people. The second is the crumbling of the concept of public sector in the Soviet Union and East European bloc which are now fast switching over to market-oriented systems and contemplating mass privatization. Thirdly, most of the developing countries have now come out of the time-honoured managing agency system fostered by the British. Large private sector companies are now in the hands of professional managers and a new entrepreneurial class has come up. Fourthly, in several developing countries, there is now in place an industrial and technological base and a fairly good infrastructure and heavy industry have been well set in a number of countries. Fifthly, the capital market, is gradually growing in a number of countries of the region including China. Sixthly, the growing recognition that withdrawal of the State from economic process is one of the keys to further development since new industries such as micro-elecronics, computers, auto-revolution, information technology, automation of textiles and several other industries needless interference from the State.

As a result, privatization is now wide spread and growing. The trend has affected all countries, both those considered capitalists, like the USA and Britain and those governed by socialists majorities, such as Sweden and Italy. Since the mid-eighties, privatization operations have been carried out or are on the drawing board in some 60 countries of all kinds-both the most industrially advanced countries like the U.K., France, Canada and Sweden, and such Third World countries as Mexico, Brazil, Morocco, Algeria, the Congo, Niger, Chile and Argentina. Asia is no exception, moreover, with India, Turkey, South Korea-which has privatized its entire banking sector-Malaysia and Singapore and so on. Even the two countries which epitomise capitalism and have only a symbolic public sector, namely, USA and Japan, have embarked on privatization schemes.

The crucial question that arises in the context of the developing countries is in what manner and at what pace can the public sector be privatized since the private sector even now has neither the resources nor the competence to take over all public enterprises. If privatization is taken to mean selling away the assets of the public sector partially or fully to some individuals or to some private companies including foreign enterprises, however, efficient or financially sound, that may not be in the interest of the developing economies since no country or government would be willing to risk the political fallout that will be generated if any such step is contemplated. Privatization in the sense of ownership transfer at the moment should mean only disinvestment of PSE's shares to the public at large including workers-partially, substantially or fully. Even in this restricted sense, full privatization given the present state of economies in the countries of the region, would

be neither feasible nor desirable. The reasons are obvious. Neither governments nor the public sector would be in a position to absorb the shock of full privatization without a fundamental restructuring of national economies. Moreover, taking into account the experiences of the privatization in Latin America and U. K. it appears that privatization works only to the extent that the rest of the economy works. If the general economy suffers from an overdose of bureaucratic controls, rules and regulations, permits and licences, or sluggish growth, it would make only a nominal difference whether an enterprise is in private or public sector.

It is contended that four preconditions have to be satisfied before privatization in the sense of ownership transfer can be successful :

"(i) The economy should be globalised. Intranational and international competition should be fully encouraged. Otherwise privatization will result in the replacement of inefficient monopolies by exploitative private monopolies.

(ii) Subsidies will have to be abolished. Full privatization in a regime of subsidies will be an absurdity.

(iii) Administered prices and privatization is an equally glaring contradiction. No privatization with simultaneous price controls can ever work.

(iv) Internal and external protection through non tariff measures will have to be abolished. Whatever tariffs are needed have to be fully retionalized, otherwise efficiencises will deteriorate and the consumer and tax payer will become the victims. Privatization, in essence, means competition."[11]

These are macroeconomic issues and involve restructuring of the national economies and fundamental change in the overall historical perspective. Alleviation of poverty, equitable distribution of goods and services and maintenance of regional balances continue to be the major demands on the States of the region needing subsidies through the mechanism of administered and retention prices. Since Governments are likely to take time in taking a position on these major issues, full privatization of the public sector at the moment should ramain a long-term objective.

