

amalgamation, as the case may be, shall become void with effect from the commencement of this Act, or be void, as the case may be.]

[377. **Restrictions on right of managing agent to appoint directors.**—*Omitted by the Companies (Amendment) Act, 2000 as provisions relating to managing agents, etc. had become redundant after abolition of system by Act 17 of 1969.*]

CHAPTER IV

A. SECRETARIES ¹[* * *]

[**Sections 378 to 383.**—*Omitted by the Companies (Amendment) Act, 2000 as provisions relating to managing agents, etc. had become redundant after abolition of system by Act 17 of 1969.*]

²[**383A. Certain companies to have secretaries**³.—(1) Every company ⁴[having such paid-up share capital as may be prescribed⁵] shall have a whole-time secretary, and where the Board of directors of any such company comprises only two directors, neither of them shall be the secretary of the company:

⁶[Provided that every company not required to employ a whole-time secretary under sub-section (1) and having a paid-up share capital of ten lakh rupees or more shall file with the Registrar a certificate from a secretary in whole-time practice in such form⁷ and within such time and subject to such conditions as may be prescribed,⁸ as to whether the company has complied with all provisions of this Act and a copy of such certificate shall be attached with Board's report referred to in section 217.]

⁹[(1A) If a company fails to comply with the provisions of sub-section (1), the company and every officer of the company who is in default, shall be punishable with fine which may extend to ¹⁰[five hundred rupees] for every day during which the default continues:

¹ Reference to treasurers needs to be deleted after abolition of the system by Act 17 of 1969, w.e.f. 3-4-1970.

² Inserted by Act 41 of 1974, section 30, w.e.f. 1-2-1975.

³ See e-Form 66.

⁴ Substituted by the Companies (Amendment) Act, 1988, section 52, w.e.f. 1-12-1988 for the words "having a paid-up share capital of rupees twenty-five lakhs or more".

⁵ According to rule 2, Companies (Appointment and Qualifications of Secretary) Rules, 1988 all companies having paid-up capital of not less than Rs. 2 crores shall have a whole-time company secretary (*w.e.f. 11-6-2002*).

⁶ Inserted by the Companies (Amendment) Act, 2000, w.e.f. 13-12-2000.

⁷ See Companies (Compliance Certificate) Rules, 2001.

⁸ *Ibid.*

⁹ Inserted by the Companies (Amendment) Act, 1988, section 52, w.e.f. 1-12-1988.

¹⁰ Substituted for "fifty rupees" by the Companies (Amendment) Act, 2000, w.e.f. 13-12-2000.

Provided that in any proceedings against a person in respect of an offence under this sub-section, it shall be a defence to prove that all reasonable efforts to comply with the provisions of sub-section (1) were taken or that the financial position of the company was such that it was beyond its capacity to engage a whole-time secretary.]

(2) Where, at the commencement of the Companies (Amendment) Act, 1974 (41 of 1974),—

- (a) any firm or body corporate is holding office, as the secretary of a company, such firm or body corporate shall, within six months from such commencement, vacate office as secretary of such company;
- (b) any individual is holding office as the secretary of more than one company having a paid-up share capital of rupees twenty-five lakhs or more, he shall, within a period of six months from such commencement, exercise his option as to the company of which he intends to continue as the secretary and shall, on and from such date, vacate office as secretary in relation to all other companies].

B. MANAGERS

384. Firm or body corporate not to be appointed manager.—¹[No company] shall, after the commencement of this Act, appoint or employ, or after the expiry of six months from such commencement, continue the appointment or employment of, any firm, body corporate or association as its manager.

385. Certain persons not to be appointed managers.—(1) No company shall, after the commencement of this Act, appoint or employ, or continue the appointment or employment of, any person as its manager who—

- (a) is an undischarged insolvent, or has at any time within the preceding five years been adjudged an insolvent; or
- (b) suspends, or has at any time within the preceding five years suspended, payment to his creditors; or makes, or has at any time within the preceding five years made, a composition with them; or
- (c) is, or has at any time within the preceding five years been, convicted by a Court in India of an offence involving moral turpitude.

(2) The Central Government may, by notification in the Official Gazette, remove the disqualification incurred by any person in virtue of clause (a), (b) or (c) of sub-section (1), either generally or in relation to any company or companies specified in the notification.

386. Number of companies of which a person may be appointed manager.—(1) No company shall, after the commencement of this Act, appoint or employ any person as manager, if he is either the manager or the managing director of any other company, except as provided in sub-section (2).

¹ Substituted by Act 65 of 1960, section 145, for certain words.