CHAPTER VII

MANAGEMENT AND ADMINISTRATION

Important Provisions at a glance

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REGISTER OF MEMBERS, ETC (SECTION 88)

SECTION 88(1) Keeping and Maintenance of Register

Every company shall keep and maintain the following registers in such form and in such manner as may be prescribed, namely:-

(a) Register of members indicating separately for each class of equity and preference shares held by each member residing in or outside India;

(b) Register of debenture-holders; and

(c) Register of any other security holders.

RULE 3 : Register of Members:

(1) Every company limited by shares shall, from the date of its registration, maintain a register of members in Form No. MGT. 1 :

Provided that *in case of existing companies*, registered under the Companies Act, 1956, particulars shall be compiled within 6 months from the date of commencement of these rules.

(2) In the case of a company not having share capital , the register of members shall contain the following particulars, in respect of each member, namely :-

(a) Name of the member; address (registered office address in case the member is a body corporate); e-mail address; Permanent Account Number or CIN; Unique Identification Number, if any ; Father's/Mother's/ Spouse's name ; Occupation; Status; Nationality;in case member is a minor, name of the guardian and the date of birth of the member; name and address of nominee;

(b) Date of becoming member;

(c) Date of cessation;

(d) Amount of guarantee, if any;

Any other interest if any; and

Instructions, if any, given by the member with regard to sending of notices etc:

Provided that *in case of existing companies*, registered under the Companies Act, 1956, particulars shall be complied within 6 months from the date of commencement of these rules.

RULE 4: Register of debenture holders or any other security holders :-

Every company which issues or allots debentures or any other security shall maintain a separate register of debenture holders or security holders, as the case may be, for each type of debentures or other securities in Form No. MGT.2.

RULE 5: Maintenance of the Register of members etc. under Section 88:-

Every company shall maintain the registers under clauses (a), (b) and (c) of sub-section (1) of section 88 in the following manner namely:-

(1) The entries in the registers maintained under section 88 shall be made within 7 days after the Board of Directors or its duly constituted committee approves the allotment or transfer of shares, debentures or any other securities, as the case may be.

(2) The registers shall be maintained at the registered office of the company

Unless a SPECIAL RESOLUTION is passed in a general meeting authorizing

- The keeping of the register *at any other place* within the city, town or village in which the registered office is situated or
- any other place in India *in which more than 1/10th of the total members entered in the register of members reside.*

(3) Consequent upon any forfeiture, buy-back, reduction, sub-division, consolidation or cancellation of shares, issue of sweat equity shares, transmission of shares, shares issued under any scheme of arrangements, mergers, reconstitution or employees stock option scheme or any of such scheme provided under this Act or by issue of duplicate or new share certificates or new debenture or other security certificates, entry shall be made within 7 days after approval by the Board or committee, in the register of members or in the respective registers, as the case may be.

(4) If any change occurs in the status of a member or debenture holder or any other security holder whether due to death or insolvency or change of name or due to transfer to Investor Education Protection Fund or due to any other reason, *entries thereof explaining the change shall be made in the respective register.*

(5) If any rectification is made in the register maintained under section 88 by the company pursuant to any order passed by the competent authority under the Act, *the necessary reference of such order shall be indicated in the respective register.*

(6) If any order is passed by any judicial or revenue authority or by Security and Exchange Board of India (SEBI) or competent authority attaching the shares, debentures or other securities and giving directions for remittance of dividend or interest, *the necessary reference of such order shall be indicated in the respective register.*

(7) In case of companies whose securities are *listed* on a stock exchange in or outside India, *the particulars of any pledge, charge, lien or hypothecation created by the promoters* in respect of any securities of the company held by the promoter including the names of pledgee/pawnee and any revocation therein shall be entered in the register within 15 days from such an event.

(8) If promoters of any listed company, which has formed a joint venture company with another company have *pledged or hypthoticated or created charge or lien in respect of any security of the listed company in connection with such joint venture company*, the particulars of such pledge, hypothecation, charge and lien shall be entered in the register members of the listed company within 15 days from such an event.

SECTION 88(2) Index of Register

Every register maintained under sub-section (1) shall include an index of the names included therein.

