathetic attitude on the Board's part towards the Central Authority's intention of instituting investigation measures. The Chamber appreciates this point and recommends that, while the normal procedure should involve prior consultation with the Advisory Board on the powers to be exercised and the action to be taken by the Central Authority, in cases of urgency or where there is reason to think that the investigation would be prejudiced or unduly influenced by such prior consultation, the Central Authority should have power to act at once but should immediately report on the action taken, and the circumstance in which it was taken, to the Advisory Board to keep the latter in full touch.

There are two points which should be amplified in connection with this suggested machinery for the investigation of complaints, the institution of proceedings and the enforcement of the law against dishonest managements :

(a) In the context of Annexure VI (Managing Agents) it was suggested by the Chamber's representatives and is now confirmed to be the view of the Chamber that provisions on the lines of Sections 164/175 and 210 of the English Act could be wide enough to cover, for instance, any substantial alterations in the control or management of the managing agency company or of the managed company where any such alteration has unfairly and materially prejudiced, or is likely so to prejudice, the interests of the company or any substantial section of its members.

(b) In the context of Annexure III (Investigation) it was suggested on the 15th March, and is now again recommended for the consideration of the Expert Committee that, in adapting Section 164 of the English Act to the requirements of India, the provisions of the Section should be so widened that —(i) all officers and agents of any managing agents of a company whose affairs are being investigated should for the purposes of the section be deemed to be officers and agents of the managed company ; (ii) an Inspector appointed to investigate the affairs of a managed company should have powers to investigate also the affairs of the managing agency in so far as may be necessary for the purposes of his investigation of the affairs of the managed company and to report thereon so far as may be relevant to the investigation of the managed company ; and (iii) the powers to proceed on the Inspector's report should be clearly applicable to the managing agents, its directors and officers.

The foregoing general description of the machinery which the Chamber has in view will, it is hoped, be of assistance to the Expert Committee in considering this extremely complicated and difficult aspect of the revision of the Indian Act and will serve also to explain the background of several of the more detailed proposals and comments which appear below.

Annexure I—*Private Companies.*

In dealing with the suggestion contained in Item 2 of this annexure, namely that "the annual accounts and the balance sheets of private companies should be filed with the registrar" the Chamber witnesses advocated (in preference to the U. K. procedure which involves the difficulty of exempted companies) the adoption of the recommendation of the Millin Committee in South Africa, namely that private companies should be required to file their balance sheets but not their profit and loss accounts or directors' reports which are properly confidential.

Annexure III : Item 9—*"The Registrar may also take the help of the Police Officer for the purpose of the investigation because it has been found that investigation by a Police Officer assists in the quick and efficient prosecution of the guilty persons".*

If arrangements on these lines are considered necessary as an accompaniment to the introduction into the Indian Act of provisions on the lines of Sections 164 to 175 of the English Act, the Chamber would not oppose the idea provided there were reasonable safeguards against abuse of the powers. It is, the Chamber thinks, very desirable that investigation proceedings should be entrusted only to officers of sufficient experience and standing and that the Inspectors should at least be of the status of Gazetted Government Officers. In that event, the Chamber as an alternative to the Inspector being accompanied by a police officer, would favour the Inspector being vested with the authority of a "Public officer" as defined in the Indian Penal Code.

Annexure IV—*Transfer of shares.*

On the 15th March, the Chamber representatives were asked to amplify in this supplementary memorandum their views on the suggestion that powers should be given to the Central Government to require information as to persons interested in shares or debentures. Reference was made in that connection to the provisions of the Income Tax Act which preclude an Income Tax Officer from divulging information and the Chamber was asked for its opinion on the proposal that provisions on the lines of Sections 172 to 174 of the English Act should be introduced.

After full consideration of this proposal, the Chamber agrees to something on the lines of these sections of the English Act being incorporated in the Indian Act.

As was pointed out at the hearing, the amendment for this purpose of the Income Tax Act would have much wider repercussions than are desirable and the Chamber would view any such suggested amendment with strong disfavour.

Annexure VI—*Managing Agents.*

Paragraph 2, Item 1 : "Managing Agents shall not directly or indirectly engage themselves in business similar to the business of the company in which they are managing agents".

The Expert Committee will recall that there was considerable discussion on the 15th March with regard to the Chamber's view that Section 87H of the Act is adequate for this purpose and calls for no radical amendment. The Chamber representatives undertook to reconsider the matter and find themselves in general agreement with the view that the law should be such that managing agents should not be in a position to compete with their managed companies by means of partnerships or through any private company whether a subsidiary or not. In other respects, such abuses as may take place on the part of the unscrupulous few would, in the Chamber's opinion, be more effectively and properly catered for by the introduction into the Indian Act of provisions on the lines of Section 164 to 175 and 210 of the English Act, already strongly recommended. Incidentally and on a point raised by a member of the Expert Committee on the 15th March, the adoption of this course would also provide a remedy should any managing agency house be suspected of unfairly benefiting any managed company in which thay had a substantial shareholding compared with one in which they had a lesser interest.

To attempt to go any further than this by means of specific detailed legislation would, the Chamber considers, only have the result of involving honest Managing Agents in unnecessary and impracticable restraints and interference, and, as is pointed out in the concluding paragraph of this Memorandum, any revisions of Section 87H will call for very careful drafting to avoid such a result.

Paragraph 2, Item 3 : "The appointment of managing agents in the case of private companies shall be prohibited".

The Chamber witnesses on the 15th March reiterated their opposition to this proposal expressed, for the reasons stated, in

the Chamber's original memorandum but according to the precis which accompanied your letter No. 4(22)-CLEC/50-51 of the 16th April, they undertook to examine the problem of "chain managing agents" mentioned by Mr. J. J. Kapadia. The witnesses recall the point being raised but had not understood that their further views on it were expected. They can only repeat that such a set of circumstances has never come within their experience and add the view that if, by such means, malpractices are perpetrated, the Chamber would certainly have no objection to suitable measures being taken to prevent them provided the measures introduced for the purpose are not such as to lead to the harassment of managing agents who do not stoop to these devices.

Paragraph 2, Item 4 : "Companies shall not be eligible for appointment as managing agents".

The point was raised on the 15th March that in the event of a public company being managing agents, the existing management might sell out with the result that the control of the managed company or companies might fall into undesirable hands. The Chamber in this connection wishes to confirm the view expressed at the hearing that such an eventuality would be adequately covered by the proposed introduction into the Indian Act of a provision on the lines of Section 210 of the English Act widened to the extent indicated in sub-paragraph (a) on page 2 of this memorandum but with a safeguard to the effect that the section would not come into operation except at the instance of a specified percentage of shareholders or shareholding as already suggested.

Paragraph 2, Item 12 : "Every managing agency agreement shall be filed with the Registrar".

In the Chamber's original memorandum the necessity for such a provision was questioned. As stated on the 15th March, the Chamber now accepts the proposal on the assumption that a copy certified by an officer of the company shall suffice for the purpose.

Paragraph 2, Item 17 : "Current accounts with the managing agents shall be prohibited".

The Expert Committee will recall in this connection that the Chamber representatives, in reiterating their opposition to this proposal, agreed that it would be reasonable to place a limit on the amount of the current account to be maintained by the managed company with the managing agents and suggested that a limit of Rs. 50,000/- would be appropriate.

Financial inter-relationship of managing agents and managed companies.

In this context, the Chamber's representatives undertook on the 15th March (*i*) to supply the Expert Committee with particulars of instances in which managing agents, outside their ordinary obligations as managing agents, have come to the rescue of their managed companies when the latter have been financially embarrassed and (*ii*) to examine Mr. J. J. Kapadia's suggestion that large managing agency group arrangements might react to the detriment of the other companies in the group should any one of them, or the managing agents themselves, get into difficulties—in which connection he referred to a Tariff Board Report of 1932, presumably the Board's report on the grant of protection to the Cotton Textile Industry.

As regards (*i*), Appendix 1 to this supplementary memorandum contains a random but fairly representative range of examples of the type of financial assistance which is frequently given by reputable managing agents to their managed companies.

On the second of the two questions mentioned above, the Chamber ventures to submit that though the circumstances which Mr. Kapadia had in mind must vary in individual cases and each such case would need investigation on its merits, the general assumption of adverse reactions on the group of companies as a whole is not a criticism of the managing agency system as such because the same repercussions would be felt on the individual component companies of any group of associated companies not operating through managing agents. The Tariff

Board report to which Mr. Kapadia referred also gives the other side of the picture, namely the advantages of experience, expertise and economies which accrue to the managed companies from the managing agency system ; and it is to be remembered that in 1932, when the Tariff Board wrote this report, there was no prohibition on managed companies lending to their managing agents whereas since 1937 this has not been allowed. It is appreciated that since 1937 this provision has to some extent been avoided by placing money with the Managing Agents on current account, but the Chamber's suggestion made above under item 17 would sufficiently close this loophole. To the extent to which the financial standing of the managing agents or of the individual managed companies in the agency, may affect the others, there is now less scope for the unfortunate consequences of financial interdependence which Mr. Kapadia had in mind. In fact, the Chamber feels that one of the main advantages of the Managing Agency system is that it does give the Managing Agents a long-term continuing interest in the fortunes of their managed companies—an interest which is less marked in the case of individual managers or directors. It is further suggested that abuses on the part of officers of the Managing Agents are less likely than in the case of this alternative form of individual management as there is less possibility of collusion on the part of two or more such officers.

Annexure VII—Directors.

The Chamber's representatives were asked to examine Section 96A of the Canadian Companies Act and Section 78 of the U. S. A. Securities Exchange Act and to express their views on the desirability of something on these lines being introduced into the Indian Act with the object of preventing Directors from taking undue advantage of their knowledge as Board members. The Canadian provision requires every Director of a public company to furnish an annual return of his interest in the company and stipulates that he shall not "speculate for his personal account, directly or indirectly in the shares or other securities of the company". The U. S. A. Act, which

requires the submission of returns of beneficial ownership to the Exchange, provides that any profit realised by the director from the sale or purchase of the company's shares shall *insure* to the company in certain specified circumstances.

The Chamber fully supports the ideas underlying these provisions of the Canadian and U. S. A. Law but finds it difficult to see how they could be made effective in India—if indeed they are at all effective in Canada or the U. S. A. The means of evading them are so obvious to any one with knowledge of the ramifications of the stock markets that provisions on the same lines in the Indian Act would merely result in harassment of an honest director without in any way deterring the less scrupulous.

Annexure IX—*Auditors—Item 12 : "At present the auditor's report should state whether or not the balance sheet exhibits a true and correct view of the company's affairs. The words 'true and correct view' should be substituted by the words 'true and fair view' ".*

At the hearing before the Expert Committee, the Chamber deligation pointed out that, in their view, it would not be advisable to incorporate, in the Indian Companies Act, a provision requiring the Auditors to report on whether or not the Balance Sheet of the Company reveals a "true and fair view" of the state of the Company's affairs.

Under the United Kingdom Companies Act, an Auditor is now required to report on the basis of "true and fair view", and experience there has shown that difficulties, which were probably never visualised by the Legislature, have arisen through the use of these words.

Thus, provision for Depreciation may be made in many ways. A Company might, in good years have depreciated its assets very considerably so that they appear in the Accounts at a value considerably lower than that at which they should appear if the Accounts are to show a "fair view" of the state of the company's affairs. In such circumstances, while the Accounts show the true and *correct* state of the company's affairs there is

considerable doubt as to whether they exhibit a true and *fair* view. This is only one example, but other complications can easily arise if the word "fair" is introduced, as it might be argued that a result, obtained by reasonable commercial practice, might not give a "fair view" at any particular date.

The above remarks are primarily applicable to the report to be made on Balance Sheets, but apply equally to any report stating that a Profit and Loss Account shows a "fair" view of the profits for the year as, to instance once more the position of Depreciation as an example, it is exceedingly difficult to define what is a "fair" charge for depreciation in any year.

The Chamber feels, therefore, that no change should be made in the wording of the report to be furnished by Auditors either in relation to the Balance Sheet or in relation to the Profit and loss Account.

Annexure X—Accounts.

The Chamber representatives undertook on the 15th March to submit in greater detail their views on the recommendation of the Institute of Chatered Accountants of India with regard to the contents of the Profit and Loss Account and the form of the Balance Sheet.

The Chamber is in agreement with the Council that it is desirable that adequate disclosure should be made in the *Profit and Loss Account*, and is generally in agreement with the Council's views.

There are, however, a few matters of detail which it is felt should be amended.

(1) In the draft of section 132 sub-section (3) there is a reference to "credits or receipts in respect of extraneous or non-recurrent transactions or transactions of an exceptional nature". It appears to the Chamber that difficulties might arise in considering whether or not a transaction is recurring and it is thought that this provision should be omitted.

Similarly, difficulties may arise in determining whether a transaction is of an exceptional nature and provided that it is

made clear that the gross income from every source is disclosed, it does not appear necessary to include this provision.

As an example of what the Chamber has in mind there have recently been shipments of coal by Coal Companies to the U. K. and it might be argued that these are exceptional and non-recurring.

It appears to the Chamber that the whole field is covered if, in addition to items (ix) and (x) of the Council's recommendations, there is added a clause on the lines of Section 14 (6) (b) of Part I of the English Schedule in the U. K. Companies Act, 1948.

Reference is also made to "non-recurrent and exceptional profits" under paragraph (xi) and it is suggested that this should be omitted.

(2) Some Companies have followed the practice of showing the cost of sales in place of disclosing purchases, opening and closing stocks, and the Chamber sees no reason why this alternative should not be permitted.

(3) At the same time it is considered that where there has been any change in the method of valuation of stocks or anything of this description which affects profits materially, it should be shown separately in the Profit and Loss Account.

(4) As a general rule the Chamber thinks that, so far as possible, the Profit and Loss Account should be complete in itself and not contain notes, and therefore that any note is unnecessary where provision with regard to depreciation has been provided in a manner other than a normal debit.

The items which the Chamber cousiders all companies should be required to show in the Profit and Loss Account are detailed in the draft schedule attached as Appendix II.

As regards the proposed form of *Balance Sheet*, the Chamber has the following observations to make additional to those contained in the Chamber's original memorandum to the Expert Committee.

The Chamber does not agree that it is necessary to lay down the exact form in which the Balance Sheet of

any company is to be prepared, but, in the event of its being decided that a form of Balance Sheet should be prescribed, there are one or two points in connection with the proposed form which it is thought should be altered, some of which have already been covered in the Chamber's original memorandum :—

1. Livestock should not be included under the heading "Fixed Assets".

2. The Chamber does not consider that it should be necessary to value assets under under Group II at Cost or at Market Value whichever is less, and in many cases it might be most undesirable to do this, e.g., where the investments have been written down below cost and market value is above cost. The position will be adequately covered if it is made obligatory to show the market value of the Company's quoted investments and the value of unquoted investments as determined by the Directors.

3. The Chamber does not consider that any attempt should be made to prescribe the method to be adopted in valuing Stock. It has been suggested above that in the Profit and Loss Account any material respect in which items in the Profit and Loss Account are affected by a change in the basis of accounting should be separately shown. This would cover the case of any variation in the method of valuing Stock. With this provision and the provision that the mode of valuation must be stated against the figure of Stock appearing in the Balance Sheet, the Chamber thinks that the position is adequately covered. In any case, unless what is meant by the phrase "Market Price" is fully explained, great difficulties in interpreting this phrase would arise.

4. The Chamber does not agree that a statement should be attached to the Balance Sheet giving a list of companies in which the investment under Group II have been made, and the other information as suggested in Note 2.

5. The Chamber considers that the information to be given under IV, Loans and Advances, is quite adequate without any additional information as suggested in Note 3.

6. It is agreed that Capital Reserves should be shown separately in the Balance Sheet, but in many cases such reserves may or may not be available for distribution as dividend. As the question of availability for distribution as dividend can only be determined with reference to each case and to the circumstances existing at the time of proposed distribution it is considered that the words "not available for dividend" should be omitted.

Miscellaneous additional points.

(1) The Expert Committee kindly said that they would welcome any additional points or suggestions whether embodied in the Government of India's original memorandum or not. At the present stage, the Chamber has no new points to raise or suggestions to offer except to remark that they are in agreement with the following recommendations which are known to have been placed before the Expert Committee already :—

(*a*) That persons who are about to have a company registered should be permitted to reserve the proposed ***name of the Company*** for a period of a month before the memorandum of Association containing such name is submitted to the Registrar ;

(*b*) that it should be permissible for a company, if it so wishes, to submit a type-written or cyclostyled copy of its *Memorandum and Articles of Association* to the Registrar ;

(c) the *copy of the prospectus* lodged for registration should be dated and should be lodged within, say, 14 days of that date and should be issued within a period of not more than three months from the date on which it is lodged for registration. If issued after that, it should be deemed to be a prospectus of which a copy has not been registered ;

(d) every *prospectus* submitted to the Registrar for registration should be accompanied by the written consent to act of all persons named in it as Auditors, Solicitors or Bankers to the Company ;

(e) to ensure that the *prospectus* is actually before the recipient of any application form for shares offered to the public by means of the prospectus, the application form should be issued with and attached to the prospectus.

(2) In Item 6 of the precis of the Chamber's evidence, forwarded with the Expert Committee's letter of the 16th April, reference is made to a statement said to have been made by Sir Paul Benthall, who led the Chambers' delegation, that a note would be submitted on the drafting of the amendments considered to be necessary in the Act. There is some misunderstanding of what the Chamber representatives intended. According to their recollection, the point arose in connection with the suggested amendment of Section 87H relating to managing agents competing in the same business as their managed companies. In expressing their general views on that subject, the Chamber delegation emphasised the extreme importance of accurate and precise drafting should any amendment of this particular section be contemplated.

APPENDIX I

Examples of assistance given by Managing Agency Houses to their Managed Companies.

Case A.—An Engineering company which had made reasonable profits between 1915 when it was floated and the end of

1919, made heavy losses after the first World War because of a collapse of the metal market. It continued to run at a loss for the next 20 years although its paid up capital had increased meantime to Rs. 27 lakhs. All through this period the Managing Agents had foregone their commission and had advanced several lakhs of rupees. The company was reconstructed in 1941 and is now a flourishing concern. But this was possible only because the Managing Agents had foregone by cancellation of loans and the interest thereon and commission a sum exceeding Rs. 15 lakhs.

Case B.—In another case the Managing Agents found it necessary owing to the slump following World War I to reconstruct a saw mills and timber company by writing down shares from Rs. 10/- to Rs. 3/- each after the Managing Agents had agreed to forego a loan of Rs. 8,96,461/- and the interest on it of Rs. 1,30,532/-. Up to 1938 the Managing Agents continued to forego interest on their loan and their allowance, totalling about Rs. 15 lakhs. They bore the full expense of the Calcutta office approximately Rs. 20,000/- per annum (excluding rent) and in June 1939 the shares of the managed Company were again written down to Re. 1/-. On this occasion the Managing Agents gave up debenture bonds held by them to the value of Rs. 4,08,560/- for cancellation. In all the Managing Agents have suffered to the extent of about Rs. 29,35,000/- quite apart from the costs of the Calcutta establishment of the company.

Case C.—A paper mills company having at the end of World War I a capital of Rs. 25,85,000/- found it extremely difficult to earn profits during the slump of the early 1920's due to severe competition from imported paper dumped on the Indian market at prices below production cost. By 1925 the debit balance of the company's Profit and Loss Account stood at about Rs. 36,40,000/-. The Managing Agents at this time proposed reconstruction and offered to forego the loan of Rs. 30 lakhs which they had advanced to the company. The face value of the shares was written down to the extent of Rs. 18 lakhs and the debits reduced by the amount of the loan which the Manag-

ing Agents had agreed to forego. In consideration the Managing Agents received 175,000 deferred shares of Re. 1/- each. The company is now a highly efficient and important concern with a capital of Re. 1 crore due to the action taken by the Managing agents at a critical juncture in its history. While the company was in difficulties the Managing Agents also forewent all remuneration.

Case D.—An inland steamship company which at 30th June 1950 had a subscribed capital of Rs. 12,60,000 had received an unsecured loan of Rs. 9 lakhs from the Managing Agency. This loan was granted voluntarily and enabled the company to secure from other sources funds required for continuing operations without resorting to either voluntary liquidation or sale of assets which would have meant a serious curtailment of the company's activities.

Case E.—A company considerably embarrassed for funds has hypothecated its assets to a bank. The limit of drawings under the hypothecation has been reached and the Managing Agents have advanced the further finance required mainly to cover the cost of increased production for the fulfilment of Government indents and requirements. The Managing Agency has no security other than a reversionary interest in the assets and they are only covered to the extent of the excess of assets after meeting the claims of the bank. In addition, collection of Managing Agency commission has been postponed.

Case F.—The following forms of aid have been given by one Managing Agency to companies in their charge, in addition to overdrafts allowed by the bankers of the companies to the fullest extent. All cases were directly or indirectly connected with industrial development.

(1) Over Rs. 4 lakhs was advanced for the repayment of a debenture loan which could not be met and so saved the credit of the company and averted liquidation. When the advance was made the market was depressed and the company running at a loss. It has now developed and is the second largest producing unit of its kind in the country.

(2) During the 1930 slump the balance of debit in the profit and loss account was about Rs. 3 lakhs. The Managing Agency loaned about Rs. 4 lakhs and capital reconstruction was supported by the Managing Agents in the absence of outside support, in which they agreed to write off part of the loan. The company has prospered and is now capable of undertaking heavy structural work on a large scale.

(3) For an extension of the company's activities, the total cost of plant and buildings amounted to Rs. 10 lakhs. No support was forthcoming from the public and the money was advanced by the Managing Agents. The venture is promising success.

(4) The managed company previously did jobbing work and was never very profitable. A few years ago it was decided to remodel the works for quantitative production. The Managing Agents put at its disposal money and property to the value of Rs. 15 lakhs. The projects have not yet matured, but may prove profitable and be able to supply highly specialised products previously imported.

(5) During 1944 it was decided to develop a new property. Costs have been higher than estimated and to enable the company to meet liabilities when its profits were adversely affected by costly production and when the shareholders and the public could not be asked for additional funds, the Managing Agency advanced Rs. 22 lakhs. The loan is still in existence.

Case G.—A company which had been faced from time to time with financial embarassment was taken over by a Managing Agency three years ago. It is still running at a loss. With the object of keeping it afloat and placing it on a better footing the Managing Agency have granted loans amounting to over Rs. 17 lakhs.

Case H.—An engineering company was affected by the severe depression of 1930/31 and had to reduce its capital by

writing down the value of its shares from Rs. 10/- to Rs. 1½ (paid up). Managing Agents made an unsecured loan during this period. In 1934 the company's debenture loan of Rs. 5 lakhs fell due and was repaid, but subscriptions to a new debenture loan were inadequate so that the Managing Agents had to increase their unsecured loan by over Rs. 2 lakhs to provide the necessary capital. Later the loan was again increased for expansion of production. The company progressed and in 1939 proposals for reconstructions of its capital were adopted : it was able to raise capital on debentures and since then has consolidated its financial position.

Case I.—The Managing Agents of a company of paper manufacturers loaned the capital necessary for pioneering the manufacture of paper from bamboo. During the first eight years of the Company's existence its average indebtedness to the Managing agents was over Rs. 15 lakhs the largest overdraft being Rs. 28 lakhs. The accumulated loans of the Company during this period were not wiped out until 1933, the first dividend being paid in 1934. The total dividends paid up to date represent an average of only 4% per annum. Until September 1927 no remuneration was drawn by the Managing Agents. A recommendation of the Tariff Board that the company be given financial assistance from Government because of the importance of pioneering the new paper-marking process, was turned down, and because of the heavy losses the company was incurring, it was not possible to raise money from the investing public. Without the assistance of the Managing Agents during its difficult initial stages, the company would not have survived.

Case J.—In consequence of post-World War I inflation the cost of machinery and plant installed on the incorporation of a coke company, estimates were much exceeded. In 1923 the company's overdraft with its Managing Agents was Rs. 17,00,000/-, which was eventually liquidated so that by 1930 it was able to pay its first dividend. As the result of the advance from the Managing Agents of cash to the extent af 1½ times the paid up capital—without any hope of immediate return—the

company was saved from liquidation and in World War II was able to render valuable service to the Government of India in the supply of war materials.

Case K.—The resources of two jute mills which were situated in an area where there was considerable labour trouble and which suffered also from the unsatisfactory position of the industry during 1949/50 and had to be substantially re-equipped after the war, were so diminished that after taking into account the amount they were able to secure from hypothecation of their assets to the Banks, they owed the Managing Agents Rs. 54,00,000 and Rs. 25,00,000 respectively. At present one of the companies is still financed to the extent of Rs. 25,00,000 on an unsecured loan, interest of Rs. 1,37,083 having been waived ; and in the case of the other, remuneration has been waived to the extent of Rs. 9,58,625.

Case L.—Two tea companies incorporated in the U. K. with Managing Agents in Calcutta are situated in the district where difficulties of low yield per acre and consequent increases in the cost per lb. of tea, plus costs of supplying foodstuffs to labour forces, have left the companies with practically no reserves. For rehabilitation of their gardens, the Managing Agents advanced sums amounting at the end of 1949 to Rs. 54,48,000. The companies' crops are now financed by way of Cash Credit Accounts, but the limit is insufficient for their requirements and at the height of the season it is still necessary for the Managing Agents to advance sums exceeding the Bank's limits. At one stage these amounted to Rs. 24,00,000. Thus the finances have been improved and loss of capital through forced sale of properties has been avoided. Interest on the Managing Agents loans amounting to Rs. 62,638 has been waived.

APPENDIX II

Draft of ..... Schedule.

The profit and loss account shall include the particulars set forth under the following headings:—

1. The gross income before any deduction on account of costs or expenses showing separately turnover and

distinguishing income from investments, dividends from investments, dividends from subsidiary companies and each other source from which the income has been derived.

II. The gross expenditure showing separately any expenditure chargeable under the following heads :—

(*i*) the purchases and the opening and the closing trading stocks or, alternatively, the cost of sales.

(*ii*) Provision for depreciation on fixed assets.

(*iii*) Interest on debentures and other fixed loans.

(*iv*) Amounts provided for taxation on profits.

(*v*) Amounts provided for the redemption of (a) share capital and (b) loan capital.

(*vi*) Provisions for losses of subsidiary companies.

(*vii*) The total of the amounts paid as remuneration to the Managing Agents, if any, whether as fees, percentages, or otherwise ;

(*viii*) The total of the amounts paid, whether as fees, percentages or otherwise, to the Directors as remuneration for their services and where a special resolution of the company so requires to the Manager. If any Director of the company is by virtue of the nomination, whether direct or indirect, of that company, a Director of any other company any remuneration or other emoluments received by him for his own use, whether as a Director of, or otherwise in connection with the management of, that other company, shall be shown in a note at the foot of the account or in a statement attached thereto ;

(*ix*) The aggregate amounts of any compensation paid to Managing Agents, Directors or former Managing Agents or Directors of the company, (1) as such and (2) otherwise, for loss of office or in

connection with or arising out of their retirement from the company or from any other company of which the Director is a Director by virtue of the nomination, whether direct or indirect of the company sub-divided to show the amounts paid respectively.

(*a*) by the company ;

(*b*) by such other companies ; and

(*c*) by any other person.

(*x*) The aggregate amounts of any pension paid to Directors or former Directors of the company, (1) as such and (2) otherwise, sub-divided to show the amounts paid respectively ;

(*a*) by the Company—

(*b*) by any subsidiary company ;

(*c*) corresponding figures for the immediately preceding period.

III. Any profits or expenditure applicable to any previous period if material.

IV. The aggregate, if material, of amounts withdrawn from reserves.

V. The aggregate, if material, credited in respect of provisions made for specific liabilities contingencies or commitments no longer required.

VI. Any material respects in which any items shown in the profit and loss account are affected by any change in the basis of accounting.

VII. Dividends paid or proposed, disclosing whether such amounts are stated before or after deduction of income tax.

VIII. Corresponding figures for the immediately preceding period or, where the account is for a half-yearly period, for the corresponding period in the immediately preceding financial year of the company.

INDIAN COMPANIES (AMENDMENT) ORDINANCE, 1951

Circular No. 73-AC. dated 31st July 1951 issued by the Associated Chambers of Commerce of India to its Constituent Chambers, reproducing B. C. C. letter No. 5603 of 31-7-51 to the Government of India, Ministry of Finance.

The Chamber Committee have given their consideration to the above-mentioned Ordinance and wish to invite Government's attention to certain points which to their mind detract from the purpose for which it was issued.

2. Clause 2 of the Ordinance places a restriction on the amendment of articles relating to appointment of directors, and covers companies not under managing agents which naturally therefore extends to include managing agency companies themselves. It asks, by the total prohibition placed therein upon any changes or variations in agreements that, for instance, if a managing director wishes to retire and thus vary his agreement, this would not be permissible without the approval of Central Government. Again, it also asks that the approval of Central Government should be accorded to an increase in the remuneration attached to the post of the managing director or any other director. The Chamber feel that it cannot be Government's intention so to burden the Advisory Commission appointed under Section 289B, and they would therefore ask for Government's reconsideration of Section 86J so that it may be re-worded or amended in such manner as will exclude points of the foregoing nature.

3. They next turn to Clause 4 of the Ordinance and would point out that it does not cover cases where, owing to the Board of Directors having become hostile, the administration of the company's affairs is rendered impossible and ***the managing agent left with no option but to resign***, nor does it cover cases where the managing agents are forced to resign office or attempts made to force them so to do. Accordingly the Chamber would suggest the addition of the words "and by the Central Government" in Section 87B(f).

4. Section 87BB, *vide* Clause 5 of the Ordinance, makes it impossible for any transfer of shares in the managing agent company to take place without the approval of Central Government. It further has the effect of automatically cancelling all managing agency agreements should such transfers be registered without Government's approval. The Chamber again feel that this was not Government's intention and therefore suggest for consideration that the word "constitution" where it appears in the phrase "no change in the constitution of the managing agent" should be replaced by the words "controlling interest". The Chamber suggest that this would enable transfers of shares not amounting to a change in the controlling interest of the managing agent being permissible without Government's approval, and further that it would render unnecessary the Explanation to Section 87BB which, if Government agreed, could therefore be deleted.

5. Reference is invited to Clause 7 of the Ordinance and in particular to Section 153C(2) (a). The words "the member" where they appear in the opening phrase of the section in question should be, the Chamber suggest, replaced by the words "a member or members".

6. It would be appreciated if Government would be so good as to give this matter their urgent consideration.

INDIAN COMPANIES (AMENDMENT) ACT, 1951.

Circular No. 231-1951.—Calcutta, 28th September, 1951.

From—Secretary,
Bengal Chamber of Commerce.

To—All members of the Chamber.

The Indian Companies Amendment Act was passed into law on the fourteenth day of September 1951 from which date the Indian Companies Amendment Ordinance was repealed. A copy of the Act is forwarded for members' information together with a copy of the form that has at present to be submitted to Government in quintuplicate when any application is being made.

Application for approval under the Act has to be made to Government in the following circumstances :—

1. *Directors and Managing Directors.*

(a) When it is proposed to amend the Articles of Association of a Company or vary an Agreement—

(i) relating to the appointment of a Managing Director or the appointment or election of a Director not liable to retire by rotation ; or

(ii) where the amendment or variation purports to increase or has the effect of increasing, whether directly or indirectly, the remuneration of a Managing Director *or any other Director.*

(b) Where the number of Directors is proposed to be increased in excess of the number provided for in the Articles of Association.

(c) Where it is proposed to re-appoint after the 21st July 1951 a Managing Director in place of the Managing Director holding office on that date if the terms of such re-appointment purport to increase or have the effect of increasing the remuneration that the Managing Director was receiving immediately before such re-appointment.

(d) Any amendment in the Articles which purports to increase or has the effect of increasing, whether directly or indirectly, the remuneration of the Managing Director or any other Director.

N. B.—No approval under the above is required in the case of a Private Company unless it is the subsidiary of a Public Company. Also no approval is required when an ex-officio director retires and is replaced unless a change in the articles or a variation in an agreement is involved.

2. *Managing Agents.*

(a) Any amendment in the Articles of or any variation in an Agreement which purports to extend or has the effect of extending the term of office of the Managing Agent holding office as such on the 21st July, 1951.

(b) The following are considered under Section 87 BB of the Act to be changes in the constitution of the Managing Agent and require the approval of the Central Government—

(i) Where the Managing Agent is a firm, by a change amongst the Partners of the firm whether caused by retirement or replacement of any of the Partners or by the introduction of a new Partner save and except where the change amongst the Partners is caused by death or retirement by efflux of time.

(ii) Where the Managing Agent is a Company, by a change amongst the Board of Directors or Managers thereof whether caused by retirement or replacement of any Director or Manager or by the introduction of a new Director or Manager or by a change in the registered ownership of the shares save and except in the following circumstances namely :—

(a) Where the change amongst the Board of Directors or Managers is caused by the death or retirement by efflux

of time of any of them or the change is caused by death of a shareholder of the Managing Company.

N. B.—Clarification is being sought from Government regarding the implication of the word "change". The Chamber's legal advisers consider that the word implies replacement of one person by another and not just a change caused by the retirement of a person who is not replaced but Government may, of course, take the contrary view.

(b) Where the Managing Agent is a Public Company whose shares are dealt in or quoted on a Principal Stock Exchange in India, a change in the registered ownership of the shares shall not require Government approval unless Government publish a Notification to this effect in the official Gazette.

(iii) Where the Managing Agent is a Private Company by the conversion thereof to a Public company.

(c) The appointment of a Managing Agent of a Company for the first time after the 21st July 1951.

(d) Any amendment in the Articles or any variation in any Agreement relating to the appointment of the Managing Agent, which increases or has the effect of increasing, whether directly or indirectly, the remuneration of the Managing Agent.

(e) The re-appointment after the 21st July 1951 of a Managing Agent holding office as such on that date, or the appointment of a new Managing Agent in place of the Managing Agent holding office as such on that date or thereafter provided that no approval for the above shall be required in the case of a Private Company unless it is the subsidiary of a Public Company.

3. Before any application for approval is made to the Central Government on the form enclosed the Company must issue a general notice not individual notices to the members indicating the nature of the approval sought and publish such notice once in the principal Indian language of the State in which the registered office is situate in a newspaper circulated in that State and once in an English language newspaper similarly circulated and copies of the notification duly certified by the Company shall be attached to the application for approval.

4. Complaints may be made to the Central Government by a Managing Agent, Managing Director or any other Director of the Company on the grounds that, as a result of a change in the ownership of the shares held in the Company, a change in the Board of Directors is likely to take place which, if allowed, would affect prejudicially the affairs of the Company. If the Central Government, after making enquiries, is satisfied that it is correct to do so it may make an Order that no resolution passed or action taken to effect a change in the Board of Directors after the date of complaint shall have effect unless confirmed by the Central Government.

5. Section 153C gives power to a person who has obtained the consent in writing of not less than 100 members of the Company or not less than one-tenth in number of the members, whichever is less, or to a member holding not less than one-tenth of the issued share capital of the Company, to apply to the Court on the grounds that the affairs of the Company are being conducted in a manner prejudicial to the Company or in a manner prejudicial to some of the members of the Company.

On such an application, if the Court is of the opinion that the affairs of the Company are being conducted as aforesaid and that to wind up the Company would unfairly and materially prejudice the interests of the Company or any part of its members, the Court may with a view of bringing to an end the matters complained of make such Order as it thinks fit and such Order may provide for—

(*a*) the regulation of the conduct of the Company in future ;

(*b*) the purchase of the shares or interests by any members of the Company or any other Company ;

(*c*) a reduction in the Company's capital ;

(*d*) the termination of any Agreement between the Company and its Manager, Managing Director or any of its other Directors.

The above does not purport to be a full summary of every provision of the Act, but it is designed to give members details of the circumstances and matters which require the approval of the Central Government.

6. All applications to the Central Government should be addressed as follows :—

B. K. KAUL, ESQ., I.C.S.,
Deputy Secretary.
Department of Economic Affairs, Ministry of Finance,
Government of India, New Delhi.

7. As regards the form of application appended* to this Circular—which was the one in use under the former Ordinance—the Chamber is at present in touch with the Government of India in an endeavour to arrange for its replacement, under the Rules to be issued under the amendment Act, by a series of simpler and more appropriate application forms designed to cover the circumstances in which for example (a) there is a change in the controlling interest of a Company (b) application is made for the approval of share transfers not involving a change of control, (c) application is made for the approval of changes among the Partners or Board of Directors and (d) application is made for the approval of changes in the remuneration of Directors.

* Not reproduced.

THE INDIAN COMPANIES (AMENDMENT) ACT, 1951.

BE it enacted by Parliament as follows :—

1. **Short title.**—This Act may be called the Indian Companies (Amendment) Act, 1951.

2. **Insertion of new section 86J in Act VII of 1913.**—After section 86I of the Indian Companies Act, 1913 (hereinafter referred to as the principal Act) the following section shall be inserted, namely :—

"86J. *Restrictions on appointment, reappointment and number of directors, their remuneration etc.*—(1) Notwithstanding anything to the contrary contained in any other provision of this Act or in the articles of, or any agreement with any, company—

(*a*) any amendment in the articles or any variation in the agreement—

(*i*) which relates to the appointment of a managing director or the appointment or election of a director not liable to retire by rotation ; or

(*ii*) which purports to increase or has the effect of increasing, whether directly or indirectly, the remuneration of a managing director or any other director, or

(*b*) any increase in the number of directors provided for in the articles, except where the increase is within the maximum limits permissible under the articles as in force on the 21st day of July, 1951, or

(*c*) the appointment of a managing director for the first time after the 21st day of July, 1951, or the reappointment after the said date of a managing director holding office as such on that date or thereafter, if the terms of such reappointment purport to increase or have the effect of increasing, whether directly or indirectly the remuneration that the managing director was receiving immediately before such reappointment, shall be void unless approved by the Central Government.

(2) Where a complaint is made to the Central Government by the managing agent, managing director or any other director of a company that as a result of a change in the ownership of the shares held in the company a change in the board of directors is likely to take place which, if allowed, would affect prejudicially the affairs of the company, the Central Government may, if after such inquiry as it thinks fit to make it is satisfied that it is just and proper so to do, by order direct that no resolution passed or action taken to effect a change in the board of directors after the date of the complaint shall have effect unless confirmed by the Central Government and any such order shall have effect notwithstanding anything to the contrary contained in any other provision of this Act or in the articles of the company.

(3) Nothing contained in this section shall apply to a private company unless it is a subsidiary company of a Public company.

3. **Insertion of new section 87AA in Act VII of 1913.**—After section 87A of the principal Act, the following section shall be inserted, namely :—

87AA. *Restrictions on extension of term of office of managing agents*—In the case of a company managed by a managing agent, any amendment in the articles of, or any variation in any agreement with, the company which purports to extend, or has the effect of extending, the term of office of a managing agent holding office as such on the 21st day of July, 1951, shall,

notwithstanding anything to the contrary contained in any other provision of this Act or in the articles or agreement, be void unless approved by the Central Government.

Provided that nothing contained in this section shall apply to a private company unless it is a subsidiary company of a public company."

4. Amendment of section 87B, Act VII of 1913.—After the proviso to clause (c) of section 87B of principal Act, the following further proviso shall be inserted, namely :—

"Provided further that in the case of public company managed by a managing agent, a transfer of his office by the managing agent shall be void unless the approval of the Central Government is also obtained."

5. Insertion of New section 87BB in Act VII of 1913.—After section 87B of the principal Act, the following section, shall be inserted, namely :—

"*87BB. Restrictions on change in the constitution of a managing agent*—(*1*) Notwithstanding anything contained in any other provision of this Act in the case of a public company managed by a managing agent which is a firm or a company, no change in the constitution of the managing agent shall have effect unless approved by the Central Government and every such firm or company shall cease to be entitled to act as such managing agent from the date of such change until the approval of the Central Government is obtained.

Explanation 1—Subject to the exceptions contained in *Explanation II*, a change in the constitution of a managing agent takes place in any of the following circumstances, namely :—

(*a*) where the managing agent is a firm, by a change among the partners of the firm, whether caused by the retirement or replacement of any of the partners or by the introduction of a new partner as the case may be,

(*b*) where the managing agent is a company, by a change among the board of directors, or managers thereof, whether caused by the retirement or replacement of any director or manager or by the introduction of a new director or manager, as the case may be, or by a change in the registered ownership of shares in the company,

(*c*) where the managing agent is a private company, by the conversion thereof into a public company.

Explanation II—No change in the constitution of a managing agent shall be deemed to have taken place in any of the following circumstances, namely :—

(*a*) where the managing agent is a firm, by a change among the patners of the firm caused by the death or retirement by efflux of time of a partner,

(*b*) where the managing agent is a company by a change among the board of directors, or managers caused by the death or retirement by efflux of time of any of them or a change caused by the death of any shareholder of the managing agency company.

(*2*) Notwithstanding anything contained in sub section (*1*), where the change in the constitution of the managing agent, which is a public company the shares whereof are for the time being dealt in or quoted on the principal stock exchanges of India, is due to a change in the registered ownership of the shares held therein, nothing contained in that sub-section shall apply to the managing agent unless the Central Government, by notification in the Official Gazette, otherwise directs, and

any such notification may provide that with effect from such date as may be specified therein every such managing agent shall cease to be entitled to act as such until the approval of the Central Government is obtained to the change.

Provided that no such notification shall be issued unless the Central Government is of opinion that the change is of such a nature that it has affected or is likely to affect prejudically the affairs of the company which is being managed by the managing agent.

6. Insertion of new section 87CC in Act, VII of 1913.—After section 87C of the principal Act, the following section shall be inserted, namely :—

"87CC. *Restrictions on amendment of articles or agreement relating to appointment or remuneration of managing agents etc.* :—(*1*) Notwithstanding anything to the contrary contained in any other provision of this Act or in the articles of, or agreement with, any company,—

(*a*) The appointment of a managing agent for the company for the first time after the 21st day of July, 1951, and

(*b*) in the case of a company managed by a managing agent,

(*i*) any amendment in the articles of, or any variation in any agreement with the company which relates to the appointment of the managing agent or which purports to increase, or has the effect of increasing, whether directly or indirectly, the remuneration of the managing agent managing director or any other director, or

(*ii*) the reappointment after the 21st day of July, 1951, of a managing agent holding office as such on that date or the appointment of a new managing agent in place of the managing agent holding office as such on that date, or thereafter, shall be void unless approved by the Central Government.

(*2*) Nothing contained in this section shall apply to a private company unless it is a subsidiary company of a public company.

7. Insertion of new sections 153C and 153D in Act VII of 1913.—In Part IV of the principal Act, before section 154, the following heading and sections shall be inserted, namely :—

"*Alternative remedy to winding up in cases of mismanagement or oppression*

153C. *Power of court to act when company acts in a prejudicial manner or oppresses any part of its members.*—(*1*) Without prejudice to any other action that may be taken whether in pursuance of this Act or any other law for the time being in force, any member of a company who complains that the affairs of the company are being conducted—

(*a*) in a manner prejudicial to the interests of the company, or

(*b*) in a manner oppressive to some part of the members (including himself) may make an application to the court for an order under this section,

(*2*) An application under sub-section (1) may also be made by the Central Government if it is satisfied that the affairs of the company are being conducted as aforesaid.

(3) No application under sub-section (1) shall be made by any member, unless—

(a) in the case of a company having a share capital, the member complaining—

(i) has obtained the consent in writing of not less than one hundred in number of the members of the company or not less than one-tenth in number of the members, whichever is less, or

(ii) holds not less than one-tenth of the issued share capital of the company upon which all calls and other sums due have been paid ; and

(b) in the case of a company not having a share capital, the member complaining has obtained the consent in writing of not less than one-fifth in number of the members, and where there are several persons having the same interest in any such application and the condition specified in clause (a) or clause (b) of this sub-section is satisfied with reference to one or more of such persons, any one or more of them may, with the permission of the court, make the application on behalf of, or for the benefit of, all persons so interested, and the provisions of rule 8 of Order I of the First Schedule to the Code of Civil Procedure, 1908 (Act V of 1908) shall apply to any such application as it applies to any suit within the meaning of that rule.

(4) If on any such application the court is of opinion—

(a) that the company's affairs are being conducted as aforesaid, and

(b) that to wind up the company would unfairly and materially prejudice the interests of the company or any part of its members, but otherwise the facts would justify the making of a winding-up order on the ground that it is just and equitable that the company should be wound up,

the court may, with a view to bringing to an end the matters complained of, make such order in relation thereto as it thinks fit.

(5) Without prejudice to the generality of the powers vested in a court under sub-section (4), any order made under that sub-section may provide for—

(a) the regulation of the conduct of the company's affairs in future ;

(b) the purchase of the shares or interest of any members of the company by other members thereof or by the company ;

(c) in the case of a purchase of shares or interests by the company being a company having a shares capital, for the reduction accordingly of the company's capital or otherwise ;

(d) the termination of any agreement, howsoever arrived at, between the company and its manager, managing agent, managing director or any of its other directors ;

(e) the termination or revision of any agreement entered into between the company and any person other than any of the persons referred to in clause (d), provided that no such agreement shall be terminated or revised except after due notice to the party concerned and, in the case of the revision of any such agreement, after obtaining the consent of the party concerned thereto,

(f) the setting aside of any transfer, delivery of goods, payment, execution or other act relating to property made or done by or against the company within three months before the date of the application under sub-section (1), which would, if made or done by or against an individual, be deemed in his insolvency to be a fraudulent preference.

(6) Where an order under this section makes any alteration in, or addition to, the memorandum or articles of any company, then notwithstanding anything contained in any other provision of this Act, but subject to the provision of the order, the company concerned shall not have power without the leave of the court to make any further alteration in, or addition to, the memorandum or articles inconsistent with the provisions of the order but subject to the foregoing provisions of this sub-section the alterations or additions made by the order shall have the same effect as if duly made by a resolution of the company, and the provisions of this Act shall apply to the memorandum or articles as so altered or added to accordingly.

(7) A certified copy of every order under this section altering or adding to, or giving leave to alter or add to, the memorandum or articles of any company shall, within fifteen days after the making thereof, be delivered by the company to the registrar for registration, and if a company makes default in complying with the provisions of this sub-section, the company and every officer of the company who is in default shall be punishable with fine which may extend to five thousand rupees.

(8) It shall be lawful for the court upon the application of any petitioner or of any respondent to a petition under this section and upon such terms as to the court appears just and equitable, to make any such interim order as it thinks fit for regulating the conduct of the affairs of the company pending the making of a final order in relation to the application.

(9) Where any manager, managing agent, managing director or any other director or any other person who has not been impleaded as a respondent to any application under this section applies to be made a party thereto, the court shall, if it is satisfied that his presence before the court is necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the application, direct that the name of any such person be added to the application.

(10) In any case in which the court makes an order terminating any agreement between the Company and its manager, managing agent or managing director or any of its other directors, as the case may be, the court may if it appears to it that the manager, managing agent, managing director or other director, as the case may be has misapplied or retained or become liable or accountable for any money or property of the company or has been guilty of any misfeasance or breach of trust in relation to the company, compel him to repay or restore the money or property or any part thereof respectively with interest at such rate as the court thinks just or to contribute such sums to the assets of the company by way of compensation in respect of the misapplication, retainer, misfeasance or breach of trust as the court thinks just, and the provisions of sections 235 and 236 of this Act shall apply as they apply to a company in the course of being wound up.

Explanation—For the purposes of this section, any material change after the 21st day of July 1951 in the control of a company, or in the case of a company having a managing agent in the composition of the managing agent which is a firm or in a managing agent in the composition of a managing agent which is a company, may be deemed by the court to be a fact which would justify the making of a winding-up order on the ground that it would be just and equitable that the company should be wound up.

Provided that the court is satisfied that by reason of the change the interests of the company or any part of its members are or are likely to be unfairly and materially prejudiced.

158D. *Effect of termination of managing agency agreement etc.*—(*1*) Where by virtue of an order made under sub-section (*5*) of section 153C an agreement between a company and its manager, managing agents, managing director or other director as the case may be, is terminated or any other agreement is terminated or revised,—

(*a*) the order shall not give rise to any claim on the part of the manager, managing agent, managing director or other director, as the case may be, for damages or for compensation for loss of office or otherwise, whether the claim is made in pursuance of the agreement or otherwise.

(*b*) the order shall not give rise to any claim on the part of any other person for damages or for compensation for the termination or revision of any other agreement, and

(*c*) no manager, managing agent, managing director or other director or any associate of such managing agents shall, without the leave of the court, be appointed or reappointed or be entitled to act as the manager, managing agent, managing director or director of the company for a period of five years from the date of the order.

(*2*) If any person acts as the managing agent or manager of a company in contravention of the provisions of this section, such person, and in the case of a company each of its directors, shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to five thousand rupees, or with both.

(*3*) No court shall grant leave under this section unless notice of the application has been served on the Central Government and the Central Government has been given an opportunity of being heard in the matter.

Explanation—In this section, the expression 'associate of a managing agent, means—

(*a*) any firm of which the managing agent is a partner ;

(*b*) any partner of the managing agent ;

(*c*) any private company in which the managing agent or any partner of the managing agent or any officer of the managing agent is a member, director, managing agent or manager ;

(*d*) in the case of a managing agent which is a company, any subsidiary company of the managing agent and any director, managing agent or manager of the managing agent or any subsidiary company of the managing agent ;

(*e*) where the managing agent is a private company, any director or any member thereof ;

(*f*) any company of which the managing agent, whether alone or together with any partner of the managing agent, and where the managing agent is a company, any director of the managing agent is entitled to exercise, or control the exercise of, one-quarter or more of the voting power at any general meeting.

8. **Insertion of new section 289B in Act VII of 1913.**—After section 289A of the principal Act, the following section shall be inserted, namely,—

289B. *Power of Central Government to appoint advisory commission and to make rules in respect of certain matters*—(*1*) For the purpose of advising it in relation to any matter arising out of section 88J, section 87AA, clause (*c*) of section 87B, section 87BB, or section 87CC, the Central Government may constitute a commission consisting of not more than three persons with suitable qualifications and appoint one of them to be the chairman thereof.

(*2*) It shall be the duty of the commission to inquire into and advise the Central Government on all applications for approval made to the Central Government under any of the sections referred to in sub-section (*1*) and on all other matters which may be referred to it by the Central Government under any of the said sections.

(*3*) Every application for approval made to the Central Government under any of the sections referred to in sub-section (*1*) shall be in such form as may be prescribed.

(*4*) Before any application for approval is made to the Central Government, there shall be issued by or on behalf of the company a general notice to the members indicating the nature of the approval sought, and such notice shall be published once in the principal Indian language of the State in which the registered office of the company is situate in a newspaper circulating in that State, and once in English in a newspaper similarly circulating and copies of the publication duly certified by the company shall be attached to the application for approval :

Provided that nothing in this sub-section shall apply to a private company which is not the managing agent of public a company.

(*5*) For the purpose of making any inquiry under this section the commission may—

(*a*) require the production before it of any books or other documents in the possession custody or control of the company relating to any matter under enquiry ;

(*b*) call for any further information or explanation if the commission is of opinion that such information or explanation is necessary in order that the books or other documents produced before it may afford fully particulars of the matter to which they purport to relate ;

(*c*) with such assistance as it thinks necessary inspect any books or other documents so produced and make copies thereof or take extracts therefrom ;

(*d*) require any manager, managing agent, managing director or any other director or other officer of the company or any shareholder or any other person who, in the opinion of the commission, is likely to furnish information with respect to the affairs of the company relating to any matter under inquiry, to appear before it, and examine such person on oath or require him to furnish such information as may be required and administer an oath accordingly to the person for the purpose.

(6) If any person refuses or neglects to produce any book or other documents in his possession or custody which he is required to produce under this section or to answer any question put to him relating to any matter under inquiry, he shall be punishable with imprisonment for a term which may extend to two years and shall also be liable to fine.

(7) No suit or other legal proceeding shall lie against the Central Government the commission or any member of the commission in respect of anything which is in good faith done or intended to be done in pursuance, of this section or the sections referred to in sub-section 1 or of any rule or orders made thereunder.

9. **Repeal of Ordinance III of 1951.**—(1) The Indian Companies Amendment Ordinance, 1951 III of 1951 is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken in the exercise of any power conferred by or under the said Ordinance shall be deemed to have been done or taken in the exercise of the powers conferred by or under this Act, as if this Act were in force on the day on which such thing was done or action was taken.

INDIAN MERCHANDISE MARKS ACT.

Notification S. R. O.—440.

SRO-440.—In exercise of the powers conferred by sub-section (1) of section 12A of the Indian Merchandise Marks Act 1889 (IV of 1889), and in supersession of the notification of the Central Government in the late Ministry of Commerce, No. S. R. O. 498 dated the 2nd September 1950 the Central Government, being convinced on enquiry that it is necessary in the public interest so to do, direct as follows :—

1(a) Subject to the provisions of sub-section (3) of the said section, the classes of goods specified in column 2 of the schedule hereto annexed shall on and after the 1st January, 1952, on importation (where the goods are imported) and at the time of sale, whether by wholesale or retail, have applied to them in the English language an indication of the country in which they were made or produced in the manner specified in the corresponding entry in column 3 of the said schedule.

(b) Where such goods are made or produced in one country and packed in containers made or produced in another, the indication shall specify such countries.

(c) Where such goods are partly or wholly made or produced in one country and partly made or produced or finished or processed or embellished or completed in another country or other countries the indication if expressed as "Made abroad" or "Foreign Made" or "Manufacture of different countries outside India" shall be deemed to be sufficient for the purposes of this notification.

(d) Where such goods are produced in a foreign country but processed or embellished in India, the country of origin and the words "Processed in India" shall be indicated.

2. Where due to the smallness of the size of the goods or otherwise it is impracticable to mark the country of origin on the goods themselves, or where it is not possible to do so without adversely affecting the quality of the goods, or without undue expenditure, the indication may be applied on the wrapper, container or label attached.

3. In this notification :—

(a) The expression "Containers or coverings" includes a wrapper, cover, band, packet, box, carton, capsule, stopper, cork, top, frame, case, tin, can, phial, bottle, jar, vessel or any other covering or container in or with which the goods of any class specified in the schedule are imported, sold or exposed for sale ;

(b) "Label" includes any ticket, band, card or tag ;

(c) "applied" includes attached, enclosed annexed, inserted, secured, fastened, stitched or sewn.

SCHEDULE

PART I.

Goods made or produced outside India and the State of Jammu and Kashmir and imported into India.

Item No.	Class of goods.	Manner in which the indication shall be applied.
1	2	3
1. (a)	Apparatuses and appliances, electric and all kinds, assembled.	(a) On the goods themselves.
(b)	Parts, spare parts and accessories of apparatuses and appliances, electric and all kinds.	(b) On the containers or coverings or otherwise.
2.	Glass bulbs and globes including electric incandescent bulbs.	On the goods themselves.
3.	Electric cells and batteries of all kinds including primary batteries for dry cells, flash lamps, torch type, motor car batteries, and also plates for motor vehicle batteries.	do
4.	Fountain pen barrels.	do
5.	Chemicals, drugs, medicines and pharmaceutical products of all kinds.	On the containers or coverings.
6.	Cigarettes.	do
7.	Fents.	On the goods themselves.
8.	Lanterns and lamps of all kinds including electric torches and flashlights and automobile lamps.	On the goods themselves.
9. (a)	Machinery of all kinds, assembled.	do
(b)	Parts, spare parts and accessories of machinery of all kinds.	On the containers or coverings, or otherwise.
10.	Piecegoods of cotton, silk, artifical silk, staple fibre yarn and wool including mixture piecegoods, i. e., piece goods made out of different kinds of yarns, or piece goods made out of yarns spun out of mixture of different kinds of textile fibre.	On the goods themselves.
11.	Stationery goods, all kinds.	On the containers or coverings, or otherwise.
12.	Tiles of all kinds.	On the goods themselves.
13.	Manufactures of wood.	do
14.	Toilet preparations of all kinds including soaps.	On the containers or coverings.

Item No.	Class of goods.	Manner in which the indication shall be applied.
1	2	3
15. (a)	Wood and timber, in logs.	(a) On the goods themselves
(b)	Wood and timber, in pieces, planks or scantlings.	(b) On the bundles, or otherwise.
16.	Yarn of cotton, silk, artificial silk, staple fibres and wool, including yarn spun out of mixture with one or more kinds of textile fibres as well as yarns consisting of strands of different kinds of yarn combined by the process of doubling or twisting.	On the bundles.
17.	Iron ingots.	On the goods themselves.