However, within the present framework a partial divestment is possible and desirable if the objectives are to : (a) improve the efficiency and performance of the PSEs; (b) make available funds to PSEs for modernization expansion and corporate growth and (c) distance the government from day-

11. Moosa Raza, " Exploding the Efficiency Myth," *The Economy vol. I - Crisis and Adjustment* (New Delhi, 1991).

to-day function of the PSEs. A partial divestment is possible without affecting major policy changes and without waiting for a total restructuring of the economy. A divesment of upto 49% should pose no problem as the Governments would still be able to retain effective policy control. This is essential because experience indicates that the success of recent industrialisers like Japan or the Republic of Korea was based, not on indiscriminate investment by private investors pursuing market signals, but industrialization guided by the state that influenced the number of units, the size of each, and the technology and marketing strategy adopted in each country. At a later stage divestment even up to 60 per cent can be tried provided the equity is distributed amongst a larger number of shareholders including the workers of the enterprises. In Britain and France, the Government retains one non-voting special share that gives it the power to reject subsequent sale or major capital or physical restructuring of the firm.New Zealand has also used a similar arrangement in some of its privatizations, with the Government retaining a ' Kiwi share'.

However, it will not be possible to divest the shares of all PSEs particularly those which are industrially sick as nobody would be interested to invest in them. The remedy for the sick units should be the same as for sick private enterprises. First, give an opportunity to the workers to run the units. If they cannot, one must face the unpleasant task of closing them down, with appropriate measures for relocation and rehabilitation of workers. The capital raised by disinvestment of selected PSUs should not go into the exchequer but should go into a separate fund with the following objectives : (i) for investment in the public sector for modernisation, expansion and corporate growth; (ii) for assisting ailing PSEs and turning them around; (iii) to create a social security scheme to safeguard the rights of workers; and (iv) for intervention in the market to sustain public confidence in this equity. Such a fund should be governed by a select body consisting of government nominees, public sector chiefs, chiefs of financial institutions and eminent economists from the public and private sectors, who would have all the authority to manage the fund for the objectives listed.

From the foregoing account, the inescapable conclusion that can be derived is that Governments in the region in their transition from the mixed economy to that of a market-oriented economy will have to sequence their privatization programmes in a phased manner keeping in mind the national interests as well the need to align their economies with the global economy.

Objectives of Privatization

Governments privatize PSEs for many reasons. These include efficiency

and productivity encharcement, revenue generation, ownership dispersion and capital market development. These goals may often conflict. Attempts to accomplish numerous objectives in one go can result in a failure to achieve any. Government's strategy should be to balance the conflicting objectives. Privatization has its great impact on economic welfare when the efficiency and productivity is kept in the forefront. It should be used to increase competition and ensure against monopolistic behaviour.

Privatization Strategy

Once objectives are clarified, strategic decisions need to be taken about the scope and pace of privatization. Traditionally, airlines, petrochemicals plants and cement and steel mills were defined as 'Strategic' and thus considered unfit for privatization. Today, the government thinking has changed and virtually all PSEs are being opened for privatization. This is borne out by the privatization of British Aerospace, British Rail Hotels, British Telecom and British Gas. The British have had no hesitation in interfering with the monopolies on natural resources. On the other hand, France has never considered denationalising all or part of EDF (French Electricity Board) of GDF (French Gas Board) on Air France which is in a competitive sector.[12]

Most divesting governments-including Moxico, Chile, Jamaica, Poland, the Philippines, Togo and the U. K. began by giving priority to small and medium-sized firms in competitive sectors. Such sales are simple and quick. They require little prior restructuring, entail minimal political risk and since they are more easily absorbed by local private investors, reduce the thorny issue of ownerhsip. Experience with small sales prepares governments for subsequent sales of larger, more complex PSEs.

A few governments, including Argentina and Brazil, have nonetheless given priority to privatization of large undertakings. Such sales are more complex and time-consuming, requiring development of a competitive environment and regulatory framework, sophisticated financial engineering and sensitive labour restructuring. Privatizing a few large loss making PSEs can have enormous budgetary impact; in Argentina, for example, the three PSEs on which Government focussed first (including telephones and railways) accounted for 50 per cent of the PSE operating deficit.[13]

Privatization priorities are country specific. In the end, the choice depends

12. Council of Europe: 'Privatization and the Law'–Report by Mr. Jacques Robert submitted to XXIst Collection on European Law held in Budapest from 15 to 17 October 1991.
13. *World Bank Privatization. The Lessons of Experience.* (Washington, 1992).

on investor interest, government capacity and on which sectors and enterprises are in need of new investments and efficiency improvements.

