to consolidate and amend the law relating to companies and certain other associations.

WHEREAS it is expedient to consolidate and amend the law relating to companies and certain other Associations;

It is hereby enacted as follows:

PART-I
PRELIMINARY

1. Short title and commencement

(1) This Act may be called the Companies Act, 1994.

(2) It shall come into force on such rate as the Government may, by notification in the Official, Gazette, appoint.

2. Definitions

(1) In this Act, unless there is anything repugnant in the subject or context,-

(a) "articles" means the articles of association of a company including, so far as they apply to the company, the regulations contained in Schedule I to this Act:

Provided that the article of association of a company framed under any law relating to companies at any time in force before the commencement of this Act shall, so far as they are not inconsistent with the provisions of this Act, be deemed to be the articles of association of that company framed in accordance with the provisions of the Act:

(b) "banking company" means a bank company as defined in section 5(9) of the Act, 1991 (Act No. 14 of 1991).

(c) "company" means a company formed and registered under this Act or an existing company;
(d) "The Court" means the Court having jurisdiction under this Act;

(e) "debenture" includes debenture stock, bonds and any other securities of a company, whether constituting a charge on the assets of company or not;

(f) "director" includes any person occupying the position of director by whatever name called;

(g) "District Court" means the principle Civil Court of original jurisdiction in a district, but does not include the High Court Division, in the exercise of its ordinary civil jurisdiction;

(h) "existing company" means a company formed and registered under any law relating to companies in force at any time before the commencement of this Act, and is in operation after commencement of this Act,

(i) "financial year" means, in relation to any body corporate, the period in respect of which any profit and loss account of the body corporate laid before it in annual general meeting is made up, whether that period is a year or not;

Provided that in relation to an insurance company, "financial year" shall mean the calendar year;

(j) "insurance company" means a company that carries on the business of insurance either solely or in common. with any other business or businesses;

(k) "manager" means an individual who, subject to the superintendence, control and direction of the Board of Directors, has the management of the whole, or substantially the whole, of the affairs and business of a company , and includes a director or any other person occupying the position of a manager, by whatever name called, and whether under a contract of service or not;

(l) "managing agent" means a person, firm or company by whatever name called, who or which is entitled to the management of the whole affairs and business of a company by virtue of an agreement with the company, and under the control and direction of the directors except to the extent, if any, otherwise provided for in the agreement;

(m) "managing director" means a director who, by virtue of an agreement with the company or of a resolution passed by the company in its general meeting or by its directors or by virtue of its memorandum or articles of association, is entrusted with the substantial powers of management which would not otherwise be exercisable by him and includes a director occupying the position of a managing director by whatever name called;

Provided that the powers to do administrative acts of a routine nature when so authorised by the directors such as the power to affix common seal of the company to any document or to draw and endorse any cheque on the account of the company in any bank or to draw and endorsed negotiable instrument or to sign any certificate of share or to direct registration of transfer of any shares shall not be deemed to be included within the substantial powers of management:
Provided further that a managing director of a company shall exercise his powers subject to the superintendent control and direction of the directors.

(n) "memorandum" means the memorandum of association of a company as originally framed or as altered in pursuance of the provisions of this Act;

(o) "officer" means a director, managing agent, manager secretary or any other officer of a company and also includes--

(i) where the managing agent is a firm any partner in the firm;

(ii) where the managing agent is a body corporate, any director or manager of the body corporate;

(iii) where the secretary is a body corporate;

Provided that, except for the purpose of sections 331, 332, and 333, the form "officer" shall not include an auditor.