PART II

Goods made or produced within India

1.	Cigarettes.	On the containers or coverings.
2.	Cotton piecegoods excepting Handloom cloth.	On the goods themselves.
3.	Primary and secondary batteries of all kinds such as dry cells for flash lights, radios, etc., and storage batteries of the motor vehicle, train lighting and stationery types, and also plates for motor vehicle batteries.	On the goods themselves.
4.	Yarn of cotton, silk, artificial silk, staple fibre and wool, including yarn spun out of mixture with one or more kinds of textile fibres, as well as yarn consisting of strands of different kinds of yarn combined by the process of doubling or twisting.	On bundles.
5.	Chemicals, drugs, medicines and pharmaceutical of all kinds.	On the containers or coverings.
6.	Toilet preparations of all kinds including soaps.	

INDIAN MERCHANDISE MARKS ACT.

Circular No. 127—1951 Calcutta, 5th June 1951.

From—Bengal Chamber of Commerce.

To—All members of the Chamber.

Indian Merchandise Marks Act, 1889.

MEMO : I reproduce for the information of members a letter No. 2104 dated 16th March from the Chamber to the Secretary, Ministry of Commerce and Industry, Government of India and his reply, letter No. 199 (I) Tr (MM)/51 of 2nd June.

Chamber Letter referred to

I have to thank you for the copy of Notification No. 301 (5)-Tr (MM)/48 of the 2nd March.

It is observed that in their revised form the draft Indian Merchandise Marks Act Rules are more workable than those published on the 2nd September, 1950 and the Chamber is grateful for the care that has been taken by the Government of India to meet the requirements of commerce and industry by the amendments now proposed. There are, however, several points to which the Chamber desires to call your attention in order that there may be as few complications as possible when the Rules are finally put into operation. These questions are :—

(1) Wood and timber in pieces, planks or scantlings—item 15 (b) of Part I of the Schedule.

Two problems are likely to arise from the proposed rule regarding the marking of this class of timber "on the bundles or otherwise". The first is that of planks and scantlings which are generally hammer-marked with the brand at the butt end of each piece, and for identification of a consignment on the steamer, with a small paint mark such as a white or blue dot/dash. Small size sections such as 1" to 7" by ½", and 1" to 7" by 1", are generally bundled with wire and it would be possible to tie a metal tag to the bundles indicating origin. But such tags are apt to come off during transit by sea, so that the bundles may arrive as loose peices. To hammer-mark the country of origin on any other part than the butt end of the piece would detract from the value of the timber. As there appears to be no way in which this difficulty can be remedied, the Chamber would suggest that the Customs authorities be requested to view leniently any unavoidable departures from strict compliance with the Rules because of the practical difficulties involved. It is also suggested that when the Rules are put into effect, their working in regard to this item may be reviewed after a lapse of six months' time.

A similar case is that of plywood tea chest boards which are imported in bundles of 100 pieces. The sides of these are protected by rejected boards and on the latter are placed the shipping and identification marks, with the object of retaining 100 clean boards for the packing of tea. The tea interests in the Chamber are anxious to have it confirmed by Government that it will be sufficient to have the name of the country of origin stamped on the outside boards of the bundles. The Chamber thinks that it would be advisable to make specific mention under item 15 (b) of "plywood tea chests for packing".

(2) Motor Car Batteries and also Plates for Motor Vehicle Batteries—Item 3 Part I.

Whilst marking "on the goods themselves" presents no special difficulties in respect of motor car batteries, in the case of plates for batteries it would be necessary for the manufacturers abroad to have special plate moulds made for the comparatively negligible quantity of such plates imported into India. The small plate lug at the top shoulder is the only part of the plate on which the country of origin can be indicated and then only very roughly. In manufacture a small piece number is included on the plate lug when the plate grids are moulded to identify different types of grids before they are pasted and become complete plates. After the plates have been pasted it is necessary for the plate lugs to be cleaned thoroughly by mechanically operated wire brushes in order that they are fit for the next process i. e. the burning up (or welding up) into plate groups. Each of the three cells of a 6-volt battery has two plate groups. On the specimen plates enclosed a slight knife cut mark has been made across the plate lugs which would indicate the point at which the plate is burned or welded on to the group bar and this further reduces the amount of space available for any such marks. Several specimen battery plates have been sent to you under separate cover to illustrate these difficulties.

Storage batteries of motor vehicles, Train lighting and stationary types : plates for motor vehicle batteries—Item 3 Part 2 of the Schedule.

The foregoing comments on the marking of imported battery plates applies also in this instance. It is suggested that in view of the difficulties described, the marking should only be on the packing cases in which battery plates issue from the factory.

(3) Stationery—Item 11 of Part I of the Schedule.

It has been noted that this item is omitted from Part II of the Schedule and it is not clear to the Chamber whether there is any obligation on printers to mark their stationery goods, on the containers or coverings, when the stationery is printed in India on paper or cards imported from abroad. Clarification of this point seems to be required and will be appreciated.

(4) Indication of Country of Origin.

In order that there should be no misunderstanding, the Chamber will be glad to know whether it would be sufficient for the purposes of Rule 1 (a) if imported goods were marked with the name and address of the foreign supplier, viz :—

Messrs. WYZ & Co.
MANCHESTER, ENGLAND.

or whether it would be necessary to add the words "Made in England" in such an instance. It appears to the Chamber from the wording of this rule that the address would itself be an adequate indication of the country of origin ; but before the Rules are put into effect, manufacturers abroad will need to be clearly instructed on the method of marking to be adopted.

Government's letter referred to

With reference to your latter No. 2104 dated the 16th March 1951, on the above subject, I am directed to observe as follows on the various points mentioned by you.

(i) Wood and timber in pieces, planks of scantlings.

The Government of India do not at present consider it necessary to issue any instructions to Customs authorities in regard to the treatment to be give in respect of planks and scantlings which may arrive loose on account of the wire with which they are bundled breaking in transit. The indication may be applied immediately after importation.

The Government of India are not clear as to the difficulty anticipated by the tea interests in your Chamber as to the adequacy of stamping the country of origin on the outside boards of bundles. As far as this Ministry can express an opinion in the matters, such stamping would seem to constitute compliance with the rules.

(ii) Motor car batteries and plates for motor vehicles batteries.

Attention is invited to the definition of the term 'applied" in para 3 of SRO 440. If, for the reasons stated by you, it is impracticable to print the country of origin on the plates for motor vehicle batteries, the requirement of SRO 440 would seem to be satisfied if the indication of the country of origin is made on anything attached, annexed, secured or fastened to the plates.

(iii) Stationery.

As far as the Government of India can see SRO 440 does not place any obligation on the printer in India to mark their stationery goods, or their containers or coverings, when the stationery is printed in India on paper or cards imported from abroad.

(iv) Indication of country of origin.

The Government of India are inclined to think that the indication of the name and address of the foreign supplier of imported goods would not by itself be sufficient compliance with the requirements of SRO 440, and that an indication such as "Made in England" would be necessary in addition.

2. With reference to your letter No. 2637 dated the 4th April 1951, I am to say that if goods manufactured in England are packed in containers made in India, it would seem necessary to indicate the latter fact by the addition of the indication "Packed in India" or other similar legend. As regards vitamin ampoules and tablets, which are manufactured in India from raw materials imported from abroad, item 5 of part 1 of the Schedule would seem to apply at the time of importation and item 5 of Part II of the Schedule would seem to apply at the time of the sale of the finished product. In the latter case the indication "Processed in India" would seem to be necessary.

Circular No. 215—1951 Calcutta 14th September 1951.

From—Bengal Chamber of Commerce.

To—All members of the Chamber.

Indian Merchandise Marks Act : Notification No. SRO-440 dated 31st, March 1951.

MEMO : —I reproduce for the information of members a copy of the Chamber's letter dated 2nd August to the Government of India Ministry of Commerce and Industry and the latter's reply of the 8th September. This is in continuation of Circular No. 127-1951 of the 5th June.

Letter of 2nd August referred to.

In continuation of the correspondence concerning Indian Merchandise Marks Act Rules, resting with your letter No. 199(1) (TR MM) 51 of the 2nd June, the Chamber would be glad to have the following point clarified. As you know Rule 1(a) provides that goods must be marked with the Country of Origin on importation and at the time of sale. Although in Part I of the Schedule it is prescribed that parts of machinery, spare parts and accessories may have the necessary marks on the containers or coverings or otherwise, there is some doubt among member concerns as to whether this would serve the purposes of the rules at "the time of sale" since a number of such parts may be contained in one container or covering at the time of import and afterwards be distributed for sale.

It appears to the Chamber that provided the goods are so marked when first sold, the requirements of the rules would be met, and should there be a subsequent re-sale of parts removed from their coverings or containers, it is obviously not only difficult but in some instances impossible to provide for marking. The Chamber would, nevertheless, be glad to have your confirmation of the correctness of this assumption.

Letter of 8th September referred to.

With reference to your letter No. 5636, dated the 2nd August 1951, I am directed to say that under items 1 (b) and 9 (b) of Part I of the Schedule to SRO 228 of the 24th February 1951, the indication of the country of origin is, in the case of parts, spare parts and accessories, to be applied on the containers, coverings, or otherwise. So long as the articles are sold in containers or coverings, whether at the first or subsequent sales, there would presumably be no difficulty in applying the indication of the country of origin to the containers or coverings. Where the smallest unit of packing is broken up and the contents sold loose and naked (as in the retail trade in the case of some articles), the requirements of the SRO would seem to de satisfied if that unit is marked with the country of origin.

Circular No. 11—1952 Calcutta 11th January 1952.

From—Bengal Chamber of Commerce.

To—All Members of the Chamber.

Indian Merchandise Marks Act : Notification No. SRO. 440 dated 31st March, 1952.

MEMO.—I reproduce for the information of members the Chamber's letter dated 20th August 1951 to the Government of India, Ministry of Commerce and Industry and the latter's reply of the 7th January 1952. This is in continuation of Circular No. 215-1951 of the 14th September 1951.

B. C. C. Letter dated 20-8-52 referred to

Further to my letter No. 5636 of the 2nd August and with reference to your letter No. 199 (1) Tr (MM)/51 of the 2nd June 1951, manufacturers of pharmaceutical preparations in the Chamber have brought to the Chamber's notice the difficulty in application of the marking procedure mentioned in your final paragraph. In this you stated that "As regards vitamin ampoules and tablets, which are manufactured in India from raw materials imported from abroad, item 5 of Part I of the Schedule would seem to apply at the time of the sale of the above product. In the latter case the indication "processed in India" would seem to be necessary".

2. The Chamber would be glad to have this question re-considered by Government because, assuming that such a rule has to be followed in the case of all pharmaceutical preparations manufactured in the country which contain imported materials, very few such preparations would escape the rule, since a very small proportion are made purely from indigenous materials.

3. This does not seem to be the intention of the Merchandise Marks Act and the Chamber will be gratified to have the matter clarified.

Government of India letter dated 7-1-52 referred to.

With reference to your letter No. 6063 dated the, 20th August 1951 on the above subject, I am directed to say that it is not the intention that the finished products turned out of imported ingredients should in every case be marked as "Processed in India". The question whether pharmaceutical preparations which include wholly imported ingredients or some Indian-made ingredients and some imported ingredients should be marked as "Made in India" or as "Processed in India" would seem

to depend on the circumstances of each case. The deciding consideration is whether the imported ingredient underwent substantial manufacturing processes in India. If they did, it would be correct to mark the resultant goods "Made in India". Where no real manufacturing process was involved, but only bottling or similar work was done, the marking should appropriately be "Made in (foreign country) : Processed in India". Other cases would presumably fall between the two extremes mentioned above, and each manufacturer must judge for himself, in the light of the facts of the case, what marking to make in the case of each of his products, having due regard to the processes which the ingredients have undergone. In case of doubt, he could protect himself by explaining in the "literature" or other paper enclosed with the goods the manner in which the goods were produced. So long as the consumer is given a reasonably correct indication of the country of manufacture of the goods, it is unlikely that objection will be taken.

Indian Merchandise Marks Act Rules.

Circular No. 46—1952 Calcutta 1st March 1952.

From—Bengal Chamber of Commerce.

To—All members of the Chamber.

I am directed to refer to this Ministry's Notification No. SRO 440 dated the 31st March, 1951, which requires that on and after the 1st January, 1952, the goods specified in Schedule to the Notification shall on importation (where the goods are imported) and at the time of sale, whether by wholesale or retail have applied to them in the English langauge an indication of the country in which they were made or produced.

Part II of the Schedule to the Notification relates to goods made or produced within India and contains the following items :—

1. Cigarettes.
2. Cotton piecegoods excepting handloom cloth.
3. Primary and secondary batteries of all kinds such as dry cells for flash lights, radios, etc. storage batteries of the motor vehicle, train lighting and stationery types ; and plates for motor vehicle batteries.
4. Yarn of cotton, silk, artifical silk, staple fibre and wool, including yarn spun out of mixture with one or more kinds of textile fibres, as well as yarn consisting of strands of different kinds of yarn combined by the process of doubling or twisting.

5. Chemicals, drugs, medicines and pharmaceutical products of all kinds.
6. Toilet preparation of all kinds including soaps.

The Government of India do not purpose to include further items in this part of the Schedule until the Notification has been in force for some time and experience has been gained as to its operation. They, however, consider that it would be desirable that as many products as possible of Indian manufacture should be marked "Made in India" so that the public at large may become aware of the range of products of quality which are now being manufactured in this country. I am accordingly to request that the desirability of so marking the products may be brought to the notice of your members.

The Government of India hope that the practice of marking Indian goods "Made in India" would in time be adopted so generally that further legislation to make it compulsory would not become necessary.

LAW & LEGISLATION—TAXATION

INDIAN FINANCE ACT, 1951.

Indian Finance Act 1951 : Taxation of Non-resident Shareholders & Pensioners.

CLAUSE 3

Amendment of section 17, Act XI of 1922.

With effect from the 1st day of April, 1951, the following sub-section shall be substituted for sub-section (1) of section 17 of the income-tax Act, namely ;—

"(1) Where a person is not resident in the taxable territories and is not a company, the tax, including super-tax, payable by him or on his behalf on his total income shall be an amount equal to—

(a) the income-tax which would *be* payable on his total income * * * at the maximum rate, plus

(b) either the super-tax which would *be* payable on his total income * * * at the rate applicable in the case of an individual to the slab next to the slab exempt from super-tax, or the super-tax which would *be* payable on his total income *if it were the total income of a person* resident in the taxable territories, whichever is greater :

Provided that any such person may, on the first occasion on which he is assessable for any year subsequent to the year ending on the 31st day of March, 1951, *and before the 30th day of June in that year, or where the first occasion on which he is so assessable falls during the year ending on the 31st day of March, 1952, before such date as the Central Board of Revenue may, by notification in the Official Gazette, specify in this behalf,* by notice in writing to the income-Tax Officer declare (such declaration being final and being applicable to all assessments thereafter) that the tax, including super-tax payable by him or on his behalf on his total income shall be determined with reference to his total world income, and thereupon such tax shall be an amount bearing to the total amount of tax including super-tax which would have been payable on his total world income had it been his total income the same proportion as his total income bears to his total world income".

Taxation of Non-resident Shareholders & Pensioners.

P. No. 56(13) I. T. /51.

CENTRAL BOARD OF REVENUE

New Delhi, the 9th May 1951

CIRCULAR No. 21 (XLIII-I) OF 1951

Non-residents—Option of being assessed on the basis of world income—Instructions regarding.

Attention is invited to the amendments made to section 17 of the Indian Income-Tax Act by section 3 of the Finance Act 1951. Before this amendment, a non-resident who was a citizen of India or British subject, was chargeable to income-tax on his Indian Income at the rate appropriate to his total world income, while any other non-resident was chargeable at the maximum rate. In regard to super-tax, however all non-residents were treated alike and had to pay super-tax at the rate applicable to their total world income. The amendment now made abolishes the distinction based on nationality with the result that the total income of all non-residents is now chargeable to income-tax at the maximum rate. In regard to super-tax the basis of charge has been materially altered. The total income of all non-residents other than companies will henceforth be chargeable at a flat rate of Super-tax, namely, the rate applicable to the slab next to the slab exempt from Super-tax which, according to the Finance Act, 1951 is 3 annas in the rupee *plus* 1/26th thereof as Surcharge. This is, however, subject to the condition that the amount of Super-tax plus Surcharge shall not be less than the Super-tax and Surcharge payable by a resident having the same total income. The amended section 17 of the Indian Income-tax Act does, however, give to all non-resident persons an opportunity to exercise, within a certain time limit, the option of being assessed on the old basis, i. e. at the rate applicable to their total world income the option once exercised being irrevocable.

2. A non-resident person may on the first occasion on which he is assessable for 1951-52 or a later year and before the 30th day of June in that year, declare by notice in writing to the Income-tax Officer that the tax, including the super-tax payble by him or on his behalf, on his total income shall be determined with reference to his total world income. If, however, the first occasion on which a non-resident person is assessable falls during the assessment year 1951-52, the said option may be exercised by the 31st October 1951—the date specified by the Board in this behalf. As observed above, the option once exercised shall be final and will be applicable to all subsequent assessment years.

3. All Income-tax Officers who assess Companies should *immediately* inform *all Companies in their jurisdiction* that they (the companies) should, without delay, bring the new provisions relating to the exercise of option referred to above to the notice of their non-resident shareholders so as to enable them to exercise the option within the time limit to their best advantage. Pending the declaration of such option, the companies must be told that super-tax and surcharge should be deducted in accordance with clause (b) of section 17 (1) i. e. at 3 annas in the rupee *plus* 5 per cent, unless the gross dividend of the shareholder concerned exceeds Rs. 73,750. If the gross dividend exceeds Rs. 73,750, super-tax and surcharge should be deducted at the rate applicable to such gross dividend treating it as the total income of the shareholder.

4. It should also be brought to the notice of all private employers, that they may deduct income-tax at the maximum rate and Super-tax at 3 annas in the rupee or at the rate applicable to the pension paid to a non-resident person, treating it as the income of a resident individual, whichever is higher. If the pensioner elects to be assessed at the rate applicable to his total world income, before the prescribed date, and any additional tax becomes payable, the employer should undertake to adjust the short deduction, if any, arising on the basis of the pensioner's final option. The employer may obtain the declaration of his pensioner and file it with the Income-tax Officer who assesses the employer.

(Sd) S. P. LAHIRI,
Secretary, Central Board of Revenue.

Taxation of non-resident shareholders and pensioners.

Circular No. 122—1951 Calcutta 26th May, 1951.

From—Bengal Chamber of Commerce.

To—All Members of the Chamber.

1. Members are aware that non-residents have been affected by Section 3 of the Finance Act, 1951, which has amended Section 17 (1) of the Indian Income Tax Act, and it is felt that they should now advise their non-resident shareholders of the position.

2. Under the Finance Act it is necessary for all companies paying dividends to non-resident individual shareholders to deduct :—

(*a*) Income Tax at the maximum rate (i.e. 4 annas plus 5% surcharge) on any profits which have not borne tax, and

(*b*) Super Tax at the rate applicable in the case of an individual to the slab next to the slab exempt from Super Tax (at present 3 annas plus 5% surcharge), or the Super Tax applicable to the total of the dividends paid, whichever is higher.

3. So far as a non-resident individual is concerned there are two alternatives :—

EITHER

(the basic method)

he is assessed to :—

(*a*) Income Tax at the maximum rate (i. e. at present 4 annas plus 5% surcharge) or the Super Tax applicable to his total Indian Income, whichever is greater.

OR

(the optional method)

he has the option to be assessed in India on his Indian Income at the same rates as are applicable to residents, but calculated by reference to his World Income.

4. If it is desired to exercise this option it must be exercised in the first year after 1950/51 in which an individual is non-resident, and in years other than the current year before the 30th June in that year. In the current year, however, it has been agreed that a certain amount of additional time will be given and the Central Board of Revenue have by notification No. 40 dated the 10th May 1951—a copy of which is appended—extended the time within which the option may be exercised up to the 31st October 1951.

5. If the option is exercised it is apparent that there will be some saving in Income Tax in that the rate applicable to individuals, however high the income, does not reach the maximum rate, while it is a question of the circumstances in each individual case to determine what rate of Super Tax, if any is applicable, a Schedule comparing the incidence of these taxes (*a*) under the basic method and (*b*) under the optional method on a selected range of incomes is attached.

6. The rates of Indian Income Tax and Super Tax for the current year (1951-52) for individuals are as follows : –

Income Tax	Rate	Surcharge
1. On the first Rs. 1,500 of total income	Nil	Nil
2. On the next Rs. 3,500 of total income	Nine pies in the rupee	One-twentieth rate specified in the preceding column.
3. On the next Rs. 5,000 of total income	One anna and nine pies in the rupee	Do.
4. On the next Rs. 5,000 of total income	Three annas in the rupee	Do.
5. On the balance of total income	Four annas in the rupee	Do.

Super Tax	Rate	Surcharge
1. On the first Rs. 25,000 of total income	Nil	Nil
2. On the next Rs. 15,000 of total income	Three annas in the rupee	One-twentieth of the rate specified in the preceding column.
3. On the next Rs. 15,000 of total income	Four annas in the rupee	Do.
4. On the next Rs. 15,000 of total income	Six annas in the rupee	Do.
5. On the next Rs. 15,000 of total income	Seven annas in the rupee	Do.
6. On the next Rs. 15,000 of total income	Seven and a half annas in the rupee	Do.
7. On the next Rs 50,000 of total income	Eight annas in the rupee	Do.
8. On the balance total income	Eight and a half annas in the rupee	Do.

7. At discussions with the Central Board of Revenue it was pointed out that hardships would arise if Companies were compelled to continue to deduct Super Tax from non-resident shareholders whose

World Income was below the Super Tax limits, and the Central Board of Revenue has agreed verbally that Super Tax exemption certificates may be issued by Income Tax Officers in such cases. This provision cannot operate, however, until the Act has been amended to permit of Super Tax exception certificates in the case of income from dividends.

8. The procedure visualised is that the individual shareholder will obtain from his Inspector of Taxes in the U. K. or elsewhere a certificate of his World Income based on his last completed assessment and that certificate will be forwarded to the Income Tax Officer in whose District he is assessable. In the case of those with no income in India other than dividends, the Income Tax Officer with jurisdiction is the Non-Residents' Refund Circle, Bombay.

After the Super Tax exemption certificate has been obtained it will be filed with all the Companies from whom the shareholder receives dividends and those Companies will then cease deducting Super Tax from the individual's dividends.

9. While, as previously pointed out, the arrangement with regard to Super Tax exemption certificates awaits an amendment to the Act, it is essential that individual shareholders should consider their position at an early date and decide whether or not they wish to exercise the option. This option—it is again emphasised—can only be exercised once and in the case of those who are now non-resident the option must be exercised during 1951/52 prior to the 31st October 1951. It is desirable that non-resident shareholders should be advised of this position as soon as possible.

10. It may be of assistance to individuals in the U. K. if the letter exercising the option is first forwarded to a Company in which they have shares and that Company forwards the letter to the Income Tax Officer in Bombay in a manner ensuring acknowledgment, so that there is a permanent record that the option has been exercised. It is of course possible that some Companies will be prepared to act as Agents for their non-resident shareholders but this is a matter for individual decision.

*11. A copy of the Central Board of Revenue's Circular F. No. 56(13) I. T/51 of the 9th May is attached. In so far as it relates to *non-resident pensioners*, it adds to the information already known in only two respects, namely (*i*) that the option under Section 17 (1) must be exercised before the 31st October 1951 and (*ii*) that employers may deduct tax at the rates applicable to the pension only provided the employer assumes responsibility for any short deduction of tax.

Circular No. 128—1951 Calcutta, 9th June 1951.

From—Bengal Chamber of Commerce.

To—All members of the Chamber.

Deduction of tax from dividends paid to non-resident shareholders. Preparation of letters for use in application.

In response to several requests which have been made by members following the issue of Circular No. 122 of the 26th May, the Income Tax Sub-Committee of the Chamber have taken in hand the preparation of a specimen letter which companies with non-resident shareholders may wish to utilise in explaining to the latter the effects on them of the recent amendment of Section 17(1) of the Indian Income Tax Act and the action they should take as a result.

2. The specimen letter is attached together with the draft of a letter which the non-resident shareholder should address to the appropriate income-tax officer in India in exercise of the option afforded to non-residents under the proviso to section 17(1) as now amended. Additional copies of the specimen letter and its accompaniment may be obtained on application to the Chamber but if these are required in numbers exceeding five, payment for them at the actual cost of paper and printing will be required.

3. The Income Tax Sub-Committee have examined a number of points which have been referred to them with the following results :—

(a) It has been confirmed by reference to the Central Board of Revenue that the 31st October 1951 is the date before which *all* assessees, whether or not previously assessed as non-residents, may exercise the option under Section 17(1) during the assessment year ending on the 31st March 1952.

(b) As the onus rests on the company of determining whether a shareholder is resident or non-resident for the purpose of tax deduction, the company should endeavour to ascertain from the Bank concerned whether a particular shareholder registered in the company's books C/o a *Bank address* is or is not a non-resident.

(c) Until the company paying the dividend receives an exemption certificate specifying the rates at which tax is to be deducted from the dividends of a particular shareholder, it is incumbent on the company to continue deducting tax at the rates laid down in Section 17(1), *i. e.* income-tax at four annas in the rupee plus 5% and super-tax at 3 annas plus 5% or, if the total of the grossed-up dividend exceeds Rs. 73,750 (£5531) a year, at the increased rate appropriate to the higher Indian Income.

Indian Finance Act, 1951.

Deduction of Tax from dividends paid to Non-Resident Shareholders.

The purpose of this letter is to explain to you, as a non-resident shareholder in the above/our Company, the effect which the recent change in the Indian Income-Tax Act (amendment of Section 17, Act XI of 1922) will have in the first place on the actual dividend you will receive from the Company and secondly on your liability by virtue of that dividend to Indian taxation.

2. Before the introduction of the amendment the position was as follows :—

Income Tax : Non-resident British subjects were assessable on their Indian income at the rate appropriate to their total world income, while subjects of any other nationality and similarly non-resident were assessable at the maximum rate of tax from time to time in force.

As a company's rate of income tax is always higher than that applicable to an individual and your dividend was paid without any deduction for tax paid by the Company, subject to deduction of tax paid by the Company, you were entitled to claim a refund of the difference between your own effective rate and the maximum rate of income tax as paid by the Company. If your total world income did not exceed Rs. 36,000/- (£270) you were not liable to tax in India and the whole amount of income tax paid by the Company in respect of your dividend could be reclaimed by you from the Income Tax authorities.

Super Tax : All non-residents, whether British subjects or not, were assessable *on their Indian income* at the rate applicable to their total world income subject to the statutory free allowance of Rs. 25,000/- (£1875) on which no super tax was payable.

No credit was however given for the super tax paid by the Company on its profits, but neither was this added back, as was the case with income tax, to arrive at the gross dividend on which your liability to Indian taxation was determined. Only when your total world income exceeded Rs. 25,000/- (£1875) were you liable to pay super tax on your dividend and then at the same rate as a resident of India.

3. With effect from 1st April 1951, following the adoption by the Indian Parliament of the amendment referred to above, the liability of a non-resident has been changed as to :—

Income Tax:—Where the person, irrespective of nationality, is non-resident and is not a company, income tax will be chargeable at the maximum rate (at present As. -/4/-in the rupee plus 5% surcharge) with no exempted minimum,

and

Super Tax :—At a flat rate (at present As.-/3/- in the rupee plus 5% surcharge) or, if the total of the *Indian income* exceeds Rs. 73,750(£5531) at the increased rate appropriate to the higher *Indian income.*

It is important to note that there is no longer any necessity to include *non-Indian income* to arrive at the appropriate rate of tax.

In future then, *subject to the important proviso detailed in paragraph 4 below,* a company when paying dividends to a non-resident shareholder will be obliged to deduct income tax at the maximum rate on such part of the dividend as is attributable to profits which have not been taxed in the hands of the company and also super tax (on the grossed-up dividend) at either the flat rate noted above or at the rate appropriate to the total of the dividend paid to the non-resident shareholder by the company during each financial year whichever is the higher.

4. The amendment introduced in the Indian Finance Act, 1951, contains however the *option* that, if you so desire, you may by notice in writing to the Income Tax Officer declare that you wish to be assessed in India on your *Indian income* at the rates appropriate to your total world income. This in fact restores you, if you are a U. K. non-resident, to the position applicable prior to the introduction of the amendment as detailed in paragraph 2 above.

If you find it in your interest to exercise this option, and generally it will be to the advantage of any person to do so where the total world income is below Rs. 82.156/- per annum, you should obtain from your Inspector of Taxes in the U. K. (or the country of your residence) a certificate of *your* world income based on your last completed assessment in that country and forward this in original to the Income Tax Officer in India by whom you have been previously assessed as a non-resident.

As husbands and wives are separately assessed in India, individual incomes should be stated on the certificate so that only the income of the shareholder will be taken into account. If you have no income in India other than dividends and have not previously been assessed in this country as a non-resident, then the certificate should be forwarded to the Income Tax Officer, Non-Residents Refund Circle, Churchgate Street, Fort, Bombay. In both cases the certificate should be accompanied by a letter stating that you wish in future to be assessed in India on your Indian income at the rate appropriate to your total world income and stating also your income from the companies in India in which you hold shares.

If you wish to adopt this optional method you must exercise your option before the following dates:—

(a) If you had income accruing or arising in India during the year ended 31st March 1951—before 31st October 1951 ;

or

(b) if the current financial year (i. e. 1st April 1951 to 31st March 1952) or any subsequent year is the first year in which you receive Indian income after becoming non-resident—before 30th June 1952, or the 30th June of such subsequent year.

In either case the option once exercised is final and binding on all future assessments and cannot be revoked.

A specimen letter for use in this connection is attached and it is suggested that in the event of your deciding to exercise the option available to you, a copy of your letter to the Income Tax Officer should be sent to us for purposes of record. In the event of your being unable to obtain the required certificate of world income from your Inspector of Taxes in time, you should in any case file the option with the Indian Income Tax Officer before the date specified, indicating in your letter that the relative certificate will follow.

5. As regards the deduction of super tax from dividends, it is understood that on receipt of your letter and accompanying certificate of world income the Indian Income Tax Officer will, in the event of your total world income being below the super tax limit, issue an exemption certificate enabling the Company to pay you dividends in future whithout any deduction at source on account of such tax. It will be appreciated that until such time as the exemption certificate is registered with the Company, super tax will continue to be deducted at the appropriate rate as laid down in paragraph 3 above.

We are, dear Sir/Madam,
Yours faithfully,
Agents/Managing Agents.

Specimen letter to be addressed to the Income Tax Officer.

Note :—In the event of your being unable to obtain the required certificate of world income from your Inspector of Taxes in time, you should in any case file this option with the Indian Income Tax Officer before the date specified, indicating in your letter that the relative certificate will follow.

DEAR SIR,

Indian Finance Act, 1951 :
Deduction of Tax from Dividends
paid to Non-resident Shareholders.

In terms of Section 17(1), of the Indian Income Tax Act, 1922, as amended by the Finance Act, 1951, I hereby declare my desire to be assessed in India on the basis that the tax including super tax payable by me or on my behalf on my total income shall in future be determined with reference to my total world income.

A certificate of total world income as shown by my last completed assessment in the United Kingdom (or other country of residence) duly signed by the Inspector of Taxes $\frac{\text{is sent herewith}}{\text{will follow}}$ and I shall be obliged if in acknowledgment of this intimation you will send me a form of Indian income tax return for my attention.

I attach a list of the Indian Companies from which my income is derived and shall be glad if you will notify to these Companies the appropriate rate of tax for deduction from my dividends in future.

Yours faithfully.

.....

Copy to Messrs..... .....Agents/Managing Agents,..... ....for information.

LAW & LEGISLATION—TAXATION

INDIAN INCOME TAX (AMENDMENT) BILL, 1951.

Circular No. 134-1951 Calcutta, 18th June 1951.

From—The Secretary,

Bengal Chamber of Commerce.

To—All Members of the Chamber.

I am directed to attach for the information and early consideration of members of the Chamber a copy of the Indian Income Tax (Amendment) Bill, 1951 as introduced in Parliament on the 6th June.

The Chambers' information is that the Bill will be taken up by Parliament at the next Session which is likely to begin on the 6th August. It is therefore desirable that the Chamber's views on the Bill should be in the hands of the Government of India by about the 23rd July. It will be appreciated in these circumstances if members of the Chamber who wish to submit comments on the Bill will kindly do so to reach the undersigned within 14 days of the date of this Circular, that is to say by Monday, the 2nd July, at the latest.

The Indian Income Tax (Amendment) Bill, 1951.

(AS INTRODUCED IN PARLIAMENT)

A

BILL

further to amend the Indian Income-Tax Act, 1922,

BE it enacted by Parliament as follows :—

1. **Short title and commencement.**—(*1*) This Act may be called the Indian Income-Tax (Amendment) Act, 1951.

(*2*) It shall be deemed to have come into force on the 1st day of April 1951.

Amendment of section 2, Act XI of 1922.—In section 2 of the Indian Income-tax Act, 1922 (hereinafter referred to as the principal Act),—

(*a*) for clause (*2*), the following clause shall be substituted, namely :—

"(*2*) 'assessee' means a person by whom income-tax, whether with or without interest, is payable, and includes a person by whom a penalty or a sum of money for compounding an offence under section 53 or any other sum is payable under this Act ;"

(*b*) clause (*6*) shall be renumbered as clause (*5A*), and after clause (*5A*) as so renumbered, the following clause shall be inserted, namely,

"(*6*) 'Director of Inspection' means a person appointed to be Director of Inspection under section 5, and includes a person appointed to be an Additional Director of Inspection, a Deputy Director of Inspection, or an Assistant Director of Inspection ;"

(*c*) in clause (*6A*) :—

(*i*) in sub-clause (*b*), after the word "debenture-stock" the words "or of deposit certificates in any form, whether with or without interest" shall be inserted ;

(*ii*) in the proviso to sub-clause (*c*), the word "and" occurring at the end shall be omitted ;

(*iii*) after sub-clause (*d*), the following sub-clause shall be inserted, namely :—

"(*e*) any payment by a company, (not being a company in which the public are substantially interested within the meaning of section (23A) of any sum (whether as representing a part of the assets of the company or otherwise) by way of advances or loans to any of its shareholders, or any payment by the company on behalf of or for the individual benefit of any of its shareholders, to the extent to which the company possesses accumulated profits whether capitalised or not ;"

Provided that the Income-tax Officer is of opinion that the sum so paid is in effect out of the accumulated profits of the company : and

Provided further that where any such sum has been held to be a dividend by the Income-tax Officer and any dividend actually paid by the company in any subsequent year is set off against the whole or any part of such sum, the whole or part of such amount as the case may be, to the extent to which it is so set off, shall not be included within the expression 'dividend' for any of the purposes of this Act ;"

(*d*) for clause (*6C*) the following clause shall be substituted namely :—

(*6C*) "income' includes—

(*i*) anything included in 'dividend' under clause (*6A*), or anything deemed to have been paid, credited or distributed as dividend within the meaning of this Act ;

(*ii*) anything which, under *Explanation* 2 to sub-section (*1*) of section 7 is a profit received in lieu of salary for the purposes of that sub-section ;

(*iii*) any sum deemed to be profits under the second proviso to clause (*vi*) of sub-section (*2*) of section 10 ;

(*iv*) any sum in the nature of a pugree, salami, nazar or other like premium received by a person after the end of the previous year for the assessment for the year ending on the 31st day of March, 1951, on account of, or in connection with, the granting of any lease of immoveable property by him for a term of fifty years or less ;

Provided that for the purposes of assessment of any such sum such portion thereof as is equal to the amount of the sum received divided by the number of years of the lease, subject to a minimum of one-twentieth of the amount of such sum, shall be taken to be the income of the previous year in which such sum is received and of the nineteen subsequent previous years or less, as the case may be, and where before the expiry of twenty years or the term fixed, whichever is the less, the lease is terminated or the lessor dies or the lessor, being a firm or an association of persons or a company, is dissolved or wound up, as the case may be, the proportionate amount for the unexpired period of the lease shall

be deemed to be the income of the year in which the lease is terminated or the lessor dies or is dissolved or wound up as the case may be ;

(*v*) any compensation received by a person by way of damages or otherwise on the termination of a managing agency, where the Income-tax Officer is of opinion that the party concerned in the transaction has a controlling interest, whether direct or indirect, in the managed enterprise or in the new managing agency, or in both ;

(*vi*) any capital gain chargeable according to the Provisions of section 12B ;

(*vii*) the surplus, if any, in any business of insurance carried on by a mutual insurance association computed in accordance with rule 9 in the Schedule ;"

(*e*) after clause (*6D*) the following clause shall be inserted, namely :—

"(*6E*) 'Inspector of Income-tax' means a person appointed to be an Inspector of Income-tax under section 5 ;"

(*f*) in clause (*11*),—

(*i*) in the proviso to sub-clause (*a*), after the words "profits and gains," the words, letter and brackets "or has exercised the option under clause (*c*)" shall be inserted ;

(*ii*) in sub-clause (*c*), after the words "option of the assessee" the words "which shall be exercised within twelve months of the setting up of the business" shall be inserted ;

(*g*) for sub-clause (*a*) of clause (*12*) the following sub-clause shall be substituted namely :—

"(*a*) the secretary, treasurer, manager, managing agents and, where the managing agent is a firm or company, any of the partners or the principal officer thereof as the case may be, or the agent of the authority, company, body or association or, in the case of a company being wound up, the liquidator thereof, or";

(*h*) clause (*14*) shall be renumbered as clause (*13A*), and after clause (*13A*) as so renumbered, the following clause shall be inserted, namely :

"(*14*) 'shareholder' means a person holding a share in any company and registered as a member thereof in its books :

Provided that the Income-tax Officer may, in lieu of treating such person as the shareholder treat as such any other person who is either beneficially entitled for the time being to the share or who would be liable to be assessed on the dividend, if any, distributed or deemed to be distributed in respect of the share" ;

3. **Amendment of section 4, Act XI of 1922.**—In section 4 of the principal Act,—

(*a*) in sub-section (1) —

(*i*) for the second proviso, the following proviso shall be substituted, namely :—

"Provided further, that in the case of a person who was not resident in the taxable territories in two out of the three years immediately preceeding the previous year, so much of the income, profits and gains referred to in sub-clause (*iii*) of clause (*b*) as accrued or arose to him without India, shall not be included in his total income ;";

(*ii*) in *Explanation* 2, for the words "wherever paid if it is earned in the taxable territories' the following shall be substituted, namely :—

"wherever paid if—

(*i*) it is earned in the taxable territories ; or

(*ii*) it is payable to a citizen of India by the Central Government or the Government of any State other than the State of Jammu and Kashmir ; or

(*iii*) it is paid or payable out of any superannuation fund, contributions to which have been allowed at any time as a deduction out of the income, profits and gains accruing or arising in the taxable territories' ,

(*iii*) after *Explanation 4*, the following *Explanation* shall be inserted, namely :—

"*Explanation 5*—For the purposes of this Act,—

(*i*) income, profits and gains resulting from the manufacture and sale of goods, actually accrue or arise in full in the taxable territories if the goods are sold in the taxable territories ;

(*ii*) income from interest (including interest on securities) actually accrues or arises in full in the taxable territories if the money borrowed is used in the taxable territories in cash or in kind ;

(*iii*) income from royalties for the use of any copy-right, patent, design, secret process or formula, trade mark or other like property actually accrues or arises in full in the taxable territories if such property is used, or exploited in the taxable territories ;

(*iv*) profits arising to a distributor or producer by way of hire, royalty or premium on cinematograph films actually accrue or arise in full in the taxable territories, if such profits are in respect of the exhibition thereof or relate to any rights of exhibition or distribution in respect thereof." ;

(*b*) in sub-section (3),—

(*i*) for clauses (*i*) and (*ia*), the following clause shall be substituted, namely:—

"(*i*) Subject to the provisions of clause (*c*) of sub-section (1) of Section 16, any income derived from property held under a trust or other legal obligation solely for religious or charitable purposes, where such purposes relate to anything done within the taxable territories and, in the case of a property so held in part only for such purposes the income applied or finally set apart for application thereto :

Provided that where such income is derived from business carried on on behalf of a religious or charitable institution, such income shall be included in the total income unless the income is applied solely to the purposes of the institution, and

(*a*) the business is carried on in the course of the carrying out of a primary purpose of the institution, or

(*b*) the work in connection with the business is mainly carried on by the beneficiaries of the institution."

(*ii*) for clause (*vi*), the following clause shall be substituted, namely :—

"(*vi*) any special allowance, benefit or perquisite specifically granted to to meet expenses necessary for the performance of the duties of an office or employment of profit, to the extent to which such expenses are actually incurred.";

(*iii*) in clause (*xiii*) in the definition of "charitable purpose", the word, letters and brackets "clause (*ia*)" shall be omitted, and for the words "income of a private religious trust" the words "income from property held under a trust or other legal obligation for private religious purposes" shall be substituted :

(*iv*) after clause (*xiii*), the following clauses shall be inserted, namely :—

"(*xiv*) Any income received by an employee of a foreign enterprise not engaged in any trade or business in the taxable territories as remuneration for services rendered by him during the course of his stay in the taxable territories, where such stay does not exceed in the aggregate a period of ninety days in any year :

Provided that no such remuneration shall be allowed as a deduction in computing any income, profits and gains chargeable under this Act.

(*xv*) Any income received as remuneration from the Government of a Foreign State by an employee of that State, who is assigned to duties in India in connection with any co-operative technical assistance programmes and projects in accordance with an agreement entered into by the Central Government and the Government of the foreign State, and any other income of such employee or of the members of his family accompanying him to India, which accrues or arises without the taxable territories, and is not deemed to accrue or arise in the taxable territories, upon which such employee or the members of his family are required to pay any income or social security tax to the Government of the foreign State ;

(*xvi*) Any income from interest on, or from premium on the redemption of, any bonds issued by the Central Government under a loan agreement between the Central Government and the International Bank for Reconstruction and Development, except where the holder of such bond is a person resident in the taxable territories ;

(*xvii*) Interest on the 3½ per cent. Ten-year Treasury Savings Deposit Certificates issued by or under the authority of the Central Government for an amount not exceeding the miximum amount which an assessee is entitled to deposit in such certificates."

4. Amendment of section 4A, Act XI of 1922.—In section 4A of the principal Act,—

(*a*) for clause (*b*), the following clause shall be substituted, namely ;—

"(*b*) a Hindu undivided family, firm or other association of persons is resident in the taxable territories in any year if during the year the control and management of its affairs is not situated wholly without the taxable territories;";

(*b*) at the end of the section, the following *Explanation* shall be inserted, namely :—

"*Explanation*—An individual, a Hindu undivided family, firm or other Association of persons shall be chargeable as resident in the taxable territories in respect of all his or its sources of income, notwithstanding that he or it was resident in the taxable territories in the previous year in respect of any one only of his or its sources of income, profits and gains."

5. Ommission of section 4 B Act XI of 1922.—Section 4B of the principal Act shall be omitted.

6. Amendment of section 5, Act XI of 1922.—In section 5 of the principal Act,—

(*a*) in sub-section (*1*),—

(*i*) after clause (*a*), the following clause shall be inserted, namely :—

"(*aa*) Directors of Inspection," ;

(*ii*) after clause (*d*), the following clause shall be inserted namely :—

"(*e*) Inspector of Income-tax," ;

(*b*) after sub-section (*1*), the following sub-section shall be inserted, namely :—

"(*1A*) The Central Government may appoint one or more Directors of Inspection as it thinks fit and Directors of Inspecton shall, subject to the control of the Central Board of Revenue, perform such functions of any income-tax authority as may be assigned to them by the Central Government.";

(*c*) for sub-section (*3*), the following sub-section shall be substituted, namely :—

"(*3*) The Central Government may appoint as many Appellate or Inspecting Assistant Commissioners of Income-tax and Income-tax Officers of Class I service as it thinks fit, and the Commissioner may, subject to the rules and orders of the Central Government regulating the conditions of service of persons in public services and posts, appoint as many Income-tax Officers of Class II service and Inspectors of Income-tax as may, from time to time be sanctioned by the Central Government.";

"(*3A*) Subject to the rules and orders of the Central Government regulating the conditions of service of persons in public services and posts, an income-tax authority may appoint such executive or ministerial staff as may be necessary to assist it in the execution of its functions.";

(*d*) in the second sentence of sub-section (*5*), the words "with the previous approval of the Central Board of Revenue," shall be omitted, and for the words "Appellate Assistant Commissioner ", wherever they occur in this sentence the words "Inspecting Assistant Commissioner" shall be substituted ;

(*e*) after sub-section (*5*), the following sub-section shall be inserted, namely :—

"(*5A*) Inspectors of Income-tax shall perform such functions in the execution of this Act as are assigned to them by the Income-tax Officer or other income-tax authority under whom they are appointed to work, and shall be subordinate to such officer or other authority.".

(*f*) in sub-section (7), for the words "assigned to them by" the words "in respect of cases assigned to" shall be substituted ;

(*g*) after sub-section (7A), the following sub-sections shall be inserted, namely :—

"(7B) The Director of Inspection, the Commissioner or the Inspecting Assistant Commissioner, as the case may be, may issue such instructions as he thinks fit for the guidance of any Income-tax Officer subordinate to him in the matter of any assessment, and for the purposes of making any inquiry under this Act (which he is hereby empowered to do), the Director of Inspection, the Commissioner and the Inspecting Assistant Commissioner shall have all the powers that an Income-tax Officer has under this Act in relation to the making of inquiries.

(7C) Whenever in respect of any proceeding under this Act an income-tax authority ceases to exercise jurisdiction and is succeeded by another who has and exercises jurisdiction, the income-tax authority so succeeding may continue the proceeding from the stage at which the proceeding was left by his predecessor."

7. **Amendment of section 5A, Act XI of 1922.**—In section 5A of the principal Act,—

(*a*) in sub-section (2), the proviso shall be omitted ;

(*b*) in sub-section (3) for the words beginning with "A judicial member shall be" and ending with "the Auditors Certificates Rules, 1932 :", the following shall be substituted, namely :—

"A judicial member shall be a person who has for at least ten years either held a civil judicial post or been in practice as an advocate of a High Court, and an accountant member shall be a person who has for at least ten years been in the practice of accountancy whether as a chartered accountant under the Chartered Accountants Act, 1949 (XXXVIII of 1949) or as a registered accountant under any law formerly in force :";

(*c*) in sub-section (*4*), the word "judicial" shall be omitted.

8. **Amendment of section 7, Act XI of 1922.**—In section 7 of the principal Act,—

(*i*) in sub-section (*1*), for *Explanation 1*, the following *Explanation* shall be substituted, namely,—

'*Explanation 1*—For the purposes of this sub-section, "perquisites" includes—

(*a*) the full value of any benefits granted to the assessee by his employer, such as the provision of living or other accommodation, whether free of rent or at concessional rent, the supply of food or domestic servants free of cost or at concessional rate or the provision for any other service or supply or any other amenity of whatsoever nature ;

(*b*) any sum paid by the employer in respect of any charge or other obligation which but for such payment would have been paid by the assessee ;

(*c*) any sum paid by the employer, whether paid directly or through a fund to which the provisions of Chapters IXA and IXB do not apply, to effect an assurance on the life of the assessee or in respect of a contract for an annuity on the life of the assessee ;

Provided that where the perquisites are for the benefit of a number of employees collectively, the value of the benefit to the assessee shall be deemed to be such portion of the total cost to the employer in respect thereof as is proportionate to the benefit enjoyed by the assessee.";

(*ii*) in the proviso to *Explanation 2*, after the words "liable to income-tax any payment" the words "of death-*cum*-retirement gratuity received under the revised Pension Rules of the Central Government, or any payment" shall be inserted, and the words "or in lieu of or in commutation of an annuity" and the words "or on his leaving the employment in connection with which the fund is established" shall be omitted :

(*iii*) sub-section (2) shall be omitted.

9. **Amendment of section 8, Act XI of 1922.**—In section 8 of the principal Act,—

(*i*) for the word "receivable", wherever it occurs, the words "received or receivable" shall be substituted ; and for the words "a local authority or a company" the words and figures "a local authority, a company or a co-operative society registered for the time being under the Co-operative Societies Act, 1912 (II of 1912), or under any law of a State governing the registration of co-operative societies :" shall be substituted ;

(*ii*) in the first proviso, for the words and figures "not being interest on a loan issued for public subscription before the 1st day if April, 1938," the words and figures "not being interest on such loan issued for public subscription before the 1st day of April, 1938, as the Central Government may, by general or special order, specify in this behalf," shall be substituted.

10. **Amendment of section 9, Act XI of 1922.**—In section 9 of the principal Act,—

(*i*) in sub-section (1), the words "*bona fide*" shall be omitted and in the proviso to clause (*iv*), for the words and figures "not being interest on a loan issued for public subscription before the 1st day of April, 1938," the words and figures "not being interest on such loan issued for public subscription before the 1st day of April, 1938, as the Central Government may, by general or special order, specify in this behalf," shall be substituted, and after the proviso, as so amended, the following further proviso shall be inserted, namely :—

"Provided further that no allowance shall be made in respect of any annual charge which is created in consideration of the right of any present or past member of a Hindu undivided family to any maintenance allowance where no tax is payable by such member in respect of the maintenance allowance by virtue of the provisions of sub-section (1) of section 14." :

(*ii*) in sub-section (2), for the words beginning with the words "For the purposes of this section," and ending with the words "ten per cent. of such total income", the following shall be substituted, namely :—

"For the purposes of this section, the annual value of any property shall be deemed to be the sum for which the property might reasonably be expected to let from year to year, and, where the property is let in consideration of a premium in addition to a monthly or annual rent and such premium is liable to be included in the income of the lessor by virtue of clause (6C) (*iv*) of section 2, the annual value shall be so computed as to include also such premium :

Provided that, where the property is in the occupation of the owner for the purposes of his own residence, the annual value shall be determined in the

same manner as if the property had been let to a tenant, so however that where the sum so determined exceeds ten per cent. of the total income of the owner, the annul value of the property shall be deemed to be ten per cent. of such total income :".

11. **Amendment of section 10, Act XI of 1922.**—In section 10 of the principal Act,—

(1) in sub-section (2)—

(*i*) to clause (*i*), the following further proviso shall be added, namely :—

"Provided further that where in addition to such rent any premium is paid for the lease of the premises, and such premium is liable to included in the income of the lessor by virtue of clause (6C) (*iv*) of section 2, or sub-section (2) of section 9 as the case may be, the rent paid shall be computed so as to include also such portion of the premium as is equal to the premium paid divided by the number of years of the lease subject to a minimum of one-twentieth of the premium for the period of the lease or for a period of 20 years, as the case may be,";

(*ii*) in clause (*iii*),—

(*a*) in the proviso, for the words and figures "not being interest on a loan issued for public subscription before the 1st day of April 1938," the words and figures "not being interest on such loan issued for public subscription before the 1st day of April, 1938, as the Central Government may, by general or special order, specify in this behalf," shall be substituted ;

(*b*) after the proviso as so amended, the following further proviso shall be inserted namely :—

"Provided further that, where after the commencement of the business profession or vocation, the assessee has made investment or acquired assets which are not for the purposes of the business, profession or vocation or the income from which is not wholly chargeable under this Act, so much of the borrowed capital as is equal to the amount utilized in such investments or assets shall not be deemed to be capital borrowed for the purposes of the business, profession or vocation :";

(*iii*) in clause (c) of the proviso to clause (*vi*), for the words "where full" the the words "where, in the assessment of the assessee or if the assessee is a registered firm, in the assessment of its partners, full" shall be substituted ;

(*iv*) in clause (*vii*), for the words "machinery or plant", wherever they occur, the words "machinery, plant or furniture" shall be substituted, and to the clause as so amended, the following *Explanation* shall be added at the end, namely ,—

Explanation.—In this clause, the expression "sold" means transferred for a price or by way of exchange, or compulsorily acquired under any law for the time being in force, whether the transfer of acquisition was made before or after the commencement of the Indian Income tax (Amendment) Act, 1951.";

(*v*) at the end of the proviso to clause (*x*), the following words shall be inserted, namely :—

"any part of the amount which, in the opinion of the Income-tax officer, is excessive or unjustified being disallowed ;";

(*vi*) in clause (*xv*), for the words and brackets "(being in the nature of capital expenditure or personal expenses of the assessee)" the words and brackets "(not being an allowance of the nature described in any of the clauses (*i*) to (*vvi*) inclusive, and not being in the nature of capital expenditure or personal expenses of the assessee)" shall be substituted ;

(2) in sub-section (*1*),—

(*i*) for the word, letters and brackets the word, "clause (*xii*)" the word, letters and brackets "(*xv*)" shall be substituted ;

(*ii*) in clause (*b*), for the words "any partner of the firm ; or" the following shall be substituted namely :—

"any partner of the firm or by an association of persons to any member of the association, or by a Hindu undivided family to any member of the family :

Provided that the interest paid to any member of the Hindu undivided family on his self acquired and separate funds lent to the family shall not be disallowed under this clause ; or";

(3) in sub-section (*5*),—

(*i*) after clause (*b*), the following clause shall be inserted, namely :—

"(c) in the case of assets acquired by the assessee by way of gift or inheritance, the "written-down-value" as in the case of the previous owner or the market value thereof whichever is the less.';

(*ii*) at the end, the following *Explanation* shall be inserted, namely :—

"*Explanation.*—For the purposes of this sub-section, the expression "actual cost" means the actual cost of the assets as reduced by the amounts, if any, received from any outside source for or in connection with the purchase of such assets, and any allowance in respect of any depreciation carried forward under clause (*b*) of the proviso to clause (*vi*) of sub-section (*2*) shall be deemed to be depreciation "actually allowed";

(*4*) in sub-section (*6*), after the word "association" the following shall be inserted, namely :—

' which is registered under the Indian Companies Act, 1913, (VII of 1913), or is a body corporate under any other law for the time being in force in the taxable territories, shall be deemed to carry on business within the meaning of this section and shall be chargeable to tax accordingly, and any other trade, profession or similar association";

(5) after sub-section (*6*), the following sub-section shall be inserted, namely :—

"(*6A*)(*a*) Where the assessee has assets, transactions or undertakings which are either not connected with the business, profession or vocation under assessment or the income whereof is not wholly chargeable under this Act, the allowances admissible under this section shall be reduced in whole or in part to such extent as the Income-tax Officer considers reasonable.

(*b*) In computing the income, profits and gains chargeable under this section no allowance shall be made under any provision of this Act in respect of any expenditure or part thereof, if in relation to such expenditure or part, or part, as the case may be, an allowance has been made under some other provision of this Act."

12. Amendment of section 12, Act XI of 1922.—In section 12 of the principal Act,—

(*i*) in clause (*b*) of the proviso to sub-section (*2*), for the words and figures "not being interest on a loan issued for public subscription before the 1st day of April, 1938," the words and figures "not being interest on such loan issued for public subscription before the 1st day of April, 1938, as the Central Government may, by general or special order, specify in this behalf" shall be substituted ;

(*ii*) after the proviso as so amended, the following further proviso shall be inserted, namely :—

"Provided further that if any premium is paid in addition to the monthly or annual rent in respect of a lease and such premium is liable to be included in the income of the lessor by virtue of clause (*6C*)(*iv*) of section 2 or sub-section (*2*) of section 9, as the case may be, an allowance shall be made in the like manner and to the same extent as would be made under clause (*i*) of sub-section (*2*) of section 10.";

(*iii*) after sub-section (*4*), the following sub-section shall be inserted, namely :—

"(*5*) Where the assessee has assets, transactions or undertaking, which are either not connected with his income under the head 'other sources' or the income whereof is not wholly chargeable under this Act, the allowances admissible under this section shall be reduced in whole or in part to such extent as the Income-tax officer considers reasonable."