Methods and Procedures for Privatization

The basic methods and procedures for privatization are as follows :

(i) *Private sale of shares*-In this, the State sells all or part of its shareholding in a wholly or partly-owned state enterprise to a pre-identified single purchaser or group of purchasers.

(ii) *Public offering of shares*-In this the State sells to the general public or to a limited class of purchasers all or large blocks of stocks it holds in a wholly or partly-owned State enterprises.

(iii) *Management/Employees Buy-out*-This refers to the acquisition of controlling shareholding in a company by a small group of management and/or employees.

(iv) *Sale of assets*-This involves sale of particular assets (trademarks, plants etc.) rather than shares in a going concern.

(v) *Restructuring*-This involves the breaking-up of a State-owned enterprise into several subsdiaries.

(vi) *New private investments*-In this modality, the State does not dispose of its existing equity in a public undertaking, but increases overall equity and causes a dilution of the Government equity.

(vii) *Leases, management contracts and concessions*-These are arrangements whereby private sector management, technology and/or skills are provided under contract to a State-owned undertaking or in respect of State/owned assets for an agreed period and compensation.

Outright sales have a big advantage over non-ownership methods of privatization since they transfer property rights to profit-oriented owners who push their companies to perform better and at lower costs. The techniques used can be broadly divided into two processes : The first, occurs outside the market, through transfer by mutual agreement or through the takeover of the PSE by the employees, The second, which is by far most commonly used, entails placing the shares of the PSE to be transferred on the stock exchange in the form of a public offer of sale, a public offer of exchange or an increase in capital. Any PSE sale on stock exchange immediately raises the crucial problem of setting the price at which the shares will be sold. Is the PSE to be sold at the highest possible price or is it to be sold at a moderate price ? The reasons for selling a PSE for less than its value are two-fold : (i) The Government may wish to ensure that it

is sold, whatever the cost. Setting a fairly low price helps to ensure that the operation will be a commercial success. The U. K. Government initially set a particularly low price in the case of the partial privatization of the Britixh Telecom. (ii) By setting a low price a Government enables a very large number of shareholders to experience the joy of popular capitalism. In contrast, setting a proper price may discourage a number of potential buyers, particularly small shareholders. The price should be governed by principles designed to harm neither the State which is selling the PSE nor the new shareholders who are buying it so that the interests of the State are safeguarded. If the PSE shares are offered on the stock exchange, the guiding principle should be the concept of a fair price.

Quite apart from the price of the transfer, there is the problem of the people to whom the shares of a privatized PSE should be sold. Sensitivity about foreign ownership exists in all countries, developed or developing. For political and social reasons, governments generally are reluctant to give up control over their assets, especially those considered to be of strategic importance to foreign investors. They have restricted participation of foreign investors in privatization. In France, the Act of 6 August 1986 lays down a threshold of 20% of the company capital which foreign holdings must not exceed.

Mention may also be made of the practice whereby Governments assume the power to intervene in certain particularly important decisions concerning the privatization of PSEs. By virtue of the special system of 'golden shares' the Governments retain a veto which they use in connection with particular takeover bids. The term comes from the British privatization practice and refers to a stipulation in a general privatization law or in a particular sales agreement that gives it the power to reject subsequent sale or major capital or physical restructuring of the firm. The French law has also such a provision which enables the French Government, if the protection of the national interests so require, to have a share which it holds converted into a special share carrying special rights. Thus, the Minister for Economic affais may oppose holdings exceeding 10 per cent of the capital, whether by an individual or a group of individual investors acting together. In Indonesia, Togo and New Zealend also, PSEs have been sold to foreign investors with the stipulation that a certain amount of shares be gradually floated to small shareholders through the stock exchange.[14]

Small and medium-sized PSEs in the competitive sectors can easily be sold through competitive biddings. The choice of sale techniques depends on the enterprise circumstances and government objectives. In larger

14. World Bank. *Privatization : The Lessons of Experience* (Washington, 1992).

enterprises and monopolies, however, restructuring-legal, organisational, and managerial changes, financial workouts and labour shedding, is a necessary prelude to sale.

