

# HOUSE OF THE PEOPLE

## THE INDIAN COMPANIES (AMENDMENT) BILL, 1951

( REPORT OF THE SELECT COMMITTEE )



PARLIAMENT SECRETARIAT  
NEW DELHI.

*Aug, 1951*

REPORTS OF SELECT COMMITTEE PRESENTED

TO PARLIAMENT IN - 1951.

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S. No.	Short title of the Bills.	Date of introduction. (Presentation) 3.	Date of Publication. (in the Gazette) 4.
1.	The Port Trusts and Ports (Amendment) Bill, 1950.	7- 2-51.	24-2-51.
2.	The Representation of the People (No.2) Bill, 1950.	31, 3-51.	14-4-51.
3.	The Finance Bill, 1951.	21- 4-51.	24-4-51.
4.	The Constitution (First Amendment) Bill, 1951.	25- 5-51.	2-6-51.
5.	The State Financial Corporations Bill, 1951.	10- 8-51.	25-8-51.
6.	The Tariff Commission Bill, 1951. ✓	-do-	-do-
7.	The Forward Contracts (Regulation) Bill, 1950.	20- 8-51.	1- 9-51.
8.	The Indian Companies (Amendment) Bill, 1951. ✓	30- 8-51.	8- 9-51.
9.	The Evacuee Interest (Separation) Bill, 1951.	10- 9-51.	29- 9-51.
10.	The Benares Hindu University (Amendment) Bill, 1951.	7- 9-51.	29- 9-51.
11.	The Aligarh Muslim University (Amendment) Bill, 1951.	-do-	-do-
12.	The Press (Incitement to Crime) Bill, 1951.	27-9-51.	6-10-51.
13.	The Industries (Development and Control) Bill, 1949.	24- 9-51.	-do-
14.	The Plantations Labour Bill, 1951. ✓	29- 9-51.	13-10-51.

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1.	2.	3.	4.
15. The Delhi Premises (Requisition and Bisectio) Amendment Bill, 1951.	10- 9-51.	22- 9-51.	
16. The Displaced Persons (Debts Adjustment) Bill, 1951.	1-10-51.	20-10-51.	
17. The Notaries Bill, 1951.	4-10-51.	-do-	

# THE INDIAN COMPANIES (AMENDMENT) BILL, 1951

## REPORT OF THE SELECT COMMITTEE.

We, the undersigned, members of the Select Committee to which the Bill further to amend the Indian Companies Act, 1913, was referred, have considered the Bill, and have now the honour to submit this our report, with the Bill as amended by us annexed thereto.

*Clause 2.*—The original clause does not prevent the directors or shareholders of a company, when so empowered by its articles, from increasing the number of directors even beyond the maximum number specified in the articles and thereby from indirectly getting round its provisions; nor does it specifically prohibit an increase in the remuneration of a managing director or any other director except with the approval of the Central Government. It has also come to our notice that in some cases undesirable elements corner shares in companies and thereafter get themselves elected as directors with the object of exercising an unhealthy influence on managing agents. We think Government should be armed with adequate powers to meet this evil wherever necessary.

We have accordingly recast this clause so as to cover all the aforesaid matters, but at the same time we are of opinion that there is no need to make this provision applicable to private companies unless they happen to be subsidiary companies of public companies.

*Clause 4.*—There is no reason why the approval of the Central Government should be made a condition precedent to the transfer of his office by a managing agent where the managed company is a private company. We have revised this clause accordingly.

*Clause 5.*—In our opinion it is unnecessary to provide that every consequential change in the shareholding of a managing agency company should require the prior approval of the Central Government, nor is it desirable to restrict *bona fide* dealings in the shares of public limited managing companies on the stock exchange. Even if it were intended to bring all changes in the shareholding of a managing agency company within the purview of this clause, it would be extremely difficult to administer such a provision. We have accordingly recast this clause and have restricted its application to public companies managed by managing agents. Normally a change in the holding of shares in a managing agent which is a public company would not be a change in the constitution of the managing agent, but power is given to the Central Government to intervene in suitable cases.

*Clause 6.*—We have revised the clause so as to bring within it the appointment of new managing agents and the reappointment or replacement of old managing agents.

*Clause 7.*—We have made several changes in this clause. We think that the Central Government should also have the power to apply under this provision for setting right the affairs of a company. We have also provided that if any interested person applies to be made a party to any proceeding under this provision, the court shall be obliged to make him a party.