13. Insertion of new section 12A in Act XI of 1922.—After section 12A of the principal Act, the following section shall be inserted namely:—

"12AA. *Royalties or copyright fees for literary artistic works.*—Where the time taken by the author of a literary or artistic work in the making thereof is—

(*a*) more than twelve but less than twenty-four months, or

(*b*) more than twenty-four months,

the amount received or receivable by him during any previous year on account of any lump sum consideration for the assignment or grant of any of his interests in the copyright of that work, or of royalties or copyright fees (whether receivable in lump sum or otherwise), in respect of that work, shall, if he so claims, be allocated for purposes of assessment as hereunder—

(*i*) in the case referred to in clause (*a*), one-half of the amount of such lump sum, royalties or fees, as the income of the previous year in which the whole amount is received or receivable and the other half, as the income of the next succeeding previous year ; and

(*ii*) in the case referred to in clause (*b*), one-third of the amount of such lump sum, royalties or fees as the income of the previous year in which the whole amount is received or receivable, and one-third of the said amount as the income of each of the two next succeeding previous years.

Explanation.—For the purposes of this section, the expression 'author' includes a joint author and the expression 'lump sum' in regard to royalties or copyright fees includes an advance payment on account of such royalties or copyright fees which is not returnable."

14. Amendment of section 13, Act XI of 1922.—For the proviso to section 13 of the principal Act, the following proviso shall be substituted, namely :—

"Provided that—

(*a*) if no method or accounting has been regularly employed, or if the method employed is such that, in the opinion of the Income-tax Officer, the income, profits and gains cannot properly be deduced therefrom, the Income-tax Officer may, after recording the reasons for his opinion, compute the income, profits and gains on such basis and in such manner as he may determine ;

(*b*) where, in computing the income of the third year immediately preceding the previous year, an allowance has been made for any amount due but not actually paid by the assessee in that year and such amount remains unpaid at the end of the previous year, such amount shall be deemed to be income, profits and gains and to accrue or arise in the taxable territories during the previous year ;

(*c*) where any amount which has been deemed to be income, profits and gains under clause (*b*) is actually paid by the assessee subsequently, an allowance of the amount so paid shall be made from the income of the year in which it is paid ;

(*d*) where, at any time prior to the previous year, an allowance has been made in respect of any trading debt or loss incurred by the assessee, any amount received by him during the previous year in respect of such debt or loss by way of compensation or otherwise, shall be deemed to be the income, profits and gains and to accrue or arise in the taxable territories during the previous year."

15. Amendment of section 14, Act XI of 1922.—In section 14 of the principal Act,—

(*a*) for sub-section (*1*), the following sub-section shall be substituted, namely :—

"(*1*) The tax shall not be payable by an assessee in respect of any sum which he receives—

(*i*) as a member of a Hindu undivided family out of the total income of the family in respect of which the family itself has been or can be assessed as a unit ; or

(*ii*) as a member of a Hindu undivided family from the holder of an impartible estate belonging to the family, out of the total income of the holder of the estate where such income has been or can be assessed as as a unit."

(*b*) in clause (*c*) of sub-section (*2*), for the words and letter "Part B State" the words "the State of Jammu and Kashmir" shall be substituted and shall be deemed to have been substituted with effect from the 1st day of April, 1950.

16. Amendment of section 15, Act XI of 1922.—In section 15 of the principal Act,—

(*a*) in sub-section (*1*), after the words "on the life of a wife or husband of the assessee", where they occur for the second time, the words "which in con-

junction with any other benefit secures a capital sum on death" shall be inserted ; and to the said sub-section, the following *Explanation* shall be added, namely :—

"*Explanation.*—For the purposes of this sub-section, any sum paid by the employer of the assessee to effect an insurance on the life of the assessee or in respect of a contract for an annuity on the life of the assessee, which included in his total income as a perquisite under *Explanation 1* sub-section (*1*) of section 7, shall be deemed to be a sum paid by the assessee." ;

(*a*) in sub-section (*2A*), the words "other than a contract for a deferred annuity" shall be omitted.

17. Amendment of section 15C, Act XI of 1922.—In section 15C of the principal Act,—

(*a*) in sub-section (*2*),—

(*i*) in clause (*ii*), for the word "three" the word "six" shall be substituted;

(*ii*) in clause (*iii*), for the word "fifty" the word "twentyfive" shall be substituted ;

(*b*) for sub-section (*6*), the following sub-section shall be substituted, namely :—

"(*6*) The provisions of this section shall apply to the assessment for the financial year next following the previous year in which the assessee begins to manufacture or produce articles and for the four assessments immediately succeeding."

18. Amendment of section 16, Act XI of 1922.—In section 16 of the principal Act,

(*a*) in sub-section (*1*)—

(*i*) in clause (*a*), for the words, figures, and letters "section 15B and section 15C" the words, figures, letters and brackets "section 15B, section 15C and sub-section (*3*) or sub-section (*4*) of section 25" shall be inserted ;

(*ii*) in clause (*b*) after the proviso, the following further proviso shall be inserted, namely :—

"Provided further that where any such partner pays interest in respect of the capital borrowed by him and invested in the business, profession or vocation of the firm or where according to the terms of the partnership he is required to work in the firm but engages a person to work therein on his behalf, the interest or salary paid by him shall be allowed as a deduction from his share of the firm to computed ;"

(*iii*) in clause (*c*) after the words "income of the transferor" the following shall be inserted, namely :—

"and all transactions in respect of the property or assets which have been the subject of such settlement, disposition or transfer, and all such property or assets shall for the purposes of this clause, be deemed to be the transactions, property or assets of the settlor, disponor or transferor, as the case may be ;"

(*b*) in sub-section (*2*), after the words "an assessee" the words who is a shareholder in a company" shall be inserted ;

(*c*) for sub-section (*3*), the following sub-section shall be substituted, namely :—

"(*3*) In computing the total income of any individual for the purpose of assessment, there shall be included—

(*a*) so much of the income of a spouse or minor child of such individual or of the minor child of a brother of such individual as arises directly or indirectly—

(*i*) from the membership the spouse in a firm of which such individual is a partner ;

(*ii*) from the admission of any such minor to the benefits of partnership in a firm of which such individual or the spouse of such individual is a partner ;

(*iii*) from any settlement or disposition made by such individual in favour of the spouse or from assets transferred directly by such individual to the spouse otherwise than for adequate consideration or in connection with an agreement to live apart ;

(*vi*) from any settlement or disposition made by such individual in favour of such minor or from assets transferred directly or indirectly by such individual to any such minor, not being a married girl, otherwise than for adequate consideration ; and

(*b*) so much of the income of any person or association of persons as arises from any settlement or disposition made by such individual in favour of the person or association or from assets transferred otherwise than for adequate consideration to the person or association by such individual for the benefit of the spouse or minor child of such individual or for the benefit of a minor child of such individual's brother or for the benefit of all or any two or more of them.

Explanation—For the purposes of this sub-section, the word 'child' includes adopted child, foster-child, step-child, illegitimate child and grandchild."

19. Amendment of section 18 : Act XI of 1922.—In section 18 of the principal Act,—

(*a*) in sub-section (*2H*), for the words "at the rate or rates applicable to the estimated income of the assessee under this head", the following shall be substituted namely :—

"on the estimated income of the assessee under this head in accordance with the provisions of clause (*b*) of sub-section (*1*) of section 17 :

Provided that where—

(*i*) the person not so resident has obtained a certificate in writing from the Income-tax Officer (which certificate the Income-tax Officer shall be bound to give in every proper case on the application of the assessee) stating that income-tax and super-tax may be deducted at the rates specified therein, or

(*ii*) the Income-tax officer has by an order in writing, required the person responsible for making payment to deduct income-tax and super-tax at the rates specified in that order, the person responsible for making the payment shall, until such certificate or order is cancelled by the Income-tax Officer, deduct income-tax and super-tax at the rates specified in such certificate or order, as the case may be"

(*b*) sub-section (*3A*) shall be renumbered as sub section (*3B*), and before that section as so renumbered, the following sub-section shall be inserted, namely :—

'(3A) The person responsible for paying any income chargeable under the head "Interest on securities" to a person whom he has no reason to believe to be resident in the taxable territories, shall at the time of payment, deduct super-tax on the amount of such interest—

(i) if such person is a company, at the rate applicable to a company,

(ii) if such person is not a company, in accordance with the provisions of clause (b) of sub-section (1) of section 17 :

Provided that where such person is not a company, the proviso to sub-section (2B) shall apply to the deduction of super-tax under this sub-section as it applies to the deduction of super-tax under sub-section (2B)'

(c) in sub-section (3B) as so renumbered, for the words commencing with "income-tax thereon as an agent, deduct income-tax at the maximum rate" and ending with the words "or deduct the tax at such less rate, as the case may be :" the following shall be substituted, namely :—

"income-tax and super-tax thereon as an agent, deduct income-tax at the maximum rate and super-tax at the rate applicable to a company or in accordance with the provisions of sub-clause (b) of section (1) of section 17, as the case may be :

Provided that where the person not so resident is not a company, the proviso to sub-section (2B) shall apply to the deduction of income-tax and super-tax under this sub-section as it applies to the deduction of income-tax and super-tax under sub-section (2B) :";

(d) the existing sub-sections (3B) and (3C) shall be omitted ;

(e) for sub-sections (3D) and (3E), the following sub-section shall be substituted, namely,—

"(3D) Where the person responsible for paying any sum chargeable under this Act other than interest, to a person not resident in the taxable territories, considers that the whole of such sum would not be income chargeable in the case of the receipient, he may make an application to the Income-tax Officer to determine, by general or special order, the appropriate proportion of such sum so chargeable and upon such determination tax shall be deducted therefrom by the person responsible for making such payment in accordance with the provisions of sub-section (3B).

(3E) The principal officer of an Indian company or a company which has made such effective arrangements as may be prescribed for the deduction of super-tax from dividends shall, at the time of paying any dividend to a shareholder whom the principal officer has no reason to believe to be resident in the taxable territories, deduct super-tax on the amount of such dividend as increased in accordance with the provision of sub-section (2) of section 16—

(i) if the shareholder is a company, at the rate applicable to a company,

(ii) if the shareholder is a person other than a company, in accordance with the provisions of clause (b) of sub-section (1) of section 17 :

Provided that in the case of a shareholder other than a company, the proviso to sub-section (2B) shall apply to the deduction of super-tax under this sub-section as it applies to the deduction of super-tax under sub-section (2B).";

(f) in sub-section (5), after the words "Any deduction made" the words "and paid to the account to the Central Government" shall be inserted ; after the words "given to him therefor" the words "on the production of the certificate furnished under sub-section (9) of section 20, as the case may be," shall be inserted, and after the second proviso, the following further proviso shall be inserted, namely :—

"Provided further that where any security or share in a company is owned jointly by two or more persons not constituting a partnership, credit in respect of the tax deducted or in respect of any sum by which the dividend has been increased under sub-section (2), of section 16, may be given to each such person in the same proportion in which the interest on such security or dividend on such share has been included in his total income."

(g) in sub-section (7), for the words, brackets, figures and letters "sub-sections (3D) and (3E)" the words, brackets, figures and letter "sub-section (3E)" shall be substituted ;

(h) in sub-section (8), the brackets, figures and letters "(3C), (3D)" shall be omitted ;

(i) after sub-section (9), the following sub-section shall be inserted, namely :—

(10) In this section, the expression 'person responsible for paying' shall mean and shall be deemed always to have meant—

(i) in the case of payments of income chargeable under the head 'Salaries' other than payments by the Central Government or the Government of a State, the employer himself or if the employer is a company, the company itself or the principal officer thereof ;

(ii) in the case of payments of income chargeable under the head 'Interest on securities', other than payments made by or on behalf of the Central Government or the Government of State, the local authority, company or the co-operative society concerned or the principal thereof".

20. Amendment of section 18A, Act XI of 1922.—In section 18A of the principal Act,—

(a) in sub-section (1) (a), for the words "if that total income exceeded six thousand rupees," the words "if that total income exceed the maximum amount not chargeable to tax in his case by two thousand five hundred rupees." shall be substituted ;

(b) in sub-section (3),for the words "is likely to exceed six thousand rupees," the words "likely to exceed the maximum amount not chargeable to tax in his case by two thousand five hundred rupees," shall be substituted,

(c) after sub-section (3), the following sub-section shall be inserted, namely :—

"(3A) If at any time during a financial year, the Income-tax Officer has reason to believe that—

(a) that tax payable by any person under this section in that year on his income in respect of the period which would be the previous year or

part thereof for the purposes of assessment for the year next following is likely to be greater than—

(*i*) the tax that he has been, or would have been, required to pay under sub-section (*1*) on the basis of his last completed assessment, or

(*ii*) the estimate of the tax payable by him under sub-section (*3*), or

(*b*) any person who should have sent an estimate of the tax payable by him under sub-section (*3*), has not sent any such estimate,

the Income-tax Officer may require such person to furnish a statement of his income for the period which would be the whole of the previous year or part thereof for the purposes of the assessment for the year next following, and may also require him to produce such account books or other information as he may require in respect of that period to enable him to determine the tax payable by such person under this section :

Provided that if any person does not furnish a statement of his income or does not produce the account books or other information required under this sub-section, the Income-tax Officer shall determine the tax payable by such person to the best of his judgement and may futher direct that such person shall pay by way of penalty, a sum not exceeding one-fifth of the tax so determined.

21. Insertion of new section 20B in Act XI of 1922.—After section 20A of the principal Act, the following section shall be inserted, namely :—

"**20.** *Supply of information regarding interest on securities and dividends collected on behalf of other persons.*—(*1*) Any person who claims that he is himself not liable to be assessed in respect of any interest on securities or dividends received or collected by him during any financial year shall, on or before the 15th day of June next after the close of the financial year to which the receipt or collection relates, furnish to the prescribed Income-tax Officer a return in the prescribed form and varified in the prescribed manner showing the names and addresses of all persons on whose behalf interest on securities or dividend was so collected or received add forward therewith the relevant certificate under sub-section (*y*) of section 18 or section 20, as the case may be.

(*2*) No person referred to under sub-section (*1*) shall be entitled to claim that he is not himself liable to be assessed on the interest on securities or dividends unless he has furnished the returns and certificates required in respect thereof."

22. Amendment of section 21, Act XI of 1922.—After clause (*b*) of section 21 of the principal Act, the following clause shall be inserted namely :

"(*bb*) the value of any benefit or perquisite granted to any person and the amount of any special allowance specifically granted to meet expenses necessary in the performance of the duties of an Office or employment of profit ;"

23. Amendment of section 22, Act XI of 1922.—In section 22 of the principal Act,—

(*a*) in sub-section (*1*), for the words "exceeded the maximum amount which is not chargeable to income-tax" the words "did not fall short of the maximum amount not chargeable to income-tax by more than five hundred rupees" shall be substituted ;

(*b*) in sub-section (*2*), for the words "whose total income is, in the Income-tax Officer's opinion, of such an amount as to render such person liable to income-tax," the words "whose total income in the Income-tax Officers opinion, does not fall short of the maximum amount not chargeable to income-tax by more than five hundred rupees," shall be substituted ;

(*c*) after sub-section (*2*), the following sub-sections shall be inserted, namely :—

"(*2A*) If any person, who has not been served with a notice under sub-section (*2*), has sustained a loss of profits or gains in any year under the head 'Profits and gains of business, profession or vocation', and such loss or any part thereof would ordinarily have been carried forward under sub-section (*2*) of section 24, he shall, if he is to be entitled to the benefit of the carry forward of loss in any subsequent assessment, furnish within the time specified in the general notice given under sub-section (*1*), all the particulars required under the prescribed form of return of total income and total world income in the same manner as he would have furnished a return under sub-section (*1*) had his income exceeded the maximum amount not liable to income-tax in his case, and all the provisions of this Act shall apply as if it were a return under sub-section (*1*).

(*2B*) The prescribed form of returns referred to in sub-section (*1*) and (*2*) shall, in the case of an assessee engaged in any business, profession or vocation, whose total income exceeds the maximum amount not liable to super-tax, be accompanied by statements of accounts including a Balance Sheet, Profit and Loss Account and Trading Accounts duly audited by a chartered accountant."

(*d*) in sub-section (*4*), for the words "such accounts or documents as the Income-tax officer may require", the following words shall be sub-substituted, namely : –

"such accounts or documents, including accounts relating to any year subsequent to the previous year as the Income-tax Officer may require, or to furnish in writing and verified in the prescribed manner, information in such form and on such points or matters as the Income-tax Officer may require ."

24. Amendment of section 23, Act XI of 1922.—In section 23 of the principal Act,—

(*a*) in sub-section (*2*) for the words "without requiring" the words "without further information or without requiring" shall be substituted ;

(*b*) after sub-section (*2*), for the following sub-section shall be inserted, namely,

'(*2A*) Where any fact, account or document, is relied upon by the assessee in support of his return, the onus of proving the correctness of such fact, account or document and of proving the quantum of his total income or total world income, shall be on the assessee."

25. Amendment of section 23A, Act XI of 1922.—In section 23A of the principal Act,—

(*a*) for sub-section (*1*), the following sub-section shall be substituted, namely :—

"(*1*) Where the Income-tax Officer is satisfied that in respect of any previous year the profits and gains distributed as dividends, if any, by any company up to the end of the twelvth month after the end of that previous year,

are less than sixty per cent. of the assessable income of the company of that previous year, as reduced by—

(a) the amount of income-tax payable by the company in respect thereof,

(b) the amount of any tax levied by the Government of a State or by a local authority, whether such tax is wholly or partly an admissible deduction under section 9 or section 10 or not, and

(c) in the case of a banking company, the amount transferred to a reserve fund under section 17 of the Banking Companies Act, 1949,

he may, unless he is satisfied that having regard to losses incurred by the company in earlier years or to the smallness of the profit made, the payment of any dividend or a large dividend than that declared would be unreasonable, make with the previous approval of the Inspecting Assistant Commissioner an order in writing that the whole of the undistributed portion of the assessable income of the company of that previous year as computed for income-tax purposes and reduced by the amounts aforesaid shall be deemed to have been distributed as dividends amongst the shareholders at the date of any general meeting which has been held within the twelve months aforesaid, or as at the end of the aforesaid period of twelve months whichever is earlier, and thereupon the proportionate share thereof of each shareholder shall be included in the total income of such shareholder for the purpose of assessing his total income :

Provided that in the case of a company whose income is derived mainly from investments or from dealings in investments, and in the case of any other company, if its reserves representing accumulations of past profits which have not been the subject of an order under this sub-section exceed the paid up capital of the company, together with any loan capital which is the property of the shareholders, or the actual cost of the fixed assets of the company, whichever of these is greater, this section shall apply as if instead of the words 'sixty per cent.' and 'fifty-five per cent' the words 'one hundred per cent'. 'and ninety per cent'. respectively had been substituted :

Provided further that where the company has distributed not less than fifty-five per cent. of its assessable income, as reduced by the amounts aforesaid, the Inspecting Assistant Commissioner of Income-tax shall not give his approval to any order proposed to be passed by the Income-tax Officer under this section, unless after service of a notice from the Inspecting Assistant Commissioner, the company fails to make within two months of the service of such notice a further distribution of its profits and gains so as to bring up the total distribution to not less than sixty per cent. of the assessable income of the company of the previous year concerned, as reduced by the amounts as aforesaid :

Provided further that this sub-section shall not apply to any company in which the public are substantially interested or to a subsidiary company of such a company if the whole of the share capital of such subsidiary company has been held by the parent company or by the nominees thereof at the end of that previous year.

Explanation—For the purposes of this sub-section, a company shall be deemed to be a company in which the public are substantially interested only if at any time during that previous year its shares have been offered for sale in a recognised stock exchange in the taxable territories and it is neither a private company within the meaning of the Indian Companies Act, 1913 (VII of 1913), nor a company in which shares carrying more than fifty per cent. of the total voting power have, at any time during that previous year, been held or controlled by less than six persons" ;

(b) in sub-sections (3) and (4), for the word "member", wherever it occurs, the word "shareholder" shall be substituted ;

(c) after sub-section (5), the following sub-sections shall be inserted, namely :—

"(6) Any notice required under the provisions of this section may, where the company is in liquidation, served on the liquidator and the liquidator shall be responsible for doing all matters or things required to be done by or on behalf of the company and for the payment of any tax payable by or recoverable from the company under the provisions of this section.

(7) In the case of a company which is not a company in which the public are substantially interested within the meaning of sub-section (*t*), the accumulated profits of the company of the period from the end of the last previous year for which it has made a return of its total income, to the date on which an order or resolution for winding it up is made shall, for for the purposes of assessment of its shareholders, be deemed to have been distributed as dividend amongst the shareholders on the date of that order or resolution, and the provisions of sub-sections (3), (4), (5) and (6) shall apply in the like manner and to the same extent as they apply in the case of an order under sub-section (*t*)."

26. **Amendment of section 24, Act XI of 1922.**—In section 24 of the principal Act,—

(a) in sub-section (*t*), for the first proviso, the following provisos shall be substituted namely :—

"Provided that in computing the income, profits and gains chargeable under any head or the loss of profits and gains falling under any head, so much of any loss as would but for the loss have accrued or arisen within the State of Jammu and Kashmir, shall not be taken into account except to the extent of the amount of income, profits and gains, if any, which would be exempt under the provisions of clause (c) of sub-section (2) of section 14 :

Provided further that in computing the profits and gains chargeable under the head "Profits and gains of business, profession or vocation", any loss sustained in a business consisting of speculative transaction shall not be taken into account except to the extent of the amount of profits and gains, if any, in any other business consisting of speculative transactions.";

(b) in sub-section (2),—

(*i*) for the words "under the head 'Profits and gains of business, profession or vocation'," the word "in any business, profession or vocation" shall be substituted ;

(*ii*) in clause (*a*) of the proviso, for the words "India, but outside the taxable territories" the words "the State of Jammu and Kashmir" shall be substituted ;

(*iii*) after clause (*c*) of the proviso, the following clauses shall be inserted, namely :—

"(*f*) where the assessee is a company which is not resident in the taxable territories and the loss carried forward is a loss of profits and gains which arose without the taxable territories in any year in which the company was assessed as a resident company under sub-clause (*b*) of clause (*c*) of section 4A, such loss shall not be allowed to be set off against the profits and gains from the same business arising in the taxable territories except to the extent to which the profits and gains arising without the taxable territories have, as reduced by the amount of such losses, if any, allowed previously, been assessed in the past ;

(*g*) where there are two or more businesses other than a business consisting of speculative transactions and the losses sustained therein cannot be wholly set off under sub-section (*f*), the amount of loss which has not been so set off shall, for the purposes of this sub-section, be allocated to each such business in the same proportion as the loss sustained in each such business bears to the aggregate of the losses sustained in all such businesses." ;

(*c*) after sub-section (*3*), the following sub-section shall be inserted, namely :—

"(*4*) For the purposes of this Act,—

(*i*) life insurance business shall be deemed to be a distinct and separate business from any other kind of insurance business ; and

(*ii*) where the speculative transactions carried on are of such a nature as to constitute a business, the business shall be deemed to be distinct and separate from any other business.

(*iii*) a speculative transaction means a transaction in which a contract for purchase and sale of any commodity including stocks and shares is periodically or ultimately settled otherwise than by the actual delivery or transfer of the commodity or scrips :

Provided that a contract in respect of raw materials or merchandise entered into by a person in the course of his manufacturing or merchanting business to guard against loss through future price fluctuations in respect of his contracts for actual delivery of goods manufactured by him or merchandise sold by him shall not be deemed to be a speculative transaction.

27. Amendment of section 24A, Act XI of 1922.—In sub-section (*1*) of section 24A of the principal Act, for the words "has been assessed in his hands", the words "has been fully assessed in his hands" shall be substituted.

28. Amendment of section 25, Act XI of 1922.—(*1*) In section 25 of the principal Act,—

(*a*) in sub-section (*1*), for the words "any year, an assessment may be made in that year" the words "any financial year, an assessment may be made at the rates in force in that financial year" shall be substituted ; and to the said sub-section the following proviso shall be added, namely :—

"Provided that where such period exceeds the period of the previous year relating to the assessment year following that financial year, a separate assessment may be made on the income, profits and gains of such previous year and another assessment on the income, profits and gains of the remaining period" ;

(*b*) in sub-section (*3*), after the words "is discontinued", the words "in the course of a previous year" shall be inserted, and for the words "the previous year", wherever they occur, the words "the immediately preceding previous year" shall be substituted ;

(*c*) in sub-section (*4*), after the words "is succeeded" the words "in the course of a previous year" shall be inserted, and for the words "the previous year", wherever they occur, the words "the immediately preceding previous year ' shall be substituted ;

(*d*) for sub-section (*5*), the following sub-section shall be substituted, namely:—

"(*5*) The benefit of sub-section (*3*) and sub-section (*4*) shall not be given to any person unless such person has, before the expiry of one year from the date on which the business, profession or vocation was discontinued or succeeded to, as the case may be, given notice of such discontinuance or succession to the Income-tax Officer concerned."

(*2*) The amendments made by clauses (*a*), (*b*) and (*c*) of sub-section (*1*) shall be given effect to as if they had been originally enacted.

29. Insertion of new section 25B, Act XI of 1922.—After section 25A of the principal Act, the following section shall be inserted, namely :—

'25B. *Liquidators, etc.*—(*1*) Every person, in his section referred to as the "trustee",—

(*a*) who is the liquidator of any company which is being wound up under the orders of a court or otherwise ; or

(*b*) who has been appointed the receiver of any assets of a company ; or

(*c*) who is an agent of a person not resident in the taxable territories, and has been required by his non-resident principal to wind up the business or to realise the assets of the principal,

shall within thirty days after he has become such trustee, give notice of his appointment as such to the Income-tax Officer who is entitled to assess the income of the company or of the non-resident person.

(*2*) The Income-Tax Officer shall, after making such inquiries or calling for such information as he may deem fit with respect to the assets of the company or the properties in the hands of the trustee, notify to the trustee the amount which in the opinion of the Income-tax Officer would be sufficient to provide for any tax which then is or is likely thereafter to become payable by the company or the principal or the agent of the principal, as the case may be.

(*3*) The trustee—

(*a*) shall not without the leave of the Income-tax Officer part with any of the assets of the company or of the principal ;

(*b*) shall set aside, out of the assets coming into his possession, assets to the value of the amount so notified, or the whole of such assets if they are of a value equal to or less than that amount ; and

(*c*) shall, to the extent of the value of the assets which he is so required as aforesaid to set aside, be personally liable to pay the tax on behalf of the company or the non-resident person as the case may be.

(*d*) Where there is more than one trustee, the obligations and liabilities attaching to the trustee under this section shall attach to all the trustees jointly and severally.

(*5*) The amount notified by the Income-tax Officer under sub-section (*2*) shall not be called in question in any proceeding before any court under any law, and the provisions of this section shall have effect notwithstanding anything to the contrary contained in any other law for the time being in force.

30. Amendment of section 26A, Act XI of 1922.—After sub-section (*2*) of section 26A of the principal Act, the following sub-section shall be be inserted, namely :—

"(*3*) If the particulars contained in the application made under sub-section (*2*) are found to be incorrect, the registration granted to the firm under sub-section (*1*) for any year shall be cancelled and the firm shall, subject to the provisions of section 23B or section 34, be assessed or reassessed to tax as if it were an unregistered firm, association of persons or individual as the case may be."

31. Omission of section 27, Act XI of 1922.—Section 27 of the principal Act shall be omitted.

32. Amendment of section 28, Act XI of 1922.—In section 28 of the principal Act,—

(*a*) for sub-section (*1*), the following sub-section shall be substituted, namely :—

"(*1*) If the Income-tax Officer, the Appellate or Inspecting Assistant Commissioner, the commissioner or the Appellate Tribunal in the course of any proceedings under this Act, whether or not such proceedings relate to the assessment in which any default or concealment has occured, is satisfied that any person has without reasonable cause failed to comply or has without reasonable cause failed to comply within the time allowed, if any, in that behalf with the requirements of any notice under section 22 or section 23 or section 34 or has concealed the particulars of his income or has negligently or deliberately furnished any inaccurate or incomplete particulars in his return of total income or in any information furnished in compliance with the notice under sub-section (*4*) of section 22 or in any evidence furnished under section 23, he or it may direct that such person shall, in addition to the the amount of income-tax and super-tax, on his total income (which amount in this sub-section is referred to as "such sum") pay by way of penalty an amount computed as follows :—

(*a*) where the return of total income required by the notice under sub-section (*1*) of section 22 is not furnished within the time allowed by such notice but is furnished before the commencement of the next financial year, the penalty payable shall be an amount not exceeding three hundred rupees or one fourth of such sum whichever is the less :

Provided that if a return is furnished before the commencement of the next financial year and before the issue of a notice under sub-section (*2*) of section 22, there shall be no penalty ;

(*b*) where the return of total income required by the notice under sub-section (*1*) of section 22 is not furnished or is furnished after the commencement of the next financial year, or where the return of total income required by the notice under sub-section (*2*) of section 22 or section 34 is not furnished or is furnished after the time allowed by such notice, the penalty payable shall be an amount not exceeding such sum,

(*c*) where the return of total income required by the notice under sub-section (*2*) of section 22 or section 34 has not been furnished and a notice under sub-section (*4*) of section 22 has not also been complied with within the time allowed by the notice, the penalty payable shall be an amount not exceeding one and a half times such sum ;

(*d*) where the return of total income has been furnished, but any notice under sub-section (*4*) of section 22 or sub-section (*2*) or sub-section (*3*) of section 23 has not been complied with within the time allowed by the notice, the penalty payable shall be an amount not exceeding the difference between such sum and the amount of income-tax and super-tax, if any which would have been payable had the income as returned, been accepted as the correct income ;

(*e*) where a return of total income furnished is incorrect or incomplete in any material particulars, and such incorrectness or incompleteness is due to negligence, the penalty payable shall be an amount not exceeding one-half but not less than one-fourth of the amount of the difference between such sum and the amount of income-tax and super-tax, if any, which would have been payable had the income as returned been accepted as the correct income ;

(*f*) where a return of total income or any information or evidence furnished as aforesaid is found to be deliberately incorrect or incomplete in any material particulars or where any particulars of income have been concealed, the penalty payable shall be an amount not exceeding one and a half times but not less than the difference between such sum and the income-tax and super-tax, if any, which would have been payable had the income as returned been accepted as the correct income :

Provided that—

(*i*) the aggregate of the amounts of penalties imposable under this sub-section shall not exceed one and a half times such sum in any case ;

(*ii*) where the assessment in respect of which penalty is imposible is for a year which is outside the limit of time specified in section 23B, or section 34, as the case may be, the expression "such sum" shall for the purposes of computing the penalty, mean income-tax and super-tax which would have been payable on the true total income had it been assessed at the proper time, and the amount of the penalty shall not, in any case be less than the amount of income-tax and super-tax, which has been avoided by such person for that year ;

(*iii*) no penalty for failure to furnish the return of his total income shall be imposed on an assessee whose total income does not exceed the maxi-

mum amount not chargeable to income-tax in his case by more than one thousand rupees, unless he has been served with a notice under sub-section (2) of section 22 ;

(*iv*) where a person has failed to comply with the notice under sub-section (2) of section 22 or section 34, and proves that he has no income liable to tax, the penalty imposable under this sub-section shall be a penalty not exceeding twenty-five rupees ;

(*v*) no penalty shall be imposed under this sub-section upon any person assessable under section 42 as the agent of a person not resident in the taxable territories for failure to furnish the return required under section 22 unless a notice under sub-section (2) of that section or under section 34 has been served on him ;

(*vi*) where the person liable to penalty is a registered firm whose registration in consequence of proceedings under this section has not been cancelled, or is an unregistered firm treated under clause (*b*) of sub-section (6) of section 23 as a registered firm, so that the amount of the income-tax and super-tax payable by the firm itself has not been determined, the amount of penalty payable by the registered firm shall be that amount which would have been payable had such firm been assessed as an unregistered firm.";

(b) in sub-section (2),—

(*i*) for the words "Appellate Assistant Commissioner or the Appellate Tribunal" the words "Appellate or Inspecting Assistant Commissioner, the Commissioner or the Appellate Tribunal" shall be substituted ;

(*ii*) after the words "proceedings under this Act" the words "whether or not such proceedings relate to the assessment of which the distribution of profits is in question" shall be inserted ; and

(*iii*) for the words "he or it may direct" the words "he or it may, if the registration or the firm has not been cancelled, direct" shall be substituted ;

(c) after sub-section (2), the following sub-section shall be inserted, namely :—

"(2A) If the Income-tax Officer, the Appellate or Inspecting Assistant Commissioner the Commissioner or the Appellate Tribunal in the course of any proceedings under this Act, whether or not such proceedings relate to the assessment in which the abetment occured, is satisfied that any person has knowingly or wilfully abetted another person to commit a default or to do anything which has rendered that other person liable to any penalty under sub-section (1) or sub-section (2) he or it may direct that such first mentioned person shall without prejudice to any action that may be taken against him under this Act or under any law, pay a penalty of an amount not exceeding the amount of penalty which has been imposed on that other person or five thousand rupees whichever is the less :

Provided that no such penalty shall be imposed unless such first mentioned person has been heard, or has been given a reasonable opportunity of being heard :

Provided futher that where the first mentioned person is a member of a firm constituted for the exercise of a profession or vocation, each member of the firm shall be jointly and severally liable for the penalty levied under this section.";

(d) in sub-section (5), for the words, brackets and figures, "Appellate Assistant Commissioner or the Appellate Tribunal on making an order under sub-section (1) or sub-section (2)" the following shall be substituted, namely :—

"Appellate or Inspecting Assistant Commissioner the Commissioner or the Appellate Tribunal on making an order under sub-section (1), sub-section (2) or sub-section (2A)";

(e) after sub-section (6), the following sub-section shall be inserted namely :—

"(7) Where a penalty under sub-section (1), sub-section (2) or sub-section (2A) has been imposed upon any person, the Income-tax Officer may, with the previous sanction of the commissioner, publish the name, address and other particulars relating to that person or his affairs in such manner as may be specified by the Central Board of Revenue."

33. **Amendment of section 30, Act XI of 1922.**—In section 30 of the principal Act,—

(a) for sub-section (1), the following sub-section shall be substituted, namely :—

"(1) Any assessee—

(*i*) objecting to the amount of income assessed or the amount of tax determined, as the case may be, under section 23, or to the amount of loss computed under section 24, or

(*ii*) objecting to the cancellation by an Income-tax Officer of the registration of a firm under sub-section (4) of section 23, or to a refusal to register a firm under sub-section (4) of that section or section 26A, or

(*iii*) objecting to an order made by an Income-tax Officer under sub-section (2) of section 25 or section 25A or sub-section (2) of section 26 or section 28, or

(*iv*) objecting to an order of rectification or of refusal to rectify made by an Income-tax Officer under section 35, or

(*v*) object to any penalty imposed by an Income-tax Officer under sub-section (6) of section 44E or sub-section (3) of section 44F or sub-section (1) of section 46, or

(*vi*) objecting to a refusal by an Income-tax Officer to allow a claim to a refund under section 48 or section 49F, or objecting to the amount of the refund allowed by an Income-tax Officer under any of those sections, or

(*vii*) denying his liability to be assessed under this Act, or

(*viii*) being a company, objecting to an order made by the Income-tax Officer under sub-section (1) of section 23A,

may appeal to the Appellate Assistant Commissioner against the assessment, refusal or order as the case may be ;

Provided that no appeal shall lie—

(*a*) against an order passed by an Inspecting Assistant Commissioner, when exercising the powers of the Income-tax Officer in pursuance of a direction given by the Commissioner under sub-section (5) of section 5 ;

(*b*) against an order under sub-section (1) of section 46, unless the tax has been paid within the time specified in the notice of demand for penalty;

(*c*) against any order in respect of an assessment if, on an application made by the Income tax Officer in this behalf the Appellate Assistant Commissioner is of the opinion that the assessee has not paid such amount of the tax due or furnished such security or banker's guarantee for payment of tax as appears to him to be reasonable in the circumstances;

Provided further that where the partners of a firm are individually assessable on their shares in the total income of the firm any such partner may, on behalf of the firm and after partners to the petition, appeal to the Appellate Assistant Commissioner against any order of the Income-tax Officer determining the amount of the total income or the loss of the firm or the apportionment thereof between the several partners, and no partner shall, in any appeal relating to the assessment of his own total income, be entitled to raise any question in respect of matters determined by any order of the Income-tax Officer or by the Appellate Assistant Commissioner as a result of any appeal under this proviso.";

(b) in sub-section (*1A*), the brackets, figures, letters and word "(*3A*) and "or (*2C*)" shall be omitted;

(c) in sub-section (*2*), for the words, figures and letter "to register a firm under section 26A or of the date of the refusal to make a fresh assessment under section 27," the following shall be substituted, namely :—

"or of the intimation of the order refusing to register, or cancelling the registration of a firm under sub-section (*1*) of section 23 or section 23A"

34. **Amendment of section 31, Act XI of 1922.**—In section 31 of the principal Act,—

(*a*) in sub-section (*2A*), after the words "not wilful or unreasonable" the following shall be inserted, namely :—

"and the consideration of that ground does not involve the production of any evidence contrary to the provisions contained in sub-section (*2B*).";

(*b*) after sub-section (*2A*), the following sub-section shall be inserted namely :

"(*2B*) The Appellate Assistant Commissioner shall not, at the instance of the appellant, allow any evidence, whether oral or documentary, to be produced, which was not produced before the Income-tax Officer notwithstanding that the appellant was required specifically so to do by the Income-tax Officer, acting under this Act or which the appellant could with due diligence have produced before the Income-tax Officer but did not so produce in response to a notice under sub-section (*2*) of section 23:

Provided that the Appellate Assistant Commissioner may, after recording his reasons for so doing, to be produced any additional evidence which may be necessary to enable him to dispose of the appeal, including the passing of an order therein enhancing an assessment.";

(*c*) for sub-section (*3*), the following sub-section shall be substituted, namely :—

"(*3*) In disposing of an appeal, the Appellate Assistant Commissioner may—

(*i*) in the case of an order of assessment—

confirm, reduce, enhance, amend or set aside the assessment, or set aside the assessment and direct the Income-tax Officer to make a fresh assessment after making such further inquiry as the Income-tax Officer may think fit or the Appellate Assistant Commissioner may direct, and the Income-tax Officer shall thereupon proceed to make such fresh assessment and determine, where necessary, the amount of tax payable on the basis of such fresh assessment;

(*ii*) in the case of an appeal against a computation of loss under section 24—

confirm or vary such computation;

(*iii*) in the case of an order cancelling or refusing the registration of a firm under sub-section (*4*) of section 23 or section 26A—

confirm such order or cancel it and direct the Income-tax Officer to register the firm and to assess the partners separately on their respective shares;

(*iv*) in the case of an order under sub-section (*2*) of section 25 or sub-section (*1*) of section 23A, or sub-section (*2*) of section 26 or section 48 or section 49F.—

confirm, cancel or vary such order, and, in the case of an appeal against an order under sub section (*2*) of section 26, direct a consequential modification of the assessments of the predecessors and the successors concerned;

(*v*) in the case of an order under sub-section (*1*) of section 25A,—

confirm such order or cancel it and either direct the Income-tax Officer to make further inquiry and pass a fresh order or to make an assessment in the manner laid down in sub-section (*2*) of section 25A;

(*vi*) in the case of an order under section 28, or sub-section (*6*) of section 44E, or sub-section (*5*) of section 44F, or sub-section (*1*) of section 46—

confirm or cancel such order or vary it so as either to enhance or reduce the penalty;

(*vii*) in the case of an appeal under sub-section (*1A*) of section 30—

decide that the person is or is not liable to make the deduction and in the latter case direct the refund of the sum paid under sub-section (*6*) of section 18:

Provided that the Appellate Assistant Commissioner shall not enhance an assessment or a penalty unless the appellant has had a reasonable opportunity of showing cause against such enhancement:

Provided further that at the hearing of any appeal against an order of an Income-tax Officer, the Income-tax Officer shall have the right to be heard either in person or by a representative or to submit in duplicate a brief statement in writing of his arguments or objections a copy of which shall be furnished to the appellant at the time of hearing of the appeal,";

(*d*) for sub-section (*5*), the following sub-section shall be substituted, namely :—

"(*5*) Every order passed on appeal by the Appellate Assistant Commissioner shall contain a clear specification of the relief, if any, granted and the precise effect thereof on the assessment or on the order appealed against,

and a copy of the order shall be sent to the assessee and the Commissioner."

35. Amendment of section 33, Act XI of 1922.—In section 33 of the principal Act,—

(*a*) for sub-section (*1*), the following sub-sections shall be substituted, namely :—

"33. *Appeals to Appellate Tribunal.*—(*1*) Any assessee objecting to an order passed by an Appellate Assistant Commissioner under section 28 or section 31 or to an order passed by an Inspecting Assistant Commissioner or Commissioner under section 23 may appeal to the Appellate Tribunal within sixty days of the date on which a copy of the order is received by him.

(*1A*) Any assessee objecting to any such order as is referred to in sub-section (*1*) of section 33, passed by an Inspecting Assistant Commissioner when exercising the powers of an Income-tax Officer, may appeal to the Appellate Tribunal within the time specified in sub-section (*2*) of that section and the provisions of sections 30 and 31 shall, so far as may be, apply to such appeal as they apply to an appeal to the Appellate Assistant Commissioner from an order of the Income-tax Officer.";

(*b*) in sub-section (*2*) for the words "the order is communicated to the Commissioner by" the words "a copy of the order is received by the Commissioner from" shall be substituted ;

(*c*) sub-section (*2A*) shall be renumbered, as sub-section (*2B*) and before the sub-section as so renumbered, the following sub-section shall be inserted namely :—

"(*2A*) The Income-tax Officer or the assessee, as the case may be, on receipt of notice that an appeal against the order of the Appellate Assistant Commissioner has been preferred under sub-section (*1*) or sub-section (*2*) by the other party may, notwithstanding that he may not have appealed against such order or any part thereof, within thirty days of the service upon him of the notice, file a memorandum of cross objections against any part of the order of the Appellate Assistant Commissioner and such memorandum shall be disposed of by the Appellate Tribunal as if it were an appeal presented within the time under sub-section (*1*) or sub-section (*2*), as the case may be.";

(*d*) in sub-section (*2B*) as so renumbered, after the words "admit an appeal" the words, figure, letter and brackets "other than an appeal under sub-section (*1A*)" shall be inserted ;

(*e*) in sub-section (*4*), for the words "and shall communicate any such orders to the assessee and to the Commissioner" the words, figures, letter and brackets "and shall send a copy of any such orders to the assessee and to the Commissioner, and the provisions of sub-sections (*2B*), (*3*) and (*5*) of section 31 shall, so far as may be, apply to the orders and proceedings of the Appellate Tribunal shall be substituted.

36. Amendment of section 34, Act XI of 1922.—In the second proviso to sub-section (*3*) of section 34 of the principal Act, for the words and figures "to a reassessment made under section 27 or in pursuance of" the words "to an assessment or reassessment made in consequence of, or to give effect to any finding or direction contained in" shall be substituted.

37. Amendment of section 35, Act XI of 1922.—In section 35 of the principal Act, after sub-section (*4*), the following sub-section shall be inserted, namely :—

"(*5*) Where in respect of any completed assessment of a partner in a firm it is found on the assessment or reassessment of the firm or on any reduction or enhancement made in the income of the firm under section 31, section 33, 33A, section 33B, section 66 or section 66A that the share of the partner in the profit or loss of the firm has not been included in the assessment of the partner or, if included, is not correct, the inclusion of the share in the assessment or the correction thereof, as the case may be, shall be deemed to be a rectification of a mistake apparent from the record within the meaning of this section, and the provisions of sub-section (*1*) shall apply thereto accordingly, the period of four years referred to in that sub-section being computed from the date of the final order passed in the case of the firm.

(*6*) Where the excess profits tax or the business profits tax payable by an assessee has been modified in appeal, revision or other proceeding [whether before or after the commencement of the Indian Income-tax (Amendment) Act, 1951], and in consequence thereof it is necessary to recompute the total income of the assessee chargeable to income-tax, such recomputation shall be deemed to be a rectification of a mistake apparent from the rectification within the meaning of this section, and the provisions of sub-section (*1*) shall apply accordingly, the period of four years referred to in that sub-section being computed from the date of the order modifying the assessment of such excess profits tax or business profits tax.

Explanation.—For the purposes of sub-section (*6*), where the assessee in a firm, the provisions of sub-section (*5*) shall also apply as they apply to the rectification of the assessment of the partners of the firm."

38. Substitution of new sections for section 37 in Act XI of 1922.—For section 37 of the principal Act, the following sections shall be substituted, namely :—

"37 *Power to take evidence on oath, etc.*—(*1*) Subject to any rules made in this behalf by the Central Government by notification in the Official Gazette, every income-tax authority shall for the purposes of this Act, have the same powers as are vested in a court under the Code of Civil Procedure, 1908 (Act V of 1908), when trying a suit in respect of the following matters, namely :—

(*a*) enforcing the attendance of any person and examining him on oath or affirmation ;

(*b*) compelling the production of documents ;

(*c*) issuing commissions for the examination of witnesses.

(*2*) Any income-tax authority may impound and retain in its custody, for such period as it thinks fit, any books of account or other documents produced before it in any proceeding under this Act.

(*3*) Any proceeding before an income-tax authority or Appellate Tribunal under this Act shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code (Act XLV of 1860), and every such authority shall be deemed to be be a revenue court for the purposes of section 480 and 482 of the Code of Criminal Procedure, 1898 (Act V of 1898).

37A. *Power to enter premises, etc.*—(*1*) Any income-tax authority not below the rank of Assistant Commissioner and, if specially authorised in this behalf by any other income-tax authority, an Income-tax Officer may—

(*i*) enter any building or place, whether belonging to the person liable to assessment or otherwise, if it or he has reason to believe that any books of account or other documents of any such person may be found therein ;

(*ii*) seize any such books of accounts or documents or place marks of identification thereon or make extracts or copies therefrom ;

(*iii*) make a note or an inventory of any other article or thing found in the course of the search which in its or his opinion may be useful for or relevant to any of the purposes of this Act,

and the provisions of the Code of Criminal Procedure, 1898 (Act V of 1898), relating to searches, so far as may be, shall apply to searches made under the authority of this sub-section :

Provided that where in the opinion of an Income-tax Officer of Class I service it is not practicable to obtain the special authorisation of any other income-tax authority before proceeding to act under this section, he may exercise any of the powers given by this sub-section without such previous authorisation and where he does so, he shall forthwith make a report thereof in writing to the Inspecting Assistant Commissioner stating the reasons which called for the exercise of such powers without obtaining such previous authorisation.

(*2*) Notwithstanding anything contained in sub-section (*1*) but without prejudice to the provisions contained therein, it shall be lawful for any income-tax authority to enter at all reasonable times any building or place belonging to or occupied by any person liable, or believed by it to be liable to assessment for the purpose of making any inquiry which, in the opinion of that authority, would be useful for the purposes of this Act, and the the authority may examine the books of account or other documents of such person and place marks of identification thereon or make extracts or copies therefrom.

(*3*) Notwithstanding anything in any other law to the contrary, every person shall be bound—

(*a*) to produce to the income-tax authority such books of account or other documents in his charge or custody as he may be required to produce,

(*b*) to give to the authority any information in his possession in respect of the books of account or other documents which may be required ;

(*c*) to prepare such statements for, or furnish such information to, the authority as may be required ;

(*d*) to answer all questions which may be put to him by the authority."

34. Amendment of section 38, Act XI of 1922.—Section 38 of the principal Act shall be renumbered as sub-section (*1*) thereof, and in sub-section (*1*) as so renumbered,—

(*a*) for clause (*1*) the following clause shall be substituted, namely :—

"(*1*) require any Hindu undivided family, firm, or association of persons to furnish him with a return of the names and such other particulars of the members as may be prescribed ;";

(*b*) for clause (*3*), the following clause shall be substituted, namely :—

"(*3*) require any person to furnish a statement of the names and addresses of all persons to whom he has paid in any year rent, premium, interest, commission, royalty or brokerage, or any annuity not being an annuity taxable under the head "salaries", or any other sum chargeable under the Act amounting to more than four hundred rupees, together with particulars of all such payments made ;";

(*c*) after clause (*4*), the following clauses shall be inserted, namely :—

"(*5*) require any person doing or managing any business on behalf of another person not resident in the taxable territories or having any business connection with such other person within the meaning of section 42 to furnish a statement of the names and addresses of all such persons on whose behalf he has done business in the taxable territories or with whom he has such business connection in any year ;

(*6*) require any banking or insurance company, notwithstanding anything in any law to the contrary, to furnish a statement of the names and addresses of all persons who have made deposits or have taken loans or overdrafts or who have made remittances or who have taken policies in any year of such amount as may be prescribed together with particulars of the deposits, loans, overdrafts, remittances, policies and of the securities and other property lodged with the banking or insurance company, as the case may be ;

(*7*) require any chartered accountant to furnish a statement of the names and addresses of the businesses and of the proprietors thereof whose accounts were audited by him in any year together with the particulars of the period to which the accounts relate and the scope of such audit ;

(*8*) require any person who owns jointly with other persons any security, stocks shares or deposits or property to furnish a statement of the names and addresses of all persons who have a beneficial interest therein and the extent of such beneficial interest ;

(*9*) require any person maintaining a safe deposits vault ; to furnish the names and addresses of all persons who have or had at any time hired lockers or have lodged any property for safe custody ;

(*10*) require any person to furnish such information or evidence which may directly or indirectly be useful or relevant to any assessment made or to be made";

(*b*) after sub-section (*1*) as so re-numbered, the following sub-section shall be inserted namely :

"(*2*) Any return or statement required under sub-section (*1*) shall be in the prescribed form and verified in the prescribed manner."

40. Amendment of section 41, Act XI of 1922.—In sub-section (*1*) of section 41 of the principal Act,—

(*i*) after the words and figures "the Mussalman Wakf Validating Act, 1913," the words "or the Shabait or other manager of a property held under a private

religious trust or an endowment or any other legal obligation" shall be inserted ;

(*ii*) for the first proviso,the following proviso shall be substituted, namely :—

"Provided that in the following case the tax on such income, profits and gains shall be levied and recoverable at the maximum rate, namely :—

(*i*) where the income, profits and gains are receivable on behalf of or for the benefit of an artificial or juridical person ;

(*ii*) where the income, profits and gains are not specifically receivable on behalf of any individual ; or

(*iii*) where the income, profits and gains are receivable on behalf of or for the benefits of more than one person, and the relevant document or record, if any, does not specify the separate share of each person ; unless the persons, none of them being an artificial or juridical person, have no other personal income chargeable under this Act, in which case the tax shall be levied and recoverable, as if such income, profits and gains or such part thereof were the total income of an association of persons."

41. Amendment of section 42, Act XI of 1922.—In section 42 of the principal Act,—

(*a*) for the words beginning with "All income" and ending with the words "the assessee in respect of such income-tax ;" the following shall be substituted, namely :—

'Save as otherwise provided in sub-section (*1*) of section 4, all income, profits or gains accruing or arising, whether directly or indirectly through or from any business connection in the taxable territories, or through or from any property in the taxable territories, shall be deemed to be income accruing or arising within the taxable territories, and where the person entitled to the income, profits or gains is not resident in the taxable territories, he shall be chargeable to income-tax either in his own name or in the name of his agent treated as such under section 43, and in the latter case such agent shall be deemed to be, for all the purposes of this Act, the assessee in respect of such income tax, all income, profits or gains of such person chargeable in the taxable territories whether receivable by him direct or through or from any other person, being assessed in the name of such agent :";

(*b*) after sub-section (*1*), the following sub-sections shall be inserted, namely :—

"(*1A*) Where a notice under sub-section (*2*) of section 22 or section 34 has been issued for the purposes of making an assessment in the case of a person not resident in the taxable territories (whether such notice is issued to him direct or to his agent treated as such under section 43), the Income-tax Officer may, if he thinks, that the circumstances of the case so require, issue, pending completion of the assessment, an order prohibiting any person holding any assets of or from whom any money is due to, the person not resident, from transferring such assets or paying such money to the person not resident or to any other person on his behalf, and any such order issued by the Income-tax Officer shall be in force for such period as may be specified in the order and shall have the same effect as an attachment by the Collector in the exercise of his powers under the proviso to sub-section (*2*) of section 46.

(*1B*) If any person to whom an order under sub-section (*1A*) has been issued fails to comply therewith, he shall be personally liable for the payment of the tax due on the total income of the person not resident to the extent of the value of the assets or the money so held or payable by him, and, for the purposes of Chapter VI of this Act, such person shall be deemed to be an assessee in default.";

(*c*) for sub-section (*2*), the following sub-section substituted, namely :—

"(*2*) Where a person carries on business in the taxable territories and it appears to the Income-tax Officer that, owing to the close connection between such person and another person who is not resident and is not chargeable in the taxable territories, to the business carried on in the taxable territories produces to such first mentioned person either no profits in the taxable territories or less than the ordinary profits which might be expected to arise in the taxable territories in that business, such first mentioned person shall be chargeable to tax on such amount of profits as might reasonably have been expected to arise or deemed to arise in the taxable territories but for the close connection between him and the other person.";

(*d*) in sub-section (*3*), for the words "shall be" the words "shall, subject to any rules made in this behalf by the Central Board of Revenue for any such business, be" shall be substituted.

42. Amendment of section 54, Act XI of 1922.—Section 44 of the principal Act shall be renumbered as sub-section (*1*) thereof, and after that sub-section as so renumbered, the following sub-section shall be inserted, namely :—

"(*2*) Notwithstanding anything contained in the Indian Companies Act, 1913 (VII of 1913), where, in respect of the profits and gains of any previous year, whether such previous year is the previous year for the assessment for the year ending on the 31st day of March, 1952 or is the previous year for the assessment for any year prior or subsequent thereto, tax is or has been assessed on a company, whether before or in the course of or after its liquidation, if any and any such tax cannot be recovered from the company, then—

(*i*) every person who is or was a shareholder of the Company at any time during the relevant previous year, and

(*ii*) every other company whose shares carrying not less than ninety per cent. of the voting power are or were owned directly or indirectly by the first mentioned company at the end of the relevant previous year,

shall be jointly and severally liable for the payment of the tax, and shall, for the purposes of section 45 and 46, be deemed to be an assessee in default :

Provided that clause (*i*) of this sub-section shall not apply where the company is, within the meaning of the *Explanation* to sub-section (*1*) of section 23A, deemed to be a company in which the public are substantially interested."

43. Substitution of new Chapter VA in Act XI of 1922.—For Chapter VA of the principal Act, the following Chapter shall be substituted, namely :—

"CHAPTER VA.

SPECIAL PROVISIONS RELATING TO CERTAIN CLASSES OF SHIPS AND AIRCRAFT.

44A. *Liability to tax on ships or aircraft in respect of occasional trips*—The provisions of this Chapter shall, notwithstanding anything contained in any other provison of this Act apply for the purpose of the levy and recovery of tax in the case of any person who resides out of the taxable territories and carries on business in the taxable territories in any year as the principal owner or charterer of a ship or of an aircraft (such person hereinafter in this Chapter being referred to as the principal), unless the Income-tax Officer—

(*a*) in the case the principal of a ship, is satified, or

(*b*) in the case of the principal of an aircraft, has notified the Customs Collector or other officer authorised in this behalf by the Customs Collector,

that there is an agent of such principal from whom the tax will be recoverable in the following year under the provisions of this Act.

44B. *Return of profits and gains.*—(*1*) Before the departure from any port in the taxable territories of any ship, the master of the ship shall prepare and furnish to the Income-tax Officer a return of the full amount paid or payable to the principal or to any person on his behalf on account of the carriage of all passengers, livest ock or goods shipped at that port since the last arrival of the ship thereat.

(*2*) Before the departure from any customs aerodrome in the taxable territories of any aircraft, the pilot or other person in charge of the aircraft shall prepare and furnish to the Customs Collector or other officer authorised by the Customs Collector in this behalf a return of the full amount of the fare and freight paid or payable to the principal or to any person on his behalf on account of the carriage of all passengers, livestock or goods booked by the aircraft in the taxable territories since the last of such returns, if any, was made.

(*3*) On receipt of the return, the Income-tax Officer, if the matter relates to a ship and the Customs Collector or other officer, if the mattter relates to an aircraft, shall assess the amount referred to in sub-section (*1*) or as the case may be, in sub-section (*2*), and may for this purpose call for or inspect such accounts or documents as he may require and the amount of the profits and gains accruing to the principal shall,—

(*a*) where it relates to the carriage of the passengers, livestock and goods shipped at the port, be deemed to be one-sixth of the amount so assessed, and

(*b*) where it relates to the carriage of the passenger livestock and goods booked at the aerodrome, be deemed to be one-sixteenth of the amount so assessed.

