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NOTIFICATION

No. H. 12017/55/99-LJD, the 9th Feb, 1999. The following ordinance of the Central Government is hereby published for general information.

R. Lalthazuala,
Deputy Secretary to the Govt. of Mizoram,
Law and Judicial Department.

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS
(Legislative Department)

New Delhi, the 7th January, 1999/Pausa 17, 1920 (Saka)

THE COMPANIES (AMENDMENT) ORDINANCE, 1999.
(NO 1 OF 1999)

Promulgated by the President in the Forty-ninth Year of the Republic of India.

An Ordinance further to amend the Companies Act, 1956.

WHEREAS a Bill to consolidate and amend the law relating to companies and certain other associations has been introduced in Parliament and is pending consideration before the Department-related Standing Committee on Home Affairs;

AND WHEREAS the Companies (Amendment) Ordinance, 1998 was promulgated by the President on the 31st day of October, 1998;

AND WHEREAS the Companies (Amendment) Bill, 1998 was introduced in the House of the People to replace the said Ordinance, but has not been passed;

AND WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action to give effect to the provisions of the Companies (Amendment) Bill, 1998 with certain modifications;

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:—

Short title
and comm-
encement.

1. (1) This Ordinance may be called the Companies (Amendment) Ordinance, 1999.

(2) It shall be deemed to have come into force on the 31st day of October, 1998.

Amend-
ment of
section
4A.

2. In the Companies Act, 1956 (hereinafter referred to as the principal Act), in section 4A, in sub-section (1), after clause (v), the following clause shall be inserted, namely :—

“(vi) the Infrastructure Development Finance Company Limited, a company formed and registered under this Act.”.

Amend-
ment of sec-
tion 58A.

3. In section 58A of the principal Act, after sub-section (10) and before the *Explanation*, the following sub-section shall be inserted, namely :—

“(11) A depositor may, at any time, make a nomination and the provisions of sections 109A and 109B shall, as far as may be, apply to the nomination made under this sub-section.”.

Insertion of
new sections
77A, 77AA
and 77B.

4. After section 77 of the principal Act, the following sections shall be inserted, namely :—

Power of
company to
purchase its
own secu-
rities.

“77A. (1). Notwithstanding anything contained in this Act, but subject to the provisions of sub-section (2) of this section and 77B, a company may purchase its own shares or other specified securities (hereinafter referred to as “buy-back”) out of —

(i) its free reserves ; or

(ii) the securities premium account ; or

(iii) the proceeds of any shares or other specified securities :

Provided that no buy-back of any kind of shares or other specified securities shall be made out of the proceeds of an earlier issue of the same kind of shares or same kind of other specified securities.

(2) No company shall purchase its own shares or other specified securities.

under sub-section (1) unless—

(a) the buy-back is authorised by its articles ;

(b) a special resolution has been passed in general meeting of the company authorising the buy-back ;

(c) the buy-back is or less than twenty-five per cent of the total paid-up capital and free reserves of the company :

Provided that the buy-back of equity shares in any financial year shall not exceed twenty-five per cent of its total paid-up equity capital in that financial year ;

(d) the ratio of the debt owed by the company is not more than twice the capital and its free reserves after such buy-back :

Provided that the Central Government may prescribe a higher ratio of the debt than that specified under this clause for a class or classes of companies.

Explanation.— For the purposes of this clause, the expressions “debt” includes all amounts of unsecured and secured debts ;

(e) all the shares or other specified securities for buy-back are fully paid-up;

(f) the buy-back of the shares or other specified securities listed on any recognised stock exchange is in accordance with the regulations made by the Securities and Exchange Board of India in this behalf;

(g) the buy-back in respect of shares or other specified securities other than those specified in clause (f) is in accordance with the guidelines as may be prescribed.

(3) The notice of the meeting at which special resolution is proposed to be passed shall be accompanied by an explanatory statement stating—

(a) a full and complete disclosure of all material facts;

(b) the necessity for the buy-back;

(c) the class of security intended to be purchased under the buy-back;

(d) the amount to be invested under the buy-back; and

(e) the time limit for completion of buy-back.

(4) Every buy-back shall be completed within twelve months from the date of passing the special resolution under clause (b) of sub-section (2).

(5) The buy-back under sub-section (1) may be—

(a) from the existing security-holders on a proportionate basis; or

(b) from the open market; or

(c) from odd lots, that is to say, where the lot of securities of a public company, whose shares are listed on a recognised stock exchange, is smaller than such marketable lot, as may be specified by the stock exchange; or

(d) by purchasing the securities issued to employees of the company pursuant to a scheme of stock option or sweat equity.