Although outright sales have an advantage over non-ownership methods of privatization, such sales may not be financially or politically feasible in some countries and enterprise circumstances, and therefore alternative ways to improve PSE efficiency and productivity and bring in the private sector would need to be explored. One such way is the minority sales. Sales of minority shares can have positive efficiency effects provided managerial control is transferred to competitive investors and limitations placed on government's voting rights to curtail day-to-day interference. Some countries have started out by selling minority shares. In Chile, shares of large and 'sensitive' enterprises were sold gradually to investors until the State retained just over 5% per cent. This was followed by an offer of 2 or 3 per cent which left the Government in a minority position and the remaining shares were thus sold quickly. Minority sales are particularly beneficial when (i) Competition is introduced: (ii) Management is stranghthened: and (iii) Autonomy is ensured because the minority share offering is often a prelude to a major share offering at a later stage.

Even if the ownership of assets is not transferred, significant gains can be had by inducting private managers and allowing the PSE to operate like a private firm. To this end, management contracts, leases or concessions are particularly useful and can help facilitate later sale in activities where it is difficult to attract private investors and in low-income countries where capital markets and domestic private sectors are weak, and where an unfavourable policy framework makes private investors reluctant to take on the ownership of large assets in need of modernization (such as railways, water and power) and where capacity to regulate is poor.

In management contracts, the government pays a fee to a private company for managing the affairs of a PSE. Management contracts are quite common in hotels, airlines, and agriculture. Management contracts are usually less politically contentious than outright sales. They avoid the risk of asset concentration and can enhance productivity. The only negative feature about the management contracts is that the contractors do not assume risk; operating losses must be borne by the State even though it has relinquished day-to-day control of the operations. This risk can be reduced by a properly drawn up contract.

Leases overcome this drawback with the management contracts. In leases, the private party, which pays a fee to the government to use the assets, assumes the commercial risk of operation and maintenance and thus

has greater incentives to reduce costs and maintain the long-term value of assets. The fee is usually linked to performance and revenues. Lease arrangements have largely been used in Africa, particularly in sectors where it is difficult to attract private investors. Examples include industries in Togo (Steel, oil refinery): water supply in Guinea and Ivory Coast; electricity in Ivory Coasts; road transport in Niger; port management in Nigeria; and mining operations in Guinea.[15]

Concessions go further than the leases. The holder is responsible for capital expenditures and investments (unlike a lessee). Concessions have been successfully used in the recent privatizations of telecommunications and railways in Argentina. Venezuela plans to grant private firms concessions to operate and finance investments in ports and water supply.[16]

Private management arragnements have their utility where immediate privatization is not chosen. They work best when they are a step toward full privatization. Its main drawback is that it does not bring the increased investment unless the ownership changes.

Legal Aspects

In any programme of privatization, four stages can be contemplated. The first stage is 'Partial privatization' which consists in the initial sale of shares of a PSE to the public at large including the workers. The initial divestment is generally limited at 20 to 25 per cent. The second stage consists in the sale of shares of a partially privatized PSE in which such divestment is limited to 49%. The third stage, which may be called 'effective privatization' consists in the sale of shares to the extent of giving away control of a PSE to the private companies. The last stage is "Total privatization" which means complete withdrawal of the State from the enterprise. In stages I and II, the State control relatively remains intact but in stages III and IV, it is either minoritised or completely elimineted.