When the profits and gains have been assessed as aforesaid the Income-tax Officer, Customs Collector or other officer as the case may be, shall determine the sum payable as tax thereon at the rate for the time being applicable to the total income of a company, and such sum shall be payable by the master of the ship or, as the case may be, the pilot or other person in charge of the aircraft, and a port-clearance shall not be granted to the ship or aircraft until the Customs Collector or other officer authorised in in this behalf by the Customs Collector or any other officer duly authorised to grant the same is satisfied that the tax has been duly paid.

(*5*) Every Customs Collector and any other officer authorised in this behalf by the Customs Collector who has collected any sums under this Chapter shall, within such time and in such manner as may be prescribed by the Central Board of Revenue, pay the amount so collected to the credit of the Central Government and shall also furnish to the Income-tax Officer such statements and information in this behalf as may be prescribed.

44C. *Adjustment.*—Nothing in this Chapter shall be deemed to prevent the principal from claiming in any financial year that a regular assessment be made of his total income of the previous year, and that the tax payable on the basis thereof be determined in accordance with the other provisions of this Act and, if he so claims, he shall be entitled to credit for any payment made during the previous year, and the difference between the sum so paid and the amount of tax found payable by him shall be paid by him or refunded to him, as the case may be."

44. Amendment of section 44D, Act XI of 1922.—In section 44D of the principal Act,—

(*a*) In sub-section (*1*), the words "or to a person resident but not ordinarily resident" shall be omitted :

(*b*) In sub-section (*2*), the words "or resident but not ordinarily resident" shall be omitted.

45. Insertion of new section 44G in Act XI of 1922.—Chapter VB, after section 44F of the principal Act, the following section shall be inserted, namely :—

"44G. *Liability to tax in the case of unknown shareholders depositors, etc.*—(*1*) Where an Income tax Officer is of the opinion that any person registered as shareholder or debenture holder of a company or shown as depositor or creditor in the books of a company or of any other person is either not in existence or not traceable at the address, if any, given in the books or the company or in the books of that other person, or that the registered shareholder, debenture holder, depositor or creditor disowns the share, debenture, deposit or credit, the Income-tax Officer may, by notice, require the company or that other person, as the case may be, to take steps in the prescribed manner to trace the shareholder, debenture holder, depositor or creditor, as the case may be, and thereupon such share, debenture, deposit or credit shall not be dealt with in any manner by the company or that other person except with the written authority of the Income-tax Officer.

(*2*) If before the expiry of two years from the date of the notice referred to in sub-section (*1*), the company or the other person is not able to prove to the satisfaction of the Income-tax Officer the identity, existence and address of the shareholder, debenture holder, depositor or creditor as the case may be, the Income-tax Officer may, with the previous approval of the Inspecting Assistant Commissioner, pass an order accordingly, and thereupon the entire value of such share, debenture, deposit or credit shall notwithstanding any time limit specified in section 34, be deemed to have

been the tax evaded by the unknown person who is the shareholder, debenture holder, depositor or creditor, as the case may be, and within one week of the date on which the company or that other person is served with a copy of the Income tax Officer's order—

'(a) the company shall cancel the original share certificate or debenture bond, and issue a duplicate share certificate or debenture bond in the name of, and

(b) in the case of a deposits or credit, the company or other person shall transfer the same to

the Reserve Bank of India for and on behalf of the Consolidated Fund of India.

Provided that the Income tax Officer may for good and sufficient cause, extend the time for transferring a deposit or credit under this sub-section.

(3) Any company which has issued a duplicate share certificate or debenture bond or any company or other person who has transferred his deposit or credit within the time specified in sub-section (2) or within such further time as may have been allowed by the Income-tax Officer, shall be indemnified against all claims that may be made in respect of the cancellation of the original share certificate or debenture bond and the issue of duplicate certificate or bond, or the transfer of the amount of deposit or credit, if the company or the other person, within one month of the date of the notice referred to in sub-section (1), publishes or causes to be published in the Gazette of India and in a daily newspaper a notice in the prescribed form calling upon the registered shareholder, debenture holder, depositor or creditor to prove before the Income-tax Officer having juridiction his identity and his title (and such further facts as may be required by the notice to be proved) to the share, debenture, deposit or credit, as the case may be.

(4) Any company or any other person who does not comply with the requirements of sub-section (1) or sub-section (2) in respect of the issue of duplicate share certificate or debenture bond or the transfer of the amount at deposit or credit, shall be deemed to be an assessee in default in respect of the entire value of such share, debenture, deposit or credit and all the provisions of this Act shall apply accordingly.

(5) Any person claiming himself to be entitled to any share debenture, deposit or credit in respect of which the Income-tax Officer has passed an order under sub-section (2), may within thirty days of the date on which the company or the other person has been served with a copy of the Income-tax Officer's order, appeal to the Appellate Assistant Commissioner of Income-tax, in the same manner as if he were denying his liability to be assessed under this Act and all the provisions of this Act, shall apply accordingly."

46. Insertion of new section 45A in Act XI of 1922.—After section 45 of the principal Act, the following section shall be inserted, namely :—

"45A. *Liability for tax in respect of income from certain assets included in the total income of persons other than ostensible owners, etc.*—When in accordance with the provisions of clause (c) of sub-section (1) or sub-section (3) of section 16 or section 44D or for any other reason, the income from any assets or dealings in such assets is included in the total income of any person who

is not the ostensible or legal owner of such assets, then, notwithstanding the provisions contained in any other law for the time being in force, the tax in respect of the income so included may be recovered from the ostensible or legal owner of those assets :

Provided that no such recovery shall be made unless the ostensible or legal owner had notice of the assessment proceedings at any time before the assessment was made whereby the income came to be so included in the total income of that other person."

47. Amendment of section 46, Act XI of 1922.—In section 46 of the principal Act,—

(a) for sub-section (1), the following sub-section shall be substituted, namely :—

'(1) When an assessee is in default in making a payment of income-tax, the Income-tax Officer may—

(a) direct, in his discretion, that in addition to the amount of the arrears, a sum not exceeding that amount shall be recovered from the assessee by way of penalty ;

(b) with the previous approval of the Commissioner, publish, in such manner as may be prescribed the name and address of, and the amount of arrears and penalty due from, the assessee in default.

Explanation.—For the purposes of this section, the word "arrears", in any case in which an assessee has been allowed to pay any demand payable under this Act by instalments (whether by an income-tax authority or by the Collector) and has made default in the due payment thereof, means the aggregate of the amount of all the instalments still remaining to be paid after the date of the default." ;

(b) after sub-section (1A) the following sub-section shall be inserted, namely :—

"(1B) Where an assessee dies before payment of the income-tax and penalty due from him may be recovered from his executor, administrator or other legal representative and for the purposes of this section, such executor, administrator or other legal representative shall be deemed to be the assessee in default and all proceedings may be taken or continued against him accordingly :

Provided that the liability under this section of the executor, administrator or other legal representative shall be limited to the extent to which the estate of the deceased which has come into his hands is capable of meeting the charge."

(c) in sub-section (5A), for the last paragraph, the following paragraph shall be substituted, namely :—

"Where a person to whom a notice under this sub-section is sent, objects to it on the ground that the sum demanded or any part thereof is not due to the assessee or that he does not hold any money for or on account of the assessee or that a third person has a lien or charge on, or other interest in such sum, the Income-tax Officer shall proceed to investigate the objections, and if after making such investigation therein as he thinks fit, he is satisfied that the objection is wholly or partly provided, he shall rescind or modify the notice issued by him under this sub-section and if he is satisfied that the objection, has not been proved, he shall disallow the

objection, in which case the notice given shall be effective until the the Income-tax Officer's finding is set aside by a civil court :

Provided that where any investigation under this paragraph concerns the lien or charge of a third person, no such investigation shall be made until such person has been given notice thereof and an opportunity to adduce evidence in support of his claim."

(*d*) after sub-section (*5A*), the following sub-section shall be inserted, namely :—

"(*5B*) The income-tax Officer may, by notice in writing (a copy of which shall be fowarded to the assessee at his last address known to the Income-tax Officer), prohibit any person holding in his custody any assets belonging to the assessee from parting with them, either in favour of the assessee or any other person, and any such notice shall have the same effect as if it were an attachment by the Collector in exercise of his powers under the proviso to sub-section (2).

(*5C*) If any person to whom a notice under sub-section (*5B*) is sent, fails to comply with the notice and parts with the assets, he shall be deemed to be an assessee in default, so however that the extent of his liability shall not exceed the value of the assets he has so parted with :

Provided that if any such person parts with the assets in favour of the assessee in any case where the particulars of the assets have not been disclosed to him by the assessee, whether at the time when the assets were placed in his custody or at any time subsequent thereto, he shall be deemed to have committed an offence under this sub-section and on conviction before a magistrate, be punishable with imprisonment which may extend to six months, or with fine which may extend to ten thousand rupees, or with both."

(*e*) to sub-section (7) the following *Explanation* shall be added, namely :—

Explanation.—"A proceeding for the recovery of any sum" shall be deemed to have commenced within the meaning of this section, if some action is taken to recover the whole or any part of the sum within the period hereinbefore referred to and, for the removal of doubts, it is hereby declared that the several modes of recovery specified in this section are not mutually exclusive and do not in any way affect any other law for the time being in force relating to the recovery of debts due to Government.

48. Insertion of new section 46A in Act XI of 1922.—After section 46 of the principal Act, the following section shall be inserted, namely :—

'46A. *Persons leaving India to obtain tax clearance certificates.*—(*1*) Subject to such exceptions as may be made by the Central Government, no person who is not domiciled in India or who, even if domiciled in India at the time of his departure, has, in the opinion of an income-tax authority, no intention of returning to India, shall leave the territory of India by land, sea or air unless he first obtains from such authority as may be appointed by the Central Government in this behalf (in this section referred to as the "competent authority") a certificate stating that he has no liabilities under this Act, the Excess Profits Tax Act, 1940 (XV of 1940), or the Business Profit Tax Act, 1947 (XXI of 1947), or that satisfactory arrangements have been made for the payment of all or any of such taxes which are or may become payable by that person :

Provided that if the competent authority is satisfied that such person intends to return to India, he may issue an exemption certificate either in respect of a single journey or in respect of all journeys to be undertaken by that person within such period as may be specified in the certificates.

(*2*) If the owner or charterer of any ship or aircraft carrying persons from any place in the territory of India to any place outside the territory, allows any person to whom sub-section (*1*) applies, to travel by such ship or aircraft without first satisfying himself that such person is in possession of a certificate as required by that sub-section he shall be personally liable to pay the amount of tax, if any, which is or may be payable by such person and shall also be punishable with fine which may extend to two thousand rupees.

Explanation.—For the purposes of this sub-section the expressions "owner" and "charterers" include any representative agent or employee empowered by the owner or charterer to allow persons to travel by the ship or aircraft.

(*3*) In respect of any sum payable by the owner or charterer of any ship or aircraft under sub-section (*2*), the owner or charterer, as the case may be, shall be deemed to be an assessee in default within the meaning of sub-section (*1*) of section 46 of this Act.

(*4*) The Central Government may make rules for regulating any matter necessary for or incidental to the purpose of carrying out the provisions of this section.

49. Amendment of section 49D, Act XI of 1922.—For section 49D of the principal Act, the following section shall be substituted, namely :—

'49D. *Relief in respect of income accruing or arising outside the taxable territories.*—(*1*) If any person who is resident in the taxable territories in any year proves that, in respect of his income which accrues or arises during that year without the taxable territories (and which is not deemed to accrue or arise in the taxable territories) he has paid in any country with which there is no reciprocal arrangement for relief or avoidance of double taxation, income tax, by deduction or otherwise, under the law in force in that country, he shall be entitled to the deduction from the Indian income tax payable by him of a sum calculated on such doubly taxed income at the the Indian rate of tax of the said country, whichever is the lower.

(*2*) The Central Government may, by notification in the Official Gazette, declare that the provisions of sub-section (1) shall also apply in relation to any such income accruing or arising in the United Kingdom and chargeable under this Act for the assessment for the year ending on the 31st day of March, 1950, or for the year ending on the 31st day of March, 1951.

Explanation.—In this section,—

(*i*) the expression "Indian income-tax" means income-tax and super-tax charged in accordance with the provisions of this Act ;

(*ii*) the expression "Indian rate of tax" means the rate determined by dividing the amount of Indian income tax after deduction of any relief due under

the other provisions of this Act but before deduction of any relief due under this section, by the total income ;

(*iii*) the expression "rate of tax of the said country" means income-tax and super-tax actually paid in the said country in accordance with the corresponding laws of the said country after deduction of all reliefs due divided by the whole amount of the income assessed in the said country.'

50. Amendment of section 49E, Act XI of 1922.—In section 49E of the principal Act for the words "against the tax" the words "against the tax interest or penalty" shall be substituted.

51. Substitution of new section for section 51, Act XI of 1922.—For section 51 of the principal Act, the following section shall be substituted, namely ;

"51. *Failure to make payments or deliver returns or statements etc.*—If a person fails without reasonable cause or excuse—

(*a*) to deduct and pay tax as required under section 18 or sub-section (*5*) of section 46 ;

(*b*) to furnish a certificate required under sub-section (*9*) of section 18 or section 20 ;

(*c*) to furnish in due time any of the returns mentioned in section 19A, section 20A, section 21, sub-section (*2*) of section 22 or section 38 ;

(*d*) to furnish in due time the return required under sub-section (*1*) of section 22 in any case where the total income exceeds the amount not chargeable to income tax by two thousand rupees provided the failure was also wilful ;

(*e*) to produce, or cause to be produced, on or before the date mentioned in any notice under sub-section (*4*) of section 22, such accounts and documents as are referred to in the notice ;

(*f*) to comply with any provisions of section 25B or fails as a trustee duly to pay the tax for which he is liable under the said section ;

(*g*) to grant inspection or allow copies to be taken in accordance with the provisions of section 39,

he shall, on conviction before a magistrate, be punishable with fine which may extend to ten rupees or with imprisonment for one day for every day during which the failure continues."

52. Substitution of new section for section 52, Act XI of 1922.—For section 52 of the principal Act, the following section shall be substituted, namely :

"52 *False statement in declaration.*—(*1*) If a person make a statement in a verification mentioned in section 19A or section 20A or section 21 or sub-section (*2*) of section 26A or sub-section (*3*) of section 30 or sub-section (*3*) of section 33A or sub-section (*2*) of section 38 which is false or incomplete, and which he either knows or believes to be false or incomplete, or does not believe to be true or complete, he shall, on conviction before a magistrate, be punishable with simple imprisonment which may extend to six months and with fine which shall not be less than one thousand rupees.

(*1*) If a person makes a statement in a verification mentioned in sub-section (*1*) or sub-section (*2*) of section 22 which is false or incomplete and which he either knows or believes to be false or incomplete or does not believe to be true or complete, or produces or causes to be produced accounts or documents in response to a notice under sub-section (*4*) of the said section or sub-section (*2*) of section 22, which are false and which he either knows or believes to be false or does not believe to be true, he shall on conviction before a magistrate, be punishable with rigorous imprisonment which may extend to seven years but which shall not be for less than three years and with fine which shall not be less than the amount of the tax which would have been lost or the refund which would have been allowed in excess, had the verification or the accounts or documents been accepted at their face value.

(*2*) The provisions of sections 233 and 234 of the Code of Criminal Procedure, 1893 (Act V of 1898), shall not apply to the trial of offences under this section or to the trial of offences under section 193, 196 and 228 of the Indian Penal Code (Act XLV of 1860) where the offences are committed in the course of assessment or refund or recovery of proceedings relating to one and the same year of assessment of one and the same person, and for the purposes of section 235 of the Code of Criminal Procedure, 1898, all acts done in the course of such proceedings shall be deemed to form the same transactions."

53. Insertion of new section 52A in Act XI of 1922—After section 52 of the principal Act, the following section shall be inserted, namely :—

"*52A. Abetment*—If a person abets the commission of a default or the doing of anything by another person whereby the other person is rendered liable to prosecution under section 51 or section 52, the person abeting shall, on conviction before a magistrate, be punishable with the punishment provided for the offence abetted."

54. Substitution of new section for section 53, Act XI of 1922.—For section 53 of the principal Act, the following section shall be substituted namely :—

"53. *Sanction to prosecute and compounding of offences*—(*1*) No court shall take cognizance of an offence under section 51 or section 52 or section 52A except with the previous sanction of either the Appellate Tribunal or an income-tax authority not below the rank of an Assistant Commissioner.

(*2*) Before granting sanction under sub-section (*1*), the Appellate Tribunal or the income-tax authority, as the case may be, may call upon the person concerned to show cause why he should not be prosecuted for the offence alleged to have been committed by him and may, if it so thinks fit, compound, with the previous approval of the Central Government, any such offence and any sum payable under any such composition may be recovered under this Act as an arrear of income-tax.

55. Amendment of section 54, Act XI of 1922.—In sub-section (*3*) of section 54 of the principal Act,—

(*i*) for clauses (*a*) and (*b*), the following clauses shall be substituted, namely :—

"(*a*) of any such particulars in connection with a prosecution under the Indian Penal Code (Act XLV of 1860) or under this Act, in respect of any matter arising in the course of the execution of this Act, or

(*b*) of any such particulars to any person acting in the execution of this Act or of the Taxation on Income (Investigation Commission) Act, 1947 (XXX of 1947), where it is necessary or desirable to disclose the same to him for the purposes of either this Act or the Taxation on Income (Investigation Commission) Act, 1947,";

(*ii*) in clause (*d*), after the word "Government" the words "or any person acting in the execution of this Act" shall be inserted ;

(*iii*) in clause (*gg*), the words "in connection with income-tax proceedings" shall be omitted and for the words "registered accountant" the words "chartered accountant" shall be substituted ;

(*iv*) in clause (*p*) for the word and figures "Ordinance, 1949" the word and figures "Act, 1950" and for the words "said Ordinance" the words "said Act, or" shall be substituted ;

(*v*) after clause (*p*), the following clauses shall be inserted, namely :—

"(*q*) of any such particulars to the Advocate General where the Income-tax Officer has reason to believe that there has been a breach of trust relating to property held under trust or other legal obligation for religious or charitable purposes to enable the Advocate General to take such action as he may think fit, or

(*r*) of any such particulars of an incriminatory character to any authority or court legally entitled to take action in respect thereof, where such particulars have been furnished by the person with a view to reduce the liability to tax or to secure any other advantage under this Act, or

(*s*) of any statements to any person or court, if the statements made by the assessee are of such a nature as enables another person to establish his right or title to any property or assets, or

(*t*) with the previous sanction of the Commissioner, of any such particulars to any person where the Income-tax Officer considers that, that person would be in a position to help him in the detection of any concealed income, or

(*u*) of any such particulars as may be necessary for the purposes of sub-section (7) of section 28 or of sub-section (*l*) of section 46 of this Act, or

(*v*) of any such particulars to any department of the Central Government, or the Government of a State or to any court or to any local authority or a chamber of commerce with a view to enabling that Government or authority or court or chamber to confer upon or withdraw from any person any privilege, patronage, office, position of trust or benefit of any kind.

56. Amendment of section 58C, Act XI of 1922.—In sub-section (1) of section 58C of the principal Act,—

(*i*) to clause (*d*) the following proviso shall be added, namely :—

Provided that the fund may consist also of the accumulated balance due to an employee who has ceased to be an employee, and of interest (simple and compound) in respect thereof where such balance is retained in the fund in accordance with the provision of clause (*g*).";

(*ii*) in clause (*g*), after the words "maintaining the fund', the words "unless at the request of the employee made in writing the whole or a part of the accumulated balance due to him is retained in the fund to be drawn by him at any time on demand" shall be inserted,

57. Amendment of section 58P, Act XI of 1922.—Section 58P of the principal Act shall be renumbered as sub-section (1) thereof, and in that sub-section as so renumbered, for the words "the following conditions shall be satisfied" the words "it shall satisfy the conditions set out below and any other conditions which the Central Government may, by, rules prescribe " shall be substituted, and after sub-section (1) as so renumbered the following sub-section shall be inserted, namely—

"(2) Where there is a repugnancy between any rules of an approved superannuation fund or the terms of the instrument under which the fund is established and any provisions of this Chapter or of the rules made thereunder, the rules of the fund or the terms of the instrument under which the fund is established shall, to the extent of the repugnancy, be of no effect ; and the Central Board of Revenue may at any time require that such repugnancy shall be removed from the rule of the fund or the terms of the instrument as the case may be."

58. Amendment of section 58S, Act XI of 1922.—In section 58S of the principal Act,—

(*a*) in sub-section (2), the words "but not at or in connection with the termination of his employment" shall be omitted ;

(*b*) after sub-section (*2*), the following sub-section shall be inserted, namely :—

"Where a lump sum is paid to an employee or a former employee in commutation of or in lieu of an annuity income-tax and super-tax on the sum so paid shall, except in the case of a person whose employment was carried on abroad be deducted by the trustees at a rate equal to one-third or the rate of income-tax and super-tax at which the employee or the former employee would have been liable to income-tax and super-tax in respect of the previous year in which the payment is made and shall be paid by the trustees to the credit of the Central Government within the prescribed time and in such manner as the Central Board of Revenue may direct ; and the provisions of sub-sections (*4*), (*5*), (*6*), (*7*), (*8*) and (*9*) of section 18 shall apply as if the sum to be deducted under this sub-section and sub-section (*2*) were income-tax payable under the head 'Salaries'."

59. Insertion of new section 58W in Act XI of 1922.—In Chapter IXB of the principal Act, after section 58V, the following section shall be inserted namely :—

"58W. *Provisions relating to rules*—(*1*) All rules made under this Chapter shall be subject to the provisions of sub-sections (*4*) and (*5*) of section 59.

(*2*) In addition to any power conferred by this Chapter, the Central Government may make rules—

(*a*) prescribing the statements and other information to be submitted with an application for approval ;

(*b*) limiting the 'ordinary annual contribution' and any other contribution by an employer ;

(*c*) providing for the assessment by way of penalty of any consideration received by an employee for an assignment of, or creation of a charge upon, his beneficial interest in an approved superannuation fund ;

(*d*) determining the extent to, and the manner in which exemption from payment of income-tax and super-tax may be granted in respect of any payment made from a superannuation fund from which approval has been withdrawn ;

(*e*) providing for the withdrawal of approval in the case of a fund which ceases to satisfy the requirements of this Chapter and of the rules made thereunder ; and

(*f*) generally, to carry out the purposes of this Chapter and to secure such further control over the approval of the superannuation funds and the administration of the approved superannuation funds as it may deem requisite."

60. Amendment of section 59, Act XI of 1922.—In sub-section (*2*) of section 59 of the principal Act, for clauses (*c*) and (*d*), the following clauses shall be substituted, namely :—

"(*c*) prescribe the procedure for giving effect to the terms of any agreement for the avoidance of double taxation on income which may be entered into by the Central Government under section 49AA ;

(*d*) provide for the grant of rewards to persons giving definite information or assistance leading to the detection of any concealment or under-statement of income by an assessee, or to the recovery of any tax or penalty from him and the manner and circumstances in which rewards may be granted.

61. Insertion of new section 59A in Act XI of 1922.—After section 59 of the principal Act, the following section shall inserted, namely :—

"59A. *Power to tender immunity from prosecution etc.*—(*1*) The Central Government may, if it is of opinion (the reasons for such opinion being recorded in writing) that with a view to obtaining the evidence of any person appearing to have been directly or indirectly concerned in or privy the concealment of income or to the evasion of payment of tax on income, tender to such person immunity from prosecution for any offence under this Act or under the Indian Penal Code (Act XLV of 1860) or under any other Central law for time being in force and also from the imposition of any penalty under this Act on condition of his making a full and true disclosure of the whole circumstances relating to the concealment of income or evasion of payment of tax on income.

(*2*) A tender of immunity made to, and accepted by, the person concerned, shall, to the extent to which the immunity extends, render him immune from prosecution for any offence in respect of which the tender was made or from the imposition of any penalty.

(*3*) If it appears to the Central Government that any person to whom immunity has been tendered under this section has not complied with the condition on which the tender was made or is wilfully concealing anything or is giving false evidence, the Central Government may record a finding to that effect, and thereupon the immunity shall be deemed to have been withdrawn and any such person may be tried for the offence in respect of which the tender of immunity was made or for any other offence of which he appears to have been guilty in connection with the same matter and shall also become liable to the imposition of any penalty under this Act to which he would otherwise have been liable."

62. Amendment of section 61, Act XI of 1922.—In section 61 of the principal Act—

(*a*) in sub-section (*2*),—

(*i*) for clause (*ii*), the following clause shall be substituted, namely :—

(*ii*) "lawyer" means any person entitled to plead in any civil or criminal court in the taxable territories, and includes a solicitor who, before the 1st day of April, 1951, has attended before an income-tax authority or the Appellate Tribunal on behalf of any assessee otherwise than in the capacity of an employee or relative of that assessee ;;

(*ii*) for clauses (*iii*) and (*iv*), the following clause shall be substituted, namely :—

(*iii*) "accountant" means a chartered accountant as defined in the Chartered Accountants Act, 1949 (XXXVIII of 1949) ;

(*iv*) 'income-tax practitioner" means a person who is for the time being enrolled in the Register of Income-tax Practitioners maintained by a Commissioner of Income-tax under sub-section (*2B*)";

(*b*) after sub-section (*2*), the following sub-section shall be inserted, namely :—

"(*2A*) Any of the following persons shall, subject to the provisions contained in sub-section (*3*) and subject to any rules which the Central Board of Revenue may make in this behalf, be entitled on payment of such fee as may be prescribed to have his name entered in the Register of income-tax practioners maintained by a Commissioner,—

(*a*) any person who before the 1st day of April, 1951, was entitled to act as an income-tax practitioner and has attended before an income-tax authority subordinate to that commissioner on behalf of any assessee otherwise than in the capacity of an employee or relative of that assessee ;

(*b*) any person who has acquired such educational qualifications and experience or has passed such examinaiton as the Central Board of Revenue may prescribe for this purpose ;

Provided that nothing contained in clause (*a*) or clause (*b*) shall be deemed to prohibit any person having the requisite qualifications prescribed therein from having his name entered in the registers maintained by more then one Commissioner on payment of a separate fee for each registration ;

(*2B*) Each Commissioner of Income-tax shall maintain in the Prescribed form a Register of Income-tax Practitioners entitled to appear before an Income-tax authority subordinate to him and may, at any time remove from the register the name of any income-tax practitioner—

(*a*) who has not paid any prescribed fee required to be paid by him ; or

(*b*) who is found at any time to be subject to any of the disqualifications mentioned in sub-section (*3*) ; or

(*c*) who has been found guilty of misconduct under the rules made by the Central Board of Revenue in this behalf ; or

(*d*) whose name has been removed from the register maintained by any other Commissioner acting under clause (*b*) or clause (*c*),";

(c) in sub-section (*3*), for the words beginning with "No person who has been dismissed" and ending with the words "to represent an assessee under sub-section (*1*)", the following shall be substituted, namely :—

"(*3*) No person—

(*a*) who has been dismissed from the service of Government after the 1st day of April, 1948 ; or

(*b*) who has resigned from the service of Government before the completion of twenty-five years of service ; or

(*c*) who was formerly in the service of such department of Government as may be prescribed, unless two years have elapsed since the date of his leaving the service ; or

(*d*) who has been convicted of an offence connected with any income-tax proceedings or of any offence involving moral turpitude or on whom a penalty has been imposed under section 28, either in respect of his own assessment or for abetment of an offence in respect of the assessment of another person ; or

(*e*) who has been in partnership with any other person for the exercise of a profession or vocation during which that other person has been convicted of an offence connected with an income-tax proceeding or a penalty for abetment has been imposed on that other person under section 28 ; or

(*f*) who has become an insolvent,

shall be qualified to represent an assessee under sub-section (*1*), and if any lawyer or chartered accountant is found guilty of misconduct by the authority empowered to take disciplinary action against a member of the profession to which he belongs, or if any other person is found guilty of such misconduct by the Commissioner of Income-tax the Commissioner of Income-tax may direct that the lawyer, chartered accountant or the other person, as the case may be, shall be disqualified, either for all time or for such period as may be specified, to represent an assessee under sub-section (1) :";

(*d*) after sub-section (*3*), the following sub-section shall be inserted, namely :—

"(*4*) In addition to any rules which may be made under sub-section (*2A*) and (*2B*), the Central Board of Revenue may make rules—

(*a*) regulating the conduct of income-tax practitioners ;

(*b*) prescribing the form of application for enrolment in the Register of Income-tax Practitioners, and the procedure for making such an application ;

(*b*) prescribing the amount of fee for each initial registration and for the annual renewal thereof and the time and mode of payment of such fee ;

(*d*) providing for the refund of fees where the application for enrolment is rejected."

63. Amendment of section 63, Act X of 1922.—In section 63 of the principal Act,—

(*a*) in sub-section (*1*), for the words "A notice" the words "subject to any rules which the Central Board of Revenue may make in this behalf, a notice" shall be substituted ;

(*b*) for sub-section (*2*), the following sub-section shall be substituted, namely :—

"(*2*) Any such notice or requisition may—

(*i*) in the case of an individual, be addressed to him by name or in the name, if any, in which he is carrying on business, or, in the case of a minor or a lunatic or an idiot, to his guardian or trustee or, in the case of a deceased individual, to his legal representative ;

(*ii*) in the case of a Hindu undivided family, be addressed to it in the name, if any, in which the family is carrying on business or to the manager or any adult member of the family or to the guardian of any minor member of the family or where the family has become dissolved to any adult person who was the manager or a member of the family at the time of dissolution or where the dissolution is caused by the death of any member to the legal representative of any such deceased member ;

(*iii*) in the case of a company, be addressed to it in the name of the company or to a principal officer thereof or in the case of a company other than a company in which the public are substantially interested within the meaning of section 23A, to any person who was a shareholder of the company at any time during the relevant previous year ;

(*iv*) in the case of a firm, be addressed to it in the name of the firm, or to any member of the firm, or where the firm, has been dissolved, to any person who was a member of the firm or to any person who is the legal representative of a deceased person who was a member of the firm at any time during the relevant previous year ;

(*v*) in the case of any other association of persons, be addressed to it in the name by which the association is generally known, or to the principal officer therof, or where the association has become dissolved to the person who was the principal officer or who was a member of the association at any time during the relevant previous year or the legal representative of any such deceased member ;

64. Amendment of section 64, Act XI of 1922.—In sub-section (*1*) of section 64 of the principal Act after the words "is situate" the following words shall be inserted, namely :—

"and where the business, profession or vocation has been discontinued, by the Income-tax Officer of the area in which the place, or the principal place, at which the business, profession or vocation was carried on is situate."

65. Substitution of new section for section 66 in Act XI of 1923.—For section 66 of the principal Act, the following section shall be substituted, namely :—

"66. *Statement of case by Appellate Tribunal to High Court or to the Supreme Court.*—(*1*) Within sixty days of the date on which he is served with an order under sub-section (*4*) of section 33, the assessee or the Commissioner may present an application to the Appellate Tribunal in the prescribed

form, accompanied where the application is presented by the assessee by a fee of one hundred rupees in respect of each appeal disposed of by the order, requiring the Appellate Tribunal to refer to the High Court any question of law arising out of such order, and subject to the other provisions contained in this section the Appellate Tribunal shall within one hundred and eighty days receipt of such application draw up a statement of the case and refer it to the High Court :

Provided that the Appellate Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from presenting the application within the period of sixty days hereinbefore specified, allow it to be presented within a further period not exceeding fifteen days.

(2) If on an application made under sub-section (1), the Appellate Tribunal—

(a) refuses to state a case on the ground that no question of law arises, or

(b) rejects in on the ground that it is time-barred,

the assessee or the Commissioner, as the case may be, may, in any case falling within clause (a) of this sub-section, within six months from the date on which he is served with the notice of refusal, and in any case falling within clause (b) of this sub-section, within two months from the date on which he is served with the notice of rejection, apply to the High Court, and the High Court may, if it is not satisfied with the correctness of the decision of the Appellate Tribunal, require the Appellate Tribunal to state the case and refer it to the High Court and on receipt of any such requisition, the Appellate Tribunal shall state the case and refer it accordingly :

Provided that if in any case where it has been required by an assessee to state a case, the Appellate Tribunal refuses to do so on the ground that no question of law arises, the assessee may, within thirty days from the date on which he receives notice of the refusal to state the case withdraw his application, and if he does so the fee paid by him under sub-section (1) shall be refunded.

(3) Section 5 of the Indian Limitation Act, 1908 (IX of 1908) shall apply to an application to the High Court under sub-section (2).

(4) If on an application made under sub-section (1), the Appellate Tribunal is of opinion that either on account of the importance of any question of law involved in the case or on account of a conflict in the decisions of different High Courts in respect of any particular question of law arising therefrom, it is expedient that a reference should be made direct to the Supreme Court, the Appellate Tribunal may draw up a statement of the case and refer it direct to the Supreme Court.

(5) If the High Court or the Supreme Court is not satisfied that the statement in the case referred to it under this section are sufficient to enable it to determine the questions raised thereby, the Court may refer the case back to the Appellate Tribunal to make such addition thereto or alterations therein as it may direct in that behalf.

(6) The High Court or the Supreme Court upon hearing any such case shall decide the questions of law raised therein and shall deliver its judgement thereon containing the ground on which such decision is founded, and a copy of the judgement shall be sent under Seal of the Court and the signature of the Registrar to the Appellate Tribunal which shall pass such orders as are necessary to dispose of the case conformably to such judgement.

(7) The costs of any reference to the High Court or the Supreme Court shall be in the discretion of the Court.

(8) Notwithstanding that a reference has been made under this section to the High Court or the Supreme Court, income-tax shall be payable in accordance with the assessment made in the case.

(9) Where the amount of an assessment is reduced as a result of any reference to the High Court or the Supreme Court under the section, the amount overpaid shall be refunded with such interest as the Commissioner may allow, unless in the case of a reference to the High Court, the High Court, on an intimation given by the Commissioner within thirty days of the result of such reference that he intends to apply for leave to appeal to the Supreme Court, makes an order authorising the Commissioner to postpone the payment of such refund until the disposal of the appeal to the Supreme Court.

(10) For the purposes of this section, "the High Court means, if the place of assessment of the assessee is in the State of—

(a) Uttar Pradesh or Vindhya Pradesh,—
the High Court at Allahabad ;

(b) Bombay, Hyderabad, Madhya Bharat, Rajasthan, Saurashtra, Ajmer or Kutch,—
the High Court at Bombay ;

(c) Assam, West Bengal, Manipur, Tripura or the Andaman and Nicobar Island,—
the High Court at Calcutta ;

(d) Madras, Mysore, Travancore-Cochin or Coorg,—
the High Court at Madras ;

(e) Madhya Pradesh or Bhopal,—
the High Court at Nagpur ;

(f) Bihar or Orissa —
the High Court at Patna, and

(g) Punjab, Patiala and East Punjab State Union, Bilaspur, Delhi or Himachal Pradesh.—
the High Court at Punjab."

66. Amendment of section 66A, XI of 1922.—In sub-section (1) of section 66A of the principal Act, for the words, brackets and figures "and in respect of such case the provisions of section 98 of the Code of Civil Procedure, 1918 (V of 1908) shall, so far as may be, apply notwithstanding anything contained in the Letters Patent of any High Court established by Letters Patent or in any other law for the time being in force " the following shall be substituted, namely :

"and shall be decided in accordance with the opinion of such Judges or of the majority (if any) of such Judges ;

Provided that where there is no such majority, the Judges shall state the point of law upon which they differ, and the case shall then be heard upon that point only by one or more of the other Judges of the High Court and such

point shall be decided according to the opinion of the majority of the Judges who have heard the case, including those who first heard it."

67. Amendment of section 67, Act XI of 1922.— In section 67 of the principal Act, for the words "No suit shall be brought in any civil court to set aside or modify an assessment made under this Act" the following shall be substituted, namely :—

"No suit or other proceeding shall be brought in any civil court to set aside or modify an assessment made under this Act, and no suits or other proceeding shall lie for the grant of any relief by any court which will have the effect of preventing the commencement or continuance of any assessment proceedings againt any person under this Act."

68. Amendment of section 67, Act XI of 1922.—In section 67A of the principal Act, for the words "and the time requisite" the words "and, where a copy of the order has not been served on the person concerned, the time requisite" shall be substituted.

69. Amendment of section 67B, Act, XI of 1922.—In section 67B of the principal Act, for the words "as if the provision in force in the preceding year of the provision proposed in the Bill then before the Parliament, whichever is more favourable to the assessee", the words "as if the provision proposed in the Bill then before Parliament" shall be substituted.

70. Insertion of new section 67C in Act XI of 1922.—After section 67B of the principal Act, the following section shall be inserted, namely :—

"67C *Formal defects in proceedings not to invalidate assessments*—(*1*) No assessment or other proceedings made or purporting to have been made in pursuance of this Act shall be deemed invalid merely on the ground of any error, omission, irregularity or other defect in the proceeding or in the form of any notice or order issued or made in connection therewith, if the error, omission, irregularity or other defect has not prevented a substantial compliance with this Act according to its true intent and purposes, and has not, in fact, occasioned a failure of justice.

(2) Without prejudice to the generality of sub-section (*1*) no assessment or demand made upon an assessee shall be deemed to be invalid merely on the ground of a mistake therein as to the name or surname of the person liable or the description of the status in which he is chargeable to tax or as to the description of any profits or property or years or to the amount of tax charged."

71. Amendment of the Schedule, Act XI of 1922.—In the Schedule to the principal Act,

(*a*) for the words "Superintendent of Insurance", whenever they occur, the words "Controller of Insurance" shall be substituted ;

(*b*) in rule 2,—

(*i*) in clause (*b*), for the words "actuarial valuation made for the last inter-valuation period" the words "actuarial valuation made in accordance with the Insurance Act, 1938 (IV of 1938), in respect of the last inter-valuation period" shall be substituted ;

(*ii*) in clause (*d*) of the proviso, for the figures "12" the figures "15" shall be substituted ;

(*c*) in clause (*a*) of rule 3, for the words "one-half" the words "two-thirds" shall be substituted, and in the second proviso for the words "one-half of

such amount" the words and brackets "that proportion of such amount (one-half or two-third, as the case may be)" shall be substituted ;

(*d*) for rule 8, following rule shall be substituted, namely —

"8. The profits and gains of the branches in the taxable territories of a person not resident in the taxable territories and carrying on any business of insurance, may, in the absence of more reliable date be deemed to be that proportion of the world income of such person which corresponds to the proportion which his premium income derived from the taxable territories bears to his total premium income.

For the purposes of this rule, the world income in relation to life insurance business of a person not resident in the taxable territories shall be computed in the manner laid down in these rules for the computation of the profits and gains of life insurance business carried on in the taxable territories."

STATEMENT OF OBJECTS AND REASONS.

The object of the Bill is to give effect to such recommendations of the Income-tax Investigation Commission as have been accepted by Government. In the addition, the Bill includes—

(a) certain amendments which were originally included in the Taxation Laws Amendment Bill which was introduced in the Budget Session of 1949 but was withdrawn with a view to its provisions being included in a comprehensive Bill which was then under contemplation ;

(b) provisions for exempting foreign profits of non-residents when remitted to India within the first two years of their becoming resident in India, so as to enable such persons to bring in their savings to India without any tax liability ;

(c) provisions for the granting of full relief up to the limit of the Indian tax in respect of foreign income-tax paid by residents of India on income which does not arise and cannot be deemed to arise in India—a provision which would encourage Indian Nationals to open branches in foreign countries without being subjected to double taxation ;

(d) such other amendments as the experience of the working of the Act has indicated to be necessary or desirable. Some of these amendments give relief to assessees, while others are intended to facilitate collection of tax and to close up loop-holes of evasion.

2. The notes on clauses explain the object underlying each of the important amendments undertaken.

C. D. DESHMUKH

NEW DELHI ;
The 2nd June, 1951.

Memorandum on the Indian Income Tax (Amendment) Bill, 1951.

From—The Secretary,
Bengal Chamber of Commerce.

To—The Secretary to the Government of India,
Ministry of Finance, New Delhi.

There are several important points of principle arising from the amendments in the Bill itself on which the Chamber wish to offer comments before proceeding to a detailed analysis of its terms. These they would preface, however, by the remark that an entirely inadequate amount of time has been given commercial and industrial interests to comment upon the far-reaching amendments proposed, based upon a voluminous report issued two and a half years ago. The Bill which was introduced into Parliament on the 6th June, 1951 incorporates not only the proposals in that report found acceptable to Government, but also several other provisions not contemplated in the report. Copies of the Bill were not generally available until much later than the 6th June.

2. Industrial and commercial interests have been required therefore to re-examine the recommendations of the Income Tax Investigation Commission; consider the extent to which these have been met in the Bill; study the full implications of that measure; and submit their comments to Government in time to allow of consideration before 6th August. The amending Bill runs to seventy-one clauses with necessarily involved references and cross references embracing almost every vital taxation principle. The Chamber interests, given less than two months to deal with this subject, must register a strong protest against this impetuous method of handling an intricate and vital piece of legislation which should surely be circulated for public opinion before it is passed into law.

3. The Chamber will lend their full support to all endeavours to amend the tax legislation and the machinery and methods employed thereunder in order to defeat abuses and evasions. The ways in which Government propose to do this—if the Bill is any criterion—are not, in the Chamber view, the solution. The Act as it stands contains adequate powers which, if properly and vigorously exercised, would achieve the main purpose. It is in the enforcement methods and machinery employed under the present act that the Chamber's main criticism lies; and if the personnel of the department were strengthened in numbers and in calibre and up-to-date methods adopted of tabulating all available data to permit of effective and timely utilisation, better and more rapid results would be achieved. A strengthening of or an addition to existing powers can provide no solution to the problem if the enforcement machinery is not in the first instance fully utilised. The impression which the amending Bill unfortunately conveys is that honest assessees forming the majority are to be subjected to considerable extra work and possible harassment with little practical result on the minority who, aware of weakness in the enforcement machinery, will not, it is felt, be much affected.

Retrospective Effect

4. The Bill seeks to introduce a quite indefensible principle in taxation by making its terms apply retrospectively. The opening clause says that the Act shall be deemed to have been in force since 1st April 1951 and throughout the Bill there are other examples of its retrospective aspect by the use of such phrases as "shall mean and shall be deemed always to have meant." The Chamber offer complete opposition to this violation of an assessee's essential right to be able to determine at any given time what are his precise obligations and commitments in tax. He should not be subject at some later date to further tax obligations and disabilities of an unknown character. Many thousands of assessees engaged in commerce and industry would for instance be taxable on the value of perquisites in 1950-51 given to them *bona fide* and in satisfaction of their agreements with their employers and for which, naturally, they have made no provision for tax. The retrospective nature of the Bill introduces moreover in certain clauses, further responsibilities and obligations in tax vitally affecting companies. These companies would be liable—if the Bill becomes law—to additional heavy tax payments, for which no provision could possibly have been made as they were without any knowledge that they would be liable. Several concrete cases can be cited in support of that statement. Unpredictable and uncertain therefore in its effects as in its consequences, the Bill destroys vital business concepts. Whatever may be the direct immediate effects upon companies and individual assessees in their tax position and liabilities, it is nothing compared with the harm which results to the economy of the country through uncertainties engendered by retrospective tax legislation of this kind. Particularly is this so with regard to the proposed Section 23A; and there are instances known to the Chamber where, if the legislation were passed as drafted, a company could not distribute the profits which the Bill would render obligatory as the money is locked up in raw materials, stocks and factory expansion. It cannot be the intention of Government to discourage business expansion and individual thrift but

these unfortunately would be some of the effects of the Bill if passed without amendment.

Section 23A

5. Whilst certain of the clauses commendably tightening up the Act are understood and appreciated, there are others which in their implementation are fraught with danger to the country's progress and development. Section 23A, for instance, will by its proposed revision have most adverse repercussions on existing plans for industrial expansion and if passed into law must inevitably encourage inflationary tendencies already difficult enough to control. A very large number indeed of companies whose shares are quoted on the Calcutta Stock Exchange would, by the amendment, be forced to distribute 60% or even 100% of their profits as dividends, handicapping them therefore not only in the prosecution of their immediate work but in their plans for the future. The Chamber would invite Government's attention to the list attached to this memorandum which, taken from their own immediate membership interests and by no means complete, gives every support to the foregoing statement.

6. Companies are obliged to retain much larger sums to meet the greatly enhanced costs of commodities and also plant replacement apart from development and expansion programmes. The Bill further makes it a virtually impossibility for the management to know for a certainty whether or not the company will be affected by the proposed Section 23A ; and continued orderly management, thus subjected to unscrupulous speculative elements deriving encouragement from this clause in the Bill, is completely jeopardised. So impracticable is the wording of the revision that compliance with it would force certain companies to violate the provisions of the Companies Act ; and whilst doubtless legal means could be found of overcoming this conflict in Government's own legislative enactments, a company under the revised definition could have no remedy against an arbitrary exercise of the power which the revised definition places in the hands of Stock Exchanges.

7. In so far as the economic life of the country is concerned, Government have shown themselves fully appreciative of the need for co-ordinated action between the State and its citizens for the achievement of common aims. The disadvantages arising from divergent policy statements have on previous occasions been stressed. Vital changes in company taxation which amend the definition of a company, subject that company to controls other than Government and to speculative elements, will do little

to encourage capital development from whatever source emanating. The fact is, as the Chamber see it, that these changes whilst they may achieve a short term increase in revenue from income tax can only in the long run do inestimable harm to industry which will later be reflected in the country's revenue from this source. There has been no opportunity yet to study other than the press reports of the draft plan issued by the Planning Commission ; but these reveal that if the hopes and ambitions there expressed are to be realised, there must be a drastic amendment of the proposed new Section 23A before the expected industrial expansion can be achieved.

The I. T. O's Powers

8. Extremely wide powers are sought to be given to Income Tax Officers ; and the Chamber are concerned that in the proposals there are no safeguards against their possible misuse. Without giving any reason at all, an income tax officer can enter and search an assessee's premises ; and should that be done maliciously (or on the false report of a "common informer" for which the Bill also makes provision) an assessee has no remedies. Documents of title and books of accounts can be seized and retained for as long as the I. T. O. thinks fit thus handicapping all normal day-to-day conduct of business apart from the security as also the confidential nature of the records. The powers of a Court are to be conferred on Officers not qualified judicially to act but under which imprisonment and/or detention of an assessee by order of the I. T. O. is possible. Whatever formalities and procedure are prescribed in the Act can now by Clause 70 of the Bill be disregarded with complete immunity to the officer as to the Republic in obtaining its revenues.

9. The Chamber understand Government's actuating motives but they see no good reason why all assessees should be classified as dishonest and therefore made subject to an exercise of wide, far-reaching powers against which, even in their misuse, there is no remedy under any of the laws of the land.

Perquisites

10. The notes on the clauses to the Bill say with regard to Clause 8 that definition has been given to "perquisites" so that it will include the value of any benefits in kind granted to an employee by an employer such as free meals, free domestic services and "any sum paid by the employer in respect of any charge or other obligation which but for such payment would have been paid by the assessee." These notes then go on to say :—

> "A number of business concerns have facilitated tax evasion by their higher paid employee. The cash salary of the

employees, which was subjected to tax, was shown at a low figure and the employees were compensated by a number of amenities provided in 'kind'. U. K. had to make a similar provision in their law to meet this evasion."

11. This over-simplification of an important issue is to be deprecated ; for the impression sought to be given (and the comparison made tries to support this) is that all perquisites are nothing other than salary additions escaping tax and that in the U. K. none is permitted. The notes take no account of the differences in the economies of the countries without which no comparison in tax legislation is valid. Free medical benefits, free education, essential food supplies at low cost to consumers through vast subsidies, direct cash payments and allowances for children—as also dependants—before income is taxed, are instanced ; but quite apart from these, there are specified perquisites in the U. K. legislation free from tax. The Chamber would use the analogy by asking that Government should follow a similar procedure in this country and should specify in the Act (not in the rules) (i) perquisites which for tax purposes will be exempt in the employees hands ; (ii) perquisites which cannot be so regarded and must be therefore added to salary ; and (iii) perquisites which are so commonly available in businesses that for the purposes of the Act they can be regarded as excluded, such as free schooling, recreational facilities and the like. The Chamber's case to be found in the detailed notes, is for tax exemption in respect of (a) medical costs, (b) passage costs and (c) free office tiffins, canteen meals or food rations at concessional rates. That there should be a tax liability in respect of housing is plainly to avoid discrimination between assessees ; for in the case of an employee getting housing, his salary will be less than that given to a man of similar standing with no housing accommodation. To meet this, rules issued by the C. B. R. say that 10% of the employees salary or the rental value whichever is less will be added for tax liability purposes ; and the Chamber urge that this too be incorporated in the Act so that the whole matter of perquisites will be within the Act itself.

12. From the standpoint of administrative convenience, in avoiding the work and disputes which the revised definition of perquisite will inevitably create between assessor and assessee, the Chamber find additional support to the contentions here advanced. They commend this view to Government for their favourable acceptance.

Conclusion

13. There are other points in principle to which the Chamber would take strong exception. The new Explanation 5 *vide* Clause 3 of

the Bill seeks to deny in taxation matters a principle universally approved (and stated by the Supreme Court of India amongst others) that profits from manufacture accrue and arise only at the place of manufacture Not only that clause—which would place India in unique isolation—but another which the Chamber will quote, stand to affect a considerable body of their membership. Clause 62 seeks to impose unjustified and undesirable restrictions on the assessee's freedom to choose his professional advisers for income-tax purposes. Present complexities and taxation problems will be multiplied if the proposed measure is made law and when Government's needs and those of the assessees for recourse to the best advice possible become even more essential, the Chamber can find no justification for the practice of discrimination and for the imposition of disqualifications to the extent that Government have proposed. This discrimination is introduced extending also to the denial of employment to those who already may be in professional business—because of its retrospective nature as also by the wording of the clause—and the Chamber doubt if this is in accord with constitutional rights.

14. These and other points of detail will be brought out in the following notes ; but the Chamber trust that Government will afford their sympathetic attention to the proposal now most strongly pressed that should the Bill be placed before Parliament in the August session, it will be with a request by Government that it be circulated for public opinion.

DETAILED ANALYSIS

(Note :—The comments are headed with the appropriate clause number ; and the heavier type but smaller letter (or number) preceding the comment refers to the appropriate sub-section of the particular amendment.

Where no comment appears on any particular clause, it can be taken that the Chamber agree with the amendment proposed.

In cases where reference is made to Recommendation No. this should be taken as meaning the recommendations of the Income Tax Investigation Commission unless specific mention to the contrary appears.)

CLAUSE 1

(2) For reasons fully elaborated upon in the preamble, this should be amended to read :—

"It shall be operative as from the 1st April 1953 and shall apply to assessments from the year 1953/54 but no earlier assessments."

CLAUSE 2

(a) The words "or any other sum" inserted in the definition of an assessee are not understood nor is their purpose appreciated.

Furthermore, it is observed that an assessee for the purposes of the Act means a person by whom income tax is payable. This would bar, from the definition of an assessee, those who had sustained losses in any particular assessment year and had paid no tax. Accordingly, certain of the rights accruing to such assessees could be lost. A re-wording of the clause to meet this point is suggested.

(c)(iii) Advances and loans to any shareholders are to be regarded as "dividends" for the purposes of the Act. The clause should not however apply to advances or payments made by the company to its shareholders in the ordinary course of business. Such transactions may frequently arise between associated companies, and would make application of the clause possible, even though the advance or loan arose from trading by a company with one or more of its shareholders and was of a purely temporary character. Exemption from the provisions of that section should be given for advances and/or loans subsequently repaid.

When a loan is not adjusted against a dividend but repaid otherwise, such amount should be allowed as a deduction from the total income of the assessee in the year of repayment; and an amendment to cover this is also requested.

Resolutions creating bonus shares are usually so worded that they might be interpreted as involving a payment by the company on behalf of or for the benefit of its shareholders. A company which has satisfied the requirements of Section 23A by distributing at least 60 per cent of its profits should be free to incorporate any balance of profits in capital. No funds are placed in the hands of the shareholders thereby; and nothing in the nature of super-tax evasion is involved in the operation.

The latter half of Recommendation No. 35 has not been implimented. It provides that "when loans have been treated as dividends under this clause, these should be taken into consideration in the application of Section 23A." This should also be specifically provided for in Section 23A.

The first proviso in this clause refers to the opinion of the Income Tax Officer where the sum paid is in effect out of the accumulated profits of the company. That is a point not of opinion but of fact; and therefore the proviso should be suitably reworded.

(d) (iv) Although this offends against the principle that capital receipts are not income, the purpose of the revision is supported. Nevertheless, relief in the nature of relief under Section 60 (2) should be incorporated.

(d) (v) Reference is again made to the opinion of the Income Tax Officer on a matter depending not on opinion but on fact.

Mention it also made of the party concerned in the transaction having a direct *or indirect* controlling interest in the managed enterprise. The new clause is clumsily worded. It should be made quite clear that it applies only when the party receiving the compensation has a controlling interest in the managed enterprise and/or the new agency. As it stands, the clause would apply if another person with a controlling interest were concerned in the transaction. Indeed such a person would no doubt be concerned in the transaction, but the fact is of little relevance to the question of liability on the compensation. If the reference to "the party concerned" were to "the recipient" it would it is thought, cover the point here made.

Introducing an undesirable practice capable of leading to harassment, the words "the Income Tax Officer is of opinion that" should be deleted.

(d) (vi) This sub-clause appears to be entirely redundant as there are no capital gains affected. Section 12B deals with the position as between 31st March 1946 and 1st April 1948.

(g) No objection is taken to the extended definition of "principal officer." Clause 19 (i) (10) seeks, however, to say that the "person responsible for paying" shall mean and "shall be deemed always to have meant" *inter alia* the principal officer of a company. To the retrospective nature of this widened definition, exception is taken. Unsatisfactory and objectionable consequences could attend any attempt to make responsible now for past events anyone who might not at that time have been the "principal officer".

(h) The definition of "shareholders" should be amended so that the recognition of the beneficial owner—again a question of fact—is not left to the decision of the Income Tax Officer.

It is suggested that the definition should read :—

'shareholder' means a person holding a share in any company and registered as a member thereof in its books and any other person who is either beneficially entitled for the time being to the share or who would be liable to be assessed on the dividend, if any, distributed or deemed to be distributed in respect of the share."

CLAUSE 3

(a) (ii) Sub-section (i) of the proposed Explanation 2 should be revised to read :—

"is it earned in the taxable territories to the extent to which it is paid out of income, profits and gains accruing or arising in the taxable territories ; or"

Sub-section (iii) should be re-worded to read as follows :—

"it is paid or payable out of any superannuation fund, contributions to which have been allowed at any time as a deduction out of the income, profits and gains accruing or arising in the taxable territories in the proportion which years of membership service in the taxable territories bear to total years of membership of the fund"

(The words underlined in these two re-drafts are new.)

The first proposal is self-explanatory. Concerning the other, the wording of the new clause might be interpreted as involving Indian liability on the full amount of payments in respect of which only a proportion of the contributions have been allowed as a deduction for Indian tax purposes. Liability should attach only to a corresponding part of the payments, and for the sake of simplicity it is proposed that the apportionment should be according to years of membership service inside and outside India rather than according to an analysis of contributions.

(a) (iii) In Explanation 5 (i) it is queried whether this, under Article II of Double Tax Avoidance Agreement with Pakistan, does not amount to a change in the basis of charging tax. The proposed amendment has no basis in equity or logic : it attempts to nullify the effect of the Supreme Court's decision in the Ahmedbhai Umarbhai case. The principle of attaching to the place of sale the full profit from the manufacture and sale of goods is contrary to international practice and accepted principles of fair division of profits. The change, which will isolate tax procedure here from what internationally has been accepted and followed, is likely to prove an obstacle to the completion of Double Tax Agreements between India and all other countries.

If the amendment becomes law, there will be serious obstacles to an agreement with Burma for avoidance of double taxation ; and the working of the agreement for avoidance of double taxation in India and Pakistan will be further complicated.