We have also expanded sub-clause (5) to include provisions for termination or revision of agreements with persons other than managing agents, etc. after due notice to the parties concerned, and also for the setting aside of transactions in the nature of fraudulent preferences.

In the proposed section 153D, apart from consequential changes we have made it clear that no court shall grant leave under sub-section (3) thereof to any managing agent, managing director, etc. unless the Central Government has been given an opportunity of being heard in the matter. We have also tightened up the definition of an associate of a managing agent.

*Clause 8.*—We think that the commission's duty should not be confined merely to the tendering of advice on applications for approval made to the Central Government but should also extend to the tendering of advice in respect of any other matter arising out of the provisions of this Bill which may be referred to it. Sub-section (2) of the proposed section 289 B has been amended accordingly.

We have also provided that before any application for approval is made to the Central Government, a general notice to the shareholders indicating the nature of the approval sought should be published once in an Indian language and once in the English language in a newspaper circulating in the locality. There is no need, however, to make this provision apply to a private company which is not the managing agent of a public company.

We have also amplified the powers of the commission to call upon any person to supply such information or to produce such books or accounts in his possession as the commission may require for the purposes of its inquiry. The commission is also given power to put any person including a shareholder on oath for the purpose of any inquiry under this provision.

2. The Bill was published in the Gazette of India Part II—Section 2, dated the 18th August, 1951.

3. We think that the Bill has not been so altered as to require circulation under rule 77(4) of the Rules of Procedure and Conduct of Business in Parliament, and we recommend that it be passed as now amended.

M. ANANTHASAYANAM AYYANGAR.  
C. D. DESHMUKH.  
MAHAVIR TYAGI.  
N. P. NATHWANI.  
R. N. GOENKA.  
M. SHANKARAIYA.  
\*P. D. HIMATSINGKA.  
HUKAM SINGH.  
S. V. NAIK.  
KHANDUBHAI K. DESAI.  
M. V. GHULE.  
RENUKA RAY.  
T. A. RAMALINGAM CHETTIAR.  
MATHURA PRASAD MISHRA.  
\*B. P. JHUNJHUNWALA.  
EYAMNANDAN SAHAYA.  
M. R. MASANI.  
B. L. SONDHI.  
K. T. SHAH.  
HARIHAR NATH SHASTRI.

NEW DELHI;

The 30th August, 1951.

\* Subject to a Minute of Dissent.

## MINUTES OF DISSENT

## I

I regret I was absent when the Bill was taken up for consideration by the Select Committee on the first two days. So I could not take part in the discussions on the Bill clause by clause. While seemingly the Bill purports to place various curbs on the powers enjoyed by the Managing Agents, in effect the provisions of the Bill give the Managing Agents, more or less, a permanent lease of life. At the same time even the slightest change in the Constitution of the Managing Agency firms or companies is being proposed to be prohibited by Clause 5—proposed Section 87BB. At present, under the existing Section 87B of the Indian Companies Act, the transfer of Office by the Managing Agents is void unless approved by the Company in a General Meeting. By clause 5 of the bill along with the approval by the Company in a General Meeting, now the approval of the Government is also sought to be added by the proposed amendment as necessary to sanction a transfer. But any slight change in the Constitution of the Managing Agency firm or company is at present not regarded as a transfer and such changes in the Managing Agency firm, so long as one of the original partners continue is not regarded as a transfer of Office. But by clause 5 of the bill unless the Managing Agency company is a public company, whose shares are dealt in or quoted on the Stock Exchanges, any change in the Constitution of a Managing Agency firm or any change in the registered ownership of even one share in a private limited company, will amount to a change in the constitution of the Managing Agency firm or company, the effect whereof will be that the Company shall cease to be entitled to act as such Managing Agents. If a Managing Agency company or firm consists of, say, the members of a family consisting of several brothers, even the transfer of one share by one of the brothers to one of his sons, or the slightest change of interest, of the original shareholders or partners, will be regarded as a change and unless approved by the Government, will act as a termination of the agreement of the Managing Agents. I do not think that that could be the intention of Government, and therefore, a provision should be made to make suitable exceptions in such cases where the intention is not to transfer for substantial consideration of money the Office of the Managing Agents to any outsider. The provisions of clause 7 of the bill adding Sections 153C and 153D should be regarded as sufficient to protect the interests of the minority shareholders, if they are threatened by any change in the Constitution of the Managing Agency firm and, therefore, unless the shareholders complain of their interest having been affected, a mere change in the Constitution or composition of a Managing Agency firm or company should not be regarded as a disability, specially when nobody minds it and nobody is affected thereby and no Government sanction should be obligatory. The present proviso to Sub-section (c) in Section 87B is directly contrary or contradictory to the provisions now proposed and the said proviso to Section 87B, Sub-section (c) has also been retained. As regards clause 5 of the bill, the proposed section 87BB I do not think that the appointment of a Managing Agent for a new company which is floated hereafter should be made subject to the approval of Government. Moreover, the provision of clause 8, Section 289B Sub-clause 4, regarding publication of notice in two newspapers, should not be made applicable to all applications for approval. New appointments, at any rate, should be excluded and should not need such publication. In fact, when a Company is formed and Managing Agents appointed at the time of the

