

APPENDIX- I
THE PROCLAMATION OF INDEPENDENCE
MUJIBAGAR, BANGLADESH
Dated 10th day of April, 1971.

WHEREAS free elections were held in Bangladesh from 7th December, 1970 to 17th January, 1971, to elect representatives for the purpose of framing a Constitution;

AND

WHEREAS at these elections the people of Bangladesh elected 167 out of 169 representatives belonging to the Awami League;

AND

WHEREAS General Yahya Khan summoned the elected representatives of the people to meet on the 3rd March, 1971, for the purpose of framing a Constitution;

AND

WHEREAS the Assembly so summoned was arbitrarily and illegally postponed for an indefinite period;

AND

WHEREAS instead of fulfilling their promise and while still conferring with the representatives of the people of Bangladesh, Pakistan authorities declared an unjust and treacherous war;

AND

WHEREAS in the facts and circumstance of such treacherous conduct Banga Bandhu Sheikh Mujibur Rahman, the undisputed leader of 75 million people of Bangladesh, in due fulfilment of the legitimate right of self-determination of the people of Bangladesh, duly made a declaration of independence at Dacca on March 26, 1971, and urged the people of Bangladesh to defend the honour and integrity of Bangladesh;

AND

WHEREAS in the conduct of a ruthless and savage war the Pakistani authorities committed and are still continuously

committing numerous acts of genocide and unprecedented tortures, amongst others, on the civilian and unarmed people of Bangladesh;

AND

WHEREAS the Pakistan Government by levying an unjust war and committing genocide and by other repressive measures made it impossible for the elected representatives of the people of Bangladesh to meet and frame a Constitution, and give to themselves a Government;

AND

WHEREAS the people of Bangladesh by their heroism, bravery and revolutionary fervour have established effective control over the territories of Bangladesh;

We the elected representatives of the people of Bangladesh, as honour bound by the mandate given to us by the people of Bangladesh whose will is supreme duly constituted ourselves into a Constituent Assembly, and

having held mutual consultations; and

in order to ensure for the people of Bangladesh equality, human dignity and social justice,

declare and constitute Bangladesh to be a sovereign People's Republic and thereby confirm the declaration of independence already made by Banga Bandhu Sheikh Mujibur Rahman, and

do hereby affirm and resolve that till such time as a Constitution is framed, Banga Bandhu Sheikh Mujibur Rahman shall be the President of the Republic and that Syed Nazrul Islam shall be the Vice-President of the Republic, and

that the President shall be the Supreme Commander of all the Armed Forces of the Republic,

shall exercise all the Executive and Legislative powers of the Republic including the power to grant pardon,

shall have the power to appoint a Prime Minister and such other Ministers as he considers necessary,

shall have the power to levy taxes and expend monies,

shall have the power to summon and adjourn the Constituent Assembly, and

do all other things that may be necessary to give to the people of Bangladesh an orderly and just Government.

We the elected representatives of the people of Bangladesh do further resolve that in the event of there being no President or the President being unable to enter upon his office or being unable to exercise his powers due to any reason whatsoever, the Vice-President shall have and exercise all the powers, duties and responsibilities herein conferred on the President.

We further resolve that we undertake to observe and give effect to all duties and obligations that devolve upon us as a member of the family of nations and to abide by the Charter of the United Nations.

We further resolve that this Proclamation of Independence shall be deemed to have come into effect from 26th day of March, 1971.

We further resolve that in order to give effect to this instrument we appoint Prof. Yusuf Ali our duly Constituted potentiary and to give to the President and the Vice-President oaths of office.

APPENDIX- II
THE BANGLADESH BANK ORDER, 1972
P. O. No. 127 of 1972

List of Amending Laws

1. The Bangladesh Bank (Amendment) Act, 1975 (LXII of 1974).
2. The Bangladesh Bank (Amendment) Act, 1975 (XXXIII of 1975).
3. The Bangladesh Bank (Amendment) Ordinance, 1976 (LVI of 1976).
4. The Bangladesh Bank (Amendment) Ordinance, 1978 (XVI of 1978).
5. The Bangladesh Bank (Second Amendment) Ordinance, 1978 (XLI of 1978).
6. The Bangladesh Bank (Amendment) Ordinance, 1982 (XXVI of 1982).
7. The Bangladesh Bank (Amendment) Act, 1989 (Act 1 of 1989).
8. The Bangladesh Bank (Amendment) Act, 1990 (Act 17 of 1990).
9. The Financial Institutions Act, 1993 (Act XXVII of 1993).

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THE BANGLADESH BANK ORDER, 1972**President's Order No. 127 of 1972**

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Whereas, it is necessary to establish a central bank in Bangladesh to regulate the issue of currency and the keeping of reserves and manage the monetary and credit system of Bangladesh with a view to stabilising domestic monetary value; preserving the par value of the Bangladesh Taka; promoting and

maintaining a high level of production, employment and real income in Bangladesh; and fostering growth and development of country's productive resources in the best national interest;

NOW, THEREFORE, in pursuance of the Proclamation of Independence of Bangladesh, read with the Provisional Constitution of Bangladesh Order, 1972, and in exercise of all powers enabling him in that behalf, the president is pleased to make the following Order:-

CHAPTER 1 PRELIMINARY

1.(1) This Order may be called the Bangladesh Bank Order, 1972.