With regard to residents, the proposed amendment appears to preclude any relief under the proposed new Section 49 D where goods sold in India by a resident were manufactured by the resident outside India and the profits arising from manufacture have been assessed and charged to tax in the country of manufacture. Section 49 D as drafted only gives relief (and, according to the notes on Clause 49, is only intended to give relief) in respect of income doubly taxed, *which does not arise and cannot be deemed to arise in India*. Since it is the intention

of the amendment to make the full profit on sales in India (including any manufacturing profit) *actually accrue or arise in India*, there can be no relief in respect of doubly-taxed manufacturing profit.

Explanation 5 (ii) would affect non-resident banking and insurance companies, etc., and would bring in the whole of the depositors as liable for income tax in this country. In that same Explanation, sub-section (iii), it should be made perfectly clear that the extent of the taxable income would be that which arose in the taxable territory ; and it is particularly observed that Explanation 5 (iv) has such a qualification. Its omission from Explanation 5 (iii) is not understood except as being unintentional.

(b) (ii) Recommendation No 60 reads as follows :—

"On the question of expenses incurred for business purposes, we recommend that Income Tax Officers may be instructed not to be unduly strict about the amount of expenditure under heads like motor cars maintained and amenities provided for the benefit of customers so long as they are satisfied that such amount was actually spent and that no attempt was continuously made to pass off private expenses as business expenses."

The Chamber regret that Government should have drafted amendments diametrically opposed to that proposal. Much of the entertainment done by business houses in this country in the fostering of goodwill and benefit to trade and commerce (as also India's revenues) is in quiet unostentatious ways either in private houses or in Clubs where—perhaps naturally and understandably—entertainment for business purposes is concentrated. The system is the reverse of that in, for instance, Great Britain ; and supporting vouchers from public restaurants and resorts can readily be submitted as proof of their constituting a business expenditure. Club bills in this country can be submitted ; but it is impossible to advance *proof* of expenditure on business account if the home is utilised for the purposes of entertainment, though legitimately constituting an allowable expense.

To certain classes of business in whatever fields selected, this form of "publicity", of essential contact work and means of maintaining and developing trading activities, represents the best method of progress ; and a tradition so long established in India may now be eliminated through the restricted definition now proposed for business charges. Publicity which others can practise—tobacco manufacturers, the film industry, suppliers of consumer goods, and medicines for example—involve considerable outlay freely permitted as a legitimate business

charge. Those whose methods of "publicity" and "advertisement" are of the type and character previously mentioned and specifically detailed in Recomendation No. 60, would seem now to be precluded from so continuing.

The existing Act provides many examples of the varying procedures essential to cope with the tremendous range of differing trading, commercial, and industrial interests forming the taxable community. The Chamber would regard it as particularly harsh and contrary to these principles, were differing methods of accomplishing a common purpose not to be allowed as a business expenditure in the case of all assessees. The nature of the request makes impossible the the fixation of definite sums or scales related to taxable income. Over the years there has been hammered out with Income Tax Officers a more or less agreed and accepted level of entertainment expenses legitimately attributable to the business. The Chamber ask that that position should be left undisturbed and, as at present, discretion should be given the Income Tax Officer to fix a figure at whatever reasonable levels may be agreed.

(b) (iv) The proposed proviso in clause (xiv) running counter to Section 10 concerning admissible expenditure, is opposed. It is in the interests of the Indian economy that visits by foreign experts should be encouraged. The exemption should apply even when the foreign enterprise is engaged in trade or business in the taxable territories, since the services of employees from the head office or other branches of the enterprise would frequently be of advantage to the Indian branch or associated businesses in India. The period of free stay, 90 days, is too short to be of real value, and should be extended to 183 days in any year. Furthermore, when the remuneration is borne by an Indian business or by the Indian branch of a foreign enterprise it should in all cases be allowed as a deduction from income, if the exemption is to have any value at all in such circumstances.

In the proposed clause (xvii), reference is made to an exemption of the interest on 3½% 10-year Treasury Savings Deposit Certificates. It is thought that this should be extended also to include National Savings Certificates and Post Office Saving Banks accounts.

Clause 6

As a general remark on this clause, the Chamber would press Government to reconsider Recommendation No. 148 *viz.* that Appellate Assistant Commissioners should be placed under the Appellate Tribunal.

(e) The words "as are assigned" offer too wide a delegation of duties. This could even extend to assessments ; and Inspectors should not have such powers. Consideration could be given to their defined limitation.

(g) No point is gained by an assessee approaching the Commissioner of Income Tax under section 33A if the Commissioner has already instructed the Income Tax Officer to act in a certain manner. It is anomalous that the Inspecting Assistant Commissioner can instruct an Income Tax Officer to impose a penalty under Section 28 and also have statutory power to sanction the penalty.

Clause 8

For the reasons elaborated upon in the preamble to this detailed analysis, the Bengal Chamber of Commerce claim to have established a sufficiently strong case for the insertion in the Act of specific perquisites allowable free from tax. These are :—

(a) housing accommodation ;
(b) medical costs ;
(c) passage costs ; and
(d) free office tiffins (or meals in canteens) and food rations at concessional rates.

They would particularise these cases.

Housing Accommodation

The Chamber have seen the points made under this head by the Associated Chambers of Commerce in their memorandum dated 16th July to the Finance Ministry ; and fully supporting the points there made, they have nothing to add.

Medical Costs

The Chamber could find numerous instances where considerable sums have been expended by their members on medical services covering each and every category of staff. Were these costs added to an employee's total income for tax purposes, it would have a severe crippling effect in certain instances and be in any case a real hardship. Whether in hospitals of their own for the treatment of employees and/or dependants, whether through arrangement with doctors and hospitals—the Chamber now think especially of urban areas—employers have developed medical amenities and services. Where the need exists and where for the proper conduct of his business the expenditure on such services is justified, such services will be found. It would be wrong to saddle employees with a tax liability on a "benefit" equally that of the employer.

Medical costs are the responsibility of the State in Great Britain where contributions, payable by an individual for his State health insurance, are in addition allowable as a deduction before tax is levied. The employer here acts as the insurer against medical risks, by an expenditure undertaken to safeguard his business ; and as this is in no way convertible into cash nor a consideration used to determine an employee's salary grade, the Chamber trust that Government will support the contention that this should not be a perquisite chargeable to tax.

Passage costs

Where an employer wishes to recruit staff and in this a change in place of domicile enters, then the whole burden of travelling costs will be on the employer. The Chamber make the claim as one neither particular nor peculiar to this country nor to any particular grade of staff. It applies whether the move is from one State to another in India or whether from another country to this ; and affects all employing interests including Government.

Personnel recruited from places away from the place of employment will not accept the position unless relieved of essential travel costs in recruitment as in re-engagement or, finally, in repatriation. Even in the legislative field, expression is given to the principle here enunciated, and the Chamber would consider any departure from that as most undesirable.

The extent to which an employer will meet such costs is governed by his needs ; and he would not voluntarily incur this expenditure. The position is exactly the same with the employee. It is again not a perquisite convertible into cash in the employee's hands. Difficulties in recruitment of suitable staff would be considerably enhanced were the position to be otherwise than is the case just now.

Food concessions

The supply of food free of cost or at concessional rates is specifically mentioned in the Bill as a perquisite taxable in the employee's hands. That is not the case with either medical or passage costs which would however be hit, as the Chamber see it, by the very wide definition given that term. The Chamber feel confident that Government did not realise the burden on Income Tax Officers of checking assessments in cases where food rations are supplied at concessional rates. This concession is now a widespread practice involving staff generally throughout commerce and industry. The work involved in calculating possible tax liability will be colossal, the benefits gained infinitesimal, and the risk certainly incurred of considerable labour unrest.

In commercial houses, facilities are provided in the shape of free office tiffins ; the canteen system is spreading ; and these are benefits appreciated by all. It also benefits the employer by making the services of his staff available for a longer time than would be the case ; and were it disallowed, more staff would have to be recruited meaning less revenue to Government in less taxes from employers.

As is said Government cannot have had these in mind when amending the clause ; but unfortunately the result has been that these essential supplies would be affected and therefore render the employee liable in tax.

What here has been said lends emphasis to the Chamber's main point, namely, a definition of perquisites by specific mention of taxable and non-taxable items with the third general category of those not to be so regarded for income tax purposes.

Turning to other amendments in clause 8, the effects of sub-clause (c) of Explanation I would appear to make an employee liable for tax in respect of a lump sum payment made either by his employer or by the trustees of a superannuation fund (other than an approved fund) to secure an annuity on his life. Where the annuity contract stood in the employee's own name this provision is unexceptionable, but it seems necessary to make a consequential amendment to sub-section (2) of Section 60 to extend these benefits to perquisites granted in consideration of past services. At present the sub-section only refers to salary and to "a profit in lieu of salary". The latter phrase has been defined in Explanation 2 to Section 7(1), but the present definition does not cover a perquisite.

Frequently the practice is for trustees of superannuation funds to take out policies in their own names on the lives of the various beneficiaries, either jointly or severally. In these circumstances the policies are investments held by the fund with the added advantage that they take into account the actuarial liability of the fund. Under the proposed amendment, premiums paid by the trustees in respect of such policies would appear to be taxable in the hands of the beneficiaries of the fund. There is nothing to justify this ; and it is suggested that the amendment be redrafted so that liability would arise only in respect of contracts taken out not only on the life of, but also in the name of, the assessee.

If the principle has been accepted and agreed that there shall be limitation in the exemptions now particularised in Explanation 2 (Section 7 of the Act)—*vide* Clause 8 (ii) of the Bill, there should be no attempt to discriminate between one class of assessee and another.

Yet this is precisely what the amendment in question seeks to do by placing, it is thought unconstitutionally, Government servants death-cum-retirement gratuities on a special exemption footing whilst denying that exemption to all other assessees. The Chamber take exception to such discriminatory practices.

CLAUSE 10

In view of the retrospective nature of the proposed legislation, exception is taken to the rewording of the proviso to clause (iv). The Central Government may now prescribe what shall be permitted within the proviso in the way of interest on loans ; and this could conceivably be used to debar what hitherto has been permitted.

CLAUSE 11

(1) (ii) (a)—This would appear to give the Central Government retrospective powers to disallow certain interest previously allowed were tax not deducted at source. As such it is opposed.

(1) (ii) (b)—This proviso should stipulate that non-business assets acquired otherwise than by drawing on business capital, will not come within its scope.

(1) (iii)—A mistake in the reference is here noted : it should be clause (b) not (c).

(1) (iv) (Explanation)—This negatives the High Court decision on this point ; and were the legislation made retrospective it could be used against companies who already had obtained exemption consequent upon the High Court decision.

The mere fact that such a power is being sought is highly objectionable in itself : its use would undoubtedly create fresh litigation in which might well enter a consideration of Government's own position in their trying retrospectively to alter laws previously in force.

(1) (v)—The addition, under this sub-clause, to Clause (x) is redundant for the existing clause already adequately covers the position. In any case any sum disallowed should be treated for all purposes under the Act as if it were a dividend paid to the recipient as a shareholder in a company.

(1) (vi)—This restricts inequitably and severely the allowance of revenue expenditure. In the notes on the Bill it is explained that this gives effect to Recommendation No. 166. Either that Recommendation has not been understood—for the revision does not give effect to it—or the note has been inserted, the Chamber suggest, perhaps in error.

The offending words are "of the nature" so that any expenditure of a *similar nature* not recovered by clauses (i) to (xiv) could not be

claimed under this or any other section *e. g.* trade interest, deferred repairs etc.

There is an error in the Bill in that the amendment starts off by including clauses (i) to (xvi) ; that latter figure should be (xiv).

(3) (i)—The words "market value" should be omitted since firstly its satisfactory determination would be difficult—for instance, who would assess the "market value" and on what basis would it be assessed ?—and secondly, it is unnecessary since no loss of revenue would be incurred.

(3) (ii)—Where a contribution towards the cost of a depreciable asset is deducted in the hands of the assessee for the purpose of allowing depreciation to him, the person making the contribution should receive an allowance similar to the allowance which is being withheld from the recipient.

(4) This involves the taxation of Chambers of Commerce and like Associations not run for profit which may in certain years have surplus income. It is considered that these should not be taxed. In Clause (2)(d)(vii) the reference is to a mutual insurance association ; and the reference in this amendment should, it is urged, be so confined. The amendment should also be re-drafted making clear that where the business accounts are in no way charged with expenditure on non-business assets, no reduction in allowance should be made.

(5) The necessity for this amendment is not understood as there is no knowledge of expenditure being allowed twice.

CLAUSE 14

The operation of (b) in the proposed proviso is impracticable. It would involve a tremendous amount of work in the detailed examination of accounts the results of which could only mean great harassment to the assessees and, so far as the collection of extra taxes is concerned, little if any benefit. Furthermore an assessee is liable to penalty clauses if he misses only one item of adjustment under this head not added back. Accounts audited and certified by Chartered Accountants should be acceptable in showing the true position regarding the inclusion of liabilities.

In (d) of this revised proviso, the reference to trading debts would appear redundant *vide* the proviso to Section 10(2)(xi).

The Chamber had completed their notes in connection with the Bill when a further point of importance was brought to their attention by a member : it concerns Clause 14 of the Bill and, in particular, (d) of the proviso. The objection is against the words "or otherwise" which immediately follow the word "compensation" in that particular part of the proviso.

These words are vague and wide and can be held to mean receipt of money or money's worth by way of any conceivable circumstance. The words would cover, for instance, receipt by way of a windfall, or by a pure act of bounty on the part of some third party, whose primary object in making the payment may be to fulfil a purpose quite different from paying for trading losses or debts. Moreover, the words "or otherwise" are quite out of harmony with the corresponding provisos, as they have stood since May 1946, in clause (vii) of Section 10 (2) of the Act. This clause (vii) refers to buildings, machinery and plant which have been discarded or demolished or destroyed, and provides for making balancing allowances and balancing charges. In so far as "any insurance, salvage or compensation moneys" fall short of their written-down value, clause (vii) provides that an allowance should be made for the difference between the written-down value and the amount received. In so far as "any insurance, salvage or compensation moneys" exceed the written-down value, so much of the excess as does not exceed the difference between the original cost and the written-down value is deemed to be assessable profits of the previous year in which such moneys were received, that is to say the excess over the original cost will not be taxable, but the remainder will be taxed. Proviso (d) which it is proposed to insert in Section 13 of the Act is the counterpart of existing clause (vii) of Section 10 (2). The latter deals with compensation received for fixed physical assets, the former with compensation for trading losses and debts, such as losses of stores, products and stock in trade. It is not then understood why such a loose expression as "moneys received by way of compensation *or otherwise*" should be used in the case of circulating assets in preference to the clearer and precise expression "insurance, salvage or compensation moneys" used in the case of fixed physical assets. The Chamber's main objection lies in the use of vague terms in matters where precision is of the most vital importance to an assessee, especially as the proviso is intended to operate retrospectively in the accounting year 1950. They feel there must be some restraint on deeming things to be what they are not to accrue or arise where they do not in fact accrue or arise.

The Chamber most strongly urge a replacement of the words "or otherwise" by the words "salvage or insurance".

CLAUSE 16

Having regard to the small amount of business transacted in the form of deferred annuities in recent years, the Chamber urge that no alteration in the present basis of taxation be made.

The underlying principle of allowing income tax relief for life assurance policies and deferred annuities has been to encourage thrift and the making of provision against the future. As a desirable concession to encourage a worthwhile object, there are stronger reasons for its maintenance than its curtailment.

Relief in respect of contributions paid under approved superannuation funds will still be allowed. Their provision of pensions has the same basic object as a deferred annuity; and a similar concession should thus be allowed for such premia. A deferred annuity (where no medical examination is required) can be provided for those whose physical disability might preclude them from a life assurance. Those individuals will now suffer the further disability of not being able to obtain income tax relief in respect of premiums.

Whatever may be decided in this, the Chamber would urge an exemption in respect of current contracts. These contracts were entered into on the understanding that income tax rebate would be allowed; and it would create hardship if this concession were now withdrawn. When the change in the U. K. Act was introduced, it was made applicable only to contracts entered into after the date of alteration.

Staff pension schemes arranged on the basis of the issue of deferred annuities for the individuals concerned would be affected adversely by any change in the present concessions. It is suggested that the C. B. R. should treat such schemes as approved superannuation funds when complying with normal requirements. Section 58P does not operate to prevent approval of schemes based on the issue of deferred annuity policies; and accordingly there should be no bar to acceptance of the idea.

CLAUSE 18

In sub-section 1 of Section 16, it is proposed to insert the words "and sub-section 3 or sub-section 4 of Section 25." This is deplored as being a breach of faith; and therefore deletion is very strongly pressed.

(b)—The addition of the words "who is a shareholder in a company" is objectionable; and the Chamber could agree to the amendment only if the words "in a company" were deleted or, alternatively, reference made to a "shareholder" who could be treated or deemed to be such under the proviso to Section 2 (14).

CLAUSE 19

(e)—The principal officer of a company is to be made responsible for deducting super tax from any dividend, whatever the amount paid "to a person whom he has no reason to believe to be resident in the taxable territories." In effect this would mean an approach to every

shareholder on every occasion before a dividend could be paid to exercise the necessary check. The principal officer of a company might have 30 to 40 managed companies under his control the extent and magnitude of the task involved can therefore be understood.

The obligation at present arises in the case of gross dividend of over Rs. 25,000, except in the case of a company, whereas now it is made applicable in any case because of the complete change in Section 17 of the Act. The principal officer of the company, who previously had only a limited number of cases to deal with and could reasonably be expected to handle these, will now have to consider the individual case of every shareholder in the company.

The Chamber would strongly commend to the attention of Government by reason of what is involved, the need for clarification and guidance which to their mind should require only that the principal officer be guided in this by his share register.

(f) Government might please consider the desirability of re-wording this amendment to protect employees who have had their tax deducted at source but whose employers have failed to make payment of that tax to Government.

(i) The expression "person responsible for paying" in this amendment has been extended considerably beyond the existing provision. Whilst this is accepted, the objection of the Chamber turns on the endeavour to make the expression deemed always to have borne the meaning now proposed. In other words, it imposes a current responsibility and liability on persons and officers who failed to do what they, by the law as it then stood, were not required to do. It will have most adverse repercussions on liquidators who in future will be reluctant to accept such liability.

If "person responsible for paying" is now to be defined as meaning and as always having meant the company, a liquidator when entering upon his duties would be required to ascertain to what extent the company was in default under Section 18 (7) and would have to take into account the liability under that sub-section before proceeding to distribute the assets. This would throw an intolerable burden on him as he would then be required to make a detailed enquiry to ascertain that tax had been correctly deducted from all payments made by the company from the date of its incorporation or, at any rate from the date on which the present Income-tax Act came into force *i.e.* 1922. If, in spite of such enquiries the liquidator did not become aware of a particular instance of failure to deduct tax and proceeded to distribute the assets without making provision for that liability he would probably

incur personal liability which in the circumstances would be quite unjustifiable.

It is a further instance of the inequitable retrospective effects of the Bill to be found either in reference to time as in Clause (1) (2), or by the use of phrases like the one mentioned above conveying a retrospective effect.

The clause could, the Chamber suggest, be further revised by exempting employers from the responsibility of tax deduction on that part of salary consisting of perquisites. The most uncertain nature of what would be taxed as such, and the impossibility in certain instances of determining whether this made an employee liable to tax, constitute the main reasons for the exemption now sought. Particularly is reference made—in support of this plea—to the grant of food concessions on tea gardens. Rice is sold at prices considerably lower than existing market rates ; and therefore this necessitates for taxation purposes, an assessment of the benefit. It is a task of considerable dimensions if placed on the employer for monthly or even more frequent determination. Yet since a clear obligation is in the Act to deduct tax before payment of salary, the employer would require to make such calculations to avoid being liable to penalties.

CLAUSE 20

(c) The attempt made by the proposed sub-section 3(A) to impose further penalties is strongly opposed. After all, the purpose of the section is merely that of making advance tax payments against liabilities, the extent of which cannot be determined with the celerity visualised in the Bill. The meticulous provisions for statements of accounts etc., will involve a vast amount of work and harassment to assessees to no great gain. To an I. T. O. behind hand with current assessment, it can very conveniently be resorted to as a means of collecting tax ; and there is knowledge of attempts unfairly to use powers in this way, one particular case concerning the provisional powers of assessment under Section 23 B.

The Chamber regard the existing provisions of Section 18A as ample, giving I. T. O's full and adequate powers. The amendment now proposed is considered unnecessary and unwarranted.

In commenting upon this amendment, the Chamber consider it appropriate and necessary to refer to the need existing for greatly accelerated action in refunds of income tax so paid.

CLAUSE 21

The Chamber have had occasion previously to comment upon the great mass of detailed information required by the present Act and on

the failure effectively to use it. The proposals on this amendment provide a further illustration of the point that data furnished are not utilised advantageously. The extreme undesirability of adding to existing unclassified data will be patent ; and the Chamber feel that in the interests of all, some attempt should be made to utilise what data are already with Government.

There is no object in the amendment now proposed except it be to give to assessees the task of preparing yet another copy of the same information already furnished *vide* Section 19A and to add another type of return to the many already furnished. All the data, all the information, all the powers necessary to carry out the purpose of amendment, as explained by the notes on the clauses, will be found already in the possession of the Department.

Banks would by the proposal be required to give the same information as the Department already receives from the companies paying dividends. If additionally the Department would wish to have from the Banks, a list of the shares or securities held in their name or that of their nominees giving the details of those on whose behalf the shares or securities are held, this can be done without the elaboration in the amendment under discussion. The amendment is unworkable ; for whereas under Section 18(a) the tax certificates have to be forwarded to the owners of the securities, the new proposal is that these should be sent by the banks to the Income Tax Officer. These vouchers are not issued in duplicate ; compliance with an existing and the proposed additional but conflicting requirement, is rendered impossible.

CLAUSE 22

Unless the proposed revision of Section 7 of the principal Act is clearly defined in its scope and purpose, the insertion of this clause would merely result in no one being prepared to sign the return under Section 21. The principal officer, subjected to penalties and disabilities, will be unwilling to give definition to the effects and significance of what now are to be deemed as benefits and perquisites under the proposed Section 7. Details of sums paid in respect of expenses incurred by employees are not necessary : these payments are not income of the employee for tax purposes.

CLAUSE 23

As a general criticism this revision particularly strikes the Chamber as meaning more harassment to assessees with little or nothing in return to the income tax revenues.

(c)—The clause as it is worded in the Bill seems to be capable of discrimination against a person suffering a trading loss ; and there is no reason why he should not be treated the same as any other assessee.

The proposed sub-section 2 (B) is against the provisions of the Companies' Act in that private companies do not require to have their accounts audited by a Chartered Accountant. In any case it is not—as the notes on the clauses state—in accordance with the recommendations of the Investigation Commission who characterised compulsory audits *as undesirable except in the case of businesses with large incomes*. A liability to super tax as a definition of "large incomes" is quite unacceptable ; and to require audits in such cases indicates a lack of appreciation of the burden involved not only on the assessees but on the already inadequate numbers of qualified accountants in this country, able reliably and promptly to carry this very heavy additional load.

(d).—There should here be a safeguard inserted limiting the Income Tax Officer in his call for accounts, documents, etc., to such papers as are relevant to the assessment under consideration and also such as could reasonably be required by the officer in question.

CLAUSE 24

In the final analysis the proof of the correctness of an assessee's statement of income is always on the assessee and therefore little purpose is served by the proposed subsection 2 (A). It in no way alters the present position. A remedy is already with the Income Tax Officer who thinks the statement is other than true. He can reject it and proceed to a best judgment assessment.

As the revision at present stands, the Income Tax Officer does not require to be reasonable nor need he give any statement why he doubts the correctness of the return. This provision—the deletion of which is strongly urged—could therefore be, unintentionally, quite unfairly used in harassment of assessees.

CLAUSE 25

In its general ill effects and disturbances, sufficient has been stated in the preamble to these notes.

The Chamber would offer the following suggestion on the proposed amendment :—

(a) It should be made clear at a very early date that the proposed amendments do not effect distribution of dividends on profits earned in the year 1950/51 as companies have already in many instances held their general meetings or are just about to hold them and with the present uncertainty, their position is extremely difficult.

(b) Companies should be given, as at present, six months from the general meeting to distribute the required percentage as dividends and not twelve months from the end of the previous year.

(c) In view of the high cost of replacement of capital assets and the high price of commodities etc., it is considered that companies subject to Section 23A should not be called upon to distribute more than 40% of their profits as dividends.

(d) Public Investment Companies should not be called upon to distribute 100% of their profits as dividends for it is necessary for them in the interests of their shareholders to accumulate funds for acquiring fresh investments ; and any way the provision whereby they are called upon to distribute 100% will mean in many cases that they are called upon to distribute out of capital. The payment of a dividend out of capital runs directly counter to the Companies Act ; and, therefore, the provision in this respect should be 80%.

(e) A company whose business is trading in goods or services should not be liable to be treated as an investment company merely because in a particular year, owing to poor trading results, its investment income exceeds other income. Were a public investment company defined as one whose main purpose is holding, or dealing in investments, then the point would be met.

(f) There should be a further provision added to enable the operation of the Section to be relaxed at the discretion of a Commissoner of Income Tax in suitable cases with an appeal from Commissioner's ruling to the Central Board.

(g) Provision should be made to allow of bad debts being deducted, in fact any disallowable revenue items which have borne tax should be allowed to be retained. In this connection there is instanced the case of reserves for bonuses which could not in fact be utilised for the payment of dividends.

(h) When a Section 23A Company (as now sought to be defined) is being wound up, the shareholders may suffer super tax on profits which they may never receive. It is quite possible, due to various circumstances, that the assets might not realise anything near their book or real value ; and therefore the shareholders might receive less than sixteen annas in the rupee. This would not be the case with a company not hit by Section 23 A. In Section 2 (6A), the reference is to any distribution made to the shareholders out of the accumulated profits. In other words, the distribution for Section 23 A companies is notional whereas in Section 2 (6A) it is fact.

(i) The last proviso to Sub-Section (1) should be amended to make it clear that the Section does not apply to the subsidiary of a non-Indian company ; and a further proviso should be added making it clear that where one or more public companies hold 51% of the shares, the Section shall not apply.

(j) The explanation set out in the Bill which it is proposed to substitute for the existing explanation of what is a 'Public Company' is considered to be quite impracticable and most undesirable from every point of view, and it is suggested that the existing explanation should be adhered to plus (if Government insist on it) the percentage of 25% to be held by the public being raised to 50% and in addition it should be made clear that a public company is part of the public.

In the proposed new explanation set out in the Bill a company can only be considered a company in which the public are substantialy interested, if at any time during the previous year its shares have been dealt in a recognised Stock Exchange in India. This cuts out any non-Indian company (with very few exceptions) and puts far too much power in the hands of Stock Exchanges who are often quite arbitrary over the question of quotations. It is considered sufficient if the shares are in fact freely transferable. In addition a company will be affected by the Section, if shares carrying more than 50% of the total voting power have been held or controlled by less than six persons at any time during the previous year. This could in many instances put companies at the mercy of unscrupulous speculators, who in order to force the company to declare large dividends may take up blocks of shares for very short periods during the previous year ; and this will, moreover mean the companies will never know from year to year whether they are subject to Section 23A or not. During the last few years, managing agents to protect themselves against "cornering" activities, have had to buy up far more shares in managed companies than they are accustomed to hold ; and this proposed amendment will therefore affect the individual companies very considerably.

CLAUSE 26.

(c) The effect of the proposed (4)(i) appears to be that losses carried forward in the life department of insurance companies may not be offset

against profits in other departments or *vice versa* before assessment. Tax is payable at a lower rate on life than on other classes of insurance business.

The amendment is objectionable in principle inasmuch as the life business of a composite company is as much a part of the company's business as any other department. Companies should have the option of offsetting a loss in one branch against a profit in another branch at the lower of the two rates of tax or of carrying forward the loss in the particular department involved.

The provisions of the proposed Sub-section (4) of this clause will require careful attention in re-drafting to avoid interference with genuine business. If the transaction is not to be classified as speculative sub-section (iii) requires the physical delivery of commodities and that is not always possible. A tea crop for instance is sold "forward" but through the interference of blight or other unpredictable factors, the contract may be determined on a basis other than physical delivery. This can happen with the several commodities in which "forward" transactions are quite normal to business.

The amendment might be deferred pending consideration of the Forwards Markets Bill.

A provision should be inserted whereby foreign exchange cover taken out in the course of legitimate business would not be affected by it. Again, clause (b) (iii) should be amended so that if the assessee is a resident for the purposes of tax in the time limit specified, losses also should be allowed to be carried forward in any subsequent assessments.

CLAUSE 29

This is a particularly objectionable amendment giving powers to an Income tax Officer to hold up liquidation proceedings indefinitely; restraining the liquidator from paying the liabilities of the company even if provision has been made for tax liabilities; imposing personally on the liquidator or trustee a liability in tax payments if the value of the assets set aside to meet tax purposes, on account of a notification from the I. T. O., do not eventually realise their estimated sum; and finishing by the following declaration :—

> *"The amount notified by the Income Tax Officer under sub-section 2 shall not be called in question in any proceeding before any court under any law, and the provisions of this section shall have effect notwithstanding anything to the contrary contained in any other law for the time being in force."*

It extends also to those who have been appointed as receivers of any assets of a company, agents of non-resident principals, and stockbrokers.

If non-residents instructed a stockbroker to realise assets—interpreted as meaning "any assets"—in this country, the Income Tax Officer would be given most effective powers to stop forever all remittances in respect of such realisations; and in whatever way used, the final provision of the proposed section effectively precludes any action by the ordinary citizen against the Department's fiat or even lack of orders.

The notes on the clauses issued by Government start off with an incorrect statement to the effect that the new clause gives effect to Recommendation No. 85 and defines its intention as safeguarding "the interests of revenue by requiring the liquidator to pay the amount notified by the Income Tax Officer as the tax payable presently or in future by the company."

The clause goes far beyond the recommendations of the Commission; violates the provision of the Companies Act and Bankruptcy Acts; and leaves the parties affected with no powers of contending on these or other grounds against whatever orders in this respect are issued by the I. T. O. The clause not only calls for a protection to revenue by asking the parties involved to set aside certain assets to meet tax commitments, but precludes any conduct of liquidation proceedings—or other more normal business proceedings to which by its extensive nature the clause can apply—until the I. T. O. so decides. By calling upon liquidators and/or trustees to be personally liable to pay tax to the extent of the value of assets notified with, at the same time, the power to prevent such parties doing anything with these assets, the amendment could place liquidators, trustees etc., in an impossible position. It is gravely doubted if in these circumstances, anyone would be willing to act in these capacities.

The clause should be entirely deleted.

CLAUSE 30

This clause, as it stands, is again one to which strong objection is taken; and the grounds are :-

(1) Any small slip in an application will, even if not material, deem such application to be incorrect for the purposes of this section. Drafting amendments are required to give effect to the intention, that of catching applications made with an intention to deceive.

(2) An application found incorrect for a previous year, even though different persons were then partners in the particular firm, makes the *present* partners liable for the tax incurred due to the firm being charged for that year as an unregistered firm. Furthermore, it enables an Income Tax Officer to go back eight years if he considered

the offence to be deliberate ; and the effects would be visited upon the partners presently constituting the firm even if they had nothing to do with the offence nor even knew of it.

(3) Though not the intention, the clause by use of the words "for any year" implies that, were registration cancelled on account of a mistake being made in one year, then the registration in respect of *all* other years (even though the applications were correct) could also be cancelled. Drafting amendments to obviate this are necessary.

Two further points are generally made : (1) the cancellation ought not to be automatic ; and (2) provision should be made for crediting any tax paid by previous partners.

(4) There does not appear to be a clear right of appeal in this case.

CLAUSE 31

This clause seeks to delete Section 27 of the principal Act. That section should be retained as it gives the assessee an opportunity to question the justification of the assessment having been made under Section 23 (4). Its deletion would lead to an increase in formal appeals.

CLAUSE 32

(a) The objection to this amendment is in the words "whether or not such proceedings relate to the assessment in which any default or concealment has occurred". Once proceedings are finished and have not been re-opened under Section 34, any further proceedings should be time-barred. Were that not so, the assessee would never know where he stood and could be caught for penalties on some point in respect of previous assessment proceedings which had been closed for perhaps years. These words should be deleted.

The words "has negligently" are too wide in purport and intention and could apply to common mistakes. The use of the word 'wilfully' is strongly advocated. In the revised sub-section (1) (e), the word "negligence" should be replaced by the words "wilful default". In the revised sub-section (1) (f), the word "wilfully" should be inserted before the word "concealed".

A minimum penalty should not be specified since this will entail the Income Tax Officer in applying a penalty in all cases arising under this sub-section whether justified or otherwise, The officer handling the case can best determine if a penalty is fitting and should have discretionary powers. To meet the objection, the words "but not less than the difference between" and "and the income-tax and super-tax, if any" could be deleted, and this is commended to Government's acceptance.

It is felt that the second of the provisons to (f) of the suggested sub-section (1) should be entirely deleted. This is a violation of the principles enunciated in Section 34 ; and if passed would enable the Department to get back by another method, the tax which is barred.

It is unreasonable that a non-resident person should be subject to penalties for failure to make a return in response to a general notice under Section 22 (1). A non-resident cannot be expected to have knowledge of announcements in the Gazette of India.

It is considered therefore that there should be a further proviso added to the six already part of Clause 32 (a) so that non-residents shall not be subject to any penalty by failing to furnish a return of their total income consequent upon a general notice under sub-section (1) of Section 22.

(b) (ii) This should be entirely deleted : it is open to the same objections as noted under (a) above.

(c) This clause should be entirely deleted or alternatively, strictly limited to the scope of the Investigation Commission's Report. It goes far beyond that recommendation, and, for instance, now makes possible a double penalty for the same offence, abetments being already punishable under existing law.

It also provides in the second proviso for a private act of a partner to be legally charged to all the partners, a fundamentally inequitable situation. It should be made clear also in the re-draft that the disability attaches only when the acts of partners are done "in course of the business of the firm".

(e) Whilst agreed that action under this clause might well have salutory effects in its present form it empowers Income Tax Officers to use it for petty cases where no fraudulent intention might exist. It is necessary to ensure that these powers are not capriciously used : action should be taken only in extreme cases.

Further, in all cases, the powers should be definitely subject to (i), prior notice being given by the Income-Tax Officer to the person concerned; and (ii) a hearing being granted to the assessees before taking a final decision.

The Chamber support this amendment which can have beneficial effects but, equally, most damaging effects; and they again would suggest that nothing be done without the approval of the C. B. R.

CLAUSE 33

Provision should be made for the undernoted additional appeals :-

(i) Right of appeal against
an order under Section 18 (7).
(ii) " " " 18A imposing penal interest.
(iii) " " " 25(3) & (4).
(iv) Right of appeal regarding the computation of unabsorbed depreciation.

Further, should Government not accept the several proposals made for a removal of the I. T. O's discretion, it is urged that a specific right of appeal should be granted under section 30 against the opinions of the I. T. O. in those contexts where the operation of the act is made dependent upon that opinion.

Proviso (c) in Clause 33(a) should be deleted *in toto* ; for, should an Income Tax Officer demand a tax beyond the ability of the assessee to pay, the assessee has no remedy.

CLAUSE 34

(a) and (b)—Both these sub-clauses should be deleted *in toto* since they must have the effect of delaying assessment proceedings and give any Income Tax Officer the right to decline to record any evidence that might be produced, no matter however valid. Also an assessee only produces such evidence under Section 23 (2) as he thinks fit.

The position is adequately covered by existing law.

(c) (iv)—Where an order under Section 23A (1) is set aside or cancelled by an A. A. C., he should have the power to direct the I. T. O. to make consequential changes in the assessments of the shareholders of the company.

(c) (vii)—The right to submit a brief statement of arguments should also be given to the assessee.

CLAUSE 35

(a) All the objections under Clause 34 (b) apply here also.

(c) Other appeals to the Tribunal allow 60 days and there appears no good reason why this should be limited to 30 days.

(d) Strong exception is taken to the denial of the present right of the Tribunal to admit a late appeal. There is no valid reason for this change in the existing provision.

Provision should be made whereby delay in the case of appeals against orders passed by an Inspecting Assistant Commissioner, exercising the powers of an Income Tax Officer, can be condoned.

(e) The objections noted under Clause 34 (b) are equally applicable.

CLAUSE 37

The amendment of shareholders assessments in respect of 23A orders should also be modified if the 23A order is cancelled or altered.

CLAUSE 38

(2) The power given under this clause whereby any income tax authority may impound and retain *for such period as it thinks fit* any books of account produced, could result in the utmost degree of harassment to assessees ; and, since business must continue to be transacted and books maintained, could be taken as direct legal inducement to more than one set of accounts. Even documents of title could be impounded and retained.

It should be sufficient to grant authority to any income tax authorities to compel the production of documents, the retention of which, if at all necessary, should definitely be limited to a stated reasonable maximum period.

It was accepted that the power should be used for the limited period and purposes of the Investigation Commission ; but it is considered wrong that this should be so for all time.

(3) The effect of this is to grant non-judicial officers the powers of a Court in which respect they are not qualified to act.

Sub-section 37(A) 1(i), (ii) and (iii)—The powers intended to be granted are not only contrary to the spirit of the Constitution but are superfluous since the law already makes provision for such searches. Nothing prevents the income-tax authorities from securing a search warrant, thus taking all possible action to secure books of account or other documents necessary for their purposes.

The provision, as it stands, would allow a completely arbitrary use of the great powers granted. These can be used by an I. T. O. on his own initiative should he so determine (subject to report to his own Department) ; and generally the section has been drafted without clear appreciation of the drastic steps involved so much so that again the law of the land can be of no protection against I. T. Os.

The section should be entirely deleted.

CLAUSE 39

(c) (5)—The words "business connection" require explicit clarification : their interpretation by the income tax authorities might well include transactions not generally recognised as business dealings.

(c) (6), (7) and (10)—Compliance with sections (6) and (7) is from a practical standpoint virtually impossible and any attempt to fulfil the demands laid down would entail banks, insurance companies, and chartered accountants in the establishment of entirely new departments.

Section 6 of the Income Tax Investigation Commission Act confers similar powers on the Commission and, in the year 1948, it took 8 months to furnish the amount of detail required. That was but one specific demand for relatively smaller work than now is visualised in the Bill.

The Chamber strongly oppose the proposal on the grounds that the traditionally confidential relations between banker and customer will be violated and there could well result a burden of considerable dimensions.

Apart from the banks, insurance companies have similar objections; and the Chamber would re-invite attention to their general remarks against adding to the detail already with the Department.

Chartered Accountants should not be shouldered with the burdens stated in Sub-section (7) of (C). The responsibility should be on the assessor and the assessee; and enquiry in particular cases can be suitably made by the I. T. O.

It might be contended that only enabling powers have been taken: if that be so, there can be no objection by Government to stating in the Act specifically what they intend to do.

The word "indirectly" in sub-clause (10) has the taint of the informer and secret-police; but the section is held to be unnecessary in view of the powers already existing.

Dealing therefore with three sub-clauses (6), (7) and (10) of the amendment in Clause 39 (c), the Chamber press for their entire deletion.

CLAUSE 41

(a) The Chamber would invite attention to their remarks under the Clause 3:a)(iii); for it is considered essential that any revision of Section 42 should exempt, in the case of a non-resident who sells goods in India, the manufacturing and other profits attributable to operations carried on outside India by non-residents.

Several difficulties arise because of the absence of any statutory definition of "business connection" thus permitting a variety of interpretations by particular income tax officers. It is thought advisable to remedy this omission so that non-residents may be more precisely aware of their liabilities under the Act. Based on current international practice as agreed to by most countries in recent double tax agreements an explanation could be given somewhat on the following lines :-

A non-resident person shall not be deemed to have a business connection in the taxable territories unless he maintains therein a branch, management, factory or other fixed place of business. An agent in the taxable territories for a non-resident person shall not be deemed to be a business connection unless he has and habitually exercises a general authority to negotiate and conclude contracts on behalf of the non resident or keeps a stock of merchandise from which he regularly fills orders on his behalf. A non-resident person shall not be deemed to have a business connection in the taxable territories merely because he conducts business dealings through a bona fide *broker or general commission agent acting in the ordinary course of his business as such. A fixed place of business or an agency maintained by a non-resident person solely for the purchase of goods within, and the sale or conversion of these goods, without the taxable territories shall not be deemed to be a business connection.*

If a person is deemed to be a statutory agent under Section 43, it is wrong to make him liable for tax due from a non-resident on income which never passed through his hands in any form whatsoever. The amendment should be re-drafted with confined application to income in the agents' hands.

(b) (1 A)—The effects would appear to be similar to those applicable in the case of a liquidator under Clause 29 in that an agent may be entirely prohibited from paying any expenditure or carrying on the business of the non-resident even if the Income Tax Officer only issues an order to the extent of holding any assets or money due.

Government's attention is invited to Recommendation No. 6 which suggested only that the assets should be frozen.

(d)—The notes by Government assert that when the rules of the C. B. R. are issued after the power now sought is given, "the non-resident can thus readily ascertain the extent of his liability to tax."

Having regard to the complexities and uncertainties in tax liability under the Bill as drafted, this is doubted.

Far too great a power is sought to be taken by the amendment; and the Chamber must enter a strong protest against legislation of this kind placing powers in the hands of officials in matters vitally affecting an assessee's tax liability and position. These can be unexpectedly and quite arbitrarily used; and Government's intentions should be stated and written into the Act itself to govern any rules thought necessary in issue.

Further comment on the present amendment is denied; for it is not known what Government's intentions are.

CLAUSE 42

The Chamber disagree with the statement in the notes on the clauses that this gives effect to the principle in Recommendation No. 28 : the amendment goes much further. It completely negatives the

whole principle of limited liability and offends against the Companies Act making shareholders liable, jointly and severally, retrospectively or otherwise, for all the tax due by the company. If the company fails to pay the tax, it makes the shareholder liable for penalties under Section 46 as an assessee in default.

Combined with the proposed revision in Section 23A, the ill effect upon industry of this proposal would be considerable.

The Chamber strongly urge its complete deletion.

CLAUSE 43

Whilst the effect of this clause is to extend the present provisions (related to shipping) to airways operated by non-residents having no office in India, the Chamber would take this opportunity of directing attention to the adverse effects of the present tax provision on India's shipping demands. The greatly restricted world supply position in shipping is known ; and Indian ports because of the tax disabilities are most unattractive to tramp steamers. Consideration could be directed to this by Government, for irrespective of the status of the shipping company it is assessed for tax at the rates applicable to a private foreign company.

CLAUSE 44

This asks companies to :—

(i) seek out and find for the Income Tax Officer the whereabouts of an unknown shareholder, depositor or creditor shown on the books, as also to cease all dealings in the shares concerned;

(ii) substantiate the existence of all parties to whom debts are due by the company ;

(iii) publish a notice requiring any such party to prove his identity before the I. T. O.

If the company does not comply with requests to trace the shareholder or creditor or depositor ; to issue a duplicate share certificate ; or to hand over money so deposited or due ; then the company will be treated as an assessee in default and "all the provisions of this Act shall apply accordingly."

All the information in the company's possession concerning their shareholders is already with the I. T. O. ; and to enable them satisfactorily to trace parties would mean the establishment of a detective agency. Government's own police and/or detective agencies should be employed for this work ; and the Chamber must oppose any proposal to throw upon assessees work which fittingly and properly should be done by these agencies.

There is grave risk of Court action against companies in ceasing to deal with shares as also most stringent provisions in the Companies Act which would be thus violated. Further there is a most dangerous request for the issue of duplicate shares ; and whilst held indemnified by Government, any Court action taken against the company for violation of the laws of the land would be at their initial expense trouble and risk.

Government have an Expert Committee now working on company law ; and any proposal of the nature here visualised could have their attention. To the Chamber the insertion of such a section as is proposed would represent a violation of commercial law and procedure established the world over.

Whatever action is thought here necessary should not be by amendment of the Tax Act but rather the Companies Act.

CLAUSE 46

This transfers the onus in payment of tax from the actual defaulter to another person ; and could if the revision in the definition of a "shareholder" is not accepted make for considerable harassment. Should this be made part of the law, two remedies should be also provided to avoid injustice (1) a right of appeal and (2) tax on the original assessment to be refunded where the ostensible or legal owner has subsequently been re-assessed.

CLAUSE 47

(a) (1) (b)—The previous proposals by the Chamber calling for caution and care in the publication of the names of tax defaulters might please be read *vide* the comments under Clause 32 (c).

(b)—It is fundamentally wrong for an administrator to be deemed as "an assessee in default' and thus made liable to all the penalties imposed in such circumstances—*e.g.* publication of name, etc.

The following words should therefore in the opinion of the Chamber be deleted from the proposed amendment :—

"and for the purposes of this section, such executor, administrator or other legal representative shall be deemed to be the assessee in default and all proceedings may be taken or continued against him accordingly."

(c)—The right given to the I. T. O. to disallow objections filed by a person on whom notice under Section 46 (5A) is served must be opposed by the Chamber. Under the present law there is no such power ; and the remedy in a Civil Court would be of little practical value.

(e)—This appears to negative a High Court ruling. The amendment is considered to be quite unnecessary as the available modes of recovery are entirely adequate. It would permit of several quite separate attachments being made in respect of the same asse's of the assessee, with the result that no individual attachment could be satisfied.

CLAUSE 48

To the idea of tax clearance certificates the Chamber offer no opposition : to the proposal that the shipping and aircraft owners and/or agents should be shouldered with definite resonsibility in legal enforcement of these regulations, the strongest opposition is voiced. At every port of embarkation, whether by air or sea, Government already have elaborate arrangements to ensure compliance with various Customs, Police, Health and other regulations. Arrangements could well be made to use the passenger's passport for endorsement purposes under this proposal.

Whilst the carrying interests represented by the Chambers would be happy to assist in any way possible—as they do with other regulations—no responsibility could be accepted to see that the certificates are in point of fact carried or are in order or are in fact genuine. Questions of legal complexities enter in determining "domicile" which the carrying companies could not possibly decide.

Imposing this responsibility on the carriers, subjecting them to fines and penalties, and treating them as assessees in default, simply transfers an onus in effective discharge of the proposals which can rest only on Government.

CLAUSE 49

The prior right of the territory, in which income actually accrues or arises, to tax that income should be recognised (whether or not the income is deemed to accrue or arise in India) by allowing a credit for the foreign tax on all such income which is subject to Indian tax.

The Chambers believe Government's intention is to grant relief of tax paid outside the taxable territories : the addition of the words "and which is not deemed to accrue or arise in the taxable territories" would seem to limit its scope. Where any income is deemed to accrue or arise within the taxable territories, even though such income is taxed abroad on an actual accrual basis, no relief will be allowed under the proposed Section. The retention of the words will cause hardship and result in double taxation.

The Chamber feel that provision for relief in such cases should be made by suitably amending the clause.

The definition of the "rate of tax of the said country" in (iii) of the Explanation appears inequitable in certain circumstances. For instance, in the case of unilateral relief allowed in the U. K., this is admissible only in respect of income which does not arise in that country. On the other hand, the relief allowable under the proposed Section 49D in India would be in respect of income actually arising in the U. K. If the unilateral relief is spread over the entire income, the rate of tax on the income calculated according to the present set up on the income arising in the U. K. would be reduced, although such income would not in fact have received any relief in the U. K. In consequence the relief admissible under the proposed Section 49D in India might be considerably less than the relief which would be admissible having regard to the tax actually paid in the U. K. on such income.

The example below gives the position of a private limited sterling company, having its control and management in the U. K. and assessed as a resident there, but as its Indian income exceeds its U. K. income it is also assessed as resident in India. The figures are as below :—

Profit in India = 6,00,000

Profit in U. K. = 4,00,000

Tax in India on Rs. 10,00,000 @ 8.95 As. = Rs. 5,59,375

Proportionate tax in India on Rs. 4,00,000 = Rs. 2,23,750

Tax in U. K. on £ 75,000 (Rs. 10,00,000) @ 9/6 d. in the £ = £ 35,625 - (Rs. 4,75,000)

Proportionate tax in U. K. on Rs. 6,00,000 = £ 21,375 - (Rs 2,85,000)

Unilateral relief will be allowed in the U. K. of 3/4 ths. of Rs. 2,85,000 = Rs. 2,13,750 (£ 16.031/-)

U. K. rate of tax according to the proposed definition will now be $\frac{35,625-16,031}{75,000} = \frac{19,594}{75,000} = 5/2.7$ d.

Relief in India will now be on Rs. 4,00,000 @ 5.2·7 d. (4·18 annas per rupee) = Rs. 1,04,500 instead of at 9/6 d. in the £.

It will be seen that whereas the tax paid in India on the income also assessed in the U. K. is Rs. 2,23,750, the relief obtainable in India is Rs. 1,04,500, although the U. K. rate of tax (9,6 d. in the £) is lower than the Indian rate ; and equitably, therefore, the whole of the U. K. tax paid on such income should have been recovered in India.

The India and Burma (Income Tax Relief) Order, 1936 ceased to operate in 1947 and has not so far been renewed. Government might please consider also in this amendment of the section, a provision of relief between India and Burma from the date the Order ceased to operate.

CLAUSE 52

(1)—The words "which is false or incomplete, and" (appearing immediately after the words "Section 38") should be deleted. The tremendous complexity of the Bill could readily lend itself to the submission of an incorrect (and therefore false) return as also one that would be incomplete. Only a person knowingly doing so should be punishable.

(2)—For the same reasons as given above, the words "which is false or incomplete" should be deleted where they appear immediately after the first reference to "Section 22". Further, it is strongly held that no minimum penalty should be laid down : cases should not be prejudged but should be dealt with according to their individual circumstances. The provision for a minimum penalty of rigorous imprisonment for three years should therefore be amended whilst, in addition, the imposition of a minimum fine should not be obligatory.

CLAUSE 55

(i) (a)—The deletion of the words "of any such statement, return, accounts, documents, evidence, affidavit or deposition" previously contained in this clause and their replacement by the words "of any matter" is a retrograde step. The immediate effect will be to nullify Section 54 (1) and destroy the confidential nature of assessment proceedings. It is urged that the old definition be retained.

(iii)—There appears to be no sound reason for the omission of the words "in connection with income tax proceedings", nor has this been recommended by the Investigation Commission which the notes to the clauses claim to have followed.

(v) (s)—This clause is entirely objectionable since it makes possible the disclosure of confidential information in disputes between private parties rendering therefore assessees open to Court proceedings in such disputes. It goes far beyond the purpose of the recommendations of the Investigation Commission.

(v) (t)—This is a most highly objectionable clause, extending far beyond the purposes of the amendments as described in the notes to the clauses, offering direct encouragement to blackmail, and could be readily the subject of abuse.

The Chamber condemn the proposal and urge its entire deletion.

(v) (v)—There is little point in having this clause ; for all the data on which to act are available either through income-tax certificates

or through the publication of names of offenders in the Gazette which should suffice to fulfil the intention of the amendment *vide* the notes on the clauses. Why a Chamber of Commerce should be inserted is not appreciated ; but since if this amendment is left as it is, nothing need be treated as confidential to the various departments of Government (or Chambers) mentioned in the sub-clause, its deletion is strongly urged.

CLAUSE 56

(ii) The amendment makes it possible for this action to be taken by any employee dismissed or otherwise ; and there can be circumstances where the retention of the monies as also the utilisation of the fund as a banking account would be undesirable. It is designed to meet requests by employees acceptable to the employer ; and accordingly the Chamber think it but right that the words "and with the previous consent of the employer" should be inserted after the word "writing".

CLAUSE 57

The Chamber are opposed in principle to extension of the practice of government by regulation. It is strongly recommended that the extra-statutory rules for approval of superannuation funds for which Government now seek authority should be incorporated in Section 58 P.

Serious objection is noted against the new sub-section (2) of Section 58 P. The power sought is entirely inappropriate. Where any rules of a fund are repugnant to the rules for approval of funds, the action of the Central Board should be limited to limitation or variation of the income tax consequences of approval. Under the existing amendment the Central Board will have power to interfere with or destroy the whole basis of the agreement between the employer, the fund, and the employees. This is not only a serious intrusion into ordinary contractual rights, but it is also unnecessary for carriage out of the purposes of this part of the Act.

CLAUSE 58

(b) Recommendation No. 71 suggested that provision should be made in the Act similar to Regulation 8 of the superannuation funds in the U. K. Act and it is considered that the suggested sub-section goes considerably beyond this recommendation which provides that where contributions are repaid, only income tax on the amount so repaid shall be paid by the trustees of the fund at the rate of one-fourth the standard

rate of income tax in force for the year. The proposed sub-section provides that the tax must be deducted by the trustees at a rate equal to one-third of the rate of *Income tax* and *Super tax* at which the employee would have been liable in respect of the previous year. It is considered that the sub-section should be amended to follow the lines of the U. K. provision or alternatively it should be provided that in calculating the employee's rate of tax applicable to his ordinary income, the lump sum should be deducted so that his average rate of tax will not be greatly inflated by the addition of the lump sum. It should also be clarified whether the tax deducted by the trustees is intended to be the total amount of tax payable on this lump sum or whether the individual is still liable to pay further tax on it. It should also be made clear whether Section 60(2) of the Act would apply to such payments.

Clause 59

The same objections in principle noted under Clause 57 apply here. A standard set of rules should be incorporated in the Act by means of a Schedule. This inclusion in the Act would provide employers, considering the formation of a fund, with knowledge of what is required. It would eliminate interminable correspondence and delays of even years in obtaining the Board's approval ; and therefore in also minimising their work should be welcomed. There is the further aspect of time and money spent in drafting rules for a fund, often wasted because of non-compliance with new rules issued by the Board of which the employer was entirely unaware.

Clause 60

(d)—To any such system of rewards, the Chamber take firm, determined opposition. Highly objectionable in character, thoroughly immoral in principle, it is a procedure leaving no safeguards against blackmailing of the most vicious and reprehensible character.

Clause 61

This clause is entirely inconsistent with the intention of the Bill to apply all the rigours of the law against the worst possible type of offenders. No one should have the power to offer immunity in cases of the nature mentioned ; all effort should be directed to a vigorous prosecution of the offender.

Clause 62

To amend the existing section 61 of the Indian Income Tax Act of 1922 by substituting the definition of "chartered accountant" given in the Chartered Accountants' Act (XXXVIII of 1949). In the definitions contained in Chapter I Section 2 at (l) of the Act, it is prescribed that a "chartered accountant" shall be a person who is a member of the Institute of Chartered Accountants of India as constituted under the Chartered Accountants Act 1949, *and* who is in practice (l (c) & (c)). This definition is further implemented by Section 2 (2) where it is stated that a member of the Institute shall only be deemed to be in practice when he engages himself in the practice of accountancy either individually or *in partnership* with chartered accountants. In the light of these three definitions, it must be assumed that an associate of the Institute, who though registered at the Institute is a salaried employee of a chartered accountant or a firm of chartered accountants, is excluded from recognition as a chartered accountant under the Chartered Accountants Act and will equally be debarred from conducting appeals under the Indian Income Tax (Amendment) Bill. The amendment proposed in Clause 62 will thus alter the system for representing assessees which has worked successfully under the existing Act.

After due comparison with the Income Tax Act of 1922, the Chamber considers this amendment an unreasonable and probably an unintended alteration of the existing statutory position. Under Section 61 of the existing Act any assessee may be represented before an appellate Tribunal or Income Tax authority by a relative, employee, lawyer, accountant or income-tax practitioner. In the definitions attached to this clause, accountants are entitled to appear in appeal by reason of their qualifications, not their status. All accountants, therefore, whose credentials are recognised under sub-section 2 (iii) of section 61 of the Act of 1922 and rule 44 attached, are enabled to represent clients, irrespective of their being salaried employees or being in practice. The restriction implied in the wording of the draft clause, however, seems to constitute an unfair discrimination against accounting business, which has been treated much less leniently than the other parties mentioned above, who remain almost unaffected by the Bill excepting income tax practitioners, made the subject of an earlier representation. It is—the Chamber submits—unjustifiable that those best qualified to represent assessees in taxation cases should be so unnecessarily circumscribed. The amendment will certainly result in hardship and complications for the assessee anxious to be represented before a tribunal. It will restrict his choice of representative

and by ensuring that a senior practising accountant will have to perform this function, will increase the fees chargeable. Furthermore, it will compel accounting businesses to make considerable readjustments in staff and methods while making appeal more difficult for the taxpayer, thus defeating the object of the clause.