formation of the Company, there will be only seven signatories to the Memorandum and Articles, who may be regarded as shareholders. In fact, it may further be said that even before registration or incorporation of the Company, if the Company wants to have a Managing Agent, the approval of the Government will have to be obtained. Whose interest will it then be to object except of the seven signatories? As regards clause 7 section 153C the Court has been given power to regard any material change in the control of a company, or in the composition of a Managing Agency firm or company as justifying an order of winding up. No provision has been made to exclude such cases of change even where the Government has approved the change in the constitution composition or control of the Managing Agency firm or company, and I suggest that this should be expressly provided for. In Section 153C the word 'otherwise' in Sub-clause (a) of Clause 1 seems to be redundant. On the contrary it is likely to create complications. All claims arising out of the termination of the Office or in pursuance of the agreement will be extinguished, but there might be money claims for monies lent or advanced or for goods supplied etc. The word 'otherwise' might lead to an interpretation that even those claims will be extinguished. As already stated clause 8 Section 289B, sub-clause 4, the provision about the issue of notice to members, as also notice in the newspapers, should not be made applicable to all the applications, at least the applications by new companies, and approval for slight and minor changes in the Constitution of a firm should also be excluded. There should also be some provision somewhere that the approval or refusal of any application by the Government should be communicated to the applicant within reasonable limit of time which should be prescribed in the Act itself. Otherwise, there will be the usual administrative delay. Moreover, the last sub-clause that has been proposed to be added by Government, namely sub-clause (2) Section 86J of clause 2 of the Bill seems to be very drastic. The normal powers of a shareholder are sought to be taken away. The effect of all the provision throughout appears to be contrary to the democratic principles of a majority rule. The Constitution of a Government whether Central or State can be changed by votes of half the Members of the House, but the Directors of a company cannot be changed, even if an overwhelming majority of the shareholders want it and decide in favour thereof, I am afraid the effect of this provision is likely to act as a definite damper on the investment market. Moreover it is a matter worth consideration as to whether or not a person who has parted with all his shares or most of his shares for good consideration can or should be heard as an injured party.

P. D. HIMATSIKKA.

NEW DELHI;  
the 30th August, 1951.

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I join Shri P. D. Himatsingka with his notes of dissent so far as it relates to the sub-clause (a) of clause 1 of section 87CC of appointment of Managing Agent of a new company and to the sub-clause (2) of clause 2 of section 86J giving powers to the Central Government to allow effect to be given or not to be given to a change in the Board of Directors on the complaint of the Managing Agent.

B. P. JHUNJHUNWALA.

NEW DELHI;  
*the 30th August, 1951.*

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**THE INDIAN COMPANIES (AMENDMENT) BILL, 1951**

(AS AMENDED BY THE SELECT COMMITTEE)

(Words side-lined or underlined indicate the amendments suggested by the Committee; asterisks indicate the omissions)

▲  
**BILL**

further to amend the Indian Companies Act, 1913.

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 86-1 of the Indian Companies Act, 1913 (hereinafter referred to as the principal Act), the following section shall be inserted, namely:— 5

“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,— 10

(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 15

(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 20

(c) the reappointment after the 21st day of July, 1951, of a managing director in place of the 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. 2

shall be void unless approved by the Central Government. 30

(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 the principal Act, the following further proviso shall be inserted, namely:—

"Provided further that in the case of a 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 I.*—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 partners 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 prejudicially the affairs of the company which is being managed by the managing agent."