(6) Where a company has passed a special resolution under clause (b) of sub-section (2) to buy-back its own shares or other securities under this section, it shall, before making such buy-back, file with the Registrar and the Securities and Exchange Board of India a declaration of solvency in the form as may be prescribed and verified by an affidavit to the effect that the Board has made a full inquiry into the affairs of the company as a result of which they have formed an opinion that it is capable of meeting its liabilities and will not be rendered insolvent within a period of one year of the date of declaration adopted by the Board, and signed by at least two directors of the company, one of whom shall be the managing director, if any;

Provided that no declaration of solvency shall be filed with the Securities and Exchange Board of India by a company whose shares are not listed on any recognised stock exchange.

(7) Where a company buys-back its own securities, it shall extinguish and physically destroy the securities so bought-back within seven days of the last date of completion of buy back.

(8) Where a company completes a buy-back of its shares or other specified securities under this section, it shall not make further issue of the same kind of shares [including allotment of further shares under clause (a) of sub-section (1) of section 81] or other specified securities within a period of twenty-four months except by way of bonus issue or in the discharge of subsisting obligations such as conversion of warrants, stock option schemes, sweat equity or conversion of preference shares or debentures into equity shares.

(9) Where a company buys-back its securities under this section, it shall maintain a register of the securities so bought, the consideration paid for the securities bought-back, the date of cancellation of securities, the date of extinguishing and physically destroying of securities and such other particulars as may be prescribed.

(10) A company shall, after the completion of the buy-back under this section, file with the Registrar and the Securities and Exchange Board of India, a return containing such particulars relating to the buy-back within thirty days of such completion, as may be prescribed:

Provided that no return shall be filed with the Securities and Exchange Board of India by a company whose shares are not listed on any recognised stock exchange.

(11) If a company makes default in complying with the provisions of this section or any rules made thereunder, or any regulations made under clause (f) of sub-section (2), the company or any officer of the company who is in default shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to fifty thousand rupees, or with both.

Explanation.—For the purposes of this section,—

(a) “specified securities” includes employees stock option or other securities as may be notified by the Central Government from time to time;

(b) “free reserves” shall have the meaning assigned to it in clause (b) of *Explanation* to section 372A.

Transfer of
certain sums
to capital
redemption
reserve
account.

77AA. Where a company purchases its own shares out of free reserves, then a sum equal to the nominal value of the share so purchased shall be transferred to the capital redemption reserve account referred to in clause (d) of the proviso to sub-section (1) of section 80 and details of such transfer shall be disclosed in the balance sheet.

77B.(1) No company shall directly or indirectly purchase its own shares or other specified securities—

(a) through any subsidiary company including its own subsidiary companies; or

(b) through any investment company or group of investment companies; or

Prohibition
for buy-
back in
certain
circum-
stances.

(c) if a default, by the company in repayment of deposit or interest payable thereon, redemption of debentures, or preference shares or payment of dividend to any share holder or repayment of any term loan or interest payable thereon to any financial institution or bank, is subsisting.

(2) No company shall directly or indirectly purchase its own shares or other specified securities in case such company has not complied with provisions of sections 159, 207 and 211..

5. In section 78 of the principal Act, for the word "share" wherever it occurs, the word "securities" shall be substituted. Amendment of section 78.

6. After section 79 of the principal Act, the following section shall be inserted, namely:— Insertion of new section 79A.

'79A.(1) Notwithstanding anything contained in section 79, a company may issue sweat equity shares of a class of shares already issued if the following conditions are fulfilled, namely:— Issue of sweat equity shares.

(a) the issue of sweat equity shares is authorised by a special resolution passed by the company in the general meeting;

(b) the resolution specifies the number of shares, current market price, consideration, if any, and the class or classes of directors or employees to whom such equity shares are to be issued;

(c) not less than one year has, at the date of the issue elapsed since the date on which the company was entitled to commence business;

(d) the sweat equity shares of a company whose equity shares are listed on a recognised stock exchange are issued in accordance with the regulations made by the Securities and Exchange Board of India in this behalf:

Provided that in the case of a company whose equity shares are not listed on any recognised stock exchange, the sweat equity shares are issued in accordance with the guidelines as may be prescribed.