If, as seems probable, the point was neglected by oversight in the drafting, the Chamber would urge that the matter is worthy of reconsideration. It seems that the original provision has been dropped without due readjustment being made. The Chamber submits that, for the purposes of the Amendment Bill, appeal should not be restricted to accountants in practice but that all accountants, whether or not they are registered at the Institute, should be regarded as competent to represent assessees if they are accountants by vocation, and their standing as such is duly certified by their employers.

(a) (iv)—Specific definition in the present Act is given to the term "income tax practitioner". That must remain ; for it is inconceivable that the assessors should have rights to determine who shall represent the case of the assessee.

Section 61 (4) gives ample powers to control the situation ; and whilst the Chamber do not allege that the power of enrolment would be vindictively used, there are no safeguards against such.

If any roll of income tax practitioners is required, it should be under the control of the President of the Appellate Tribunal who, when objection is taken to any party appearing before the authorities, can authorise an investigation under report to and for action by the President.

(b) (2B)—The Chamber take it that if the issue of certificates of registration be found necessary it would not be obligatory to register with each Commissioner (or whoever in this way might be finally determined as the appropriate authority) and that therefore a certificate would be valid throughout India.

(c)—A vicious provision such as that in the proposed sub-section (3) (b) is unworthy of Government sanction : it could, the Chamber believe, be challenged on the grounds of denying citizens the rights prescribed by the Constitution. There are quite a number of Government servants—lawyers and accountants—who would be adversely affected. Not only must the effects upon the particular person be considered but also the general denial to assessees of their rights (as of their need in so highly complex legislation) to call upon the services of the best available person.

The Government servant who resigns—for whatever reason—is most anomalously placed in a far worse position than one who was dismissed from Government service before 1st April 1938.

With an intention to make this measure retrospective in effect, there can be even greater objection taken to the proposal. Whatever Government may finally decide, it would be inequitable to enforce either (b) or (c) of the proposed sub-section (3) prior to the passing of the legislation.

To (c) of sub-section (3) the Chamber also would take exception on grounds that any discrimination affecting a man's livelihood is most undesirable.

Clause (d) can include persons committing a technical fault and convicted on a petty charge. To lose one's means of livelihood in such circumstances would be a particular hardship and to avoid any such possibility the first 14 words could be replaced by 'who has been convicted of misconduct involving moral turpitude'.

(c) (3) (e)—Nothing in this should apply if the offence is done by the guilty partner acting in a private capacity.

CLAUSE 63

(a)—This is but a further instance of taking more out of the Act and putting more into the hands of the C. B. R. ; and matters of this kind should be left entirely to the Act itself.

(b) (iii)—Read with the proposed amendment of Section 23A, this provision is fantastic.

CLAUSE 65

(1)—The time limit of 90 days contained in the original section—whereby reference shall be made by the Appellate Tribunal to the High Court—is considered sufficient. An extension to 180 days is unreasonable.

Proviso—It is not understood why discretion should be limited to fifteen days. The words "within such period as it may specify" should follow the word "presented".

(6)—The words "within 60 days" should be inserted between the words "shall" and "pass such orders". There is no need to leave indefinite and unspecified when orders may be passed in such instances ; and the assessees concerned should not be indefinitely affected.

(9)—An obligation is imposed on the assessee by sub-section 8 to pay income tax in line with the assessment whether or not a case has been taken to the High or Supreme Courts. To that no objection is taken. In equity, however, there should be deleted in sub-section

9 any right on Government's part to withhold monies payable to the assessee consequent upon a High Court Judgment in his favour, no matter whether the authorities decide to appeal to the Supreme Court or not. The money is clearly due for the law is as declared by the High Court until on appeal it is upset by the Supreme Court.

Were equality in treatment in such matters carefully preserved, the Chamber think that relationships between the Department and the public would be bettered. Proceeding therefore in a belief that this will be an acceptable principle to Government, the Chamber further suggest that expedition in payment be regarded as equally applicable. Accordingly, amounts overpaid according to judgments given, should be refundable within 60 days ; and the extent of the interest should be for determination by the Court and not by the Commissioner who in this instance is the losing party.

CLAUSE 67

It is not understood what objection the Department can possibly have against an assessee testing before a competent Court the legality of proceedings initiated by the income tax authorities. In cases of bad faith the assessee in equity should retain the right to go to the High Court as a last recourse.

The existing section is considered adequate but to safeguard the Department, it might be subjected to the proviso that any assessment delayed under this section should not be barred under time limitation.

CLAUES 69

The notes on the clauses say that administrative inconvenience arises through the making of laborious alternative calculations. The Chamber would have thought the reverse more applicable : it seems to them very much easier to proceed on an already known basis of calculations than to stop and start all over again on different rates. Under-assessments are fully covered by Section 34. A further objection is taken because of an admitted and well known delay in obtaining refunds. Were calculations under the Finance Bill to result in a higher assessment, the assessee would be deprived of his money for a very much longer period than Government would be of theirs.

CLAUSE 70

The purpose of this amendment is seemingly innocent namely to ensure that mistakes in matters of formality and mere procedure will not invalidate assessment or other procedures. Such a change in the law however, must have far reaching consequences. Formalities in the matter of procedure, form of notices, etc. have been prescribed to

protect both the taxpayer and the Revenue and it is imperative that all the formalities be observed. Even under the present Act the income tax authorities have been granted extremely wide powers ; and the only real check is the assessee's rights specifically provided by law.

CLAUSE 71

The Chamber urge that no part of the surplus distributed to policyholders, should be subject to tax in the insurance company's hands ; and, in the case of companies assessed on the interest less expenses basis, management expenses should be allowed deduction in full.

Concerning their first point, the Chambers feel that the bonuses to policy holders approximate to that margin in the premiums which falls into surplus and should not therefore be taxable. Turning to the second point, the Insurance Act limits the expenses which may be incurred by an insurance company. If a full allowance cannot be granted for expenses actually incurred, the clause should be altered to permit of deductions to the limit of management expenses in the Insurance Act.

INDUSTRIAL

THE INDUSTRIES (DEVELOPMENT & REGULATION) ACT, 1951.

Circular No. 273—1951. Calcutta, 19th November, 1951.

From—Bengal Chamber of Commerce.

To—All Members of the Chamber.

MEMO :—The above-mentioned Act is reproduced for the information of members.

The Industries (Development and Regulation) Bill, 1951.

(AS PASSED BY PARLIAMENT.)

A

BILL,

to provide for the development and regulation of certain industries.

BE it enacted by Parliament as follows :—

CHAPTER I

PRELIMINARY

1. Short title, extent and commencement.—(*1*) This Act may be called the Industries (Development and Regulation) Act, 1951.

(*2*) It extends to the whole of India except the State of Jammu and Kashmir.

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

2. Declaration as to expediency of control by the Union.—It is hereby declared that it is expedient in the public interest that the Union should take under its control the industries specified in the First Schedule.

3. Definitions.—In this Act, unless the context otherwise requires,—

(*a*) "Advisory Council" means the Central Advisory Council established under section 5 ;

(*b*) "Development Council" means a Development Council established under section 6 ;

(*c*) "factory" means any premises, including the precincts thereof, in any part of which a manufacturing process is being carried on or is ordinarily so carried on—

(*i*) with the aid of power provided that fifty or more workers are working or were working thereon on any day of the preceding twelve months ; or

(*ii*) without the aid of power, provided that one hundred or more workers are working or were working thereon on any day of the preceding twelve months and provided further that in no part of such premises any manufacturing process is being carried on with the aid of power ;

(*d*) "industrial undertaking" means any undertaking pertaining to a scheduled industry carried on in one or more factories by any person or authority including Government ;

(*e*) "notified order" means an order notified in the Official Gazette ;

(*f*) "owner" in relation to an industrial undertaking, means the person who, or the authority which, has the ultimate control over the affairs of the undertaking, and, where the said affairs are entrusted to a manager, managing director or managing agent, such manager, managing director or managing agent shall be deemed to be the owner of the undertaking ;

(*g*) "prescribed" means prescribed by rules made under this Act ;

(*h*) "Schedule" means a Schedule to this Act ;

(*i*) "scheduled industry" means any of the industries specified in the First Schedule.

4.—Saving.—Nothing in the Act shall apply to an industrial undertaking if the capital invested therein does not exceed rupees one lakh.

CHAPTER II

THE CENTRAL ADVISORY COUNCIL AND DEVELOPMENT COUNCILS.

5. Establishment and constitution of Central Advisory Council and its functions.—(*1*) For the purpose of advising it on matters concerning the development and regulation of scheduled industries, the Central Government may, by notified order, establish a Council to be called the Central Advisory Council.

(*2*) The Advisory Council shall consist of a Chairman and such other members, not exceeding thirty in number, all of whom shall be appointed by the Central Government from among persons who are in its opinion capable of representing the interests of—

(*a*) owners of industrial undertaking in scheduled industries ;

(*b*) persons employed in industrial undertakings in scheduled industries ;

(*c*) consumers of goods manufactured or produced by scheduled industries ;

(*d*) such other class of persons including primary producers, as in the opinion of the Central Government, ought to be represented on the Advisory Council.

(*3*) The term of office of, the procedure to be followed in the discharge of their functions by, and the manner of filling casual vacancies among members of the Advisory Council, shall be such as may be prescribed.

(*4*) The Central Government

shall consult the Advisory Council in regard to—

(*a*) the making of any rules to be made under sub-section (*3*) ;

(*b*) the exercise by the Central Government of any of the powers conferred upon it under section 16 or sub-section (*1*) of section 17 ;

and may consult the Advisory Council in regard to any other matter connected with the administration of this Act in respect of which the Central Government may consider it necessary to obtain the advice of the Advisory Council.

6. Establishment and constitution of Development Councils and their functions.—(*1*) The Central Government may, by notified order, establish for any scheduled industry or group of scheduled industries, a body of persons to be called a Development Council which shall consist of members who in the opinion of the Central Government are—

(*a*) persons capable of representing the interests of owners of industrial undertakings in the scheduled industry or group of scheduled industries ;

(*b*) persons having special knowledge of matters relating to the technical or other aspects of the scheduled industry or group of scheduled industries ;

(*c*) persons capable of representing the interests of persons employed in industrial undertakings in the scheduled industry or group of scheduled industries ;

(*d*) persons not belonging to any of the aforesaid categories, who are capable of representing the interests of consumers of goods manufactured or produced by the scheduled industry or group of scheduled industries.

(2) The number and the term of office of, and the procedure to be followed in the discharge of their functions by, and the manner of filling casual vacancies among members of a Development Council shall be such as may be prescribed.

(3) Every Development Council shall be, by virtue of this Act, a body corporate by such name as may be specified in the notified order establishing it and may hold and transfer property and shall by the said name sue and be sued.

(4) A Development Council shall perform such functions of a kind specified in the second Schedule as may be assigned to it by the Central Government and for whose exercise by the Development Council it appears to the Central Government expedient to provide in order to increase the efficiency or productivity in the scheduled industry or group of scheduled industries for which the Development Council is established, to improve or develop the service that such industry or group of industries renders to the community, or to enable such industry or group of industries to render such service more economically.

(5) A Development Council shall also perform such other functions as it may be required to perform by or under any other provision of this Act.

7. **Reports and accounts of Development Councils.**—(1) A Development Council shall prepare and transmit to the Central Government and the Advisory Council, annually, a report setting out what has been done in the discharge of its functions during the financial year last completed.

(2) The report shall include a statement of the accounts of the Development Council for that year, and shall be transmitted as soon as accounts therefor have been audited, together with a copy of any report made by the auditors on the accounts.

(3) The statement of account shall be in such form as may be prescribed, being a form which shall conform to the best commercial standards, and the statement shall show the total of remuneration and allowances paid during the year to members and officers of the Council.

(4) A Copy of each such report of a Development Council, or made by the auditors on its accounts, shall be laid before Parliament by the Central Government.

8. **Dissolution of Development Councils.**—(1) The Central Government may, if it is satisfied that a Development Council should cease to continue in being, by notified order, dissolve that Development Council.

(2) On the dissolution of a Development Council under sub-section (1), the assets of the Development Council, after its liabilities, if any, are met therefrom, shall vest in the Central Government for the purposes of this Act.

9. **Imposition of cess on scheduled industries in certain cases.**—(1) There may be levied and collected as a cess for the purposes of this Act on all goods manufactured or produced in any such scheduled industry as may be specified in this behalf by the Central Government by notified order a duty of excise at such rate as may be specified in the notified order, and different rates may be specified for different goods or different classes of goods.

Provided that no such rate shall in any case exceed two annas per cent. of the value of the goods.

Explanation.—In this sub-section, the expression "value" in relation to any goods shall be deemed to be the wholesale cash price for which such goods of the like kind and quality are sold or are capable of being sold for delivery at the place of manufacture and at the time of their removal therefrom, without any abatement or deduction whatever except trade discount and the amount of duty then payable.

(2) The cess shall be payable at such intervals, within such time and in such manner as may be prescribed, and any rules made in this behalf may provide for the grant of a rebate for prompt payment of the cess.

(3) The said cess may be recovered in the same manner as an arrear of land revenue.

(4) The Central Government may hand over the proceeds of the cess collected under this section in respect of the goods manufactured or produced by any scheduled industry or group of scheduled industries to the Development Council established for that industry or group of industries, and where it does so, the Development Council shall utilise the said proceeds—

(*a*) to promote scientific and industrial research with reference to the scheduled industry or group of scheduled industries in respect of which the Development Council is established ;

(*b*) to promote improvements in design and quality with reference to the products of such industry or group of industries ;

(*c*) to provide for the training of technicians and labour in such industry or group of industries ;

(*d*) to meet such expenses in the exercise of its functions and its administrative expenses as may be prescribed.

CHAPTER III

REGULATION OF SCHEDULED INDUSTRIES

10. **Registration of existing industrial undertakings.**—(1) The owner of every existing industrial undertaking and the owner of any industrial undertaking for the establishment of which effective steps have been taken, not being the Central Government, shall, within a period of six months from the commencement of this Act, register the undertaking in the prescribed manner.

(2) The Central Government shall also cause to be registered in the same manner every existing industrial undertaking of which it is the owner.

11. **Licensing of new industrial undertakings.**—(1) No person or authority other than the Central Government, shall, after the commencement of this Act, establish any new industrial undertaking except under and in accordance with a licence issued in that behalf by the Central Government :

Provided that a Government other than the Central Government may, with the previous permission of the Central Government, establish a new industrial undertaking.

(2) A licence or permission under sub-section (1) may contain such conditions including, in particular, conditions as to the location of the undertaking and the minimum standards in respect of size to be provided therein as the Central Government may deem fit to impose in accordance with the rules, if any, made under section 30.

12. **Revocation and amendment of licences in certain cases.**—(1) If the Central Government is satisfied either on a reference made to it in this behalf or otherwise, that any person or authority, to whom or to which, a licence has been issued under section 11, has, without reasonable cause, failed to establish or to take effective

steps to establish the new industrial undertaking in respect of which the licence has been issued within the time specified therefor or within such extended time as the Central Government may think fit to grant in any case, it may revoke the licence.

(2) Subject to any rules that may be made in this behalf, the Central Government may also vary or amend any licence issued under section 11.

Provided that no such power shall be exercised after effective steps have been taken to establish the new industrial undertaking in accordance with the licence issued in this behalf.

13. Licensing of substantial expansions of industrial undertakings.—The provisions of sections 11 and 12 shall apply in relation to the effecting of any substantial expansion of an industrial undertaking as they apply in relation to the establishing of any new industrial undertaking.

Explanation.—For the purposes of the section "subsequential expansion" means the expansion of an existing industrial undertaking which is of such a nature as to amount virtually to a new industrial undertaking, but does not include any such expansion as is normal to the undertaking having regard to its nature and the circumstances relating to such expansion.

14. Procedure for the grant of licence or permission.—Before granting any licence or permission under section 11 or section 13, the Central Government may require such officer or authority as it may appoint for the purpose, to make a full and complete investigation in respect of applications received in this behalf and report to it the result of such investigation and in making any such investigation, the officer or authority shall follow such procedure as may be prescribed.

15. Power to cause investigation to be made into scheduled industries or industrial undertakings.—Where the Central Government is of the opinion that—

(*a*) in respect of any scheduled industry or industrial undertaking or undertakings—

(*i*) there has been, or is likely to be, a substantial fall in the volume of production in respect of any articles relatable to that industry or manufactured or produced in the industrial undertaking or undertakings, as the case may be; for which, having regard to the economic conditions prevailing, there is no justification; or

(*ii*) there has been, or is likely to be, a marked deterioration in the quality of any article or class of articles relatable to that industry or manufactured or produced in the industrial undertaking or undertakings, as the case may be, which could have been or can be avoided; or

(*iii*) there has been or is likely to be a rise in the price of any article or class of articles relatable to that industry or manufactured or produced in the industrial undertaking or undertakings, as the case may be, for which there is no justification; or

(*iv*) it is necessary to take any such action as is provided in this Chapter for the purpose of conserving any resources of national importance which are utilised in the industry or the industrial undertaking or undertakings, as the case may be; or

(*b*) any industrial undertaking is being managed in a manner likely to cause serious injury or damage to the interests of the consumers or a substantial body thereof, for whom the articles or any class of articles manufactured or produced therein are or is intended;

the Central Government may make or cause to be made a full and complete investigation into the circumstances of the case by such person or body of persons as it may appoint for the purpose.

16. Powers of Central Government on completion of investigation under section 15.—(*1*) If after making or causing to be made any such investigation as is referred to in section 15 the Central Government is satisfied that action under this section is desirable, it may issue such directions to the industrial undertaking or undertakings concerned as may be appropriate in the circumstances for all or any of the following purposes, namely:—

(*a*) regulating the production of any article or class of articles by the industrial undertaking or undertakings and fixing the standards of production;

(*b*) requiring the industrial undertaking or undertakings to take such steps as the Central Government may consider necessary to stimulate the development of the industry to which the undertaking or undertakings relates or relate;

(*c*) prohibiting the industrial undertaking or undertakings from resorting to any act or practice which might reduce its or their production, capacity or economic value;

(*d*) controlling the prices, or regulating the distribution, of any article or class of articles which have been the subject matter of investigation.

(*2*) Where a case relating to industry or industrial undertaking or undertakings is under investigation, the Central Government may issue at any time any direction of the nature referred to in sub-section (*1*) to the industrial undertaking or undertakings concerned, and any such direction shall have effect until it is varied or revoked by the Central Government.

17. Special provisions for direct control by Central Government in certain cases.—(*1*) If after a direction has been issued in pursuance of section 16, the Central Government is of opinion that the direction has not been complied with and that any industrial undertaking in respect of which the direction has been issued is being managed in a manner highly detrimental to the scheduled industry concerned or to the public interest, the Central Government may by notified order, authorise for a period not exceeding five years any person or a Development Council or any other body of persons (hereinafter referred to as the authorised person) either to take over the management of the whole or any part of the undertaking in supersession of any other person or body of persons in charge thereof or to exercise with respect to the whole or any part of such undertaking such functions of control as may be provided by that order.

(*2*) Where the authorised person has been authorised to take over the management of the industrial undertaking, he shall take all such steps as may be necessary to take into his custody or under his control all the property, effects and actionable claims to which the industrial undertaking is or appears to be entitled, and all the property and effects of the industrial undertaking shall be deemed to be in the custody of the authorised person as from the date of the notified order.

(*3*) Where the authorised person has been authorised to exercise any functions of control in relation to an industrial undertaking, the undertaking shall be carried on in accordance with any directions given by the authorised person in accordance with the provisions of the notified order and any person having any functions of management in relation to the undertaking or part thereof shall comply with any such directions.

(*4*) The authorised person shall in all cases exercise his functions in accordance with any instructions given to him by the Central Government, so, however, that he shall not have any power to give to any other person any directions under this section inconsistent with the provisions of any Act or instrument determining the functions of the authority carrying on the undertaking except in so far as may be specifically provided by the order.

(*5*) If at any time it appears to the Central Government on the application of the owner of the industrial undertaking or otherwise, that the purpose of the order made under this section has been fulfilled or that for any other reason, it is not necessary that the order should remain in force, the Central Government may by notified order cancel such order and on the cancellation of any such order, the management or the control, as the case may be of the industrial undertaking shall vest in the owner of the undertaking.

(*6*) Any order made under this section shall have effect, notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument having effect by virtue of any enactment other than this Act.

18. Power of person or body of persons appointed under section 15 to call for assistance in any investigation.—(*1*) The person or body of persons appointed to make any investigation under section 15 may choose one or more persons possessing special knowledge of any matter relating to the investigation to assist him or it in holding the investigation.

(*2*) The person or body of persons so appointed shall have all the powers of a civil court under the Code of Civil Procedure, 1908 (Act V of 1908), for the purpose of taking evidence on oath (which he or it is hereby empowered to administer) and of enforcing the attendance of witnesses and compelling the production of documents and material objects, and the person or body of persons shall be deemed to be a civil court for all the purposes of section 195 and Chapter XXXV of the Code of Criminal Procedure, 1898 (Act V of 1898).

CHAPTER IV
MISCELLANEOUS

19. Powers of inspection.—(*1*) For the purpose of ascertaining the position or working of any industrial undertaking or for any other purposes mentioned in this Act or the rules made thereunder, any person authorised by the Central Government in this behalf shall have the right—

(*a*) to enter and inspect any premises ;

(*b*) to order the production of any document, book, register or record in the possession or power of any person having the control of, or employed in connection with, any industrial undertaking ; and

(*c*) to examine any person having the control of, or employed in connection with, any industrial undertaking.

(*2*) Any person authorised by the Central Government under sub-section (*1*) shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (Act XLV of 1860).

20. General prohibition of taking over management or control of industrial undertakings.—After the commencement of this Act, it shall not be competent for any State Government or a local authority to take over the management or control of any industrial undertaking under any law for the time being in force which authorises any such Government or local authority so to do.

21. Certain administrative expenses of Development Councils to be paid from moneys provided by Parliament.—Such administrative expenses as relate to the emoluments of officers of a Development Council who are appointed, by or with the approval of the Central Government, shall be defrayed out of moneys provided by Parliament.

22. Power of the Central Government to issue directions to Development Councils.—In the exercise of its functions under this Act, every Development Council shall be guided by such instructions as may be given to it by the Central Government and such instructions may include directions relating to the manner in which, and the purpose for which, any proceeds of the cess levied under section 9 which may have been handed over to it, shall be expended.

23. Question relating to amount of capital invested in an undertaking to be decided by Central Government.—If, for the purpose of section 4, any question arises with respect to the amount of capital invested in an industrial undertaking, the decision of the Central Government thereon shall be final.

24. Penalties.—(*1*) Whoever contravenes or attempts to contravene or abets the contravention of, the provisions of sub-section (*1*) of section 10 or of sub-section (*1*) of section 11, or of sub-section (*1*) of section 11 read with section 13, or of sub-section (*3*) of section 17 or of any direction issued under section 16, or of any rule the contravention of which is punishable under this section shall be punishable with imprisonment which may extend to six months, or with fine which may extend to five thousand rupees, or with both, and, in this case of a continuing contravention, with an additional fine which may extend to five hundred rupees for every day during which such contravention continues after conviction for the first such contravention.

(*2*) If the person contravening any of the said provisons is a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly ;

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(*3*) Notwithstanding anything contained in sub-section (*2*), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director or manager, secretary or other officer of the company such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation —For the purposes of this section,—

(*a*) "company" means any body corporate and includes a firm or other association of individuals ; and

(*b*) "director" in relation to a firm means a partner in the firm,

25. Power to delegate—The Central Government may by notified order, direct that any power exercisable under this Act by it, other than the power specified in section 16 and sub-section (1) of section 17 may be exercised in such cases and subject to such

conditions, if any, as may be specified in the order by such officer or authority (including in the said expressions any Development Council, State Government, officer or authority of the State Government) as may be specified in the direction.

26. **Previous sanction of Central Government for prosecutions.**—No prosecution for any offence punishable under section 24 shall be instituted except with the previous sanction of the Central Government.

27. **Jurisdiction of courts.**—No court inferior to that of a presidency magistrate or a magistrate of the first class shall try any offence punishable under section 24.

28. **Exemption in special cases.**—The Central Government may, if satisfied that it is in the public interest so to do, exempt any scheduled industry or any industrial undertaking for such period as it may specify, from the operation, of all or any of the Provisions of this Act or any rules made thereunder.

29. **Protection of action taken in good faith.**—No suit, prosecution or other legal proceeding, whatever, shall lie against any person for anything which is in good faith done or intended to be done under this Act or the rules made thereunder.

30. **Power to make rules.**—(*1*) The Central Government may, subject to the condition of previous publication, make rules for carrying out the purposes of this Act.

(*2*) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :—

(*a*) the constitution of the Advisory Council and Development Councils, the term of office and other conditions of service of, the procedure to be followed by and the manner of filling casual vacancies among, members of the Advisory Council or a Development Council ;

(*b*) the form of the statement of account to be furnished by a Development Council;

(*c*) the intervals at which, the time within which, and the manner in which the cess leviable under section 9 shall be payable and the rebate for the prompt payment of such cess ;

(*d*) the expenses which a Development Council may meet from the proceeds of the cess levied under section 9 which may have been handed over to it ;

(*e*) the appointment by or with the approval of the Central Government of any officers of a Development Council ;

(*f*) the facilities to be provided by any industrial undertaking for the training of technicians and labour ;

(*g*) the collection of any information or statistics in respect of any scheduled industry ;

(*h*) the manner in which industrial undertakings may be registered under section 10 and the levy of a fee therefor ;

(*i*) the procedure for the grant of issue of licences and permissions under section 11 or section 13, the time within which such licenses or permissions shall be granted or issued including, in particular, the publication of notices calling for applications and the holding of such public inquiry in relation thereto as may be necessary in the circumstances ;

(*j*) the fees to be levied in respect of licences and permissions issued under this Act ;

(*k*) the matters which may be taken into account in the granting or issuing of licences and permissions, including in particular, the previous consultation by the Central Government with the Advisory Council or any Development Council or both in regard to the grant or issue of any such licences or permission ;

(*l*) the procedure to be followed in making any investigation under this Act ;

(*m*) the conditions which may be included in any licences and permissions ;

(*n*) the conditions on which licences and permissions may be varied or amended under section 12 ;

(*o*) the maintenance of books, accounts and records relating to an industrial undertaking ;

(*p*) the submission of special or periodical returns relating to an industrial undertaking by persons having the control of, or employed in connection with, such undertaking, and the forms in which, and the authorities, to which, such returns and reports shall be submitted ;

(*q*) any other matter which is to be or may be prescribed under this Act.

(*3*) Any rule made under this section may provide that a contravention thereof shall be punishable under section 24.

(*4*) All rules made under this section shall be laid for not less than seven days before Parliament as soon as possible after they are made, and shall be subject to such modifications as Parliament may make during the session in which they are so laid, or the session immediately following.

31. **Application of other laws not barred.**—The provisions of this Act shall be in addition to and not, save as otherwise expressly provided in this Act, in derogation of any other Central Act for the time being in force, relating to any of the scheduled industries.

32. **Amendment of Section 2, Act XIV of 1947.**—In section 2 of the Industrial Disputes Act, 1947 (XIV of 1947),—

(*a*) in sub-clause (*i*) of clause (*a*), after the words "by a railway company" the words "or concerning any such controlled industry as may be specified in this behalf by the Central Government" shall be inserted ;

(*b*) after clause (*c*), the following clause shall be inserted, namely :—

'(*cc*) "controlled industry" means any industry the control of which by the Union has been declared by any Central Act to be expedient in the public interest ;"

THE FIRST SCHEDULE

[*See* section 2 and 3 (*j*)]

Any industry engaged in the manufacture or production of any of the following namely :—

(1) Aircraft.

(2) Arms and ammunition.

(3) Coal, including coke and other derivatives.

(4) Iron and steel.

(5) Mathematical and scientific instruments.

(6) Motor and aviation fuel, kerosene, crude oils and synthetic oils.

(7) Ships and other vessels propelled by the agency of steam, or by electricity or other mechanical power.

(8) Sugar.

(9) Telephones, telegraph apparatus and wireless communication apparatus.

(10) Textiles made wholly or in part of cotton or jute.

(11) Automobiles, including tractors.

(12) Cement.

(13) Electric lamps and fans.

(14) Electric Motors.

(15) Heavy chemicals including fertilizers.

(16) Heavy machinery used in industry including ball and roller bearing and gear wheels and parts thereof, boilers and steam generating equipment.

(17) Locomotives and rolling stock.

(18) Machine tools.

(19) Machinery and equipment for the generation, transmission and distribution of electric energy.

(20) Non-ferrous metal including alloys.

(21) Paper including newsprint and paper board.

(22) Pharmaceuticals and drugs.

(23) Power and Industrial alcohol.

(24) Rubber goods.

(25) Leather and Leather goods.

(26) Textiles made of wool.

(27) Vanaspati and vegetable oils.

(28) Agricultural implements.

(29) Batteries, dry cells and storage.

(30) Bicycles, and parts thereof.

(31) Hurricane lanterns.

(32) Internal combustion engines.

(33) Power-driven pumps.

(34) Radio receivers.

(35) Sewing and knitting machines.

(36) Small and hand tools.

(37) Glass and ceramics.

THE SECOND SCHEDULE

[*See* section 6 (*d*)]

Functions which may be assigned to Development Councils :

(1) Recommending targets for production, co-ordinating production programmes and reviewing progress from time to time.

(2) Suggesting forms of efficiency with a view to eliminating waste, obtaining maximum production, improving quality and reducing costs.

(3) Recommending measures for securing the fuller utilisation of the installed capacity and for improving the working of the industry, particularly of the less efficient units.

(*d*) Promoting arrangements for better marketing and helping in the devising of a system of distribution and sale of the produce of the industry which would be satisfactory to the consumer.

(5) Promoting standardisation of products.

(6) Assisting in the distribution of controlled materials and promoting arrangements for obtaining materials for the industry.

(7) Promoting or undertaking inquiry as to materials and equipment and as to methods of production, management and labour utilisation, including the discovery and development of new materials, equipment and methods and of improvements in those already in use, the assessment of the advantages of different alternatives and the conduct of experimental establishments and of tests on a commercial scale.

(8) Promoting the retraining of persons engaged or proposing engagement in the industry and their education in technical or artistic subjects relevant thereto.

(9) Promoting the retraining in alternative occupations of personnel engaged in or retrenched from the industry.

(10) Promoting or undertaking scientific and industrial research, research into matters affecting industrial psychology and research into matters relating to production and to the consumption or use of goods and services supplied by the industry.

(11) Promoting improvements and standardisation of accounting and costing methods and practice.

(12) Promoting or undertaking the collection and formulation of statistics.

(13) Investigating possibilities of decentralising stages and processes of production with a view to encouraging the growth of allied small scale and cottage industries.

(14) Promoting the adoption of measures for increasing the productivity of labour, including measures for securing safer and better working conditions and the provision and improvement of amenities and incentives for workers.

(15) Advising on any matters relating to the industry (other than remuneration and conditions of employment) as to which the Central Government may request the Development Council to advise and undertaking inquiries for the purpose of enabling the Development Council so to advise, and

(16) Undertaking arrangements for making available to the industry information obtained and for advising on matters with which the Development Councils are concerned in the exercise of any of their functions.

The Industries Development & Control Bill.

Circular No. 202—1951 Calcutta, 3rd September 1951.

From—Bengal Chamber of Commerce.

To—All Members of the Chamber.

The Planning Commission in their first five-year plan draft outline have made clear their wish that Parliament should now pass at the earliest possible opportunity a measure for the regulation and control of industry. It is however not very apparent from their report whether the Planning Commission favour the Bill as originally drafted or the one which emerged in 1950 after consideration by Select Committee. It seems however from enquiries which have been made that it is the latter mentioned Bill.

2. The Chamber Committee have therefore renewed consideration of the detailed objections which were taken to the Bill as amended by Select Committee and which were set forth in their letter to Government of 24th March 1950* (copy attached). This has been done as a necessary preliminary to the consideration which they feel will have to be devoted to the measure in its amended form and Government, it is understood, are at the moment redrafting certain sections of the Bill, as it emerged from Select Committee, in order more closely to conform to the wishes of the Planning Commission. No news is forthcoming yet of the shape of these amendments but the Chamber has made arrangements whereby they will be immediately informed whenever the amendments in question are published.

*See Volume II of 1950, Report.

THE INDUSTRIES DEVELOPMENT AND REGULATION BILL.

Copy of a letter dated 15th September 1951.

From—President,
Bengal Chamber of Commerce.

To—Secretary,
Ministry of Commerce and Industry,
Government of India, New Delhi.

You will recall that when the Industries (Development and Control) Bill was originally introduced in 1949, there was very strong opposition to it on the part of commerce and industry generally. When the Bill was amended by the Select Committee the opposition to the measure modified considerably and we in Eastern India reconciled ourselves to the acceptance of it in the form of the Industries (Development and Regulation) Bill, 1950, subject to one or two amendments which we put forward in our letter of the 24th March 1950.

One of the main factors which influenced our attitude was the inclusion in the amended Bill of provision for the establishment of a Central Industries Board to which would be assigned the functions of granting and refusing licences under the Act and of ensuring that the powers of control vested in the Central Government would be exercised only after full investigation by the Board. We have now heard from Elkins, who was personally invited to give evidence this week before the new Select Committee on the Bill, that the latest proposals involve the dropping of the Central Industries Board to which we formerly attached so much importance. With this latest proposal we must express strong disagreement. We would, however, be prepared to support the suggestion which Elkins informs us was urged on the Select Committee by Sir Ramaswamy Mudaliar and himself, namely that the Central Advisory Council should function vis-a-vis the Central Government in much the same way as the former Central Industries Board, certainly insofar as the investigation and control provisions of Chapter IV are concerned, except that the actual investigation would be undertaken under the ad hoc

arrangements envisaged for the purpose under the latest amendments. In other words, the Central Advisory Council should be in the position of advising Government on any action contemplated under Chapter IV. My main purpose in writing to you now—at short notice—is to emphasise the importance we attach to this in view of the proposed removal of provision for a Central Industries Board which was the main factor responsible for our acceptance of the 1950 Bill.

In other respects, we agree with and support the submissions made by Elkins to the Select Committee, particularly as regards the Development Councils, the need for a reduction in the cess figure, the objections to the delegation of powers to the State Governments, the retention of the former division of the schedule of industries into two parts and retention of the existing machinery for the control of capital issues if this is not to be vested in a Central Industries Board.

In our letter to Government of the 24th March 1950 we pressed that where a case was referred to the Central Industries Board for investigation, the hearings of the Board should take place in public as in the case of the Tariff Board. We think that similar provision should be made in respect of investigations carried out under the auspices of the Central Advisory Council. We notice in that connection that public hearings are enjoined in the proposed revised Clause 11 of the Bill dealing with licensing, where we do not regard them as desirable ; but we do attach major importance to public hearings under Chapter IV of the Bill.

I trust it will be possible for these views to be taken into consideration by the Select Committee before their revised draft of the Bill is completed.

THE EMPLOYEES' STATE INSURANCE (AMENDMENT) ACT 1951.

(Bill No. 24 of 1951)

A Bill to amend the Employees' State Insurance Act, 1948.

Be it enacted by Parliament as follows :-

1. **Short title.**—This Act may be called the Employees' State Insurance (Amendment) Act, 1951.

2. **Amendment of section 1, Act XXXIV of 1948.**—In section 1 of the Employees' State Insurance Act, 1948 (hereinafter referred to as the principal Act),—

(a) in sub-section (3), for the words and letter "except Part B States" the words "except the State of Jammu and Kashmir" shall be substituted ;

(b) in sub-section (3), for the words "for different States" the words "for different States or for different parts thereof" shall be substituted ;

(c) in sub-section (5), for the words "with the approval of the Central Government" the words "where the appropriate Government is a State Government, with the approval of the Central Government" shall be substituted.

3. **Amendment of section 2, Act XXXIV of 1948.**—In section 2 of the principal Act,—

(a) for Clause (2) the following Clause shall be substituted, namely :—

(2) "benefit period" means such period being not less than twenty-five but not exceeding twenty-seven consecutive weeks or six consecutive months corresponding to the contribution period, as may be specified in the regulations :
Provided that in the case of the first benefit period a longer or shorter period may be specified by or under the regulations ; ' ;

(b) for clause (5) the following clause shall be substituted, namely :—

(5) "contribution period" means such period, being not less than twenty-five but not exceeding twenty-seven consecutive weeks or six consecutive months, as may be specified in the regulations :
Provided that in the case of the first contribution period a longer or shorter period may be specified by or under the regulations ; " ;

(c) in clause (12),—

(i) in the definition of "factory", the words "or a railway running shed" shall be added at the end ; and

(ii) for the figures "1934" the figures "1948" shall be substituted ;

(d) in clause (15), for the figures "1934" the figures "1948" shall be substituted ;

(e) in clause (17), in sub-clause (i), for the words, brackets, letter and figures "clause (e) of sub-section (1) of section 9 of the Factories Act, 1934" the words and figures "the Factories Act, 1948" shall be substituted ;

(f) in clause (22), for the words "paid at regular intervals after the last day of the wage period" the words "paid at intervals not exceeding two months" shall be substituted.

4. **Amendment of section 4, Act XXXIV of 1948.**—In section 4 of the principal Act, in clause (d), for the words and letter "Part A States" the words and letters "Part A States and Part B States in which this Act is in force" shall be substituted.

5. **Amendment of section 8, Act XXXIV of 1948.**—In section 8 of the principal Act,—

(a) after clause (b) the following clause shall be inserted, namely :—

"(bb) three members of the Corporation representing such three State Governments thereon as the Central Government may, by notification in the Official Gazette, specify from time to time ; "

(b) in clause (c),—

(i) for the word "nine" the words "six" shall be substituted ; and

(ii) sub-clause (i) shall be omitted.

6. **Amendment of section 9, Act XXXIV of 1948.**—In section 9 of the principal Act, for the word, brackets and letter "clause (b)", in both the places where they occur, the words, brackets and letters "clause (b) or clause (bb)" shall be substituted.

7. **Amendment of section 10, Act XXXIV of 1948.**—In section 10 of the principal Act, in clause (d) of sub-section (1), for the words and letter "Part A States" the words and letters "Part A States and Part B States in which this Act is in force" shall be substituted.

8. **Amendment of section 12, Act XXXIV of 1948.**—Section 12 of the principal Act shall be renumbered as sub-section (1) thereof, and after sub-section (1) as so renumbered, the following sub-section shall be inserted, namely :—

"(2) Where in the opinion of the Central Government any person nominated or elected to represent employers, employees or the medical profession on the Corporation, the standing Committee or the Medical Benefit Council, as the case may be, has ceased to represent such employers, employees or the medical profession, the Central Government may, by notification in the Official Gazette, declare that with effect from such date as may be specified therein such person shall cease to be a member of the Corporation, the Standing Committee or the Medical Benefit Council, as the case may be."

9. **Amendment of Section 22, Act XXXIV of 1948.**—In clause (a) of section 22 of the principal Act, for the words "the Corporation, the Standing Committee and the Medical Commissioner" the words "the Corporation and the Standing Committee" shall be substituted.

10. **Amendment of section 26, Act XXXIV of 1948.**—In Section 26 of the principal Act,—

(a) in sub-section (2), the words and letter "Part B States" shall be omitted ; and

(b) for sub-section (3), the following sub-section shall be substituted, namely:—

"(3) Subject to the other provisions contained in this Act and to any rules or regulations made in this behalf, all moneys accruing or payable to the said Fund shall be paid into the Reserve Bank of India or such other bank as may be approved by the Central Government to the credit of an account styled the account of the Employees' State Insurance Fund."

11. **Amendment of section 28, Act XXXIV of 1948.**—In clause (v) of section 28 of the principal Act, the words and letter "Part B States" shall be omitted.

12. **Substitution of new section for section 44 in Act XXXIV of 1948.**—For section 44 of the principal Act, the following section shall be substituted, namely ;—

"44. *Employers to furnish returns and maintain registers in certain cases.*—(1) Every principal and immediate employer shall submit to the Corporation or to such officer of the Corporation as it may direct such returns in such form and containing such particulars relating to persons employed by him or to any factory or establishment in respect of which he is the principal or immediate employer as may be specified in regulations made in this behalf.

(2) Where in respect of any factory or establishment the Corporation has reason to believe that a return should have been submitted under sub-section (1) but has not been so submitted, the Corporation may require any person in charge of the factory or establishment to furnish such particulars as it may consider necessary for the purpose of enabling the Corporation to decide whether the factory or establishment is a factory or establishment to which this Act applies.

(3) Every principal and immediate employer shall maintain such registers or records in respect of his factory or establishment as may be required by regulations made in this behalf."

13. **Amendment of section 45, Act XXXIV of 1948.**—In sub-section (2) of section 45 of the principal Act, after clause (c) the following clauses shall be inserted, namely :—

"(d) make copies of, or take extracts from, any register, account book or other document maintained in such factory, establishment, office or other premises ;

(e) exercise such other powers as may be prescribed."

14. **Amendment of section 50, Act XXXIV of 1948.**—In section 50 of the principal Act,—

(a) in sub-section (1), for the words "occuring" the words "occurring or expected to occur" shall be substituted ;

(b) in sub-section (2), for the words "the rate of twelve annas a day" the words "the daily rate specified in sub-section (3)" shall be substituted,

(c) after sub section (2), the following sub-section shall be inserted, namely :—

"(3) The daily rate referred to in sub-section (2) shall be—

(i) the rate at which the insured woman could have claimed sickness benefit for any period of sickness during the benefit period in which the confinment occures or is expected to occur if she had been qualified to claim sickness benefit during that period, or

(ii) twelve annas,

whichever is greater."

15. **Amendment of section 53, Act XXXIV of 1948.**—In clause (iii) of section 53 of the principal Act, for the words and figures "Commissioner appointed under the Workmen's Compensation Act, 1923 (VIII of 1923)"—the words "Employees" Insurance Court having jurisdiction" shall be substituted.

16. Amendment of section 55, Act XXXIV of 1948.—In section 55 of the principal Act,—

(a) for sub-section (1) the following sub-section shall be substituted, namely :—

"(1) Subject to the provisions of this Act, the Corporation may, either of its own motion or on the application of the person receiving the benefit, review the payment of any disablement or dependants' benefit :

Provided that unless otherwise specified in the regulations made in this behalf every application for the review of a disablement benefit shall be accompanied by a certificate of a duly appointed medical officer." ;

(b) in sub-section (2),—

(i) for the words "the Commissioner" the words "the Corporation" shall be substituted ; and

(ii) for the words "disablement benefit" the words "disablement or dependants' benefit" shall be substituted.

17. Amendment of section 56, Act XXXIV of 1948.—In sub-section (3) of section 56, of the principal Act, for the words "or as provided under the regulations, is in receipt of disablement benefit" the words "or is in receipt of such disablement benefit as does not disentitle him to medical benefit under the regulations" shall be substituted.

18. Amendment of section 58, Act XXXIV of 1948.—In sub-section (4) of section 58 of the principal Act, for the words and letter "for a Part A State" the words "of a State" shall be substituted.

19. Amendment of section 68, Act XXXIV of 1948.—In sub-section (1) of section 68 of the principal Act, for clause (i), the following clause shall be substituted, namely :—

"(i) the difference between the amount of benefit which is paid by the Corporation to the said person and the amount of the benefit which would have been payable on the basis of the contributions which were in fact paid by the employer ; or ;"

20. Insertion of new Chapter V-A in Act XXXIV of 1948.—In the principal Act, after Chapter V, the following shall be inserted as Chapter V-A, namely :—

CHAPTER V-A

TRANSITORY PROVISIONS.

73A. Employer's special contributions.—(1) For so long as the provisions of this chapter are in force, every principal employer shall, notwithstanding anything contained in this Act, pay to the Corporation a special contribution (hereinafter referred to as the employers' special contribution) at the rate specified under sub-section (3).

(2) The employer's special contribution shall, in the case of a factory or establishment situate in any area in which the provisions of both Chapters IV and V are in force, be in lieu of the employer's contribution payable under Chapter VI.

(3) The employer's special contribution shall consist of such percentage, not exceeding five per cent. of the total wage bill of the employer, and the Central Government may, by notification in the Official Gazette, specify from time to time :

Provided that before fixing or varying any such percentage the Central Government shall give by like notification not less than two months notice of its intention so to do and shall in such notification specify the percentage which it proposes to fix or, as the case may be, the extent to which the percentage already fixed is to be varied :

Provided further that the employer's special contribution in the case of factories or establishments situate in any area in which the provisions of both Chapters IV and V are in force shall be fixed at a rate higher than that in the case of factories or establishments situate in any area in which the provisions of the said Chapters are not in force.

(4) The employer's special contribution shall fall due as soon as the liability of the employer to pay wages accrues, but may be paid to the Corporation at such intervals, within such time and in such manner as the Central Government may, by notification in the Official Gazette, specify and any such notification may provide for the grant of a rebate for prompt payment of such contribution.

Explanation.—"The wage bill" in this section means the total wages which have accrued due to employees in a factory or establishment in respect of such wage periods as may be specified for the purposes of this section by the Central Government by notification in the Official Gazette.

73B. Special tribunals for decision of disputes or questions under this Chapter where there is no Employees' Insurance Court.—(1) If any question or dispute arises in respect of the employer's special contribution payable or recoverable under this Chapter and there is no Employees Insurance Court having jurisdiction to try such question or dispute, the question or dispute shall be decided by such authority as the Central Government may specify in this behalf.

(2) The provisions of sub-section (1) of section 76, sections 77 to 79 and 81 shall, so far as may be, apply in relation to a proceeding before an authority specified under sub-section (1) as they apply in relation to a proceeding before an Employees' Insurance Court.

73C. Benefits under Chapter V to depend upon employee's contribution.—The payment of the employee's contribution for any week in accordance with the provisions of Chapter IV in any area where all the provisions of that Chapter are in force shall for the purpose of Chapter V, have effect as if the contributions payable under Chapter IV in respect of that employee for that week has been paid, and shall accordingly entitle the employee as an insured person to the benefits specified in Chapter V if he is otherwise entitled thereto.

Explanation.—In the case of an exempted employee, the employee's contribution shall be deemed to have been paid for a week if the Corporation is satisfied that during that week the employer's contribution under Chapter IV would have been payable in respect of him but for the provisions of this Chapter.

73D. Mode of recovery of employer's special contribution.—The employer's special contribution payable under this Chapter may be recovered as if it were an arrear of land revenue.

73E. Power to call for additional information or return.—Without prejudice to the other provisions contained in this Act, the Corporation may, for the purpose of determining whether the employer's special contribution is payable under this Chapter or for determining the amount thereof by general or special order, require any principal or immediate employer or any other person to furnish such information

or returns to such authority, in such form and within such time as may be specified in the order.

73F. Power to exempt to be exercised by Central Government alone in respect of employer's special contributions.—Notwithstanding anything contained in this Act, the Central Government may, having regard to the size or location of, or the nature of the industry carried on in, any factory establishment or class of factories or establishments, exempt the factory or establishment or class of factories or establishments from the payment of the employer's special contribution under this Chapter and nothing contained in sections 87 to 91 inclusive shall be deemed to authorise any State Government to grant any such exemption.

73G. Application of certain provisions of this Act to employer's special contribution.—Save as otherwise expressly provided in this Chapter, the provisions of Chapter IV, section 72 and Chapter VII and any rules and regulations made under this Act shall, so far as may be, apply in relation to the payment or recovery of employer's special contributions, the penalties specified in connection therewith and all other matters incidental thereto as they would have applied in relation to an employer's contribution if this Chapter were not in force and the employer's contribution had been payable under this Act.

73H. Power to remove difficulties.—(1) If any difficulty arises in giving effect to the provisions of this Chapter, the Central Government may, by order notified in the Official Gazette, make such provision or give such direction as appear to it to be necessary for the removal of the difficulty.

(2) Any order made under this section shall have effect notwithstanding anything inconsistent therewith in any rules or regulations made under this Act.

73I. Duration of Chapter V-A.—The Central Government may, by notification in the Official Gazette, direct that the provisions of this Chapter shall cease to have effect on such date as may be specified in the notification, not being a date earlier than three months from date of the notification :—

Provided that on the provisions of this Chapter so ceasing to have effect the provisions of section 6 of the General Clauses Act, 1897 (X of 1897), shall apply as if the provisions of this Chapter had then been repealed by a Central Act '

21. Amendment of section 75, Act XXXIV of 1948.—In sub-section (1) of section 75 of the principal Act, after clause (c) the following clause shall be inserted, namely :—

"(cc) any direction issued by the Corporation under section 53 on a review of any payment of disablement or dependants' benefits ;".

22. Amendment of section 86, Act XXXIV of 1948.—To sub-section (1) of section 86 of the principal Act, the words "or of such other officer of the Corporation as may be authorised in this behalf by the Central Government" shall be added at the end.

23. Amendment of section 94, Act XXXIV of 1948.—In section 94 of the principal Act, after the words, figures and brackets "Insolvency Act, 1920 (V of 1920), the words and letter "or under any law relating to insolvency in force in a Part B State" shall be inserted.

24. Insertion of new section 94A in Act XXXIV of 1948.—After section 94 of the principal Act, the following section shall be inserted, namely :—

"*94A Delegation of powers.*—The Corporation, and, subject to any regulations made by the Corporation in this behalf, the Standing Committee may direct that all or any of the powers and functions which may be exercised or performed by the Corporation or the Standing Committee, as the case may be, may, in relation to such matters and subject to such conditions, if any, as may be specified, be also exercisable by any officer or authority subordinate to the Corporation."

25. Amendment of section 97, Act XXXIV of 1948.—In sub-section (2) of section 97 of the principal Act,—

(a) for clause (xix) the following clause shall be substituted, namely :—

"(xix) the returns to be submitted and the registers or records to be maintained by the principal and immediate employers, the forms of such returns, registers or records, and the times at which such returns should be submitted and the particulars which such returns, registers and records should contain ; " ;

(b) for clause (xxi) the following clause shall be substituted, namely :—

"(xxi) the method of recruitment, pay and allowances, discipline, superannuation benefits and other conditions of the service of the officers and and servants of the Corporation other than the Principal Officers ; " ;

(c) after sub-section (2) the following sub-section shall be inserted, namely :—

"(2A) The condition of previous publication shall not apply to any regulations of the nature specified in clause (xxi) of sub-section (2)."

26. Omission of section 98, Act XXXIV of 1948.—Section 98 of the principal Act shall be omitted.

27. Insertion of new section 100 in Act XXXIV of 1948.—After section 99 of the principal Act, the following section shall be inserted namely :—

"100. *Repeals and savings.*—If, immediately before the day on which this Act comes into force in a Part B State, there is in force in that State any law corresponding to this Act, that law shall, on such day, stand repealed :

Provided that the repeal shall not affect—

(a) the previous operations of any such law, or

(b) any penalty, forfeiture or punishment incurred in respect of any offence committed against, any such law, or

(c) any investigation or remedy in respect of any such penalty, forfeiture or punishment ;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed, as if this Act had not been passed :

Provided further that subject to the preceding proviso anything done or any action taken under any such law shall be deemed to have been done or taken under the corresponding provision of this Act and shall continue in force accordingly unless and until superseded by anything done or any action taken under this Act."

28. Amendment of Schedule I, Act XXXIV of 1948.—In Schedule I to the principal Act, for paragraph 2 the following paragraph shall be substituted, namely :—

'2. The average daily wages shall be :—

(a) in respect of an employee whose wage period is a day, the amount of wages earned during the week divided by the number of days worked in that week ;

(b) in respect of any employee employed on the basis of any other wage period, the amount of wages earned in that wage period in which the contribution falls due divided by the number of days worked in such wage period ;

(c) in respect of an employee employed on any other basis, the amount calculated on the basis of wages earned for the day on which the contribution falls due or on such other day as may be specified in the regulations in this behalf.

Explanation I.—Subject to any regulation made in this behalf, the term "days worked" means the number of days on which the employee worked for wages.

Explanation II.—Where any night shift continues beyond mid-night, the period of the night shift after midnight shall be counted for reckoning the days worked as part of the day preceding.

Explanation III.—Except as provided by regulations, wages, pay, salaries or allowances paid in respect of any period of leave or holidays other than the weekly holidays shall not be taken into account in calculating wages.

Explanation IV.—"wage period" means the period in respect of which wages are ordinarily payable whether in terms of the contract of employment, express or implied, or otherwise.

29. Amendment of Schedule II, Act XXXIV of 1948.—In Schedule II, to the principal Act,—

(a) in paragraph 2,—

(i) after the word and figures "section 48" the words "plus the number of any other weeks in that contribution period for which contributions were paid in respect of the person" shall be inserted ;

(ii) In *Example 3*, for the words "benefit year" the words "benefit period" shall be substituted ;

(b) in paragraph 3, for the words "provided that", the following words shall be substituted, namely : —

"Provided that where no contribution was paid in respect of the employee during the aforesaid period of fifty-two weeks the disablement and dependants' benefit shall be an amount equivalent to one-fifty-second part of the monthly wages calculated in accordance with section 5 of the Workman's Compensation Act, 1923 (VIII of 1923), and provided further that :"

(c) in paragraph 4, in the second proviso to sub-paragraph (ii),—

(i) for the words "legitimate children" the words "legitimate children or adopted son" shall be substituted ;

(ii) for the words "exceeds the full rate" the words "exceeds at any time the full rate" shall be substituted ; and

(iii) for the word "reduced" the word "altered" shall be substituted ;

(d) in paragraph 5, for the words and figures "Commissioner appointed under the Workman's Compensation Act, 1923" the words "Employees' Insurance Court having jurisdiction" shall be substituted.

STATEMENT OF OBJECTS AND REASONS

The Employees' State Insurance Act, 1948, was passed by the Dominion Legislature in April 1948. It provides for certain benefits to industrial employees in case of sickness, maternity and employment injury. The Act permits the implementation of the scheme by stages.

2. It was intended that the scheme should be implemented in the first instance in Delhi and Kanpur, but regional implementation of such schemes is always attended with certain practical difficulties. The principal difficulties are the rise in the cost of production and the diminution of the competitive capacity of industries located in those regions. The main objections of employers centred round the former difficulty and those of the Uttar Pradesh Government emphasised the latter. The Central Government have considerd those objections and are anxious to avoid any competitive handicap to any region. This may be best achieved by an equitable distribution of the employer's contribution, even where implementation is effected only in certain areas, among the employer's in the whole country—employers in regions where the scheme is implemented paying slightly higher contributions. This will minimise the contribution leviable from the employers and spread the incidence of the cost of the scheme equitably. This Bill is primarily intended to achieve this object.

3. Advantage has been taken of this opportunity to effect some other amendments to the Act which have been found necessary for rectifying certain defects and removing certain lacunae in the Act. The reasons for the amendments are, however necessary, given in the Notes on Clauses attached to this Bill.

JAGJIVAN RAM.

NEW DELHI ;

The 13th March, 1951.

Employees' State Insurance (Amendment) Act 1951.

Letter No.—2610, Calcutta 4th April 1951.

From—Bengal Chamber of Commerce.

To—The Secretary,
Government of India,
Ministry of Labour, New Delhi.

I am directed to address you on the subject of the Bill referred to above on behalf of the Industrial interests connected with this Chamber.

2. The interests mentioned are gravely concerned over the provisions of Chapter 5A which it is proposed to add to the Employees' State Insurance Act. From the Statement of Objects and Reasons attached to the Bill, read with the reports which have appeared in the Press from time to time recently, it appears that it is Government's intention to utilise the provisions of this new chapter to make a levy on all employers covered by the Act of ¾% of their total wage bill, the intention being to remove the disadvantages which would be suffered by employers in Kanpur and Delhi because of the proposed introduction of pilot schemes under the Act in these areas. While the industrial interests connected with the Chamber have every sympathy with the industrialists in the areas mentioned, they are most strongly opposed to such a proposal, which they consider is not only completely inequitable but will also prove to be a very serious burden upon industry throughout the country.

3. The proposal in fact means that employers in areas other than the two mentioned are being asked to contribute very considerable sums of money without anything whatever in the shape of a return for such contributions. In addition, this contribution if to be imposed upon them over and above the expenditure which they have already to bear in connection with their own existing medical services, workmen's compensation, and maternity benefit, all of which are supposed to be covered by

the Act. Such a proposal is not only contrary to all principles of insurance, on which the Act is supposed to be based, but is also obviously most unfair because no return whatever will be granted in exchange for the contributions.

