

1

Definitions of Certain Expressions

SECTION 2

DEFINITIONS

CLAUSE (7) - BODY CORPORATE

1 Cl. (7) Societies registered under the Societies Registration Act is not a 'body corporate'.

I

The question whether a particular institution or body, other than that specified in sub-clauses (a), (b) and (c) of clause (7) of section 2, is a body corporate under the said Act has to be decided with reference, among other things, to the status, mode of incorporation, constitution, etc., of the institution. It is not possible for the Department to lay down any general definition other than that given in the Act or to furnish a list of bodies which are deemed to be bodies corporate under clause (7) of section 2.

† Generally speaking, the Department would consider that any corporate body, *i.e.*, a body which has been or is incorporated under some statute and which has a perpetual succession, a common seal and is a legal entity apart from the members constituting it, will come within the definition of the term 'body corporate'. The term will not, however, include a society registered under the Societies Registration Act, 1860, or any of the bodies which have been specifically excluded by sub-clauses (a), (b) and (c) of clause (7) of section 2.

► *Circular: No. 8(26)/2(7)/63-PR, dated 13th March, 1963*

II

The question whether a society registered under the Societies Registration Act, 1860 should be considered a 'body corporate' within the meaning of clause (7) of section 2 has been carefully examined further in consultation with the Ministry of Law as well as in the light of the judgment of the Supreme Court in *Board of Trustees v. State of Delhi* AIR 1962 SC 458. It has been decided that such a society should not be deemed to be a 'body corporate' within the meaning of the aforesaid provisions

of the Companies Act, although such a society can be treated as a 'person' having separate legal entity apart from the members constituting it and thereby capable of becoming a member of a company under section 41(2).

Consistent with the interpretation of the expression 'body corporate' as stated above, a society should be excluded from the scope of the expression 'body corporate' occurring in various provisions of the Companies Act, viz., sections 43A, 209, 303, 372, etc.

► *Circular: No. 8/48/2(7)/63-PR, dated 24th November, 1962*

2

Cl. (7) - Oil and Natural Gas Commission notified as body corporate by Central Government.

In pursuance of sub-clause (c) of clause (7) of section 2 of the Companies Act, 1956, the Central Government hereby specifies, for the purposes of the said sub-clause, the Oil and Natural Gas Commission, as a body corporate established under section 3 of the Oil and Natural Gas Commission Act, 1959 (43 of 1959).

► *Notification : No. GSR 1883, dated 20th December, 1965*

CLAUSE (12) - DEBENTURE

3

Cl. (12) - Fixed deposit does not constitute 'debenture' within the meaning of the clause.

It was brought to the notice of this Department that a company in South India issued an advertisement in English Daily inviting 'fixed deposits' from the public to carry out its expansion and development plans and that the Registrar of Companies concerned advised the company that inasmuch as such an advertisement partook the nature of a 'prospectus' within the meaning of clause (36) of section 2, the provisions of sections 56(3) and 60 should have been duly complied with. The company, however, contended that such fixed deposits would not constitute debentures. The point was, therefore, referred to this Department for examination and advice.

The question whether such fixed deposit receipt constitute a 'debenture' or not within the meaning of clause (12) has accordingly been examined in consultation with the Ministry of Law. This Department is advised that in view of the inclusive nature of the definition in clause (12), the position is not entirely free from doubt. It is understood that borrowing against fixed deposit receipts is recognised method of raising company finance in some parts of the country and it is felt that it would not be desirable to do anything to disrupt this practice, until instances of widespread abuse of the procedure by companies are brought to the notice of this Department. It has, therefore, been decided that for the present, though a fixed deposit receipt may be regarded as a security, it should not be regarded as 'debenture' within the meaning of clause (12).

► *Letter: No. 8/2/58-PR, dated 10th December, 1958*