Explanation 1.—For the purposes of this sub-section, the expression "a company" means company incorporated, formed and registered under this Act and includes its subsidiary company incorporated in a country outside India.

Explanation II.—For the purposes of this Act, the expression “sweat equity shares” means equity shares issued by the company to employees or directors at a discount or for consideration other than cash for providing know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called.

(2) All the limitations, restrictions and provisions relating to equity shares shall be applicable to such sweat equity shares issued under sub-section (1).’.

Amendment 7. In section 80 of the principal Act, in sub-section (1), of in clause (c), for the words “share premium account”, the section 80. words “security premium account” shall be substituted.

Amendment 8. In section 82 of the principal Act, for the word “shares”, of section the words “shares or debentures” shall be substituted. 82.

Insertion 9. After section 109 of the principal Act, the following of new sections shall be inserted, namely:—
109A and
109B.

Nomination “109A. (1) Every holder of shares in, or holder of debentures of, a company may, at any time, nominate, in the prescribed manner, a person to whom his shares in, or debentures of, the company shall vest in the event of his death. of shares.

(2) Where the shares in, or debentures of, a company are held by more than one person jointly, the joint holders may together nominate, in the prescribed manner, a person to whom all the rights in the shares or debentures of the company shall vest in the event of death of all the joint holders.

(3) Notwithstanding anything contained in any other law for the time being in force or in any disposition, whether testamentary or otherwise, in respect of such shares in, or debentures of, the company, where a nomination made in the prescribed manner purports to confer on any person the right to vest the shares in, or debentures of, the company, the nominee shall, on the death of the shareholder or holder of debentures of, the company or, as the case may be, on the death of the joint holders become entitled to all the rights in the shares or debentures of the company or, as the case may be, all the joint holders, in relation to such shares in, or debentures of the company to the exclusion of all other persons, unless the nomination is varied or cancelled in the prescribed manner.

(4) Where the nominee is a minor, it shall be lawful for the holder of the shares, or holder of debentures, to make the nomination to appoint, in the prescribed manner, any person to become entitled to shares in, or debentures of, the company, in the event of his death, during the minority.

Trans-
mission of
shares.

109B.(1) Any person who becomes a nominee by virtue of the provisions of section 109A. upon production of such evidence as may be required by the Board and subject as hereinafter provided, elect, either—

(a) to be registered himself as holder of the share or debenture, as the case may be; or

(b) to make such transfer of the share or debenture, as the case may be, as the deceased shareholder or debenture holder, as the case may be, could have made.

(2) If the person being a nominee, so becoming entitled, elects to be registered as holder of the share or debenture, himself, as the case may be, he shall deliver or send

to the company a notice in writing signed by him stating that he so elects and such notice shall be accompanied with the death certificate of the deceased shareholder or debenture holder, as the case may be.

(3) All the limitations, restrictions and provisions of this Act relating to the right to transfer and the registration of transfers of shares or debentures shall be applicable to any such notice or transfer as aforesaid as if the death of the member had not occurred and the notice or transfer were a transfer signed by that shareholder or debenture holder, as the case may be.

(4) A person, being a nominee, becoming entitled to a share or debenture by reason of the death of the holder shall be entitled to the same dividends and other advantages to which he would be entitled if he were the registered holder of the share or debenture except that he shall not, before being registered a member in respect of his share or debenture, be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the company.

Provided that the Board may, at any time, give notice requiring any such person to elect either to be registered himself or to transfer the share or debenture, and if the notice is not complied with within ninety days, the Board may thereafter withhold payment of all dividends, bonuses or other moneys payable in respect of the share or debenture, until the requirements of the notice have been complied with.”.

10. In section 205A of the principal Act,—

Amendment
of section
205 A.

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

“(5) Any money transferred to the unpaid dividend account of a company in pursuance of this section which remains unpaid or unclaimed for a period of seven years from the date of such transfer shall be transferred by the company to the Fund established under sub-section (1) of section 205C.”;

(b) in sub-section (6),—

(i) for the words “general revenue account of the Central Government”, the words, figures and letter “Fund established under section 205C” shall be substituted;

(ii) for the words “to such officer as the Central Government may appoint”, the words “to such authority or committee as the Central Government may appoint” shall be substituted;

(c) for sub-section (7), the following sub-section shall be substituted, namely:—

“(7) The company shall be entitled to a receipt from the authority or committee under sub-section (4) of section 205C for any money transferred by it to the Fund and such a receipt shall be an effectual discharge of the company in respect thereof.”.