4. Secondly, this additional expenditure comes at a time when industry generally is ill-prepared to meet it In addition to the many difficulties which industry has had to face in recent years it is clear that at this time much extra finance will be required to meet the greatly increased cost of raw materials due to present world conditions and the recent trade agreement with Pakistan. It may therefore be impossible for industrialists to meet this extra levy.

5. For these reasons the Chamber would urge that the Bill should not be proceeded with and that if no equitable solution can be found for the difficulties faced by industrialists in Delhi and Kanpur then the proposed introduction of pilot schemes in these areas should be postponed indefinitely. If, however, Government are unable to accept this point of view, then the Chamber would press most strongly for provision to be made in the Bill that employers are permitted to deduct from the special levy referred to the costs of running their existing medical schemes, the payment of workmen's compensation and maternity benefits. It is felt that such an arrangement is completely justified in view of the Provisions of the Act itself.

6. The Chamber trust that these views will receive the most serious attention of Government.

EMPLOYEES' STATE INSURANCE ACT, 1948 (AS AMENDED IN 1951).

MINISTRY OF LAW

Circular No. 268—1951 Calcutta, 15th November 1951.

From—Bengal Chamber of Commerce.

To—All Members of the Chamber.

MEMO:—The undernoted Act as amended by the Employees' State Insurance (Amendment) Act, 1951 is published for the information of members.

GOVERNMENT OF INDIA

The Employees' State Insurance Act, 1948.

ACT NO. XXXIV OF 1948.

(as amended by No. LIII of 1951)

An Act to provide for certain benefits to employees in case of sickness maternity and 'employment injury' and to make provision for certain other matters in relation thereto.

WHEREAS it is expedient to provide for certain benefits to employees in case of sickness, maternity and employment injury and to make provision for certain other matters in relation thereto ;

It is hereby enacted as follows :

CHAPTER I.

PRELIMINARY

1. Short title, extent, commencement and application.—(*1*) This Act may be called the Employees' State Insurance Act, 1948.

(*2*) It extends to *the whole of India except the State of Jammu and Kashmir.

(*3*) It shall come into force on such date or dates as the Central Government may, by notification in the official Gazette, appoint, and different dates may be appointed for different provisions of this Act and for different States, or for different parts thereof.

(*4*) It shall apply, in the first instance, to all (factories including factories belonging to the Government) other than seasonal factories.

(*5*) The appropriate Government may, in consultation with the Corporation and where the appropriate Government is a State Government, with the approval of the Central Government after giving six months' notice of its intention of so doing by notification in the official Gazette, extend the provisions of this Act or any of them to any other establishment or class of establishments, industrial, commercial, agricultural or otherwise.

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

(*1*) "appropriate Government" means, in respect of establishments under the control of the Central Government or railway administration or a major port or a mine or oilfield, he Central Government, and in all other cases, the State Government ;

(*2*) "benefit period" means such perion, being not less than twenty-five but not exceeding twenty-seven consecutive weeks or six consecutive months corresponding to the contribution period, as may be specified in the regulations ;

*Adoption of Laws Order 1950.

Provided that in the case of the first benefit period a longer or shorter period may be specified by or under the regulations ;

(*3*) "confinement" means labour resulting in the issue of a living child, or labour after twenty-six weeks of pregnancy resulting in the issue of a child whether alive or dead ;

(*4*) "contribution" means the sum of money payable to the Corporation by the principal employer in respect of an employee and includes any amount payable by or on behalf of the employee in accordance with the provisions of this Act ;

(*5*) "contribution period" means such period, being not less than twenty-five but not exceeding twenty-seven consecutive weeks or six consecutive months, as may be specified in the regulations ;

Provided that in the case of the first contribution period a longer or shorter period may be specified by or under the regulations ;

(*6*) "Corporation" means the Employees' State Insurance Corporation set up under this Act ;

(*7*) "duly appointed" means appointed in accordance with the provisions of this Act or with the rules or regulations made thereunder ;

(*8*) "employment injury" means a personal injury to an employee caused by accident or on occupational disease arising out of and in the course of his employment in a factory or establishment to which this Act applies, which injury or occupational disease would entitle such employee to compensation under the Workmen's Compensation Act, 1923 (VIII of 1923), if he were a workman within the meaning of the said Act :

(*9*) "employee" means any person employed for wages in or in connection with the work of factory or establishment to which this Act applies and—

(*i*) Who is directly employed by the principal employer on any work of, or incidental or preliminary to, or connected with the work of, the factory or establishment, whether such work is done by the employee in the factory or establishment or elsewhere ; or

(*ii*) who is employed by or through an immediate employer on the premises of the factory or establishment or under the supervision of the principal employer or his agent on work which is ordinarily part of the work of the factory or establishment or which is preliminary to the work carried on in or incidental to the purpose of the factory or establishment ; or

(*iii*) whose services are temporarily lent or let on hire to the principal employer by the person with whom the person whose services are so lent or let on hire has entered into a contract of service ;

but does not include—

(*a*) any member of the Indian naval, military or air forces ; or

(*b*) any person employed on a remuneration which in the aggregate exceeds four hundred rupees a month ;

(*10*) "exempted employee" means an employee who is not liable under this Act to pay the employee's contribution ;

(*11*) "family" means the spouse and minor legitimate and adopted children dependent upon the insured person and where the insured person is a male, his dependent parents ;

(12) "factory" means any premises including the precincts thereof whereon twenty or more persons are working or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power or is ordinarily so carried on but does not include a mine subject to the operation of the Indian Mines Act, 1923 (IV of 1923), or a railway running shed.

"seasonal factory" means a factory which is exclusively engaged in one or more of the following manufacturing processes, namely, cotton ginning, cotton or jute pressing, decortication of groundnuts, the manufacture of coffee, indigo, lac, rubber, sugar (including *gur*) or tea or any manufacturing process which is incidental to or connected with any of the aforesaid processes ;

The expressions "manufacturing process" and "power" shall have the meanings respectively assigned to them in the Factories Act, 1948 (XXV of 1948) :

(13) "immediate employer", in relation to employees employed by or through him, means a person who has undertaken the execution, on the premises of a factory or an establishment to which this Act applies or under the supervision of the principal employer or his agent, of the whole or any part of any work which is ordinarily part of the work of the factory or establishment of the principal employer or is preliminary to the work carried on in, or incidental to the purpose of, any such factory or establishment, and includes a person by whom the services of an employee who has entered into a contract of service with him are temporarily lent or let on hire to the principal employer ;

(14) "insured person" means a person who is or was an employee in respect of whom contributions are or were payable under this Act and who is, by reason thereof entitled to any of the benefits provided by this Act ;

(15) "occupier" of the factory shall have the meaning assigned to it in the Factories Act, 1949 (XXV of 1949) ;

(16) "prescribed" means prescribed by rules made under this Act :

(17) "principal employer" means—

(*i*) in a factory, the owner or occupier of the factory and includes the managing agent of such owner or occupier, the legal representative of a deceased owner or occupier, and where a person has been named as the manager of the factory under the Factories Act 1948, the person so named ;

(*ii*) in any establishment under the control of any department of any Government in India, the authority appointed by such Government in this behalf or where no authority is so appointed, the head of the Department ;

(*iii*) in any other establishment, any person responsible for the supervision and control of the establishment ;

(18) "regulation" means a regulation made by the Corporation ;

(19) "schedule" means a schedule to this Act ;

(20) "sickness" means a condition which requires medical treatment and attendance and necessitates abstention from work on medical grounds ;

(21) "temporary disablement" means a condition resulting from an employment injury which requires medical treatment and renders an employee, as a result of such injury, temporarily incapable of work ;

(22) "wages" means all remuneration paid or payable in cash to an employee, if the terms of the contract of employment, express or implied, were fulfilled and includes other additional remuneration, if any, paid at intervals not exceeding two months, but does not include—

(*a*) any contribution paid by the employer to any pension fund or provident fund, or under this Act. ;

(*b*) any travelling allowance or the value of any travelling concession ;

(*c*) any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment ; or

(*d*) any gratuity payable on discharge ;

(23) "week" means a period of seven days commencing at midnight or Saturday night ;

(24) the expressions "dependent", "managing agent", "occupational disease", "partial disablement" where the disablement is of a permanent nature and "total disablement" shall have respectively the meanings assigned to them in the Workmen's Compensation Act, 1923 (VIII of 1923).

CHAPTER II.

CORPORATION, STANDING COMMITTEE AND MEDICAL BENEFIT COUNCIL.

3. Establishment of Employees' State Insurance Corporation.—(1) With effect from such date as the Central Government may by notification in the official Gazette, appoint in this behalf, there shall be established for the administration of the scheme of Employees' State Insurance in accordance with the provisions of this Act a Corporation to be known as the Employees' State Insurance Corporation.

(2) The Corporation shall be a body corporate the name of Employees' State Insurance Corporation having perpetual succession and a common seal and shall by the said name sue and be sued.

4. Constitution of Corporation.—The Corporation shall consist of the following members, namely :—

(*a*) the Minister for Labour in the Central Government, *ex-officio*, as Chairman ;

(*b*) the Minister for Health in the Central Government, *ex-officio*, as Vice-Chairman ;

(*c*) not more then five persons to be nominated by the Central Government of whom at least three shall be officials of the Central Government ;

(*d*) one person each representing each of the Part A States and Part B States in which this Act is in force, to be nominated by the State Government concerned ;

(*e*) one person to be nominated by the Central Government to represent the Part C States ;

(*f*) five persons representing employers to be nominated by the Central Government in consultation with such organisations of employers as may be recognised for the purpose by the Central Government ;

(*g*) five persons representing employees to be nominated by the Central Government in consultation with such organisations of employees as may be recognised for the purpose by the Central Government ;

(*h*) two persons representing the medical profession to be nominated by the Central Government in consultation with such organisation of medical practioners as may be recognised for the purpose by the Central Government ; and

(*i*) two persons to be elected by the Parliament.

5. Term of office of members of the Corporation.—(*1*) Save as otherwise expressly provided in this Act, term of office of members of the Corporation, other than the *ex-officio* members and members referred to in clauses (*c*), (*d*) and (*e*) of section 4, shall be four years commencing from the date on which their nomination or election is notified.

Provided that a member of the Corporation shall, notwithstanding the expiry of the said period of four years, continue to hold office until the nomination or election of his successor is notified.

(*2*) The members of the Corporation referred to in clauses (*c*), (*d*) and (*e*) of section 4 shall hold office during the pleasure of the Government nominating them.

6. Eligibility for renomination or re-election.— An outgoing member of the Corporation, the Standing Committee, or the Medical Benefit Council shall be eligible for re-nomination or re-election as the case may be,

7. Authentication of orders, decision, etc.—All orders and decisions of the Corporation shall be authenticated by the signature of the Chairman or some other member authorised by the Corporation in this behalf and all other instruments issued by the Corporation shall be authenticated by the signature of such member or officer of the Corporation as may be authorised by it.

8. Constitution of Standing Committee.—A Standing Committee of the Corporation shall be constituted from among its members, consisting of—

(*a*) a Chairman, nominated by the Central Government ;

(*b*) three members of the Corporation, being officials of the Central Government, nominated by that Government,

(*bb*) three members of the Corporation representing such three State Governments thereon as the Central Government may, by notification in the Official Gazette, specify from time to time ;

(*c*) six members elected by the Corporation as follows :—

(*i*) two members from among the members of the Corporation representing employers ;

(*ii*) two members from among the members of the Corporation representing employees ;

(*iii*) one member from among the members of the Corporation representing the medical profession ; and

(*iv*) one member from among the members of the Corporation elected by the parliament.

9. Term of office of members of Standing Committee.—(*1*) Save as otherwise expressly provided in this Act, the term of office of a member of the Standing Committee, other than a member referred to in clause (*a*) or clause (*b*) or clause (*bb*) of section 8, shall be two years from the date on which his election is notified ;

Provided that a member of the Standing Committee shall, notwithstanding the expiry of the said period of two years, continue to hold office until the election of his successor is notified :

Provided further that a member of the Standing Committee shall cease to hold office when he ceases to be a member of the Corporation.

(*2*) A member of the Standing Committee referred to in clause (*a*) or clause (*b*) or clause (*bb*) of section 8 shall hold office during the pleasure of the Central Government.

10. Medical Benefit Council.—(*1*) The Central Government shall constitute a Medical Benefit Council consisting of—

(*a*) the Director General, Health Services, *ex-officio*, as Chairman ;

(*b*) a Deputy Director General, Health Services, to be nominated by the Central Government ;

(*c*) the Medical Commissioner of the Corporation, *ex-officio* ;

(*d*) one member each representing each of the Part A States and Part B States in which this Act is in force, to be nominated by the State Government concerned ;

(*e*) three members representing employers to be nominated by the Central Government in consultation with such organisations of employers as may be recognised for the purpose by the Central Government ;

(*f*) three members representing employees to be nominated by the Central Government in consultation with such organisations of employees as may be recognised for the purpose by the Central Government ; and

(*g*) three members, of whom not less than one shall be a woman, representing the medical profession, to be nominated by the Central Government in consultation with such organisations of medical practitioners as may be recognised for the purpose by the Central Government.

(*2*) Save as otherwise expressly provided in this Act, the term of office of a member of the Medical Benefit Council, other than a member referred to in any of the clauses (*a*) to (*d*) of sub-section (*1*), shall be four years from the date on which his nomination is notified.

(*3*) A member of the Medical Benefit Council referred to in the clause (*b*) and (*d*) of sub-section (*1*) shall hold office during the pleasure of the Government nominating him.

11. Resignation of membership.—A member of the Corporation, the Standing Committee or the Medical Benefit Council may resign his office by notice in writing to the Central Government and his seat shall fall vacant on the acceptance of the resignation by that Government.

12. Cessation of membership.—(*1*) A member of the Corporation, the Standing Committee, or the Medical Benefit Council shall cease to be a member of that body if he fails to attend three consecutive meetings thereof ;

(*2*) Where in the opinion of the Central Government any person nominated or elected to represent employers, employees or the medical profession or the Corporation, the Standing Committee or the Medical Benefit Council, as the case may be, has ceased to represent such employers, employees or the medical profession, the Central Government may, by notification in the Official Gazette, declare that with effect

from such date as may be specified therein such person shall cease to be a member of the Corporation, the Standing Committee or the Medical Benefit Council, as the as the case may be.

Provided that the Corporation, the Standing Committee or the Medical Benefit Council, as the case may be, may, subject to rules made by the Central Government in this behalf, restore him to membership.

13. Disqualification.—A person shall be disqualified for being chosen as or for being a member of the Corporation, the Standing Committee or the Medical Benefit Council—

(*a*) if he is declared to be of unsound mind by a competent Court ; or

(*b*) if he is an undischarged insolvent ; or

(*c*) if he has directly or indirectly by himself or by his partner any interest in a subsisting contract with, or any work being done for, the Corporation except as a medical practitioner or as a shareholder (not being a Director) of a company ; or

(*d*) if before or after the commencement of this Act, he has been convicted of an offence involving moral turpitude.

14. Filling of vacancies.—(*1*) Vacancies in the office of nominated or elected members of the Corporation, the Standing Committee and the Medical Benefit Council shall be filled by nomination or election, as the case may be.

(*2*) A member of the Corporation the Standing Committee or the Medical Benefit Council nominated or elected to fill a casual vacancy shall hold office only so long as the member in whose place he is nominated or elected would have been entitled to hold office if the vacancy had not occurred.

15. Fees and allowances.—Members of the Corporation, the Standing Committee and the Medical Benefit Council shall receive such fees and allowances as may from time to time be prescribed by the Central Government.

16. Principal officers.—(*1*) The Central Government may, in the case of the first appointment itself and in the case of subsequent appointments, in consultation with the Corporation, appoint the following officers (hereinafter referred to as Principal Officers) of the Corporation, namely :—

(*a*) a Director General of Employees' State Insurance ;

(*b*) an Insurance Commissioner ;

(*c*) a Medical Commissioner ;

(*d*) a Chief Accounts Officer ; and

(*e*) an Actuary.

(*2*) The Director General shall be the Chief Executive Officer of the Corporation.

(*3*) The Principal Officers, shall be whole-time officers of the Corporation and shall not undertake any work unconnected with their office without the sanction of Central Government.

(*4*) A Principal Officer, shall hold office for such period, not exceeding five years, as may be specified in the order appointing him. An outgoing Principal Officer shall be eligible for reappointment if he is otherwise qualified.

(*5*) A Principal Officer shall receive such salary and allowances as may be prescribed by the Central Government.

(*6*) A person shall be disqualified from being appointed as or for being a Principal Officer if he is subject to any of the disqualifications specified in section 13.

(*7*) The Central Government may at any time remove a Principal Officer from office and shall do if such removal is recommended by a resolution of the Corporation passed at a special meeting called for the purpose and supported by the votes of not less than two-thirds of the total strength of the Corporation.

17. Staff.—(*1*) The Corporation may employ such other staff of officers and servants as may be necessary for the efficient transaction of its business provided that the sanction of the Central Government shall be obtained for the certain of any post with a maximum monthly salary of five hundred rupees and above.

(*2*) The Corporation shall, with the approval of the Central Government, make regulations regarding the method of recruitment, pay and allowances, discipline, superannuation benefits and other conditions of service of the members of its staff.

(*3*) Every appointment to posts carrying a maximum monthly pay of five hundred rupees and above shall be made in consultation with the Feneral Public Service Commission :

Provided that this sub-section shall not apply to an officiating or temporary appointment for an aggregate period not exceeding one year.

18. Powers of the Standing Committee.—(*1*) Subject to the general superintendence and control of the Corporation, the Standing Committee shall administer the affairs of the Corporation and may exercise any of the powers and perform any of the functions of the Corporation.

(*2*) The Standing Committee shall submit for the consideration and decision of the Corporation all such cases and matters as may be specified in the regulations made in this behalf.

(*3*) The Standing Committee may, in its discretion, submit any other case or matter for the decision of the Corporation.

19. Corporation's power to promote measures for health., etc. of insured persons.—The Corporation may, in addition to the scheme of benefits specified in this Act, promote measures for the improvement of the health and welfare of insured persons and for the rehabilitation and re-employment of insured persons who have been disabled or injured and may incur in respect of such measures expenditure from the funds of the Corporation within such limits as may be prescribed by the Central Government.

20. Meetings of Corporation, Standing Committee and Medical Benefit Council.—Subject to any rules made under this Act, the Corporation, the Standing Committee and the Medical Benefit Council shall meet at such times and places and shall observe such rules or procedure in regard to transaction of business at their meetings as may be specified in the regulations made in this behalf.

21. Supersession of the Corporation and Standing Committee.—(*1*) If in the opinion of the Central Government, the Corporation or the Standing Committee persistently makes default in performing the duties imposed on it by or under this Act or abuses its powers, that Government may, by notification in the official Gazette, supersede the Corporation, or in the case of the Standing Committee, supersede in consultation with the Corporation, the Standing Committee :

Provided that before issuing a notification under this sub-section the Central Government shall give a reasonable opportunity to the Standing Committee, as the case may be, to show cause why it should not be superseded and shall consider the explanations and objections, if any, of the Corporation or the Standing Committee, as the case may be.

(2) Upon the publication of a notification under sub-section (1) superseding the Corporation or the Standing Committee, all the members of the Corporation, or the Standing Committee, as the case may be, shall, as from the date of such publication, be deemed to have vacated their offices.

(3) When the Standing Committee has been superseded, a new Standing Committee shall be immediately constituted in accordance with section 8.

(4) When the Corporation has been superseded, the Central Government may—

(a) immediately nominate or cause to be nominated or elected new members to the Corporation in accordance with section 4 and may constitute a new Standing Committee under section 8 ;

(b) in its discretion, appoint such agency, for such period as it may think fit, to exercise the powers and perform the functions of the Corporation and such agency shall be competent to exercise all the powers and perform all the functions of the Corporation.

(5) The Central Government shall cause a full report of any action taken under this section and the circumstances leading to such action to be laid before the Parliament at the earliest opportunity and in any case not later than three months from the date of the notification superseding the Corporation or the Standing Committee, as the case may be.

22. Duties of Medical Benefit Council.—The Medical Council shall—

(a) advise the Corporation and the Standing Committee matters relating to the administration of medical benefit, the certification for purposes of the grant benefits and other connected matters ;

(b) have such powers and duties of investigation as may be prescribed in relation to complaints against medical practitioners in connection with medical treatment and attendance ; and

(c) perform such other duties in connection with medical treatment and attendance as may be specified in the regulations.

23. Duties of Principal Officers.—The Principal Officers shall exercise such powers and discharge such duties as may be prescribed. They shall also perform such other functions as may be specified in the regulations.

24. Acts of Corporation, etc., not invalid by reason of defect in constitution. etc.—No act of the Corporation, the Standing Committee or the Medical Benefit Council shall be deemed to be invalid by reason of any defect in the constitution of the Corporation, the Standing Committee or the Medical Benefit Council, or on the ground that any member thereof was not entitled to hold or continue in office by reason of any disqualification or of any irregularity in his nomination or election, or by reason of such act having been done during the period of any vacancy in the office of any member of the Corporation, the Standing Committee or the Medical Benefit Council.

25. Regional Boards, Local Committees, Regional and Local Medical Benefits Councils.—The Corporation may appoint Regional Boards, Local Committees and Regional and Local Medical Benefit Councils in such areas and in such manner, and delegate to them such powers and functions, as may be provided by the regulations.

CHAPTER III.

FINANCE AND AUDIT

26. Employees' State Insurance Fund.—(1) All contributions paid under this Act and all other moneys received on behalf of the Corporation shall be paid into a fund called the Employees' State Insurance Fund which shall be held and administered by the Corporation for the purposes of this Act.

(2) The Corporation may accept grants, donations and gifts from the Central or any State Government, local authority, or any individual or body whether incorporated or not, for all or any of the purposes of this Act.

(3) Subject to the other provisions contained in this Act and to any rules or regulations made in this behalf, all moneys accruing or payable to the said Fund shall be paid into the Reserve Bank of India or such other bank as may be approved by the Central Government to the credit of an account styled the account of the Employees' State Insurance Fund.

(4) Such account shall be operated on by such officers as may be authorised by the Standing Committee with the approval of the Corporation.

27. Grant by the Central Government.—The Central Government shall, every year during the first five years make a grant to the Corporation of a sum equivalent to two-thirds of the administrative expenses of the Corporation not including therein the cost of any benefits provided by or under this Act.

28. Purposes for which the Fund may be expended.—Subject to the provisions of this Act and of any rules made by the Central Government in that behalf, the Employees' State Insurance Fund shall be expended only for the following purposes, namely :—

(i) payment of benefits and provision of medical treatment and attendance to insured persons and, where the medical benefit is extended to their families, the provisions of such medical benefit to their families, in accordance with the provisions of this Act and defraying the charges and costs in connection therewith ;

(ii) payment of fees and allowances to members of the Corporation, the Standing Committee and the Medical Benefit Council, the Regional Boards Local Committees and Regional and Local Medical Benefit Councils ;

(iii) payment of salaries, leave and joining time allowances, travelling and compensatory allowances, gratuities and compassionate allowances, pensions, contributions to provident or other benefit fund of officers and servants of the Corporation and meeting the expenditure in respect of offices and other services set up for the purpose of giving effect to the provisions of this Act ;

(iv) establishment and maintenance of hospitals, dispensaries and other institutions and the provision of medical and other ancillary services for the benefit of insured persons and, where the medical benefit is extended to their families ;

(v) payment of contributions to any State Government, local authority or any private body or individual, towards the cost of medical treatment and attendance provided to insured persons and, where the medical benefit is extended to their families, their families including the cost of any building and equipment in accordance with any agreement entered into by the Corporation ;

(vi) defraying the cost (including all expenses) of auditing the accounts of the Corporation and of the valuation of its assets and liabilities ;

(vii) defraying the cost (including all expenses) of the Employees' Insurance Courts set up under this Act ;

(viii) payment of any sums under any contract entered into for the purposes of this Act by the Corporation or the Standing Committee or by any officer duly authorised by the Corporation or the Standing Committee in that behalf ;

(ix) payment of sums under any decree, order or award of any Court or Tribunal against the Corporation or any of its officers or servants for any act done in the execution of his duty or under a compromise or settlement of any suit or other legal proceeding or claim instituted or made against the Corporation ;

(x) defraying the cost and other charges of instituting or defending any civil or criminal proceedings arising out of any action taken under this Act ;

(xi) defraying expenditure, within the limits prescribed, on measures for the improvement of the health and welfare of insured persons and for the rehabilitation and re-employment of insured person who have been disabled or injured ; and

(xii) such other purposes as may be authorised by the Corporation with the previous approval of the Central Government.

29. Holding of property, etc.—(1) The Corporation may, subject to such conditions as may be prescribed by the Central Government, acquire and hold property both movable and immovable, sell or otherwise transfer any movable or immovable property which may have become vested in or have been acquired by it and do all things necessary for the purposes for which the Corporation is established.

(2) Subject to such conditions as may be prescribed by the Central Government, the Corporation may from time invest any moneys which are not immediately required for expenses properly defrayable under this Act and may subject as aforesaid, from time to time re-invest or realise such investments.

(3) The Corporation may, with the previous sanction of the Central Government and on such terms as may be prescribed by it, raise loans and take measures for discharging such loans.

(4) The Corporation may constitute for the benefit of its staff or any class of them, such provident or other benefit fund as it may think fit.

30. Vesting of the property in the Corporation.—All property acquired before the establishment of the Corporation shall vest in the Corporation and all income derived and expenditure incurred in this behalf shall be brought into the books of the Corporation.

31. Expenditure by Central Government to be treated as a loan.—All expenditure incurred by the Central Government for and in connection with the establishment of the Corporation up to the date of its establishment shall be treated as a loan advanced by the Central Government to the Corporation and such loan shall be adjusted against grants from the Central Government to the Corporation.

32. Budget estimates.—The Corporation shall in each year frame a budget showing the probable receipts and the expenditure which it proposes to incur during the following year and shall submit a copy of the budget for the approval of the Central Government before such date as may be fixed by it in that behalf. The budget shall contain provisions adequate in the opinion of the Central Government for the discharge of the liabilities incurred by the Corporation and for the maintenance of a working balance.

33. Accounts.—The Corporation shall maintain correct accounts of its income and expenditure in such form and in such manner as may be prescribed by the Central Government.

34. Audit.—(1) The Accounts of the Corporation shall be audited, at such times and such manner as may be prescribed, by auditors appointed by the Central Government

(2) The auditors shall at all reasonable times have access to the books, accounts and other documents of the Corporation and may, for the purposes of the audit, call for such explanation and information as they may require or examine and principal or other officer of the Corporation.

(3) The auditors shall forward to the Central Government a copy of their report together with an audited copy of the accounts of the Corporation.

(4) The cost of the audit as determined by the Central Government shall be paid out of the funds of the Corporation.

35. Annual report.—The Corporation shall submit to the Central Government an annual report of its work and activities.

36. Budget, audited accounts and the annual report to be placed before the Central Legislature.—The annual report, the audited accounts of the Corporation and the budget as finally adopted by the Corporation shall be placed before the Parliament and published in the Official Gazette.

37. Valuation of assets and liabilities.—The Corporation shall, at intervals of five years, have a valuation of its assets and liabilities made by a valuer appointed with the approval of the Central Government.

Provided that it shall be open to the Central Government to direct a valuation to be made at such other times as it may consider necessary.

CHAPTER IV

CONTRIBUTIONS.

38. All employees to be insured.—Subject to the provisions of this Act, all employees in factories or establishments to which this Act applies shall be insured in the manner provided by this Act.

39. Contributions.—(1) The contribution payable under this Act in respect of an employee shall comprise contribution payable by the employer (hereinafter referred to as the employer's contribution) and contribution payable by the employee (hereinafter referred to as the employee's contribution) and shall be paid to the Corporation.

(2) The contributions shall be paid at the rates specified in the First Scheme, and in case where the provisions of this Act are made applicable to any employee or class of employees in any factory or establishment or class of factories or establishment in such manner that they are excluded from some of the benefits under this Act, at such rates as the Corporation may fix in this behalf.

(3) A week shall be the unit in respect of which all contributions shall be payable under this Act.

(4) The contributions payable in respect of each week shall ordinarily fall due on the last day of the week, and where an employee is employed for part of the week, or is employed under two or more employers during the same week, the contributions shall fall due on such days as may be specified in the regulations.

40. Principal employer to pay contribution in the first instance.—(1) The principal employer shall pay in respect of every employee whether directly employed by him or by or through an immediate employer, both the employer's contribution and the employee's contribution,

(2) Notwithstanding anything contained in any other enactment but subject to the provisions of this Act and the regulation, if any made thereunder, the principal employer shall in the case of an employee directly employed by him (not being an exempted employee), be entitled to recover from the employee the employee's contribution by deduction from his wages and not otherwise.

Provided that no such deduction shall be made from any wages other than such as relate to the period or part of the period in respect of which the contribution is payable, or in excess of the sum representing the employee's contribution for the period.

(3) Notwithstanding any contract to the contrary, neither the principal employer nor the immediate employer shall be entitled to deduct the employer's contribution from any wages payable to an employee or otherwise to recover it from him.

(4) Any sum deducted by the principal employer from wages under this Act shall be deemed to have been entrusted to him by the employee for the purpose of paying the contribution in respect of which it was deducted.

(5) The Principal employer shall bear the expenses of remitting the contributions to the Corporation.

41. Recovery of contribution from immediate employer.—(1)A principal employer, who has paid contribution in respect of an employee employed by or through an immediate employer, shall be entitled to recover the amount of the contribution so paid (that is to say the employer's contribution as well as the employee's contribution if any) from the immediate employer, either by deduction from any amount payable to him by the principal employer under any contract, or as a debt payable by the immediate employer.

(2) In the case referred to in sub-section (1), the immediate employer shall be entitled to recover the employee's contribution from the employee employed by or through him by deduction from wages and not otherwise, subject to the conditions specified in the proviso to sub-section (2) of section 40.

Explanation—For the purposes of section 40 and 41, wages shall be deemed to include payment to an employee in respect of any period of authorised leave, lock-out or legal strike.

42. General provisions as to payment of contributions.—(1) No employee's contribution shall be payable by or on behalf of an employee whose average daily wages are below one rupee.

Explanation—The average daily wages of an employee shall be calculated in the manner specified in the First Schedule.

(2) Contribution (both the employer's contribution and the employee's contribution) shall be payable by the principal employer for each week during the whole or part of which an employee is employed.

(3) Where wages are payable to an employee for a portion of the week, the employer shall be liable to pay both the employer's contribution and the employee's contribution for the week in full but shall be entitled to recover from the employee the employee's contribution.

(4) No contribution shall be payable in respect of an employee for any week during the whole of which no services are rendered by an employee and in respect of which no wages are payable to him.

(5) Notwithstanding the provisions of sub-section (4), contribution shall be payable, in respect of any week during which no services are rendered by and no wages are paid to an employee, at the rate at which contribution was last paid, where the failure to render such services is due to the employee being on authorised leave, or is due to a lock-out or a legal strike, if in respect of the period covered by such legal strike the employee receives wages in full or in part.

43. Method of payment of contribution.—Subject to the provisions of this Act, the Corporation may make regulations for any matter relating or incidental to the payment and collection of contributions payable under this Act and without prejudice to the generality of the foregoing power such regulations may provide for—

(a) the manner and time of payment of contributions ;

(b) the payment of contributions by means of adhesive or other stamps affixed to or impressed upon books, cards or otherwise and regulating the manner, times and conditions in, at and under which, such stamps are to be affixed or impressed ;

(c) the entry in or upon books or cards of particulars of contributions paid and benefits distributed in the case of the insured persons to whom such books or cards relate : and

(d) the issue, sale, custody, production, inspection and delivery of books or cards and the replacement of books or cards which have been lost, destroyed or defaced.

44. Employers to furnish returns and maintain registers in certain cases.—(1) Every principal and immediate employer shall submit to the Corporation or to such officer of the Corporation as it may direct such returns in such form and containing such particulars relating to persons employed by him or to any factory or establishment in respect of which he is the principal or immediate employer as may be specified in regulations made in this behalf.

(2) Where in respect of any factory or establishment the Corporation has reason to believe that a return should have been submitted under sub-section (1) but has not been so submitted, the Corporation may require any person in charge of the factory

or establishment to furnish such particulars as it may consider necessary for the purpose of enabling the Corporation to decide whether the factory or establishment is a factory or establishment to which this Act applies.

(3) Every principal and immediate employer shall maintain such registers or records in respect of his factory or establishment as may be required by regulations made in this behalf.

45. Inspectors, their functions and duties.—(1) The Corporation may appoint such persons as Inspectors, as it thinks fit, for the purposes of this Act, within such local limits as it may assign to them.

(2) Any Inspector appointed by the Corporation under sub-section (1) (hereinafter referred to as Inspector), or other official of the Corporation authorised in this behalf by it may, for the purposes of enquiring into the correctness of any of the particulars stated in any return referred to in section 44 or for the purpose of ascertaining whether any of the provisions of this Act has been complied with—

(a) require any principal or immediate employer to furnish to him such information as he may consider necessary for the purpose of this Act ; or

(b) at any reasonable time enter any office, establishment, factory or other premises occupied by such principal or immediate employer and require any person found in charge thereof to produce to such Inspector or other official and allow him to examine such accounts, books and other documents relating to the employment of persons and payment of wages or to furnish to him such information as he may consider necessary ; or

(c) examine, with respect to any matter relevant to the purposes aforesaid, the principal or immediate employer, his agents or servant, or any person found in such factory, establishment, office or other premises, or any person whom the said Inspector or other official has reasonable cause to believe to or have been an employee.

(d) make copies of, or take extracts from, any register, account book or other document maintained in such 'factory' establishment, office or other premises ;

(3) An Inspector shall exercise such functions and perform such duties as may be authorised by the Corporation or as may be specified in the regulations.

CHAPTER V.

BENEFITS.

46. Benefits.—(1) Subject to the provisions of this Act, the insured persons or, as may be, their dependants shall be entitled to the following benefits, namely :—

(a) periodical payments to any insured person in case of his sickness certified by a duly appointed medical practitioner (hereinafter referred to as sickness benefits) ;

(b) periodical payments in case of confinement to an insured woman, certified to be eligible for such payments by an authority specified in this behalf by the regulations (hereinafter referred to as maternity benefit);

(c) periodical payment to an insured person suffering from disablement as a result of an employment injury sustained as an employee under this Act and certified to be eligible for such payments by an authority specified in this behalf by the regulations (hereinafter referred to as disablement benefit) ;

(d) periodical payments to such dependants of an insured person who dies as a result of an employment injury sustained as an employee under this Act, as are entitled to compensation under this Act (hereinafter referred to as dependants' benefit) ; and

(e) medical treatments for and attendance on insured persons (hereinafter referred to as medical benefit).

(2) The Corporation may, at the request of the appropriate Government and subject to such conditions as may be laid down in the regulations, extend the medical benefits to the family of an insured person.

47. When person eligible for sickness benefit.—A person shall be qualified to claim sickness benefit during any benefit period, if during the corresponding contribution period, weekly contributions in respect of him were payable for not less than two-thirds of the number of weeks during which he shall be deemed to have been available for employment within the meaning of section 48, subject to a minimum of twelve contributions :

Provided that the Corporation may waive the minimum number of contributions during the first contribution period.

48. When person deemed available for employment.—A person shall always be deemed to have been available for employment in any week, except when during the whole of such week,—

(a) he was unable to work on account of sickness which had been duly certified, whether entitling him to receive sickness benefit or not, or

(b) he was qualified to receive disablement benefit for temporary disablement, or

(c) in the case of an insured woman, she was entitled to the maternity benefit provided in section 50 or she would have been entitled to such benefit if she had fulfilled all other conditions entitling her thereto.

49. Sickness benefit.—Subject to the provisions of this Act and the regulations, if any, a person qualified to claim sickness benefit in accordance with section 47 shall be entitled to receive such benefit at the rates specified in the Schedule for the period of his sickness :

Provided that he shall not be entitled to the benefit for an initial waiting period of two days except in the case of a spell of sickness following at an interval of not more than fifteen days, the spell of sickness for which sickness benefit was last paid :

Provided further that sickness benefit shall not be paid to any person for a number of days in excess of the number which taken together with the number of days for which he had already received the benefit makes up a total of fifty-six days during any continuous period of three hundred and sixty-five days.

50. Maternity benefit.—(1) An insured woman shall be qualified to claim maternity benefit for confinement occuring or expected to occur in a benefit period if during the corresponding contribution period, weekly contributions in respect of her were payable for not less than two-thirds of the number of weeks during which she shall be deemed to have been available for employment within the meaning of section 48, subject to a minimum of twelve contributions :

Provided that at least one contribution has been paid between thirty-five and forty weeks before the week in which the confinement takes place or in which notice of pregnancy is given before confinement whichever is mere advantageous to the insured person.

(2) Subject to the provisions of the Act, and the regulations, if any, an insured woman who is qualified to claim maternity benefit in accordance with sub-section (1) shall be entitled to receive it at the daily rate specified in sub-section (3) for all days on which she does not work for remuneration during a period of twelve weeks of which not more than six shall precede the expected date of confinement.

"(3) The daily rate referred to in sub-section (2) shall be—

(i) the rate at which the insured woman could have claimed sickness benefit for any period of sickness during the benefit period in which the confinement occurs or is expected to occur if she had been qualified to claim sickness benefit during that period, or

(ii) twelve annas,

whichever is greater."

51. **Disablement benefit.**—(1) Subject to the provisions of this Act, and the regulations, if any disablement benefit shall be payable—

(a) to a person who sustains temporary disablement, during the period of such disablement ;

(b) to a person who sustains permanent partial disablement during his life ;

(c) to a person who sustains permanent total disablement, during his life ; and

(d) to a person, in all cases of disablement not falling under sub-section (a), (b) or (c) of this sub-section, as may be provided in the regulations.

(2) Disablement benefit shall be paid on the scale and subject to the conditions specified in this behalf in the Second Schedule.

52. **Dependants' benefit.**—Where an insured person dies as a result of an employment injury sustained as an employee under this Act, dependants' benefit shall be payable subject to the provisions of this Act and the regulations, if any, to his dependants at such rates and for such period as is specified in the Second Schedule.

53. **Disablement and dependants' benefit.**—Where an insured person is or his dependants are entitled to receive or recover, whether from the employer of the insured person or from any other person any compensation or damages under the Workmen's Compensation Act, 1923 (VIII of 1923), or otherwise, in respect of an employment injury sustained by the insured person as an employee under this Act, then the following provisions shall apply, namely :—

(i) The insured person shall, in lieu of such compensation or damages, receive the disablement benefit provided by this Act [but subject otherwise to the conditions specified in the Workmen's Compensation Act, 1923 (VIII of 1923)] from the Corporation and not from the employer or other person.

(ii) If the insured person dies as a result of the employment injury sustained as an employee under this Act (whether or not he was in receipt of any periodical payment for temporary disablement in respect of the injury), dependants' benefit shall be payable at the rates and in the proportion specified in the Second Schedule to his widow or widows during her or their widowhood, and to minor legitimate or adopted sons and minor legitimate unmarried daughters.

(iii) In case the insured person does not leave him surviving any widow or children as mentioned in clause (ii) or in the case of an insured woman if she does not leave her surviving any children as mentioned in clause (ii), dependant's benefit shall

be paid to the other dependants of the deceased at such rates as may be determined by the Employees' Insurance Court having jurisdiction.

(iv) The amount of dependants' benefit payable under clause (iii) shall not exceed one-half of the amount which would have been payable to the insured person as benefit on permanent total disablement.

(v) Save as modified by this Act, the obligations and liabilities imposed on an employer by the Workmen's Compensation Act, 1923 (VIII of 1923), shall continue to apply to him.

54. **Medical examination.**—All medical examinations and treatment referred to in the Workmen's Compensation Act, 1923 (VII of 1923), shall for the purposes of this Act, be carried out by duly appointed medical practitioners.

55. **Review of benefits.**—(1) Subject to the provisions of this Act, the Corporation may, either of its own motion or on the application of the person receiving the benefit, review the payment of any disablement or dependants' benefit :

Provided that unless otherwise specified in the regulations made in this behalf every application for the review of a disablement benefit shall be accompanied by a certificate of a duly appointed medical officer.

(2) Subject to the provisions of this Act, the Corporation may, on such review as aforesaid direct that the disablement or dependants benefit be continued, increased reduced or discontinued.

56. **Medical benefit.**—(1) An insured person or (where such medical benefit is extended to his family) a member of his family whose condition requires medical treatment and attendance shall be entitled to receive medical benefit.

(2) Such medical benefit may be given either in the form of out-patient treatment and attendance in a hospital or dispensary, clinic or other institution or by visits to the home of the insured person or treatment as in-patient in a hospital or other institution.

(3) A person shall be entitled to medical benefit during any week for which contributions are payable in respect of him or in which he is qualified to claim sickness benefit or maternity benefit or is in receipt of such disablement benefit as does not disentitle him to medical benefit under the regulations.

Provided that a person in respect of whom contribution ceases to be payable under this Act may be allowed medical benefit for such period and of such nature as may be provided under the regulations.

57. **Scale of medical benefit.**—(1) An insured person and (where such medical benefit is extended to his family) his family shall be entitled to receive medical benefit only of such kind and on such scale as may be provided by the State Government or by the Corporation, and an insured person or, where such medical benefit is extended to his family, his family shall not have a right to claim any medical treatment except such as provided by the dispensary, hospital, clinic or other institution to which he or his family is allotted, or as may be provided by the regulations.

(2) Nothing in this Act shall entitle an insured person (where such medical benefit is extended to his family) his family to claim reimbursement from the Corporation of any expenses incurred in respect of any medical treatment, except as may be provided by the regulations.

58. Provision of medical treatment by State Government.—(*1*) The State Government shall provide for insured persons and (where such benefit is extended to their families) their families in the State, reasonable medical, surgical and obstetric treatment :

Provided that the State Government may, with the approval of the Corporation, arrange for medical treatment at clinics of medical practitioners on such scale and subject to such terms and conditions as may be agreed upon.

(*2*) Where the incidence of sickness benefit payment to insured persons in any State is found to exceed the all-India average, the amount of such excess shall be shared between the Corporation and the State Government in such proportion as may be fixed by agreement between them :

Provided that the Corporation may in any case waive the recovery of the whole or any part of the share which is to be borne by the State Government.

(*3*) The Corporation may enter into an agreement with a State Government in regard to the nature and scale of the medical treatment that should be provided to insured persons and (where such medical benefit is extended to the families) their families (including provision of buildings, equipment, medicines and staff) and for the sharing of the cost thereof and of any excess in the incidence of sickness benefit to insured persons between the Corporation and the State Government.

(*4*) In default of agreement between the Corporation and any State Government as aforesaid the nature and extent of the medical treatment to be provided by the State Government and the proportion in which the cost thereof and of the excess in the incidence of sickness benefit shall be shared between the Corporation and that Government shall be determined by an arbitrator (who shall be or shall have been a Judge of the High Court of a State) appointed by the Chief Justice of India and the award of the arbitrator shall be binding on the Corporation and the State Government.

59. Establishment and maintenance of hospitals, etc., by Corporation.—(*1*) The Corporation may, with the approval of the State Government, establish and maintain in a State such hospitals, dispensaries and other medical and surgical services as it may think fit for the benefit of insured persons and (where such medical benefit is extended to their families) their families.

(*2*) The Corporation may enter into agreement with any Part B State, local authority, private body or individual in regard to the provision of medical treatment and attendance for insured persons and (where such medical benefit is extended to their families) their families, in any area and sharing the cost thereof.

GENERAL.

60. Benefit not assignable or attachable.—(*1*) The right to receive any payment of any benefit under this Act shall not be transferable or assignable.

(*2*) No cash benefit payable under this Act shall be liable to attachment or sale in execution of any decree or order of any Court.

61. Bar of Benefits under other enactments.—Where a person is entitled to any of the benefits provided by this Act, he shall not be entitled to receive any similar benefit admissible under the provisions of any other enactment.

62. Persons not to commute cash benefits.—Save as may be provided in the regulations no person shall be entitled to commute for a lump sum any periodical payment admissible under this Act.

63. Persons not entitled to receive benefits in certain cases.—No person shall be entitled to sickness benefit or maternity benefit, or disablement benefit for temporary disablement in respect of any day on which he works and receives wages.

64. Recipients of sickness or disablement benefit to observe conditions.—A person who is in receipt of sickness benefit or disablement benefit (other than benefit granted on permanent disablement) –

(*a*) shall remain under medical treatment at a dispensary, hospital clinic or other institution provided under this Act and shall carry out the instructions given by the medical officer or medical attendant in charge thereof ;

(*b*) shall not while under treatment do anything which might retard or prejudice his chances of recovery ;

(*c*) shall not leave the area in which medical treatment provided by this Act is being given, without the permission of the medical officer, medical attendant or such other authority as may be specified in this behalf by the regulations ; and

(*d*) shall allow himself to be examined by any duly appointed medical officer or sick visitor or other person authorised by the Corporation in this behalf.

65. Benefits not to be combined.—(*1*) An insured person shall not be entitled to receive for the same period–

(*a*) both sickness benefit and maternity benefit ; or

(*b*) both sickness benefit and disablement benefit for temporary disablement ; or

(*c*) both maternity benefit and disablement benefit for temporary disablement.

(*2*) Where a person is entitled to more than one of the benefits mentioned in subsection (*1*), he shall be entitled to choose which benefit he shall receive.

66. Corporation's right to recover damages from employer in certain cases.—(*1*) Where any employment injury is sustained by an insured person as an employee under this Act by reason of the negligence of the employer to observe any of the safety rules laid down by or under any enactment applicable to a factory or establishment or by reason of any wrongful act of the employer or his agent, the Corporation shall notwithstanding the fact that the employer has paid the weekly contributions due under this Act in respect of such insured person be entitled to be reimbursed by the employer or the principal who is liable to pay compensation under section 12 of the Workmen's Compensation Act, 1923 (VIII of 1923), the actuarial present value of the periodical payments which the Corporation is liable to make under this Act.

(*2*) For the purpose of this Act, the actuarial present value of the periodical payments shall be determined in such manner as may be specified in the regulations.

67. Corporation's right to be indemnified in certain cases.—Where an insured person is entitled to receive or to recover (but has not received or recovered), whether from his employer or any other person, compensation or damages under any law for the time being in force in respect of any employment injury caused under circumstances creating a legal liability in some person other than the employer or his agent, the Corporation shall be entitled to be indemnified by the person so liable ;

Provided that the Corporation shall not be entitled to be indemnified by an employer who has paid contributions in respect of the employee sustaining the employment injury as an employee under this Act, except in cases covered by section 66.

68. Corporation's rights where a principal employer fails or neglects to pay any contribution.—(1) If any principal employer fails or neglects to pay any contribution which

under this Act he is liable to pay in respect of any employee and by reason thereof such person becomes disentitled to any benefit or entitled to a benefit on lower scale, the Corporation may, on being satisfied that the contribution should have been paid by the principal employer, pay to the person the benefit at the rate to which he would have been entitled if the failure or neglect had not occured and the Corporation shall be entitled to recover from the principal employer either—

(*i*) the difference between the amount of benefit which is paid by the Corporation to the said person and the amount of the benefit which would have been payable on the basis of the contributions which were in fact paid by the employer or ;

(*ii*) twice the amount of the contribution which the employer failed or neglected to pay, whichever is greater .

(*2*) The amount recoverable under this section may be recovered as if it were an arrear of land-revenue.

69. Liability of owner or occupier of factories, etc., for excessive sickness benefit.—(*1*) Where the Corporation considers that the incidence of sickness among insured persons is excessive by reason of—

(*i*) insanitary working conditions in a factory or establishment or the neglect of the owner or occupier of the factory or establishment to observe any health regulations enjoined on him by or under any enactment, or

(*ii*) insanitary conditions of any tenements or lodgings occupied by insured persons and such insanitary conditions are attributable to the neglect of the owner of the tenements or lodgings to observe any health regulations enjoined on him by or under any enactment.

the Corporation may send to the owner or occupier of the factory or establishment or to the owner of the tenements or lodgings, as the case may be, a claim for the payment of the amount of the extra expenditure incurred by the Corporation as sickness benefit ; and if the claim is not settled by agreement, the Corporation may refer the matter, with a statement in support of its claim, to the appropriate Government.

(*2*) If the appropriate Government is of opinion that a *prima facie* case for inquiry is disclosed, it may appoint a competent person or persons to hold an enquiry into the matter.

(*3*) If upon such inquiry it is proved to the satisfaction of the person or persons holding the inquiry that the excess in incidence of sickness among the insured persons is due to the default or neglect of the owner or occupier of the factory or establishment or the owner of the tenements or lodgings, as the case may be, the said person or persons shall determine the amount of the extra expenditure incurred as sickness benefit and the person or persons by whom the whole or any part of such amount shall be paid to the Corporation.

(*4*) A determination under sub-section (*3*) may be enforced as if it were a decree for payment of money passed in a suit by Civil Court.

(*5*) For the purposes of this section, "owner" of tenements or or lodgings shall include any agent of the owner and any person who is entitled to collect the rent of the tenements or lodgings as a lessee of the owner.

70. Repayment of benefit improperly received.—(*1*) Where any person has received any benefit or payment under this Act when he is not lawfully entitled thereto, he shall be liable to repay to the Corporation the value of the benefit or the amount of such payment, or in the case of his death his representative shall be liable to repay the same from the assets of the deceased, if any, in his hands.

(*2*) The value of any benefits received other than cash payments shall be determined by such authority as may be specified in the regulations made in this behalf and the decision of such authority shall be final.

(*3*) The amount recoverable under this section may be recovered as if it were an arrear of land-revenue.

71. Benefit payable up to and including day of death.—If a person dies during any period for which he is entitled to a cash benefit under this Act, the amount of such benefit up to and including the day of his death shall be paid to any person nominated by the deceased person in writing in such form as may be specified in the regulations or if there is no such nomination, to the heir or legal representative of the deceased person.

72. Employer not to reduce wages, etc.—No employer by reason only of this liability for any contributions payable under this Act shall, directly or indirectly reduce the wages of any employee, or except as provided by the regulations, discontinue or reduce benefits payable to him under the conditions of his service which are similar to the benefits conferred by this Act.

73. Employer not to dismiss or punish employee during period of sickness etc.—(*1*) No employer shall dismiss, discharge or reduce or otherwise punish an employee during the period the employee is in receipt of sickness benefit or maternity benefit, nor shall he, except as provided under the regulations, dismiss, discharge or reduce or otherwise punish an employee during the period he is in receipt of disablement benefit for temporary disablement or is under medical treatment for sickness or is absent from work as a result of illness duly certified in accordance with the regulations to arise out of the pregnancy or confinement rendering the employee unfit for work.

(*2*) No notice of dismissal or discharge or reduction given to an employee during the period specified in sub-section (*1*) shall be valid or operative.

CHAPTER V-A.

TRANSITORY PROVISIONS.

73A. Employer's special contribution.—(*1*) For so long as the provisions of this Chapter are in force, every principal employer shall, notwithstanding anything contained in this Act, pay to the Corporation a special contribution (hereinafter referred to as the employers' special contribution) at the rate specified under sub-section (*3*).

(*2*) The employer's special contribution shall, in the case of a factory or establishment situate in any area in which the provisions of both Chapters IV and V are in force, be in lieu of the employer's contribution payable under Chapter IV.

(*3*) The employer's special contribution shall consist of such percentage, not exceeding five per cent. of the total wage bill of the employer, as the Central Government may, by notification in the Official Gazette, specify from time to time :

Provided that before fixing or varying any such percentage the Central Government shall give by like notification not less than two months notice of its intention so to do and shall in such notification specify the percentage which it proposes to fix or, as the case may be, the extent to which the percentage already fixed is to be varied ;

Provided further that the employer's special contribution in the case of factories or establishments situate in any area in, which the provisions of both Chapter IV and V are in force shall be fixed at a rate higher than that in the case of factories or establishments situate in any area in which the provisions of the said Chapters are not in force.

(4) The employer's special contribution shall fall due as soon as the liability of the employer to pay wages accrues, but may be paid to the Corporation at such intervals, within such time and in such manner as the Central Government may, by notification in the Official Gazette, specify, and any such notification may provide for the grant of a rebate for prompt payment of such contribution.

Explanation.—"Total wage bill" in this section means the total wages which have accrued due to employees in a factory or establishment in respect of such wage periods as may be specified for the purposes of this section by the Central Government by notification in the Official Gazette.

73B. Special tribunal for decision of disputes or questions under this Chapter where there is no Employees' Insurance Court.—(1) If any question or dispute arises in respect of the employer's special contribution payable or recoverable under this Chapter and there is no Employees' Insurance Court having jurisdiction to try such question or dispute, the question or dispute shall be decided by such authority as the Central Government may specify in this behalf.

(2) The provisions of sub-section (1) of section 76, section 77 to 79 and 81 shall, so far as may be, apply in relation to a proceeding before an authority specified under sub-section (1) as they apply in relation to a proceeding before an Employees' Insurance Court.

73C. Benefits under Chapter V to depend upon employee's contribution.—The payment of the employee's contribution for any week in accordance with the provisions of Chapter IV in any area where all the provisions of that Chapter are in force shall for the purpose of Chapter V, have effect as if the contributions payable under Chapter IV in respect of that employee for that week had been paid, and shall accordingly entitle the employee as an insured person to the benefits specified in Chapter V if he is otherwise entitled thereto.

Explanation.—In the case of an exempted employee, the employee's contribution shall be deemed to have been paid for a week if the Corporation is satisfied that during that week the employer's contribution under Chapter IV would have been payable in respect of him but for the provisions of this Chapter.

73D. Mode of recovery of employer's special contribution.—The employer's special contribution payable under this Chapter may be recovered as if it were an arrear of land revenue.

73E. Power to call for additional information or return.—Without prejudice to the other provisions contained in this Act, the Corporation may, for the purpose of determining whether the employer's special contribution is payable under this Chapter or for determining the amount thereof, by general or special order, require any principal or immediate employer or any other person to furnish such information or returns to such authority, in such form and within such time as may be specified in the order.

73F. Power to exempt to be exercised by Central Government alone in respect of employer's special contributions.—Notwithstanding anything contained in this Act, the Central Government may, having regard to the size or location of, or the nature of the industry carried on in, any factory or establishment or class of factory or establishments, exempt the factory or establishment or class of factories or establishments from the payment of the employer's special contribution under this Chapter and nothing contained in sections 87 to 91 inclusive shall be deemed to authorise any State Government to grant any such exemption.

73G. Application of certain provisions of this Act to employer's special contribution.—Save as otherwise expressly provided in this Chapter IV, section 72 and Chapter VII and any rules and regulations made under this Act shall, so far as may be, apply in relation to the payment or recovery of employer's special contributions, the penalties specified in connection therewith and all other matters incidental thereto as they would have applied in relation to an employer's contribution if this Chapter were not in force and the employer's contribution had been payable under this Act.

73H. Power to remove difficulties.—(1) If any difficulty arises in giving effect to the provisions of this Chapter, the Central Government may, by order notified in the Official Gazette, make such provision or give such direction as appear to it to be necessary for the removal of the difficulty.

(2) Any order made under this section shall have effect notwithstanding anything inconsistent therewith in any rules or regulations made under this Act.

73I. Duration of Chapter V-A.—The Central Government may, by notification in the Official Gazette, direct that the provisions of this Chapter shall cease to have effect on such date as may be specified in the notification, not being a date earlier than three months from the date of the notification :

Provided that on the provisions of this Chapter so ceasing to have effect the provisions of section 6 of the General Clauses Act, 1897 (X of 1897), shall apply as if the provisions of this Chapter had then been repealed by a Central Act.

CHAPTER VI.

ADJUDICATION OF DISPUTES AND CLAIMS.

74. Constitution of Employees's Insurance Court.—(1) The State Government shall by notification in the official Gazette, constitute an Employees' Insurance Court for such local area as may be specified in the notification.

(2) The Court shall consist of such number of Judges as the State Government may think fit.

(3) Any person who is or has been a judicial officer or is a legal practitioner of five years standing shall be qualified to be a Judge of the Employees' Insurance Court.

(4) The State Government may appoint the same Court for two or more local areas or two or more Courts for the same local area.

(5) Where more than one Court has been appointed for the same local area, the State Government may by general or special order regulate the distribution of business between them.