RULE 6 : Index of names to be included in Register :-

(1) Every register maintained under sub-section (1) of section 88 shall include an index of the names entered in the respective registers and the index shall, in respect of each folio, contain sufficient indication to enable the entries relating to that folio in the register to be readily found:

Provided that the maintenance of index is *not necessary in case the number of members is less than fifty.*

(2) The company shall make the necessary entries in the index simultaneously with the entry for allotment or transfer of any security in such Register.

SECTION 88(3) Register of beneficial owners maintained by Depository

The register and index of beneficial owners maintained by a depository under section 11 of the Depositories Act, 1996 (22 of 1996), shall be deemed to be the corresponding register and index for the purposes of this Act.

SECTION 88(4) Keeping of Foreign Register

A company may, if so *authorised by its articles*, keep in any country outside India, in such manner as may be prescribed, a part of the register referred to in sub-section (1), called "foreign register" containing the names and particulars of the members, debenture-holders, other security holders or beneficial owners residing outside India.

RULE 7Foreign register of members, debenture holders, other security holders or beneficial Owners residing outside India:-

(1) A company which has share capital or which has issued debentures or any other security may, *if so authorised by its articles, keep in any country outside India*, a part of the register of members or as the case may be, of debenture holders or of any other security holders or of

beneficial owners, resident in that country (hereafter in this rule referred to as the "foreign register")

(2) The company shall, within 30 days *from the date of the opening of any foreign register*, file with the Registrar notice of the situation of the office in Form No.MGT.3 along with the fee where such register is kept; and

In the event of any change in the situation of such office or *of its discontinuance*, shall, within 30 days from the date of such change or discontinuance, as the case may be, file notice in Form No.MGT.3 with the Registrar of such change or discontinuance.

(3) A foreign register shall be deemed to be part of the company's register (hereafter in this rule referred to as the "principal register") of members or of debenture holders or of any other security holders or beneficial owners, as the case may be.

(4) The foreign register shall be maintained in the same format as the principal register.

(5) A foreign register *shall be open to inspection* and may be closed, and extracts may be taken there from and copies thereof may be required, in the same manner, mutatis mutandis, as is applicable to the principal register,

except that the advertisement before closing the register shall be inserted in at least two newspapers circulating in the place wherein the foreign register is kept.

(6) If a foreign register is kept by a company in any country outside India, the decision of the appropriate competent authority in regard to the rectification of the register shall be binding.

(7) Entries in the foreign register maintained under sub-section (4) of section 88 shall be made simultaneously after the Board of Directors or its duly constituted committee approves the allotment or transfer of shares, debentures or any other securities, as the case may be.

(8) The company shall—
   (a) transmit to its registered office in India a copy of every entry in any foreign register within 15 days after the entry is made; and
   (b) keep at such office *a duplicate register of every foreign register* duly entered up from time to time.

(9) Every such duplicate register shall, for all the purposes of this Act, be deemed to be part of the principal register.

(10) Subject to the provisions of section 88 and the rules made thereunder, with respect to duplicate registers, the shares or as the case may be, debentures or any other security, registered in any foreign register shall be distinguished from the shares or as the case may be, debentures or any other security, registered in the principal register and in every other foreign register; and *no transaction with respect to any shares or as the case may be*, debentures or any other security, registered in a foreign register shall, *during the continuance of that registration, be registered in any other register.*

(11) The company may discontinue the keeping of any foreign register; and thereupon all entries in that register shall be transferred to some other foreign register kept by the company outside India or to the principal register.

RULE 8 : Authentication :

(1) The entries in the registers maintained under section 88 and index included therein shall be authenticated

- by the company secretary of the company or by any other person authorised by the Board for the purpose, and
- the date of the board resolution authorising the same shall be mentioned.

(2) The entries in the foreign register shall be authenticated by the company secretary of the company or person authorised by the Board *by appending his signature to each entry.*

SECTION 88(5) Penalties for Non-Compliance

If a company does not maintain a register of members or debenture-holders or other security holders or fails to maintain them in accordance with the provisions of sub-section (1) or sub-section (2), the company and every officer of the company who is in default shall be punishable with fine which

- shall not be less Rs. 50,000 but which may extend to 3,00,000 rupees and
- where the failure is a continuing one, with a further fine which may extend to Rs. 1000 for every day, after the first during which the failure continues.