11. In section 205B of the principal Act, the following proviso shall be inserted at the end, namely:—

Amendment
of section
205B.

“Provided that nothing contained in this section shall apply to any person claiming to be entitled to any money transferred to the Fund referred to in section 205C on and after the commencement of the Companies (Amendment) Ordinance, 1999.”.

Insertion
of new
section
205C.

Establish-
ment of
Investor
Education
and
Protection
Fund.

12. After section 205B of the principal Act, the following section shall be inserted, namely:—

‘205C. (1) The Central Government shall establish a fund to be called the Investor Education and Protection Fund (hereafter in this section referred to as the “Fund”).

(2) There shall be credited to the Fund the following amounts, namely:—

- (a) amounts in the unpaid dividend accounts of companies;
- (b) the application moneys received by companies for allotment of any securities and due for refund;
- (c) matured deposits with companies;
- (d) matured debentures with companies;
- (e) the interest accrued on the amounts referred to in clauses (a) to (d);
- (f) grants and donations given to the Fund by the Central Government, State Governments, companies or any other institutions for the purposes of the Fund; and
- (g) the interest or other income received out of the investments made from the Fund;

Provided that no such amounts referred to in clauses (a) to (d) shall form part of the Fund unless such amounts have remained unclaimed and unpaid for a period of seven years from the date they became due for payment.

Explanation.—For the removal of doubts, it is hereby declared that no claims shall lie against the Fund or the company in respect of individual amounts which were unclaimed and unpaid for a period of seven years from the dates that they first became due for payment and no payment shall be made in respect of any such claims.

(3) The Fund shall be utilised for promotion of investor awareness and protection of the interests of investors in accordance with such rules as may be prescribed.

(4) The Central Government shall, by notification in the Official Gazette, specify an authority or committee, with such members as the Central Government may appoint, to administer the Fund, and maintain separate accounts and other relevant records in relation to the Fund in such form as may be prescribed in consultation with the Comptroller and Auditor-General of India.

(5) It shall be competent for the authority or committee appointed under sub-section (4) to spend moneys out of the Fund for carrying out the objects for which the Fund has been established.

Insertion
of new
section
210A.

13. After section 210 of the principal Act, the following section shall be inserted, namely:—

‘210A. (1) The Central Government may, by notification in the Official Gazette, constitute an Advisory Committee to be called the National Advisory Committee on Accounting Standards (hereafter in this section referred to as the “Advisory Committee”) to advise the Central Government on the formulation and laying down of accounting policies and accounting standards for adoption by companies or class of companies under this Act.

Constitution
of National
Advisory
Committee
on
Accounting
Standards.

(2) The Advisory Committee shall consist of the following members, namely:—

(a) a Chairperson who shall be a person of eminence well versed in accountancy, finance, business administration, business law, economics or similar discipline;

(b) one member each nominated by the Institute of Chartered Accountants of India constituted under the Chartered Accountants Act, 1949, the Institute of Cost and Works Accountants of India constituted under the Cost and Works Accountants Act, 1959 and the Institute of Company Secretaries of India constituted under the Company Secretaries Act, 1980;

(c) one representative of the Central Government to be nominated by it;

(d) one representative of the Reserve Bank of India to be nominated by it;

(e) one representative of the Comptroller and Auditor-General of India to be nominated by him;

38 of 1949.

23 of 1959.

36 of 1980.

(f) a person who holds or has held the office of professor in accountancy, finance or business management in any university or deemed university;

54 of 1963. (g) the Chairman of the Central Board of Direct Taxes constituted under the Central Boards of Revenue Act, 1963 or his nominee;

(h) two members to represent the Chambers of Commerce and industry to be nominated by the Central Government; and

(i) one representative of the Securities and Exchange Board of India to be nominated by it.

(3) The Advisory Committee shall give its recommendations to the Central Government on such matters of accounting policies and standards and auditing as may be referred to it for advice from time to time.

(4) The members of the Advisory Committee shall hold office for such term as may be determined by the Central Government at the time of their appointment and any vacancy in the membership in the Committee shall be filled by the Central Government in the same manner as the member whose vacancy occurred was filled.

(5) The non-official members of the Advisory Committee shall be entitled to such fees, travelling, conveyance and other allowances as are admissible to the officers of the Central Government of the highest rank'.