**6. Insertion of new section 87CC in Act VII of 1913.**—(1) 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.*—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.

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- 5 (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:—

- 10 “*Alternative remedy to winding up in cases of mismanagement or oppression.*”

15 ● 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),

20 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.

- 25 (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—

30 (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

35 (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

40 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

45 of Civil Procedure, 1908 (Act V of 1909), 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 interests 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 share 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 provisions 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.

5 (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.

10 (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.

15 (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 so 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.

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25 (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 section 235 and 236 of this Act shall apply as they apply to a company in the course of being wound up.

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40 *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 the control of the 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:

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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.

153D. 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 agent,  
managing director or other director, as the case may be, is terminated  
or any other agreement is terminated or revised,—

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(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, \* \*

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

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

(2) If any person acts as the manager 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 manag-  
ing agent” means—

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(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;

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(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 subsi-  
diary company of the managing agent;

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

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(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.”

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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 86J, 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 a public 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 inquiry;

(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 full particulars of the matter to which they purport to relate;

(c) with such assistants 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 document 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. 5

(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 rules or orders made thereunder. 10 15

**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. 20

FINANCIAL MEMORANDUM ON THE INDIAN COMPANIES  
(AMENDMENT) BILL PREPARED BY THE MINISTRY OF  
FINANCE

In pursuance of section 289B of the Indian Companies Act, as amended by the Indian Companies (Amendment) Ordinance, a Commission has been set up consisting of the following persons:—

1. Shri C. H. Bhabha, *Chairman*.
2. Shri N. Sundaresan, Deputy Governor, Reserve Bank of India.
3. Shri D. L. Mazumdar, Member Secretary, Company Law Committee.

The Commission is intended to advise the Central Government in exercise of the powers to accord or withhold approval to change in the controlling interest of existing companies. The aforesaid Ordinance also enables the Commission to obtain such information to carry on such further investigation as it considers necessary for this purpose. The Select Committee have also recommended certain changes in the Indian Companies (Amendment) Bill, 1951, which will substantially add to the duties of the Commission. These are as follows:—

- (i) it shall be the duty of the Commission to enquire and advise the Government not merely in regard to applications submitted under sections 86J, 87AA, 87B, 87BB and 87CC but also on all other matters arising out of the provisions of the Bill;
- (ii) the following specific amendments in Sections 86J, 87CC, 153C, 153D which require the prior approval of the Government to certain changes in the management of companies or which call upon the Government to take certain action to further the objects underlying the Bill:
  - (a) any amendments in the articles of association of a company or any variation in the agreement with it which purports to increase or has the effect of increasing, whether directly or indirectly the remuneration of a managing director or any other director; [86J(1) (a) (ii)],
  - (b) any resolution passed or other action taken to increase the number of directors provided for in the articles except where the increase is within the limit permissible under the articles; [86J(1)(b)]
  - (c) where a managing agent, managing director or director has complained to the Central Government that on account of a change in the ownership of shares in the company, a change is likely to be caused in the Board of Directors and as a result of such change the interests of the company are likely to be prejudicially affected; [86J(2)]
  - (d) appointment and re-appointment of a managing agent after the twenty-first day of July, 1951. [86CC]

2. The effect of these extensive amendments to the Bill which the Select Committee has recommended on the volume of work that may have to be undertaken by the Commission will not be known till some time after

the Bill has been passed into law. To start with, the following staff will be necessary to attend to the secretarial portion of the work devolved on the Commission:—

- One Assistant
- One Clerk-typist
- Two Peons.

If there be any substantial increase in the volume of work involved, it may be necessary to appoint a superintendent to supervise the work. The expenditure on the above staff and their allowances for one year will come to about Rs. 35,000 inclusive of the travelling allowances of the Chairman and Members of the Commission.

3. It may also be necessary to appoint two Solicitors, one at Bombay and the other at Calcutta so as to assist the Commission in investigating the matters referred to them by the Government. The expenditure on Solicitors and their staff for one year may amount to Rs. 34,000.

4. The total expenditure for the administration of the Amending Act works out approximately to Rs. 60,000 during one year till the Indian Companies Act is revised on the recommendations of the Company Law Committee. As all the appointments will not be filled up from the outset, considerable savings will be effected if the volume of work does not increase substantially.

PARLIAMENT OF INDIA

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Report of the Select Committee on the Bill further to amend  
the Indian Companies Act, 1913.

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*(As amended by the Select Committee)*