For implementing stages I and II of privatization, which can be characterized as partial privatization, there is already in place in most of the countries of the region the requisite legal framework, although a few changes will be required in certain legislation and a few fresh legislations may have to be enacted to create the new autonomous bodies to be entrusted with the task of facilitating and overseeing the process of partial privatization. At present, the equity of PSEs is not quoted at stock exchanges and therefore arrangements will have to be made to determine the sale and purchase price

15. *Ibid*
16. *Ibid*.

of their shares. For this appropriate changes and devices will have to be worked out in the companies and securities laws. Moreover, while embarking on a programme of progressive privatization, industrially sick units will have to be closed down which will result in massive retrenchment and unemployment of workers. Suitable amendments will have to be effected in the relevant industrial/labour laws to ease the cost of human adjustment.

For implementing stages III and IV of privatization, since the character of the PSE undergoes a transformation, considerable restructuring will be involved. Such restructuring will need a suitable legal framwork. This legal framework generally includes constitutional guarantees and/or a law creating and respecting property rights, in which the term 'property' is given the widest connotation; a law setting forth provisions for the transfer of property; a law regulating industrial development; a law relating to pollution prevention and environmental protection; a companies law; a contract law; an insolvency law ; a securities law ; a law of taxation on corporate incomes and dividends; an excise law (*ad valorum* and a value-added taxes); a competition law; and a set of industrial/labour laws regulating, *inter alia* the treatment of employees in privatized enterprises.

Constitutional guarantees and/or a law creating and respecting property rights is a prerequisite because clearly defined property rights are an essential precondition of privatization. The law regulating transfer of ownership of land and businesses is required because almost all businesses to be privatized will involve the transfer of, or the right of use, land from the State to the enterprises concerned. Such a law will provide whether companies with a certain percentage of foreign ownership can hold real property, and if so under what conditions. The law relating to industrial development will specify the sectors which are reserved to the public sector and those which are open to the private enterprise. The prevention of pollution law, apart from checking pollution, will fix the liabilities for pollution damage caused by industrial accidents. The company law will specify the forms of business organisations (joint stock companies, both public and private, partnerships etc.), confer separate legal personality on the business organizations and provide the extent of protection to investors from liabilities incurred by the business organisations in which they invest. The contract law is a *sine qua non* for commercial exchanges as it makes the contractual obligations binding on the parties to a contract. The insolvency law is necessary to deal with those businesses which fail to make a profit or are unable to continue to pay to their creditors. This will apply to private individuals as well as to businesses and will deal with the way in which outstanding creditors are paid from the pool of remaining assets. The securities law is required to

create the necessary lagal and regulatory framework within which the market for trading securities is established and made functional and to protect the interests of investors. Such a law will also lay down rules governing the operations of a stock exchange and the information that must be disclosed by companies to obtain a listing on the exchange. The tax law, apart from taxing corporate incomes and dividends, will provide fiscal incentives for the establishment of new industrial enterprises. The competition law, an essential precondition for privatization, is intended to promote a healthy competitive environment and to ensure that PSEs, once privatised do not maintain their monopolistic position. Side by side with the competition law, an independent *quasi* judicial body (such as the Monopolies and Restricted Trade Practices Commission in India) will have to be created to investigate and to implement the said legislation.

This body of laws may have to be complemented by a transformation law and a privatization law. The transformation law will be needed to facilitate the transfer of title to businesses from the State to the private sector. Such a law will provide that a PSE may be transformed either by the Government itself or by the management and/or workers with the permission of the Government. It might adopt either of the following two approaches : (i) The PSE may be transformed into a company, and once this has taken place the State will be the sole shareholder of the company and the shares may then be sold in the privatization process; and (ii) a new company will be formed and the government will contribute various assets together with the business as a going concern as its contribution to the capital. The ramaining shares in the new enterprises may then be sold to raise finance for the running of the business.

A specific law on privatization will be necessary to empower the government to carry out the privatization programme. This is because under the consistitutions of many a State, a trade or industry can be nationalised by legislation and that too for a public purpose. From that it necessarily follows that a trade or industry can be privatised only by a specific enactment for that purpose and that such legislation must disclose the grounds on which public or community interest is better served by privatization. In France and Britain, it is the Government itself which takes the decision to sell off a PSE. In these countries, specific ministerial machinery has been set up with responsibility for privatization. In France, it is the Ministry for Economic Affairs, Finance and Privatization, and in Britain, it is the Public Enterprises Group which is part of the Treasury. Moreover, in both those countries parliamentary authorisation is needed for a sale of PSE. There is a law in France which lists companies to be privatised by name (Act No.