DECLARATION IN RESPECT OF BENEFICIAL INTEREST IN ANY SHARE (SECTION 89)

SECTION 89(1) Declaration by Registered Owner

Where the name of a person is entered in the register of members of a company as the holder of shares in that company but who does not hold the beneficial interest in such shares, such person shall *make a declaration* within such time and in such form as may be prescribed to the company specifying the name and other particulars of the person who holds the beneficial interest in such shares.

RULE 9(1)

A person whose name is entered in the register of members of a company as the holder of shares in that company but who does not hold the beneficial interest in such shares (hereinafter referred to as “the registered owner”),

shall file with the company, a declaration to that effect in Form No.MGT.4 in duplicate,

within a period of 30 days from the date on which his name is entered in the register of members of such company:

SECTION 89(2) Declaration by beneficial owner

Every person *who holds or acquires a beneficial interest* in share of a company *shall make a declaration* to the company specifying the nature of his interest, particulars of the person in whose name the shares stand registered in the books of the company and such other particulars as may be prescribed.

RULE 9(2)

> Every person holding and exempted from furnishing declaration or acquiring a beneficial interest in shares of a company not registered in his name (hereinafter referred to as "the beneficial owner")
>
> > shall file with the company, a declaration disclosing such interest in Form No. MGT.5 in duplicate, within 30 days after acquiring such beneficial interest in the shares of the company:

SECTION 89(3) Changes in the Beneficial Interest

Where any change occurs in the beneficial interest in such shares, the person referred to in sub-section (1) and the beneficial owner specified in sub-section (2) shall, within a period of 30 days from the date of such change, make a declaration to the company in such form and containing such particulars as may be prescribed.

RULE 9(1) & 9(2) Proviso

Proviso of 9(1)

Provided that where any change occurs in the beneficial interest in such shares, the registered owner shall, within a period of thirty days from the date of such change, make a declaration of such change to the company in Form No.MGT.4 in duplicate.

Proviso of 9(2)

Provided that where any change occurs in the beneficial interest in such shares, the beneficial owner shall, within a period of thirty days from the date of such change, make a declaration of such change to the company in Form No.MGT.5 in duplicate.

SECTION 89(4) Manner of disclosing BI

The Central Government may make rules to provide for the manner of holding and disclosing beneficial interest and beneficial ownership under this section.

SECTION 89(5) Failure to make Declaration

If any person *fails, to make a declaration* as required under sub-section (1) or sub-section (2) or sub-section (3), without any reasonable cause, he shall be punishable with fine

- which may extend to 50,000 rupees and
- where the failure is a continuing one, with a further fine which may extend to 1000 rupees for every day after the first during which the failure continues.

SECTION 89(6) Filing of return by the Company

Where any declaration under this section is made to a company, the company shall make a note of such declaration in the register concerned and shall file, within 30 days from the date of receipt of declaration by it, *a return in the prescribed form with the Registrar* in respect of such declaration with such fees or additional fees as may be prescribed, within the time specified under section 403.

RULE 9(3)

Where any declaration under section 89 is received by the company, the company shall make a note of such declaration in the register of members and shall file, within a period of 30 days from the date of receipt of declaration by it, a return in Form No.MGT.6 with the Registrar in respect of such declaration with fee.

SECTION 89(7) Default in filing return

If a company, required to file a return under sub-section (6), fails to do so before the expiry of the time specified under the first proviso to sub-section (1) of section 403, the company and every officer of the company who is in default shall be punishable with fine

- which shall not be less than 500 rupees but which may extend to 1000 rupees and
- where the failure is a continuing one, with a further fine which may extend to 1000 rupees for every day after the first during which the failure continues.

SECTION 89(8) Claiming of right

No right in relation to any share in respect of which a declaration is required to be made under this section but not made by the beneficial owner, shall be enforceable by him or by any person claiming through him.

SECTION 89(9)

Nothing in this section shall be deemed to prejudice the obligation of a company to pay dividend to its members under this Act and the said obligation shall, on such payment, stand discharged.

INVESTIGATION OF BENEFICIAL OWNERSHIP OF SHARES IN CERTAIN CASES (SECTION 90)

Where it appears to the Central Government that there are reasons so to do, it may appoint one or more competent persons to *investigate and report as to beneficial ownership* with regard to any share or class of shares and the provisions of section 216 shall, as far as may be, apply to such investigation as if it were an investigation ordered under that section.