75. Matters to be decided by Employees' Insurance Court.—(1) If any question or dispute arises as to—

(a) Whether any person is an employee within the meaning of this Act or whether he is liable to pay the employee's contribution, or

(b) the rate of wages or average daily wages of an employee for the purposes of this Act, or

(c) the rate of contribution payable by a principal employer in respect of any employee, or

(*d*) the person who is or was the principal employer in respect of any employee, or

(*e*) the right of any person to any benefit and as to the amount and duration thereof, or

(*ee*) any direction issued by the Corporation under section 55 on a review of any payment of disablement or dependants' benefits ;

(*f*) the actuarial present value of the periodical payments referred to in section 66, or

(*g*) any other matter which is in dispute between a principal employer and the Corporation, or between a principal employer and an immediate employer, or between a person and the Corporation or between an employee and a principal or immediate employer, in respect of any contribution or benefit or other dues payable or recoverable under this Act,

such question or dispute shall be decided by the Employees' Insurance Court in accordance with the provisions of this Act.

(*2*) The following claims shall be decided by the Employees' Insurance Court name'y :—

(*a*) claim for the recovery of contributions from the principal employer ;

(*b*) claim by a principal employer to recover contributions from any immediate employer ;

(*c*) claim under section 66 or 67 made by the Corporation against the employer or other person liable thereunder ;

(*d*) claim against a principal employer under section 68 ;

(*e*) claim under section 70 for the recovery of the value or amount of the benefit received by a person when he is not lawfully entitled thereto ; and

(*f*) any claim for the recovery of any benefit admissible under this Act.

(*3*) No Civil Court shall have jurisdiction to decide or deal with any question or dispute as aforesaid or to adjudicate on any liability which by or under this Act is to be decided by the Employee's Insurance Court.

76. Institution of proceedings, etc.—(*1*) Subject to the provisions of this Act and any rules made by the State Government all proceedings before the Employees' Insurance Court shall be instituted in the Court appointed for the local area in which the insured person was working at the time the question or dispute arose.

(*2*) If the Court is satisfied that any matter arising out of any proceeding pending before it can be more conveniently dealt with by any other Employees' Insurance Court in the same State, it may, subject to any rules made by the State Government in this behalf, order such matter to be transferred to such other Court for disposal and shall forthwith transmit to such other Court the records connected with that matter.

(*3*) The State Government may transfer any matter pending before any Employees' Insurance Court in the State to any such Court in another State with the consent of the State Government of that State.

(*4*) The Court to which any matter is transferred under sub-section (*2*) or sub-section (*3*) shall continue the proceeding as if they had been orginally instituted in it.

77. Commencement of proceedings.—(*1*) The proceedings before an Employees' Insurance Court shall be commenced by application.

(*2*) Every such application shall be in such form and shall contain such particulars and shall be accompanied by such fee, if any, as may be prescribed by rules made by the State Government in consultation with the Corporation.

78. Powers of Employees's Insurance Court.- (*1*) The Employees' Insurance Court shall have all the powers of a Civil Court for the purposes of summoning and enforcing the attendance of witnesses, compelling the discovery and production of documents and material objects administering oath and recording evidence and such Court shall be deemed to be a Civil Court within the meaning of section 195 and Chapter XXXV of the Code of Criminal Procedure, 1898 (V of 1898).

(*2*) The Employees' Insurance Court shall follow such procedure as may be prescribed by rules made by the State Government.

(*3*) All costs incidental to any proceeding before an Employees' Insurance Court shall subject to such rules as may be made in this behalf by the State Government, be in the discretion of the Court.

(*4*) An order of the Employees' Insurance Court shall be enforceable as if it were a decree passed in a suit by a Civil court.

79. Appearance by legal practitioners, etc.—Any application, appearance or act required to be made or done by any person to or before an Employees' Insurance Court (other than appearance of a person required for the purpose of his examination as a witness) may be made or done by a legal practitioner or by an officer of a registered trade union authorised in writing by such person or with the permission of the Court, by any other person so authorised.

80. Benefit not admissible unless claimed in time.—An Employee's Insurance Court shall not direct the payment of any benefit to a person unless he has made a claim for such benefit in accordance with the regulations made in that behalf, within twelve months after the claim became due :

Provided that if the Court is satisfied that there was reasonable excuse for not making a claim for the benefit within twelve months after it became due it may direct the payment of the benefit as if the claim had been made in time.

81. Reference to High Court.—An Employees' Insurance Court may submit any question of law for the decision of the High Court and if it does so shall decide the question pending before it in accordance with such decision.

82. Appeal.—(*1*) Save as expressly provided in this section, no appeal shall lie from an order of an Employees' Insurance Court.

(*2*) An appeal shall lie to the High Court from an order of an Employees' Insurance Court if it involves a substantial question of law.

(*3*) The period of limitation for an appeal under this section shall be sixty days.

(*4*) The provisions of sections 5 and 12 of the Indian Limitation Act, 1908 (XL of 1908) shall apply to appeals under this section.

83. Stay of payment pending appeal.—Where the Corporation has presented an appeal against an order of the Employees' Insurance Court, that Court may, and if so directed by the High Court shall, pending the decision of the appeal, withhold the payment of any sum directed to be paid by the order appealed against.

CHAPTER VII.

PENALTIES.

84. Punishment for false statement.—Whoever, for the purpose of causing any increase in payment or benefit under this Act, or for the purpose of causing any

payment or benefit to be made where no payment or benefit is authorized by or under this Act, or for the purpose of avoiding any payment to be made by himself under this Act or enabling any other person to avoid any such payment, knowingly makes or causes to be made any false statement or false representation, shall be punishable with imprisonment for a term which may extend to three months, or with fine not exceeding five hundred rupees, or with both.

85. Punishment for failure to pay contributions, etc.—If any person—

(*a*) fails to pay any contribution which under this Act he is liable to pay, or

(*b*) deducts or attempts to deduct from the wages of an employee the whole or any part of the employer's contribution, or

(*c*) in contravention of section 72 reduces the wages or any privileges or benefit's admissible to an employee, or

(*d*) in contravention of section 73 or any regulation dismisses, discharges, reduces or otherwise punishes an employee, or

(*e*) fails or refuses to submit any return required by the regulations or makes a false return, or

(*f*) obstructs any Inspector or other official of the Corporation in the discharge of his duties, or

(*g*) is guilty of any contravention of or non-compliance with any of the requirements of this Act or the rules of the regulations in respect of which no special penalty is provided,

he shall be punishable with imprisonment which may extend to three months or with fine which may extend to five hundred rupees, or with both.

86. Prosecutions.—(1) No prosecution under this Act shall be instituted except by or with the previous sanction of the Insurance Commissoner, or by such other officer of the Corporation as may be authorized in this behalf by the Central Government.

(2) No Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence under this Act.

(3) No Court shall take cognizance of any offence under this Act except on a complaint made in writing in respect thereof, within six months of the date on which the offence is alleged to have been committed.

CHAPTER VIII.

MISCELLANEOUS.

87. Exemption of a factory or establishment or class of factories or establishments.—The appropriate Government, may by notification in the official Gazette and subject to such conditions as may be specified in the notification, exempt any factory or establishment or class of factories or establishments in any specified area from the operation of this Act for a period not exceeding one year and may from time to time by like notification renew any such exemption for periods not exceeding one year at a time.

88. Exemption of persons or class of persons.—The appropriate Government may, by notification in the official Gazette and subject to such conditions as it may, deem it to impose exempt any persons or class of persons employed in any factory or establishment or class of factories or establishments to which this Act applies from the operation of the Act.

89. Corporation to make representation.—No exemption shall be granted or renewed under section 87 or section 88, unless a reasonable opportunity has been given to the Corporation to make any representation it may wish to make in regard to the proposal and such representation has been considered by the appropriate Government.

90. Exemption of factories or establishment belonging to Government or any Local authority.—The appropriate Government may by notification in the official Gazette and subject to such conditions as may be specified in the notification, exempt any factory or establishment belonging to the Crown or any local authority, if the employees in any such factory or establishment are otherwise in receipt of benefits substantially similar or superior to the benefits provided under this Act.

91. Exemption from one or more provisions of the Act.—The appropriate Government may with the consent of the Corporation by notification in the official Gazette, exempt any employees or class of employees in any factory or establishment or class of factories or establishments from one or more of the provisions relating to the benefits provided under this Act.

92. Power of Central Government to give directions.—The Central Government may give directions to a State Government as to the carrying into execution of this Act in the State.

93. Corporation officers and servants to be public servants.—All officers and servants of the Corporation shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code (XLV of 1860).

94. Contribution, etc., due to Corporation to have priority over other debts.—There shall be deemed to be included among the debts which, under section 49 of the Presidency-towns Insolvency Act, 1920 (III of 1909), or under section 61 of the Provincial Insolvency Act, 1909 (V of 1920), or under any law relating to insolvency in force in a Part B State or under section 230 of the Indian Companies Act, 1913 (VII of 1913), are, in the distribution of the property of the insolvent or in the distribution of the assets of a company being wound up, to be paid in priority to all other debts, the amount due in respect of any contribution or any other amount payable under this Act the liability wherefor accrued before the date of the order of adjudication of the insolvent or the date of the winding up, as the case may be.

94A. Delegation of powers.—The Corporation, and subject to any regulations made by the Corporation in this behalf, the Standing Committee may direct that all or any of the powers and functions which may be exercised or performed by the Corporation or the Standing Committee, as the case may be, may, in relation to such matters and subject to such conditions, if any, as may be specified, be also exercisable by any officer or authority subordinate to the Corporation.

95. Power of Central Government to make rules.—(1) The Central Government may, subject to the conditions of previous publication, make rules not incousistent with this Act for the purpose of giving effect to the provisions thereof.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :—

(*a*) the manner in which nominations and elections of members of the Corporation, the Standing Committee and the Medical Benefit Council shall be made ;

(*b*) the quorum at meetings of the Corporation, the Standing Committee and the Medical Benefit Council and the minimum number of meetings of those bodies to be held in a year ;

(c) the records to be kept of the transaction of business by the Corporation, the Standing Committee and the Medical Benefit Council ;

(d) the powers and duties of the Principal Officers and the conditions of their service ;

(e) the powers and duties of the Medical Benefit Council ;

(f) the procedure to be adopted in the execution of contracts ;

(g) the acquisition, holding and disposal of property by the Corporation ;

(h) the raising and repayment of loans ;

(i) the investment of the funds of the Corporation and of any provident or other benefit fund and their transfer or realisation ;

(j) the basis on which the periodical valuation of the assets and liabilities of the Corporation shall be made ;

(k) the bank or banks in which the funds of the Corporation may be deposited, the procedure to be followed in regard to the crediting of moneys accruing or payable to the Corporation and the manner in which any sums may be paid out of the Corporation funds and the officers by whom such payment may be authorised ;

(l) the accounts to be maintained by the Corporation and the forms in which such accounts shall be kept and the times at which such accounts shall be audited ;

(m) the publication of the accounts of the Corporation and the repor tof auditors, the action to be taken on the audit report, the powers of auditors to disallow and surcharge items of expenditure and the recovery of sums so disallowed or surcharged ;

(n) the preparation of budget estimates and of supplementary estimates and the manner in which such estimates shall be sanctioned and published ;

(o) the establishment and maintenance of provident or other benefit fund for officers and servants of the Corporation ; and

(p) any matter which is required or allowed by this Act to be prescribed by the Central Government.

(3) Rules made under this section shall be published in the official Gazette and thereupon shall have effect as if enacted in this Act.

96. **Power of State Government to make rules.**—(1) The State Government may, subject to condition of previous publication, make rules not inconsistent with this Act in regard to all or any of the following matters, namely :—

(a) the constitution of Employee's Insurance Courts, the qualifications of persons who may be appointed Judges thereof, and the conditions of service of such Judges ;

(b) the procedure to be followed in proceedings before such Courts and the execution of orders made by such Courts ;

(c) the fee payable in respect of applications made to the Employees' Insurance Court, the costs incidental to the proceedings in such Court, the form in which applications should be made to it and the particulars to be specified in such applications ;

(d) the establishment of hospitals, dispensaries and other institutions, the allotment of insured persons or their families to any such hospital, dispensary or other institution ;

(e) the scale of medical benefit which shall be provided at any hospital, clinic, dispensary or institution, the keeping of medical records and the furnishing of statistical returns ;

(f) the nature and extent of the staff, equipment and medicines that shall be provided at such hospitals, dispensaries and institutions ;

(g) the conditions of service of the staff employed at such hospitals, dispensaries and institutions ; and

(h) any other matter which is required or allowed by this Act to be prescribed by the State Government.

(2) Rules made under this section shall be published in the official Gazette and thereupon shall have effect as if enacted in this Act.

97. **Power of Corporation to make regulations.**—(1) The Corporation may, subject to the condition of previous publication, make regulations, not inconsistent with this Act and the rules made thereunder, for the administration of the affairs of the Corporation and for carrying into effect the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such regulation may provide for all or any of the following matters, namely :—

(i) the time and place of meetings of the Corporation, the Standing Committee and the Medical Benefit Council and the procedure to be followed at such meetings :

(ii) the matters which shall be referred by the Standing Committee to the Corporation for decision ;

(iii) the manner in which any contribution payable under this Act shall be assessed and collected ;

(iv) reckoning of wages for the purpose of fixing the contribution payable under this Act ;

(v) the certification of sickness and eligibility for any such benefit ;

(vi) the method of determining the actuarial present value of periodical payments ;

(vii) the assessing of the money value of any benefit which is not a cash benefit ;

(viii) the time within which and the form in which any claim for a benefit may be made and the particulars to be specified in such claim ;

(ix) the circumstances in which an employee in receipt of disablement benefit may be dismissed, discharged, reduced or otherwise punished ;

(x) the manner in which and the place and time at which any benefit shall be paid ;

(xi) the method of calculating the amount of cash benefit payable and the circumstances in which and the extent to which commutation of disablement and dependant's benefits, may be allowed and the method of calculating the commutation value ;

(*xii*) the notice of pregnancy or of confinement and notice and proof of sickness ;

(*xiii*) the conditions under which any benefit may be suspended ;

(*xiv*) the conditions to be observed by a person when in receipt of any benefit and the periodical medical examination of such person ;

(*xv*) the visiting of sick persons ;

(*xvi*) the appointment of medical practitioners for the purposes of this Act, the duties of such practitioners and the form of medical certificates ;

(*xvii*) the penalties for breach of regulations by fine (not exceeding two days' wages for a first breach and not exceeding three days' wages for any subsequent breach) which may be imposed on employees ;

(*xviii*) the circumstances in which and the conditions subject to which any regulation may be relaxed, the extent of such relaxation, and the authority by whom such relaxation may be granted ;

(*xix*) the returns to be submitted and the registers or records to be maintained by the principal and immediate employers, the forms of such returns, registers or records, and the times at which such returns should be submitted and the particulars which such returns, registers and records should contain ;

(*xx*) the duties and powers of Inspectors and other officers and servants of the Corporation ;

(*xxi*) the method of recruitment, pay any allowances, discipline, superannuation benefits and other conditions of service of the officers and servants of the Corporation other than the Principal Officers ;

(*xxii*) the procedure to be followed in remitting contributions to the Corporation ; and

(*xxiii*) any matter in respect of which regulations are required or permitted to be made by this Act.

(*2A*) The condition of previous publication shall not apply to any regulations of the nature specified in clause (XXI) of sub-section (2).

(*3*) Regulations made by the Corporation shall be published in the Gazette of India and thereupon shall have effect as if enacted in this Act.

98. **Enhancement of benefits.**—At any time when its funds so permit, the Corporation may enhance the scale of any benefit admissible under this Act and the period for which such benefit may be given, and provide or contribute towards the cost of medical care for the families of insured persons.

99. **Repeals and savings.**—If, immediately before the day on which this Act comes into force in a Part B State, there is in force in that State any law corresponding to this Act, that law shall, on such day, stand repealed :

Provided that the repeal shall not affect—

(*a*) the previous operations of any such law, or

(*b*) any penalty, forfeiture or punishment incurred in respect of any offence committed against any such law, or

(*c*) any investigation or remedy in respect of any such penalty, forfeiture or punishment ;

and any such investigation, legal preceding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed, as if this Act had not been passed :

Provided further that subject to the proceeding proviso anything done or any action taken under any such law shall be deemed to have been done or taken under the corresponding provision of this Act and shall continue in force accordingly unless and until superseded by anything done or any action taken under this Act.

SCHEDULE I.

(*See* section 39)

1. The amount of weekly contribution payable in respect of an employee shall be calculated with reference to his average daily wages.

2. The average daily wages shall be :—

(*a*) in respect of an employee whose wage period is a day, the amount of wages earned during the week divided by the number of days worked in that week ;

(*b*) in respect of any employee employed on the basis of any other wage period, the amount of wages earned in that wage period in which the contribution falls due divided by the number of days worked in such wage period ;

(*c*) in respect of an employee employed on any other basis, the amount calculated on the basis of wages earned for the day on which the contribution falls due or on such other day as may be specified in the regulations in this behalf.

Explanation I.—Subject to any regulations made in this behalf, the term "days worked" means the number of days on which the employee worked for wages.

Explanation II.—Where any night shift continues beyond midnight, the period of the night shift after midnight shall be counted for reckoning the days worked as part of the day preceding.

Explanation III—Except as provided by regulations, wages, pay, salaries or allowances paid in respect of any period of leave or holidays other than the weekly holidays shall not be taken into account in calculating wages.

Explanation IV—"Wages period" means the period in respect of which wages are ordinarily payable whether in terms of the contract of employment, express or implied or otherwise.

3. (*a*) For the purposes of fixing the amount of weekly contribution payable, employees shall be divided into eight groups on the basis of their average daily wages ascertained in the manner specified in paragraph 2.

(*b*) The employee's contribution and employer's contribution payable in respect of the group of employees specified in the first column of the table below shall be at the rates respectively specified in the corresponding entries in the second and third columns thereof.

TABLE

Group of employees	Employees' contribution (recoverable from employees)	Employers' contribution	Total contribution (employees' and employers' contribution)
1	2	3	4
	Rs. A. P.	Rs. A. P.	Rs. A. P.
1. Employees whose average daily wages are below Re. 1.	Nil	0 7 0	0 7 0
2. Employees whose average daily wages are Re. 1 and above but below Rs. 1 8 0.	0 2 0	0 7 0	0 9 0
3. Employees whose average daily wages are Rs. 1 8 0, and above but below Rs. 2.	0 4 0	0 8 0	0 12 0
4. Employees whose average daily wages are Rs. 2 and above but below Rs. 3.	0 6 0	0 12 0	1 2 0
5. Employees whose average daily wages are Rs. 3 and above but below Rs. 4.	0 8 0	1 0 0	1 8 0
6. Employees whose average daily wages are Rs. 4 and above but below Rs. 6.	0 11 0	1 6 0	2 1 0
7. Employees whose average daily wages are Rs. 6 and above but below Rs 8.	0 15 0	1 14 0	2 13 0
8. Employees whose average daily wages are Rs. 8 and above.	1 4 0	2 8 0	3 12 0

SCHEDULE II

(*See* sections 49, 51, 52 and 53)

Sickness Benefit and Disablement and Dependants' Benefits.

1. The average daily wages of an employee in each of the groups specified in the first column of the table below shall for the purpose of calculating the sickness benefit and disablement and dependants' benefits be assumed to be the rate specified in the corresponding entry in the second column thereof.

TABLE

Group of employees	Average assumed daily wages
1	2
	Rs. A. P
1. Employees whose average daily wages are below Re. 1.	0 14 0
2. Employees whose average daily wages are Re. 1 and above, but below Rs. 1 8 0.	1 4 0
3. Employees whose average daily wages are Re. 1 8 0 and above, but below Rs. 2.	1 12 0
4. Employees whose average daily wages are Rs. 2 and above, but below Rs. 3.	2 8 0
5. Employees whose average daily wages are Rs. 3 and above, but below Rs. 4.	3 8 0
6. Employees whose average daily wages are Rs. 4 and above, but below Rs. 6.	5 0 0
7. Employees whose average daily wages are Rs. 6 and above, but below Rs. 8.	7 0 0
8. Employees whose average daily wages are Rs. 8 and above.	10 0 0

2. The daily rate of sickness benefit during any benefit period shall be an amount equivalent to one-half of the sum of the assumed average daily wages as aforesaid for each of the weeks for which contributions were paid in respect of the person during the corresponding contribution period, divided by the number of weeks in that contribution period in which he was deemed to have been available for employment within the meaning of section 48 plus the number of any other weeks in that contribution period for which contributions were paid in respect of the person; provided that where the amount of the benefit so calculated included a fraction of an anna, it shall be rounded to the next higher anna. The calculation indicated above is illustrated by the following example :—

Example 1.—If the assumed average daily wages of the person as an employee were Rs. 1/4/- a day for 10 weeks, Rs 1/12/- a day for 10 weeks and Rs. 2/8/- a day for 6 weeks, the average of the assumed daily wages for the purpose of the rate of sickness benefit will be :—

$$\frac{10\times 20+10\times 28+6\times 40}{26}=27\frac{18}{26}$$

The daily rate of sickness benefit payable in the benefit period will then be 13½ annas, rounded to the next higher anna, namely, 14 annas.

Example 2.—If the person was deemed to have been not available for employment for 14 weeks in any contribution period and was employed as an employee for only 12 weeks in that contribution period, his assumed average daily wages being Rs. 1/4/- for the 12 weeks, the average of the assumed daily wages for the purpose of the rate of sickness benefit will be :—

$$\frac{12\times 20}{(26-14)}=20 \text{ annas.}$$

The daily rate of sickness benefit payable in the benefit period will than be 10 annas.

Example 3.—If the person was deemed to have been not available for employment for 4 weeks in any contribution period and was employed as an employee for only 20 weeks (he having been without any employment for 2 weeks) in that contribution period, his assumed average daily wages being Rs. 1/12/- for 20 weeks, the average of the daily wages for the purpose of the rate of sickness benefit will be :—

$$\frac{20\times 28}{(26-4)}=25\frac{5}{11} \text{ annas}$$

The daily rate of sickness benefit payable in the benefit period will then be 12½ annas rounded to the next higher anna namely, 13 annas.

3 Disablement and dependents' benefit shall be an amount equivalent to one-half of the sum of this assumed average daily wages for each of the weeks for which contributions were paid in respect of the employee during the period of fifty-two weeks immediately preceding the week in which the employment injury occurs, divided by the number of weeks for which contributions were so paid "provided that where no contribution was paid in respect of the employee during the aforesaid period of fifty-two weeks the disablement and dependents' benefit shall be an amount equivalent to one-fifty-second part of the monthly wages calculated in accordance with section 5 of the Workman's Compensation Act, 1923 (VIII 1923), and provided further that ")

Example 1.—If the assumed average daily wages of an employee were 14 annas a day for 20 weeks, Rs. 1 4 0 a day for 20 weeks and Rs. 1 12 0 a day for 12 weeks, the average of the assumed daily wages for the purpose of disablement and dependants benefit will be:—

$$\frac{20\times14+20\times20+12\times28}{52}=10\frac{28}{52}\text{ annas.}$$

The disablement or dependants' benefit will then be $9\frac{28}{52}$ annas, rounded to the next higher anna, namely, 10 annas a day.

Example 2.—If the employee worked only 34 weeks in the period of 52 weeks preceding the week in which the employment injury occurs and his assumed average daily wages were 14 annas a day for 20 weeks, and Rs. 1 4 0 for 14 weeks, the average of the assumed daily wages for the purpose of disablement and dependants' benefit will be :—

$$\frac{20\times14+14+20}{34}=16\frac{16}{34}\text{annas.}$$

The disablement or dependants' benefit will be $8\frac{16}{34}$ annas, rounded to the next higher anna namely, 9 annas a day.

The disablement or dependants' benefits calculated as aforesaid shall be called the full rate.

4. The disablement or dependants' benefit shall be payable to a person suffering from disablement as a result of an employment injury sustained as an employee in a factory or establishment to which this Act applies, or if he dies as a result of such injury, to his dependants as follows :—

(*i*) to the insured person—

(*a*) for temporary disablement, during the period of such disablement at the full rate ;

(*b*) for permanent partial disablement, at a percentage of the full rate, as provided in section 4 of the Workmen's Compensation Act, 1923 (VIII of 1923), for life ;

(*c*) for permanent total disablement, at the full rate for life ;

(*d*) in the cases of disablement not covered by clauses (*a*), (*b*) and (*c*) above, as may be provided in the regulations.

(*ii*) in the case of the death of the person, to his widow and children as follows :—

(*a*) to the widow during life or until remarriage an amount equivalent to three-fifths of the full rate and, if there are two or more widows, the amount payable to the widow as aforesaid shall be divided equally between the widows.

(*b*) to each legitimate or adopted son, an amount equivalent to two-fifths of the full rate until he attains fifteen years of age ;

(*c*) to each legitimate unmarried daughter, an amount equivalent to two-fifths of the full rate until she attains fifteen years of age or until marriage, whichever is earlier ;

Provided, that the Corporation may continue such benefit to any legitimate or adopted son or any legitimate unmarried daughter until he or she attains the age of eighteen years if such son or daughter continues education to the satisfaction of the Corporation.

Provided further that if the total of the dependents' benefits distributed among the widow or widows and legitimate children or adopted son of the deceased person as aforesaid exceeds at any time the full rate, the share of such of the dependants shall be proportionately altered so that the total amount payable to them does not exceed the amount of disablement benefit at the full rate.

5. In case the deceased person does not leave a widow or legitimate child, dependants' benefit at such rates as may be determined by the Employees' Insurance Court, having jurisdiction shall be payable as follows :—

(*a*) to a parent or grand parent, for life ;

(*b*) to any other male dependant, until he attains fifteen years of age ;

(*c*) to any other female dependant, until she attains fifteen years of age or until marriage, whichever is earlier, or if widowed until she attains fifteen years of age.

K. V. K SUNDARAM,
Secy. to the Govt. of India

Employees State Insurance Act, 1948 (as amended in 1951).

Circular No. 299—1951. Calcutta 10th December 1951.

From—Bengal Chamber of Commerce.

To—All Members of the Chamber.

MEMO :—There are reproduced below for the information of members copies of Notifications Nos. SRO 1831 and SRO 1832 dated the 24th November issued by the Government of India, Ministry of Labour, in continuation of Circular No.268-1951 dated 15th November 1951.

Notifications referred to

S. R. O. 1831.—In pursuance of sub-section (3) of section 73-A of the Employees' State Insurance Act, 1948 (XXXIV of 1948), the Central Government hereby gives notice of its intention to fix after the expiry of a period of two months from the date of this notification, the following percentage of the total wage bill of the employer which shall constitute the employer's special contribution—

(a) in the case of factories and establishments situate in any area in which the provisions of both Chapters IV and V of the said Act are in force, 1¼ per cent. of the total wage bill ;

(b) in the case of factories and establishments situate in any other area, ¾ per cent. of the total wage bill.

S. R. O. 1832.—In exercise of the powers conferred by sub-section (3) of section 1 of the Employees' State Insurance Act, 1948 (XXXIV of 1948), the Central Government hereby appoints—

(a) the 24th day of November 1951, as the date on which the provisions of Chapters I, II, III, VII and VIII and section 44 and 45 of Chapter IV of the said Act shall come into force in all Part B States except the State of Jammu and Kashmir ;

(b) the 24th day of November 1951 as the date on which the provisions of Chapter V-A of the said Act shall come into force in the whole of India except the State of Jammu and Kashmir.

Employees' State Insurance Act, 1948 (as Amended in 1951)

Circular Letter No. 602-Int.—28th January, 1952.

From—Bengal Chamber of Commerce.

To—(1) All Industrial Associations connected with the Chamber.

(2) To all members of the Chamber with industrial interests not covered under (1) above.

As members are aware, the Employees' State Insurance Act, 1948 was recently amended by the insertion of a new Chapter V-A under the Employees' State Insurance (Amendment) Act, 1951. This new Chapter provides for the levy of special contributions on employers throughout the whole country although the State Insurance Scheme is being enforced only in certain specified areas in the first instance. Furthermore, Sub-Section 3 of Section 73-A of this Chapter provides that the employer's special contribution shall consist of such percentage, not exceeding 5% of the total wage bill of the employer, as the Central Government may, by notification in the official Gazette, specify from time to time.

2. Several notifications have been issued in connection with this legislation and the present position may therefore be summed up as follows :—

(1) By Notification No. SS. 21(2) dated the 31st August, 1948, the provisions of the following Chapters came into force in all the then Provinces (now Part "A" States) of India, with effect from the 1st of September, 1948 :—

I Definitions etc.

II State Insurance Corporation etc.

III Finance and Audit.

IV Miscellaneous.

The practical effect of this notification was to allow the setting up of the Employees' State Insurance Corporation and

other administrative bodies, and to empower the Central and State Governments to make rules in respect of certain matters provided for by the Act. Certain of these rules have since been issued but are not of any practical importance to members of the Chamber.

(2) By Notification No. SS 121(32) dated the 3rd of April 1950, the Government of India appointed the 1st of April, 1950, as the date on which the provisions of the following Sections and Chapter of the Act came into force in Assam, Bihar, Bombay, Madhya Pradesh, Madras, Orissa, Punjab, Uttar Pradesh, West Bengal, Ajmer, Coorg, Delhi and the Andaman and Nicobar Islands :—

Sec. 44—Submission of Returns

45—Functions of Inspectors

CHAPTER VII—PENALTIES.

(3) By Notification No. SRO 1831 dated the 24th of November, 1951, the Government have intimated their intention of fixing (after the expiry of two months from the notification) the following percentages of the total wage bill of the employer as the employer's special contribution :—

(a) In the case of establishment and factories situated in any area in which the provisions of both Chapters IV—Contribution—and V—Benefits—of the Employees State Insurance Act, 1948, are in force :—

1¼% of the total wage bill

This is the rate which will presumably be applicable to industries covered by the Delhi-Kanpur Pilot Scheme when introduced.

(b) In the case of factories and establishments situated in any other area :—

¾% of the total wage bill.

(4) By a further Notification No. SRO 1832 dated the 24th of November, 1951, the Government of India have fixed the 24th of November 1951, as the date on which the provisions of Chapters :—

I Definations etc.

II State Insurance Corporation, Standing Committee and Medical Benefit Committee.

III Finance and Audit.

IV Contributions (Section 44 & 45 only).

V Penalties.

VI Miscellaneous.

of the Act came into force in all part "B" States, except Jammu and Kashmir, i. e. in Hyderabad, Madhaya Bharat, Mysore, Patiala and East Punjab States Union, Rajasthan, Saurashtra, Travancore-Cochin and Vindhya Pradesh.

(5) By the same notification as in (3) above, the Government of India have fixed the 24th November, 1951, as the date on which the provisions of the new Chapter V-A-Transitory Provisions regarding Employees' contributions etc.—of the Act came into force in the whole of India except Jammu and Kashmir.

3. The general effect of all these notifications is that all the Chapters mentioned in (1), (2), (4) and (5) above have been brought into force through the whole of India except the State of Jammu and Kashmir. No rules or regulations affecting members have yet been issued and no action is at present therefore required of employers. It is, however, suggested that members should make financial provision for their special contribution of ¾% of their total wage bill as from the 24th of January, 1952, so to ensure that as they are fully prepared in case their contributions are actually called for from that date.

4. In this connection it is to be noted that one of the deficiencies of the original Act was that there was no definition of the term "total wage bill". This deficiency has, however, now been remedied in so far as it refers to the employer's special contribution, by the following explanation to Sec. 73A introduced under the recent amendment Act :—

> "Total Wage Bill" in this section means the total wages which have accrued due to employees in a factory or establishment in respect of such wage periods as may be specified for the purposes of this section by the Central Government by notification in the official Gazette."

For the purposes of clarifying this definition, members are reminded that the terms "Employees" and "Wages" are defined as follows :—

> "*Employee*" means any person employed for wages or in connection with the work of a factory or establishment to which this Act applies and—
>
> (i) who is directly employed by the principal employer or any work of, or incidental or preliminary to, or connected with the work of, the factory or establishment whether such work is done by the employee in the factory or establishment or elsewhere ; or
>
> (ii) who is employed by or through an immediate employer on the premises of the factory or establishment or under the supervision of the principal employer or his agent on work which is ordinarily part of the work of the factory or establishment or which is preliminary to the work carried on in an incidental to the purpose of the factory or establishment ; or
>
> (iii) whose services are temporarily lent or let on hire to the principal employer by the person with whom the person whose services are so lent or let on hire has entered into a contract of service ; but does not include—
>
> (a) any member of the Indian naval, military or air forces ; or
>
> (b) any person employed on remuneration which in the aggregate exceeds four hundred rupees a month."

"*Wages*" means all remuneration paid or payable in cash to an employee, if the terms of the contract employment, express or implied, were fulfilled and includes other additional remuneration, if any, paid at intervals not exceeding two months but does not include—

(a) any contribution paid by the employer to any pension fund or provident fund or under this Act ;

(b) any travelling allowance on the value of any travelling concession ;

(c) any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment ; or

(d) any gratuity payable on discharge".

(N. B.—It will be observed that the definition given to "wages" embraces also dearness allowance.)

5. It will be recalled that an attempt was made to have expenses on medical benefits, sickness benefits, etc., made deductible as an allowance before the payment of the special contribution by employers in areas where the scheme visualised by the Act was not operative. That attempt was unsuccessful ; and employers are liable for payments as explained above.

THE EMPLOYEES' PROVIDENT FUND ORDINANCE, 1951.

No. VIII of 1951.

An Ordinance to provide for the institution of Provident funds for employees in factories and other establishments.

Whereas Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action ;

Now, therefore, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance :—

1. **Short title, extent, commencement and application.**—(1) This Ordinance may be called the Employees' Provident Funds Ordinance, 1951.

(2) It extends to the whole of India except the State of Jammu and Kashmir,

(3) It shall come into force at once,

(4) It applies in the first instance to all factories engaged in any industry specified in Schedule I in which fifty or more persons are employed, but the Central Government may, after giving not less than two months' notice of its intention so to do, by notification in the Official Gazette, apply the provisions of this Ordinance to all factories employing such number of persons less than fifty as may be specified in the notification, and engaged in any such industry.

2. **Definitions.**—In this Ordinance, unless the context otherwise requires,—

(a) "appropriate Government" means—

(i) in relation to a factory under the control of the Central Government or a railway administration or the administration of a major port or a factory engaged in a controlled industry or in an industry connected with a mine or an oilfield, the Central Government, and

(ii) in relation to any other factory, the State Government ;

(b) "basic wages" means all remuneration which is earned by an employee while on duty or on leave with wages in accordance with the terms of the contract of employment and which is paid or payable in cash to him, but does not include—

(i) the cash value of any food concession ;

(ii) any dearness allowance (that is to say, all cash payments, by whatever name called, paid to an employee on account of a rise in the cost of living), house rent allowance, overtime allowance, bonus, commission or any other similar allowance payable to the employee in respect of his employment or of work done in such employment ;

(iii) any presents made by the employer ;

(c) "contribution" means a contribution payable in respect of a member under a Scheme ;

(d) "controlled industry" means any industry the control of which by the Union has been declared by a Central Act to be expedient in the public interest ;

(e) "employer" means—

(i) in relation to a factory under the control of any department of the Central Government or of any State Government, the authority appointed by such Government in this behalf, or, where no authority is so appointed, the head of the department ;

(ii) in any other factory, the owner or occupier of the factory, including the agent of such owner or occupier, the legal representative of a deceased owner or occupier, and, where a person has been named as a manager of the factory under clause (f) of sub-section (1) of section 7 of the Factories Act, 1948 (LXIII of 1948), the person so named ;

(f) "employee" means any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of a factory, and who gets his wages directly or indirectly from the employer, and includes any person employed by or through a contractor in or in connection with the work of the factory ;

(g) "factory means any premises, including the precincts thereof, in any part of which a manufacturing process is being carried on or is ordinarily so carried on, whether with the aid of power or without the aid of power ;

(h) "Fund" means the provident fund established under a Scheme ;

(i) "industry" means any industry specified in Schedule I, and includes any other industry added to the Schedule by notification under section 4 ;

(j) "member" means a member of the Fund ;

(k) "occupier of a factory" means the person who has ultimate control over the affairs of the factory, and, where the said affairs are entrusted to a managing agent, such agent shall be deemed to be the occupier of the factory ;

(l) "Scheme" means a Scheme framed under this Ordinance.

3. **Power to apply Ordinance to establishment which has a common provident fund with a factory.**—Where immediately before this ordinance becomes applicable to a factory there is in existence a provident fund which is common to the employees employed in a factory to which this Ordinance applies and employees in any other establishment, the Central Government may, by notification in the Official Gazette, direct that the provisions of this Ordinance shall also apply to that establishment, and thereupon the establishment shall be deemed to be a factory for all the purposes of this Ordinance.

4. **Power to add to Schedule I.**—The Central Government may, by notification in the Official Gazette, add to Schedule I any other industry in respect of the employees in which it is of opinion that a provident fund scheme should be framed under this Ordinance, and thereupon the industry so added shall be deemed to be an industry specified in Schedule I for the purposes of this Ordinance.

5. **Employees' Provident Fund Schemes.**—The Central Government may, by notification in the Official Gazette, frame a Scheme to be called the Employees' Provident Fund Scheme for the establishment of provident funds under this Ordinance for employees and specify the factories to which the said Scheme shall apply.

6. **Contributions and matters which may be provided for in Schemes.**—(1) The contribution which shall be paid by the employer to the Fund shall be six and a quarter per cent. of the basic wages and the dearness allowance payable to each of the employees, and the employee's contribution shall be equal to the contribution payable by the employer in respect of him and may, if any employee so desires and if the Scheme makes provision therefor, be an amount not exceeding eight and one-third percent. of his basic wages and dearness allowance :

Provided that where the amount of any contribution payable under this Ordinance involves a fraction of a rupee, the Scheme may provide for the rounding off of such fraction to the nearest rupee, half of a rupee or quarter of a rupee.

Explanation.—For the purposes of this sub-section, dearness allowance shall be deemed to include also the cash value of any food concession allowed to the employee.

(2) Subject to the provisions contained in sub-section (1), any Scheme may provide for all or any of the matters specified in Schedule II.

7. Modification of Scheme.—The Central Government may, by notification in the Official Gazette, add to, amend or vary any Scheme framed under this Ordinance.

8. Mode of recovery of moneys due from employers.—Any amount due from an employer in respect of any contribution payable under this Ordinance or towards the cost of administering the Fund payable by him under any Scheme may, if it is in arrear, be recovered by the appropriate Government in the same manner as an arrear of land revenue.

9. Fund to be recognised under Act XI of 1922.—For the purposes of the Indian Income tax Act, 1922 (XI of 1922), the Fund shall be deemed to be a recognised provident fund within the meaning of Chapter IX A of that Act.

10. Protection against attachment.—(1) The amount standing to the credit of any member in the Fund shall not in any way be capable of being assigned or charged and shall not be liable to attachment under any decree or order of any court in respect of any debt or liability incurred by the member and neither the official assignee appointed under the Presidency-towns Insolvency Act, 1909 (III of 1909), nor any receiver appointed under the Provincial Insolvency Act, 1920 (V of 1920), shall be entitled to, or have any claim on, any such amount.

(2) Any amount standing to the credit of any member in the Fund at the time of his death and payable to his nominee under the Scheme shall, subject to any deduction authorised by the said Scheme, vest in the nominee and shall be free from any debt or other liability incurred by the deceased or incurred by the nominee before the death of the member.

11. Priority of payment of contributions over other debts.—The amount due in respect of any contribution under this Ordinance or under any Scheme and any charges incurred in respect of the administration of the Fund under any Scheme shall, where the liability therefor has accrued before the person liable is adjudicated insolvent, or, in the case of a company ordered to be wound up, before the date of such order, be deemed to be included among the debts which under section 49 of the Presidency-towns Insolvency Act, 1909 (III of 1909), or under section 61 of the Provincial Insolvency Act, 1920 (V of 1920) or under section 230 of the Indian Companies act, 1913 (VII of 1913) are to be paid in priority to all other debts in the distribution of the property of the insolvent or the assets of the company being wound up, as the case may be.

12. Employer not to reduce wages.—No employer shall, by reason only of his liability for any contribution payable under this Ordinance, reduce, whether directly or indirectly, the wages of any employee, or, except as provided by any Scheme, discontinue or reduce any benefit (similar to any benefit conferred by this Ordinance or by any Scheme) to which the employee is entitled under the terms of his employment.

13. Inspectors.—(1) The appropriate Government may, by notification in the Official Gazette, appoint such persons as it thinks fit to be Inspectors for the purposes of this Ordinance or of any Scheme, and may define their jurisdiction.

(2) Any Inspector appointed under sub-section (1) may, for the purpose of inquiring into the correctness of any information furnished in connection with this Ordinance or a Scheme or for the purpose of ascertaining whether any of the provisions of this Ordinance or of any Scheme have been complied with,

(a) require an employer to furnish such information as he may consider necessary in relation to the Scheme;

(b) at any reasonable time enter any factory or any premises connected therewith and require any one found in charge thereof to produce before him for examination any accounts, books, registers and other documents relating to the employment of persons or the payment of wages in the factory;

(c) examine, with respect to any matter relevant to any of the purposes aforesaid, the employer, his agent or servant or any other person found in charge of the factory or any premises connected therewith or whom the Inspector has reasonable cause to believe to be, or to have been, an employee in the factory;

(d) make copies of, or take extracts from, any book, register or other documents maintained in relation to the factory;

(e) exercise such other powers as the Scheme may provide.

(3) Every Inspector shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (Act XLV of 1860).

14. Penalties.—(1) Whoever, for the purpose of avoiding any payment to be made by himself under this Ordinance or under any Scheme or of enabling any other person to avoid such payment, knowingly makes or causes to be made any false statement or false representation shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

(2) A Scheme framed under this Ordinance may provide that any person who contravenes, or makes default in complying with, any of the provisions thereof shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

(3) No court shall take cognizance of any offence punishable under this Ordinance or under any Scheme except on a report in writing of the facts constituting such offence made by an Inspector appointed under Section 13, with the previous sanction of such authority as may be specified in this behalf by the Central Government.

15. Special provisions relating to existing provident funds.—(1) Every employee who is a subscriber to any provident fund established by the employer and in existence at the commencement of this Ordinance shall, pending the framing of a Scheme in respect of the factory in which he is employed, continue to be entitled to the benefits accruing to him under the provident fund, and the provident fund shall continue to be maintained in the same manner and subject to the same conditions as it would have been if this Ordinance had not been passed.

(2) On the framing of any such Scheme as is referred to in sub-section (1), the accumulations standing to the credit of the employees in the provident fund shall, notwithstanding anything to the contrary contained in any law for the time being in force or in any deed or or other instrument establishing the provident fund but subject to the provisions, if any, contained in the Scheme, be transferred to the Fund

established under the Scheme, and shall be credited to the accounts of the employees entitled thereto in the Fund.

16. **Ordinance not to apply to infant factories for certain period.**—Notwithstanding any other provision contained in this Ordinance, this Ordinance shall not apply to any factory established whether before or after the commencement of this Ordinance unless three years have elapsed from its establishment.

17. **Power to exempt.**—The appropriate Government may, by notification in the Official Gazette, and subject to such conditions as may be specified in the notification, exempt from the operation of this Ordinance or of any Scheme :—

(a) any factory under the control of the Government or of any local authority, if, in the opinion of the appropriate Government, the employees in such factory are otherwise in enjoyment of provident fund or old age pension benefits which are on the whole not less favourable to the employees than the benefits provided under this Ordinance or under any Scheme in relation to employees in any factory of a similar character,

(b) any other factory having a provident fund, if the rules of the provident fund with respect to contributions are in conformity with, or are more favourable to the employees therein than, those specified in this ordinance, and if, in the opinion of the appropriate Government, the employees are otherwise in enjoyment of provident fund benefits generally which are on the whole not less favourable to the employees than the benefits provided under this Ordinance or under any Scheme in relation to employees in any factory of a similar character.

Explanation.—The following conditions shall be deemed to be always included in the conditions which may be specified in a notification under clause (b), namely :—

(i) the amount of accumulations in the provident fund shall be invested in such manner as the Central Government may direct ;

(ii) the amount of accumulations to the credit of an employee in the provident fund shall, where he leaves his employment and obtains re-employment in another factory to which this Ordinance applies within such time as may be specified in this behalf by the Central Government, be transferred to the credit of his account in the Fund established under the Scheme applicable to the factory ;

(c) any class of persons employed in any factory, if the Central Government is of opinion that such class of persons is entitled to old age pension benefits which are on the whole not less favourable to such persons than the benefits provided under this Ordinance or under any Scheme in relation to persons employed in any factory of a similar character :—

Provided that no notification under clause (c) shall be issued unless the Central Government is satisfied that the majority of persons so employed desire to continue to be entitled to such old age pension benefits.

18. **Protection for acts done in good faith.**—No suit or other legal proceeding shall lie against an Inspector or any other person in respect of anything which is in good faith done or intended to be done under this Ordinance or under any Scheme.

19. **Delegation of powers to the State Government.**—The Central Government may, by notification in the Official Gazette, direct that any power, authority or jurisdiction

exercisable by it under or in relation to any such provisions of this Ordinance or of any Scheme as may be specified in the notification shall, subject to such conditions and restrictions as may be so specified, be exercisable also by any State Government.

SCHEDULE I

(See sections 2(i) and 4)

Any industry engaged in the manufacture or production of any of the following, namely :—

Cement.

Cigarettes.

Electrical, mechanical or general engineering products.

Iron and steel.

Paper.

Textiles (made wholly or in part of cotton or jute or silk, whether natural or artificial).

SCHEDULE II

(See section 6(2))

Matters for which provision may be made in a Schedule.

1. The employees or class of employees who shall join the Fund, and the conditions under which employees may be exempted from joining the Fund or from making any contributions.

2. The time and manner in which contributions shall be made to the Fund by employers and by, or on behalf of, employees, the contributions which an employee may, if he so desires, make under sub-section (i) of section 6, and the manner in which such contributions may be recovered,

3. The payment by the employer of such sums of money as may be necessary to meet the cost of administering the Fund and the rate at which and the manner in which the payment shall be made,

4. The constitution of boards of trustees for the administration of Funds, each of which shall consist of—

(a) nominees of the Central Government ;

(b) nominees of such State Government as the Central Government may, having regard to the jurisdiction of the board, specify in this behalf ;

(c) representatives of the employers and employees concerned, nominated by the Central Government after consultation with the employers and employees concerned or with such of their respective organisations as are representative of their interests, provided that the number of representatives of the employees shall in no case be less than the number of representatives of the employers.

5. The number of trustees of any board, the terms and conditions subject to which they be nominated, the time, place and procedure of meetings of the board, the appointment of officers and other employees of the board, and the opening of regional and other offices.

6. The manner in which accounts shall be kept, the investment of money's belonging to the Fund in accordance with any directions issued or conditions specified by the Central Government, the preparation of the budget, the audit of

accounts and the submission of reports to the Central Government or to any specified State Government.

7. The conditions under which withdrawals from the Fund may be permitted and any deduction or forfeiture may be made and the maximum amount of such deduction or forfeiture.

8. The fixation by the Central Government in consultation with the boards of trustees concerned of the rate of interest payable to members:

9. The form in which an employee shall furnish particulars about himself and his family whenever required.

10. The nomination of a person to receive the amount standing to the credit of a member after his death and the cancellation or variation of such nomination.

11. The registers and records to be maintained with respect to employees and the returns to be furnished by employers.

12. The form or design of any identity card, token or disc for the purpose of identifying any employee, and for the issue, custody and replacement thereof.

13. The fees to be levied for any of the purposes specified in this Schedule.

14. The contraventions or defaults which shall be punishable under sub-section (2) of section 6.

15. The further powers, if any, which may be exercised by Inspectors.

16. The manner in which accumulations in any existing provident fund shall be transferred to the Fund under section 15, and the mode of valuation of any assets which may be transferred by the employers in this behalf.

17. Any other matter which may be necessary or proper for the purpose of implementing the Scheme.

RAJENDRA PRASAD,
President.
K. V. K. SUNDARAM,
Secretary to the Government of India.

Circular No. 374/174 Calcutta 9th January, 1952

From—The Secretary,
Bengal Chamber of Commerce.

To—The Secretary to the Government of India,
Ministry of Labour,
New Delhi.

I am directed, on behalf of the wide range of industrial interests represented by this Chamber and its connected industrial Associations, to address you on the subject of the Employees' Provident Funds Ordinance promulgated by the Government of India on the 15th November last.

2. These industrial interests do not in any way object to the compulsory application of the provident fund system to selected industries or indeed to the whole field of organised industry—a principle which their representatives accepted, subject to certain important reservations, at the Standing Labour Committee meeting on the 2nd/3rd November 1950. They do, however, take the strongest exception both to the manner in which statutory effect has been given, by way of ordinance, to the proposal and to certain of the provisions of the Ordinance as promulgated. As regards the first of these issues, they have studied the press communique subsequently issued by the Government of India and find nothing in it which answers, or attempts to answer, the contention of industrial interests throughout the country that legislation by ordinance on this particular subject, apart from being wholly unjustified by any real consideration of urgency, involves a departure from the clear assurance given by the Chairman of the Standing Labour Committee meeting referred to above that a Bill would be introduced and an opportunity given of considering its provisions.

3. As regards the Ordinance itself, several comments on the details of it are appended. There is however one provision namely Section 6, to which the Chamber wishes to refer at some length. This section provides that the employee shall

contribute to the fund six and quarter per cent. of the basic wages and the dearness allowance payable to him, with a like contribution by the employer, and that subject to provision to that effect in the Scheme to be framed under Section 5, the employee may increase his contribution to eight and one third per cent. of this basic wages and dearness allowance. The explanation defines dearness allowance as including the cash value of any food concession allowed to the employee. The Chamber and its connected industrial interests regard the inclusion of the whole of dearness allowance in wages for this purpose as dangerous and, in the present economic circumstances of the country, both unjustifiable and based on a wrong approach to the fundamental and still undecided issue of the extent to which, at a time of admitted price and wage inflation, dearness allowance should be merged with basic wages which have themselves undergone very substantial increase during and since the war. It is dangerous because it will inevitably raise other issues of far-reaching importance both to industry and to Government, such as the basis of future bonus payments, gratuities, pensions and the like. It is, in the opinion of the Chamber, unjustifiable because, as already observed, basic wages have not by any means remained static and because it is wrong to make long-term provision for retirement on the present-day inflated level of inclusive remuneration which has been forced on private industry by successive adjudication awards—to a degree which, it may be pointed out, exceeds in the majority of cases the current payment level in comparable forms of Government employment. Thirdly, as already indicated, it sidesteps but unfairly pre-judges the main financial and economic issue which neither Government as the largest employer nor private industry has so far felt it desirable or possible to tackle, namely the assessment of the extent to which the present inflated cost of living and remuneration can be regarded as having reached (or exceeded) a stabilised level below which they are unlikely to fall in the foreseeable future. The Chamber maintains that the present level of inclusive remuneration is too high for the

economy of the country, certainly of industry, to bear and that the fictitious circumstances of today should not statutorily be made the basis of retirement provision for the distant future. It is perhaps of significance that this mistake in policy was not made in the Coal Mines Provident Fund Scheme when it was drawn up a few years ago.

4. There is a further aspect of section 6 of the Ordinance to which I am instructed to refer because of its connection with the main issue of consolidation and the difficulties to which it will give rise in practice, viz. the inclusion in dearness allowance for this purpose of the cash value of food concessions, this latter expression being undefined in the ordinance. This owing to variations in the price of food, is very frequently a changing component in total remuneration and is in many cases incalculable in terms of cash, particularly where free or subsidised meals are provided and employer-assisted canteens are maintained. The retention in the ordinance, or the perpetuation in the Scheme to be issued under it, of this particular part of the Explanation to Section 6 will certainly give rise to so much disputation and subsequent adjustment of contributions as to make it an unnecessary nuisance and a valueless provision.

5. In many respects, especially in its practical application, considered comment on the ordinance will depend on the terms of the Scheme to be issued under Section 5. The Chamber and its connected industrial interests wish therefore to urge most strongly the desirability of prior publication of, and consultation on, the draft of the Scheme before it is finally notified. It may be—and it is hoped—that the Scheme itself will be framed in such a way as to avoid or overcome many of the practical difficulties and flaws in the ordinance to which the Chamber's attention has been drawn and some of the more important of which are as follows :—

Section 2—Definitions.

Item (f)—"Employee"—This definition is too wide, in two directions. Firstly, it could be interpreted to include Managerial and like Supervisory Staff employed for "wages" (itself un-

defined) in a factory or in connection with the work of a factory and paid by the "employer". It is suggested that in this respect a definition on the lines of that included in the Labour Relations Bill would be preferable, *i. e.* limiting the scope of the definition by the exclusion of persons in receipt of basic pay plus dearness allowance exceeding a figure of say, Rs. 350/- per month.

Secondly, it is noted with concern that "employee" includes a person employed by or through a contractor in connection with the work of the factory. This will give rise to innumerable practical difficulties including, the risk of double contribution to the Provident Fund Scheme, and should, it is recommended, be carefully re-examined in all its implications.

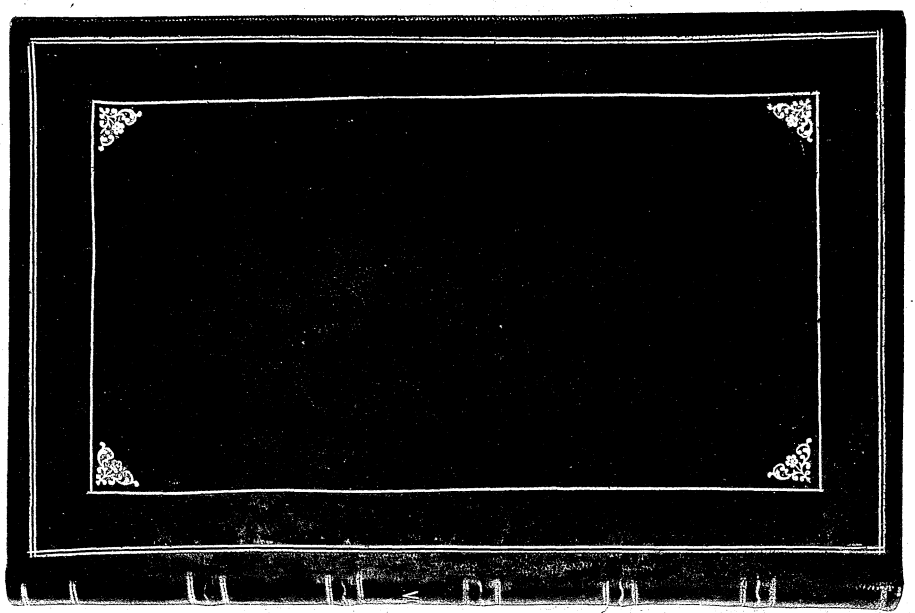
"*Establishment*"—There is no definition of this term as used in the ordinance, *e. g.* in section 3 which is in itself objectionable inasmuch as it may be used unduly to widen the application of the ordinance beyond the field of industrial labour and to the detriment of other employees already more appropriately covered by existing funds.

Section 17—Power to exempt—In two respects this section seems to call for clarification if not actual amendment. Clause (b) deals with the exemption from the ordinance and Scheme of factories under private control the employers of which already provide benefits equivalent to or more favourable than those specified in the ordinance and Scheme. The Explanation provides, as essential conditions of exemption, conformity with Government direction as to the investment of provident fund accumulations and provision for the transfer of such accumulations to the credit of the employees' account should he transfer to other employment to which the Scheme applies. No existing provident fund rules contain provisions on these lines and the Chamber would like an assurance that in the event of such provident fund rules being amended to include them subsequent to the promulgation of the Ordinance and the scheme, they will not be precluded from exemption. As regards the provision for Government direction concerning investments, this should surely be unnecessary provided the rules—as is customary restrict

investments to those referred to in Clause 20 of the Indian Trusts Act. A connected point concerning investments arises under Section 15 of the Ordinance which relates to the transfer of accumulated credits in existing provident funds to the Fund to be established under the Scheme. Such enforced transfers may, on the realisation of existing investments, result in very heavy capital losses to the detriment of the employee himself.

The Chamber wishes to reserve further comment until the Scheme is published — it is hoped — in draft form.

R. P. W.—450—10-52.



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