793 of 2 July 1986). In Britain, special Acts of Parliament have determined the establishments to be privatised.

Moreover, in the case of those countries whose Constitutions ordain the State to function as a welfare State and vest the ownership of all means of production and natural resources in the State, a constitutional amendment may be necessary specifically providing that privatization is justified in public interest only when it leads to greater productivity, efficiency and development.[17]

17. Upendra Baxi, "Constitutional Perspectives in Privatization", *Mainstream* (Indian), July 6, 1991.

Singapore

Answer to Question 1 :

The rationale for our privatisation programme is as follows :

(a) To withdraw from commercial activities which no longer need to be undertaken by the public sector;

(b) To add breadth and depth to the Singapore stock market by the floatation of government linked companies and statutory boards and through secondary distribution of government-owned shares; and

(c) To avoid or reduce competition with the private sector.

Answer to Question 2 :

The initial sale of shares of a subsidiary that has hitherto been wholly-owned by the Government is "Partial privatization". The sale of shares of partially privatised company is "further privatisation", sale to the extent of giving away control of a company is "effective privatisation" and complete withdrawal from a company is " Total privatisation".

Answer to Question 3 :

Please see answer to Question 1.

Answer to Question 4 :

The Government has shareholdings in a very diversified group of companies. Our policy is to privatise as many companies as possible.

Answer to Question 5 :

Companies which are privatised through public floatation must satisfy the listing requirements laid down by the Stock Exchange of Singapore. Please see attachment.

Answer to Question 6 :

We do not restrict ourselves to any one particular method, as we have to look at the situations and circumstances of each case of privatisation. We have not encountered any major legal problems so far.

Answer to Question 7 : No.

Part–I
Original Listing Requirement

A. CRITERIA FOR ORIGINAL LISTING

101 General

The approval of an application for the listing of securities on the Stock Exchange of Singapore Limited is a matter solely within the discretion of the Exchange.

The Exchange has established certain numerical standards, set out below, which will be considered in evaluating potential listing applicants. Aside from the numerical standards set out below, there are of course, other factors which must necessarily be taken into consideration in determining whether a company qualifies for listing. A company must be a going concern or be the successor of a going concern. While the amount of assets and earnings and the aggragate market value are considerations, greater emphasis is placed on such questions as the degree of national interest in the Company, the character of the market for its products, its relative stability and position in its industry, and whether or not it is engaged in an expanding industry with prospects of and/or maintaining its position.

102 Orodinary Shares

Companies applying for quotation of ordinary shares are, as a general rule, expected to meet the following criteria:-

(1) It has a paid-up capital of at least $ 4,000,000.

(2) At least $ 1,500,000 or 25 per cent of the issued and paid-up capital (whichever is greater) is in the hands of not less than 500 shareholders.

(3) A minimum percentage of the issued and paid-up capital is in the hands of shareholders each holding not less than 500 shares and not more than 10,000 shares:-

Nominal value of issued and paid-up capital	*Minimum percentage*
less than $ 50 million	20%
$ 50 million and above and less than $ 100 million	15% or $ 10 million whichever is greater
$100 million and above	10% or $15 million whichever is greater

In complying with this distribution, the following are to be excluded :-

(a) Holdings by parent, or companies deemed to be related by virtue of Section 6 of the Companies Act.

(b) Holdings by directors (including those of persons designated directors under the companies Act).

(4) Except in very exceptional circumstances, the Exchange will refuse a quotation to partly paid shares and even, should such a quotation be granted to such partly paid shares, the Exchange may impose such restrictions on the dealings in such shares.