POWER OF CLOSE OF REGISTER OF MEMBERS OR DEBENTURE HOLDERS OR ANY OTHER SECURITY HOLDERS (SECTION 91)

SECTION 91(1)

A company may close the register of members or the register of debenture- holders or the register of other security holders for any period or periods

- not exceeding in the aggregate forty-five days in each year,
- but not exceeding thirty days at any one time,

subject to giving of *previous notice of at least seven days or such lesser period* as may be specified by Securities and Exchange Board for listed companies or the companies which intend to get their securities listed, in such manner as may be prescribed.

RULE 10(1) : CLOSURE IN CASE OF LISTED COMPANY

A company closing the register of members or the register of debenture holders or the register of other security holders shall give at least 7 days previous notice and in such manner, as may be specified by Securities and Exchange Board of India,

if such company is a listed company or intends to get its securities listed, by advertisement

- *at least once in a vernacular newspaper* in the principal vernacular language of the district and having a wide circulation in the place where the registered office of the company is situated, and
- *at least once in English language* in an English newspaper circulating in that district and having wide circulation in the place where the registered office of the company is situated and

- ➢ *publish the notice on the website* as may be notified by the Central Government and on the website, if any, of the Company.

RULE 10(2) IN CASE OF PRIVATE COMPANY

The provisions contained in sub-rule (1) shall not be applicable to a private company provided that *the notice has been served on all members of the private company not less than seven days* prior to closure of the register of members or debenture holders or other security holders.

SECTION 91(2) Penalties for Non-Compliance

If the register of members or of debenture-holders or of other security holders is closed

- without giving the notice as provided in sub-section (1), or
- after giving shorter notice than that so provided,
- or for a continuous or an aggregate period in excess of the limits specified in that sub-section,

  the company and every officer of the company who is in default shall be liable to a penalty of 5000 rupees for every day subject to a maximum of 1,00,000 rupees during which the register is kept closed.

ANNUAL RETURN (SECTION 92)

SECTION 92(1) Preparation of Annual return

Every company shall *prepare a return* (hereinafter referred to as the annual return) in the prescribed form containing the particulars as they stood on the close of the financial year regarding—

(a) its registered office, principal business activities, particulars of its holding, subsidiary and associate companies;

(b) its shares, debentures and other securities and shareholding pattern;

(c) its indebtedness;

(d) its members and debenture-holders along with changes therein since the close of the previous financial year;

(e) its promoters, directors, key managerial personnel along with changes therein since the close of the previous financial year;

(f) meetings of members or a class thereof, Board and its various committees along with attendance details;

(g) remuneration of directors and key managerial personnel;

(h) penalty or punishment imposed on the company, its directors or officers and details of compounding of offences and appeals made against such penalty or punishment;

(i) matters relating to certification of compliances, disclosures as may be prescribed;

(j) details, as may be prescribed, in respect of shares held by or on behalf of the Foreign Institutional Investors indicating their names, addresses, countries of incorporation, registration and percentage of shareholding held by them; and