14. In section 211 of the principal Act, after sub-section (3), the following sub-sections shall be inserted, Amendment of section 211.
namely:—

‘(3A) Every profit and loss account and balance sheet of the company shall comply with the accounting standards.

(3B) Where the profit and loss account and the balance-sheet of the company do not comply with the accounting standards, such companies shall disclose in its profit and loss account and balance-sheet, the following, namely:—

(a) the deviation from the accounting standards;

(b) the reasons for such deviation; and

(c) the financial effect, if any, arising due to such deviation.

(3C) For the purposes of this section, the expression "accounting standards" means the standards of accounting recommended by the Institute of Chartered Accountants of India constituted under the Chartered Accountants Act, 1949, as may be prescribed by the Central Government in consultation with the National Advisory Committee on Accounting Standards established under sub-section (1) of section 210A:

38 of 1949.

Provided that the standard of accounting specified by the Institute of Chartered Accountants of India shall be deemed to be the Accounting Standards until the accounting standards are prescribed by the Central Government under this sub-section.

Amendment of section 217. 15. In section 217 of the principal Act, after sub-section (2A), the following sub-section shall be inserted, namely:—

"(2B) The Board's report shall also specify the reasons for the failure, if any, to complete the buy-back within the time specified in sub-section (4) of section 77A."

Amendment of section 227. 16. In section 227 of the principal Act, in sub-section (3),—

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

"(d) whether, in his opinion, the profit and loss account and balance-sheet comply with the accounting standards referred to in sub-section (3C) of section 211.";

(ii) in sub-section (4), for the word, brackets and letter "and (c)", the brackets, letters and word, "(c) and (d)" shall be substituted.

Amendment of section 370. 17. In section 370 of the principal Act, after sub-section (5), and before the *Explanation*, the following sub-section shall be inserted, namely:—

"(6) Nothing contained in this section shall apply to a company on and after the commencement of the Companies (Amendment) Ordinance, 1999."

Amendment of section 372. 18. In section 372 of the principal Act, after sub-section (14), the following sub-section shall be inserted, namely:—

"(15) Nothing contained in this section shall apply to a company on and after the commencement of the Companies (Amendment) Ordinance, 1999."

19. After section 372 of the principal Act, the following section shall be inserted, namely:—

Insertion of
new section
372A.

372A. (1) No company shall, directly or indirectly, -

Intercor-
porate loans
and inves-
ment.

(a) make any loan to any other body corporate;

(b) give any guarantee, or provide security, in connection with a loan made by any other person to, or to any other person by, any body corporate; and

(c) acquire, by way of subscription, purchase or otherwise the securities of any other body corporate,

exceeding sixty per cent. of its paid-up share capital and free reserves, or hundred per cent. of its free reserves, whichever is more:

Provided that where the aggregate of the loans and investments so far made, the amounts for which guarantee or security so far provided to or in all other bodies corporate, along with the investment, loan, guarantee or security proposed to be made or given by the Board, exceeds the aforesaid limits, no investment or loan shall be made or guarantee shall be given or security shall be provided unless previously authorised by a special resolution passed in a general meeting:

Provided further that the Board may give guarantee, without being previously authorised by a special resolution, if,—

(a) a resolution is passed in the meeting of the Board authorising to give guarantee in accordance with the provisions of this section;

(b) there exists exceptional circumstances which prevent the company from obtaining previous authorisation by a special resolution passed in a general meeting for giving a guarantee; and

(c) the resolution of the Board under clause (a) is confirmed within twelve months, in a general meeting of the company or the annual general meeting held immediately after passing of the Board resolution, whichever is earlier:

Provided also that the notice of such resolution shall indicate clearly the specific limits, the particulars of the body corporate in which the investment is proposed to be made or loan or security or guarantee to be given, the pur-

pose of the investment, loan or security or guarantee, specific sources of funding and such other details.

(2) No loan or investment shall be made or guarantee or security given by the company unless the resolution sanctioning it is passed at a meeting of the Board with the consent of all the directors present at the meeting and the prior approval of the public financial institution referred to in section 4A, where any term loan is subsisting, is obtained:

Provided that prior approval of a public financial institution shall not be required where the aggregate of the loans and investments so far made, the amounts for which guarantee or security so far provided to or in all other bodies corporate, alongwith the investments, loans guarantee or security proposed to be made or given does not exceed the limit of sixty per cent. specified in sub-section (1), if there is no default in repayment of loan instalments or payment of interest thereon as per the terms and conditions of such loan to the public financial institution:

Provided also that nothing contained in sub-sections (1) and (2) shall apply to—

(a) any loan made by a holding company to its wholly owned subsidiary;

(b) any guarantee given or any security provided by a holding company in respect of loan made to its wholly owned subsidiary; or

(c) acquisition by a holding company, by way of subscription, purchases or otherwise, the securities of its wholly owned subsidiary.