103 Bonds, Debentrues and Loan Stock

A Limited Liability Company seeking official quotation of Loan Securities may be considered for admission to the official List if:-

(1) It has at least $750,000 of issued loan securities of the class to be quoted;

(2) There are at least 100 holders of such securities;

(3) The securities are created and issued pursuant to a Trust Deed, which must comply with the Trust Deed requirements of the Exchange as set out in Part X, the trustee of which is:-

(a) A Company authorised by the law of Singapore to take in its own name a grant of Probate or Letters of Administration of the estate of a deceased person;

(b) A Company registered under any law of Singapore relating to Life Insurance;

(c) A banking company;

(d) A Company of which the whole of the issued shares are beneficially owned by one or more companies referred to in (a), (b) and (c) above;

(e) A Company approved for this purpose by the Government of Singapore as trustee for the holders of such securities.

104 Securities of Foreign Companies

The requirements for submission to the official List of foreign companies shall be prescribed by the Exchange from time to time and such requirements shall be published as " Guidelines for the listing of foreign companies".

105 Exploration and Development Companies

An application for listing form a Company whose current activities consist solely of exploration will not normally be considered, unless the company is able to establish:-

(1) The existence of adequate reserves of natural resources which must be substantiated by the opinion of an expert in a defined area over which the company has exploration and exploitation rights and

(2) An estimate of the capital cost of bringing the company into a productive position, and

(3) An estimate of the time and working capital required to bring the company into a position to earn revenue.

106 Property Investment/Property Development Companies

The Exchange generally will not list a property Company unless a valuation of the freehold and leasehold property of the company or the Group (such as the case may be) has been conducted by an independent professional valuer on a date which should be not more than six months from the date of the company's application to the Exchange for quotation.

107 Special type of companies

(1) Companies with good prospects for growth and are in need of raising capital may be considered for listing notwithstanding that they have yet to establish any track record or otherwise unable to comply with any of the listing requirements of the Exchange. The Exchange will take into consideration all pertinent factors, particularly with regard to the quality and expertise of the management and/or board of directors of the companies.

(2) If, in the opinion of the Exchange, a company seeking admission to the Official List is engaged in a business or activity which is peculiar to a particular trade and for which the requirements of the Exchange may not be totally applicable, the Continuing Listing Requirements of the Exchange in general and the Directorate Requirements in particular may be amended to bring the requirements more in line with the nature or acitvity of the company.

B. POLICIES

111 Conflicts of Interest

The existence of material conflicts of interest between companies and their officers, directors or substantial shareholders (or members of their

families or concerns controlled by them) will be reviewed by the Exchange on an individual basis in considering the eligibility of companies for original listing. In many cases, companies may be able to eliminate conflicts situation prior to listing within a reasonable period after the listing and may be asked to do so. Where a conflict cannot be resolved promptly for some business reasons, the Exchange will consider all pertinent factors.

The most common types of conflict situation to which this policy applies include personal interests of officers, directores or principal shareholders in any business, arrangements involving the Company, such as the leasing of property to or from the Company, interests in subsidiaries, interests in business that are competitors, supplies or customers of the company, loans to or from the compnay etc.

In considering the eligibility of Companies applying for original listing under its conflicts of interest policy, the Exchange considers, among other factors:-

(1) persons involved in conflict and relationship to the company;

(2) significance of conflict in relationship to the size and operations of the company;

(3) any special advantage for management involved in the colflict;

(4) Whether the conflict can be terminated and if so, how soon and on what basis, and, if the conflict cannot be promptly terminated, whether:-

 (a) the arragement is necessary or beneficial to the operations of the company:

 (b) the terms of the arrangement are the same or better than those that can be obtained from unaffiliated concerns;

 (c) the arrangement has been approved by independent directors or shareholders;

 (d) the arrangement has been adequately disclosed to shareholders through prospectus, proxy, statements or any reports.

In some cases, the Exchange will require a Company to enter into a special arrangement with the Exchange, designed to reduce the possibility of a conflict situation that could not be terminated immediately.

112 Memorandum and Articles of Association

Companies seeking admisison to the Official List of the Exchange are required to incorporate into their Memorandum and Articles of Association various provisions which are set out in Part IX of this Manual.