(k) such other matters as may be prescribed,

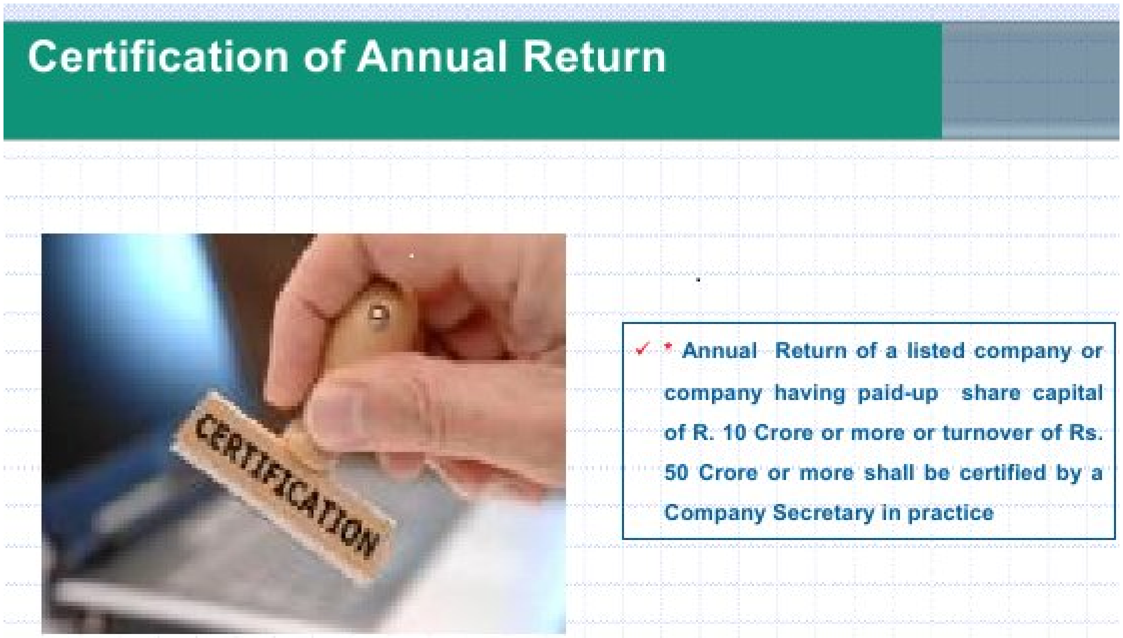
and signed

- by a director and the company secretary, or
- where there is no company secretary, by a company secretary in practice:

Provided that in relation to One Person Company and small company, the annual return shall be signed by the company secretary, or where there is no company secretary, by the director of the company.

RULE 11 (1)
Every company shall prepare its annual return in Form No. MGT.7.

SECTION 92(2)



The annual return, filed by a listed company or, by a company having such paid-up capital and turnover as may be prescribed, *shall be certified by a company secretary in practice* in the prescribed form, stating that the annual return discloses the facts correctly and adequately and that the company has complied with all the provisions of this Act.

RULE 11(2)

The annual return, filed by a listed company or a company having paid-up share capital of

- ten crore rupees or more or
- turnover of fifty crore rupees or more,

shall be certified by a Company Secretary in practice and the certificate shall be in Form No. MGT.8.

SECTION 92(3) Extract of Annual Return

An extract of the annual return in such form as may be prescribed shall form part of the Board's report.

RULE 12(1)

The extract of the annual return to be attached with the Board's Report shall be in Form No. MGT. 9.

SECTION 92(4) Filing of Annual Return

Every company shall file with the Registrar a copy of the annual return,

- within 60 days from the date on which the annual general meeting is held or
- where no annual general meeting is held in any year within *sixty* days from the date on which the annual general meeting should have been held together with the statement specifying the reasons for not holding the annual general meeting, with such fees or additional fees as may be prescribed, within the time as specified, under section 403.

RULE 12(2)

A copy of the annual return shall be filed with the Registrar with such fee as may be specified for the purpose

SECTION 403

Section 403 provides time period for filing annual return in absence of AGM i.e. 270 days from the date by which it should have been submitted for filing the return, with the additional fees.

SECTION 92(5) Failure to File Annual Return

If a company fails to file its annual return under sub-section (4), before the expiry of the period specified under section 403 with additional fee,

- the company shall be punishable with fine which shall not be less than 50,000 rupees but which may extend to 5 Lacs rupees

  and

- Every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to 6 months or with fine which shall not be less than 50,000 rupees but which may extend to 5 Lacs rupees, or with both.

SECTION 92(6) Penalty on the CS for wrong certification

If a company secretary in practice certifies the annual return otherwise than in conformity with the requirements of this section or the rules made thereunder, he shall be punishable with fine which shall not be less than 50,000 rupees but which may extend to 5 lakh rupees.

RETURN TO BE FILED WITH REGISTRAR IN CASE PROMOTER'S STAKE CHANGES (SECTION 93)

SECTION 93: Return to be filed with Registrar in case promoters' stake changes.

Every listed company shall file a return in the prescribed form with the Registrar with respect to

- change in the number of shares held by promoters and
- top ten shareholders of such company,
  within 15 days of such change.

RULE 13

Every listed company shall file with the Registrar, a return in Form No.MGT.10 along with the fee with respect to changes relating to

- *either increase or decrease of 2% or more* in the shareholding position of promoters and
- *top 10 shareholders of the company* in each case, either value or volume of the shares, within 15 days of such change.

Explanation.- For the purpose of this sub-rule, the the expression “change” means increase or decrease by two percent or more in the shareholding of each of the promoters and each of the top ten shareholders of the company.