(3) No loan to any body corporate shall be made at a rate of interest lower than the prevailing bank rate, being the standard rate made public under section 49 of the Reserve Bank of India Act, 1934.

2 of 1934.

(4) No company, which has defaulted in complying with the provision of section 58A, shall, directly or indirectly,—

(a) make any loan to any body corporate;

(b) give any guarantee, or provide security, in connection with a loan made by any other person to, or to any other person by, any body corporate; and

(c) acquire, by way of subscription, purchase or otherwise the securities of any other body corporate,

till such default is subsisting.

(5) (a) Every company shall keep a register showing the following particulars in respect of every investment or loan made, guarantee given or security provided by it in relation to any body corporate under sub-section (1), namely:—

(i) the name of the body corporate;

(ii) the amount, terms and purpose of the investment or loan or security or guarantee;

(iii) the date on which the investment or loan has been made; and

(iv) the date on which the guarantee has been given or security has been provided in connection with a loan;

(b) The particulars of investment, loan, guarantee or security referred to in clause (a) shall be entered chronologically in the register aforesaid within seven days of the making of such investment or loan, or the giving of such guarantee or the provision of such security.

(6) The register referred to in sub-section (5) shall be kept at the registered office of the company concerned and—

(a) shall be open to inspection at such office; and

(b) extracts may be taken therefrom and copies thereof may be required,

by any member of the company to the same extent, in the same manner, and on payment of the same fees as in the case of the register of members of the company; and the provisions of section 163 shall apply accordingly.

(7) The Central Government may prescribe guidelines for the purposes of this section.

(8) Nothing contained in this section shall apply,—

(a) to any loan made, any guarantee given or any security provided or any investment made by—

(i) a banking company, or an insurance company, or a housing finance company in the ordinary course of its business, or a company established with the object of financing industrial enterprises, or of providing infrastructural facilities;

(ii) a company whose principal business is the acquisition of shares, stock, debentures or other securities;

(iii) a private company, unless it is a subsidiary of a public company;

(b) to investment made in shares allotted in pursuance of clause (a) of sub-section (1) of section 81.

(9) If default is made in complying with the provisions of this section, other than sub-section (5), the company and every officer of the company who is in default shall be punishable with imprisonment which may extend to two years or with fine which may extend to fifty thousand rupees:

Provided that where any such loan or any loan in connection with which any such guarantee or security has been given, or provided by the company, has been repaid in full, no punishment by way of imprisonment shall be imposed under this sub-section, and where such loan has been repaid in part, the maximum punishment which may be imposed under this sub-section by way of imprisonment shall be appropriately reduced:

Provided further that all persons who are knowingly parties to any such contravention shall be liable, jointly and severally, to the company for the repayment of the loan or for making good the same which the company may have been called upon to pay by virtue of the guarantee given or the securities provided by such company.

(10) If default is made in complying with the provisions of sub-section (5), the company and every officer of the company who is in default shall be punishable with fine which may extend to five thousand rupees and also with a further fine which may extend to five hundred rupees for every day after the first during which the default continues.

Explanation.—For the purposes of this section,—

(a) “loan” includes debentures or any deposit of money made by one company with another company, not being a banking company;

(b) “free reserves” means those reserves which, as per latest audited balance-sheet of the company, are free for distribution as dividend and shall include balance to the credit of the securities premium account but shall not include share application money.’.

Amendment of section 642. 20. In section 642 of the principal Act, after sub-section (3), the following sub-section shall be inserted, namely:—

“(4) Every regulation made by the Securities and Exchange Board of India under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the regulation or both Houses agree that the regulation should not be made, the regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that regulation.”.

Repeal and saving.

21. (1) The Companies (Amendment) Ordinance, 1998 is hereby repealed.

Ord.
19 of 1998

(2) Notwithstanding such repeal, anything done or any action taken under the principal Act, as amended by the said Ordinance, shall be deemed to have been done or taken under the corresponding provisions of the principal Act, as amended by this Ordinance.

K.R. NARAYANAN,
President.

RAGHBIR SINGH,
Secy. to the Govt. of India.