(p) "prescribed" means as respects the provisions of this Act relating to the winding up of companies, prescribed by rules made by the Supreme Court and, as respect the other provisions of this Act, prescribed by the Government;

(q) "private company" means a company which by its articles--

(i) restricts the right to transfer its shares, if any;

(ii) prohibits any invitation to the public to subscribe for its shares or debenture, if any;

(iii) limits the number of its members to fifty not including persons who are in its employment;

Provided that where two or more persons hold one or more shares in a company jointly, the shall, for the purposes of this definitation be treated as a single member;

(r) "public company" means a company incorporated under this Act or under any law at any time in force before the commencement of this Act and which is not a private company;

(s) "Registrar" means a Registrar or any other officer, by whatever designation, performing under this Act the duty of registration of companies;

(f) "Schedule" means a schedule to this act;
"secretary" means any individual possessing the prescribed qualifications appointed to perform the duties which may be performed by a secretary under this Act and any other ministerial or administrative duties, and "share" means a share in the capital of the company, and includes stock except when a distinction between stock and shares is expressed or implied.

For the purposes of this Act, a company shall subject to the provisions sub-section (4), be deemed to be a subsidiary of another, if--

(a) that other contracts the composition of Board of Directors of the first mentioned company.

(b) the first mentioned company, being an existing company, has before the commencement of this Act, issued preference shares the holders of which have the same voting right in all respects as the holders of equity shares and that other company exercises or controls more than half of the total voting power of the first mentioned company; or

(c) the first mentioned company is not a subsidiary within the meaning of clause (b), but that other company holds more than half in nominal value of its equity share capital; or

(d) the first mentioned company is a subsidiary of a third company with is that other's subsidiary.

For the purposes of sub-section (2), the composition of a company's Board of Directors shall be deemed to be controlled by another company if, that other company, by the exercise of some power exercisable by it at its discretion without the consent or concurrence of any other person, can appoint or remove the holders of all or a majority of the directors, and for the purposes of this sub-section that other company shall be deemed to have power to appoint to a directorship with respect to which any of the following conditions is satisfied, that is to say--

(a) that power of appointment cannot be exercised except in favour of an individual,

(b) that an individual's appointment thereto follows necessarily from his appointment as director, managing agent, secretary or manager of or to any other office of employment in, that other company; or

(c) that the directorship is held by an individual nominated by that other company or a subsidiary thereof.

In determining whether one company is a subsidiary of another the following conditions shall be applicable namely:--

(a) any shares held or power exercisable by that other company in a fiduciary capacity shall be treated as not held or exercisable by it.

(b) subject to the provisions of clauses (c) and (d) any shares held or power exercisable shall be deemed to be the shares
held or power exercisable by that other company, if--

(i) the shares are held or the power is exercisable by a person as a nominee and on behalf of that other company, but this clause shall not apply to the holding of such shares or to the exercise of such powers by such person where that other company is concerned in a fiduciary capacity.

(ii) the shares are held or the power is exercisable by a subsidiary of that other company or by a nominee of such subsidiary, but this clause shall not apply to the holding of such shares or to the exercise of such powers by the subsidiary or by its nominee where the subsidiary is concerned in a fiduciary capacity;

(c) any shares held or power exercisable by any person by virtue of the provisions of any debentures of the first-mentioned company or of a trust deed for securing any issue of such debentures shall disregarded;

(d) if any shares are held or power is exercisable, not being held of exercisable as mentioned in clause (c),--

(i) by that other company or by its subsidiary or by a nominee of that other or its subsidiary as the case may be, and

(ii) the ordinary business of that other company or as the case may be of its subsidiary includes the lending of money and such shares are held or the power is exercisable by way of security of the loan [then such power shall not be treated as being held or exercisable by such company or its nominee.]

(5) For the purposes of this Act' a company shall be deemed to be the holding company of another if, and only if, that other is its subsidiary.

3. Jurisdiction of the Court.

(1) The Court having jurisdiction under this Act shall be High Court Division;

Provided that the Government may be notification in the Official Gazette and subject to such restrictions and conditions as it thinks fit, empower any District Court to exercise all or any of the jurisdiction by this Act conferred upon the Court, and in that case such District Court shall as regards the jurisdiction so conferred, be the Court in respect of all companies having their registered office in the district.

Explanation.--For the purposes to wind up companies the expression "registered office" means the place where the registered office of the company, during the six months immediately preceding the presentation of the petition of winding up was situated.

(2) Nothing in this section shall invalidate a proceeding by reason of its being taken in a wrong Court