PLACE OF KEEPING AND INSPECTON OF REGISTERS, RETURNS, ETC. (SECTION 94)

SECTION 94(1) Place of keeping register and returns

The *registers* required to be kept and maintained by a company under section 88 and *copies of the annual return* filed under section 92 shall be kept at the registered office of the company:

Provided that such registers or copies of return may also be kept at any other place in India

- in which more than one-tenth of the total number of members entered in the register of members reside,
- if approved by a special resolution passed at a general meeting of the company and the Registrar has been given a copy of the proposed special resolution in advance:

Provided further that the period for which the registers, returns and records are required to be kept shall be such as may be prescribed.

SECTION 94(2) Inspection of Register and Returns

The registers and their indices, except when they are closed under the provisions of this Act, and the copies of all the returns shall be open for inspection

- by any member, debenture-holder, other security holder or beneficial owner, during business hours without payment of any fees and
- by any other person on payment of such fees as may be prescribed.

RULE 14(1)

The registers and indices maintained pursuant to section 88 and copies of returns prepared pursuant to section 92, shall be open for inspection during business hours, at such reasonable time on every working day as the board may decide,

- by any member, debenture holder, other security holder or beneficial owner without payment of fee and
- by any other person on payment of such fee as may be specified in the articles of association of the company but not exceeding fifty rupees for each inspection.

Explanation.- For the purposes of this sub-rule, *reasonable time of not less than two hours on every working day shall be considered by the company*

SECTION 94(3) Extract or Copy of Register and Returns

Any such member, debenture-holder, other security holder or beneficial owner or any other person may—

a) take extracts from any register, or index or return without payment of any fee; or
b) require a copy of any such register or entries therein or return on payment of such fees as may be prescribed.

RULE 14(2)

Any such member, debenture holder, security holder or beneficial owner or any other person may require a copy of any such register or entries therein or return

- on payment of such fee as may be specified in the articles of association of the company
- but not exceeding ten rupees for each page.
- Such copy or entries or return shall be supplied within seven days of deposit of such fee.

RULE 15: Preservation of register of members etc. and annual return

1) The register of members along with the index shall be preserved permanently and shall be *kept in the custody of the company secretary of the company or any other person authorized by the Board for such purpose; and*
2) The register of debenture holders or any other security holders along with the index shall be preserved *for a period of eight years* from the date of redemption of debentures or securities, as the case may be, and shall be kept in the custody of the company secretary of the company or any other person authorized by the Board for such purpose.
3) Copies of all annual returns prepared under section 92 and copies of all certificates and documents required to be annexed thereto *shall be preserved for a period of eight years* from the date of filing with the Registrar.
4) The *foreign register of members shall be preserved permanently*, unless it is discontinued and all the entries are transferred to any other foreign register or to the principal register. Foreign register of debenture holders or any other security holders shall be preserved for a period of eight years from the date of redemption of such debentures or securities
5) The foreign register shall be kept in the custody of the company secretary or person authorised by the Board.
6) A copy of the proposed special resolution in advance to be filed with the registrar as required in accordance with first proviso of sub-section (1) of section 94, shall be filed with the Registrar, at least one day before the date of general meeting of the company in Form No.MGT.14

RULE 16: Copies of the registers and annual return

Copies of the registers maintained under section 88 or entries therein and

Annual return filed under section 92

shall be furnished to

- any member, debenture-holder, other security holder or
- beneficial owner of the company or
- any other person
  - on payment of such fee as may be specified in the Articles of Association of the company
  - but not exceeding rupees ten for each page and
  - such copy shall be supplied by the company within a period of seven days from the date of deposit of fee to the company.

SECTON 94(4) Penalty on refusal for any inspection or providing any copy

If any inspection or the making of any extract or copy required under this section is refused, the company and every officer of the company who is in default shall be liable, for each such default, to a penalty of 1000 rupees for every day subject to a maximum of 1 lakh rupees during which the refusal or default continues.

SECTION 94(5) Order of Central Government

The Central Government may also, by order,

- direct an immediate inspection of the document, or
- direct that the extract required shall forthwith be allowed to be taken by the person requiring it.

REGISTERS, ETC TO BE EVIDENCE (SECTION 95)

SECTION 95 Register etc, to be evidence

The registers, their indices and copies of annual returns maintained under sections 88 and 94 shall be *prima facie evidence* of any matter directed or authorised to be inserted therein by or under this Act.