(2) It extends to the whole of Bangladesh .

(3) It shall come into force at once and shall be deemed to have taken effect on the 16th day of December, 1971.

2. In this Order, unless there is anything repugnant in the subject or context.-

- (a) "appointed day" means the 16th day of December, 1971;
- (b) "approved foreign exchange" means currencies declared as such by any notification under Article 18;
- (c) "Bank" means the Bangladesh Bank;
- (d) "Bank Notes" means notes made and issued by the Bank in accordance with Article 23;
- (e) "Board" means the Board of Directors of the Bank;
- (f) "Co-operative Bank" means any co-operative society or co-operative bank including the apex co-operative bank registered under Co-operative Societies Act, 1912 (Act II of 1912), or any other law for the time being in force relating to co-operative societies, one of objectives of which is to provide financial accommodation to its members;

Notes

Co-operative Societies Act, 1912 (Act 11 of 1912) has been repealed by the Co-operative Societies Ordinance, 1984 (Ord. 1 of



1985). Consequential amendment or adaptation is necessary to substitute "Co-operative Societies Act, 1912 (Act" 11 of 1912)" by "Co-operative Societies Ordinance, 1984 (Ord. 1 of 1985)". Till such amendment is made, the reference of the repealed Act has to be construed as reference to the new law i.e. Co-operative Societies Ordinance, 1984 (Ord. 1 of 1985).

- (g) "Director" means a Director of the Bank;
- (h) "Governor" and "Deputy Governor" means respectively the Governor and Deputy Governor of the Bank;
- (i) "Government" means the Government of the People's Republic of Bangladesh;
- (j) "Scheduled Bank" means a bank for the time being included in the list of banks maintained under sub-clause (a) of clause (2) of Article 37;
- (k) "State Bank" means the State Bank of Pakistan constituted under the State Bank of Pakistan Act, 1956; and
- (l) "Taka coin" means one Taka coin and one Taka note and two Taka coin and two Taka note which are legal tender in Bangladesh.

CHAPTER-II

Establishment, Incorporation, Capital and Management.

3. (1) There shall be a bank to be called the Bangladesh Bank for the purposes of carrying on the business of central banking and it shall be deemed to have been established on the appointed day.

(2) The Bank shall be a body corporate by the name of the Bangladesh Bank, having perpetual succession and a common seal, and shall by the said name sue and be sued.

4. (1) The capital of the Bank shall be Taka three crores.

(2) The entire capital of the Bank shall stand vested in and allotted to the Government.

(3) The capital of the Bank may, subject to the approval of the Government, be increased by a resolution of the Board, and any

capital so increased shall be subscribed for by the Government in such form and manner as may be determined by the Government.

(4) On the appointed day all the shares of the State Bank held in Bangladesh which have not already vested in the Government by or under any other law for the time being in force, shall, by virtue of this Order, be deemed to have been vested in, and allotted to, the Government free from any trust, mortgage, charge, lien, interest, or other encumbrance whatsoever.

(5) The Government shall pay such compensation in respect of the shares vested in the Government under clause (4) as may be determined by it and such compensation shall be distributed among the shareholders of the State Bank in Bangladesh in the manner as may be determined by the Government:

Provided that the total compensation payable under this clause shall not exceed the total paid up value of the shares held by the share holders, among whom such compensation is to be distributed.

5. (1) On the appointed day the entire undertaking of the State Bank in and in relation of Bangladesh shall be deemed to have been transferred to, and vested in, the Bank.

(2) The undertaking of the State Bank so transferred and vested shall be deemed to include all assets, rights, powers, authorities and privileges and all property, movable and immovable, including all lands, buildings, cash balances, reserve funds, investments, and debts or actionable claims, any security or negotiable instrument, and all other rights and interests in, or arising out of, such property as were immediately before the appointed day in the ownership, possession, power or control of the State Bank in relation to, or for the purpose of, the undertaking of the State Bank in or in relation to Bangladesh, whether such property is situated within or without Bangladesh, and all books of account, registers, records and all other documents of whatever nature relating thereto and shall also be deemed to include all borrowings, liabilities and obligations of whatever kind of the State Bank in relation to the undertaking within the territory of Bangladesh.

(3) Subject to the provisions of this Order, all contracts, deeds, bonds, agreements, powers of attorney, grants of legal representation and other instruments of whatever nature

subsisting or having effect immediately before the appointed day and to which the State Bank is a party or which are in favour of the State Bank shall--

- (a) if they are exclusively for the purposes or for the business of the undertaking of the State Bank in Bangladesh; or
- (b) if they are partly for the purposes in sub-clause (a) and partly for any other purpose to the extent and subject to such conditions and limitation, as the Government may determine, be of as full force and effect against or in favour of the Bank and may be enforced or acted upon as fully and effectively as if in place of the State Bank, the Bank has been a party thereto or as if they had been issued in favour of the Bank.

6. (1) All suits, appeals, or other legal proceedings of whatever nature pending on the appointed day by or against the State Bank in relation to its undertaking which has vested in the Bank under Article 5, shall be deemed to be suits, appeals and other legal proceedings pending by or against the Bank and may be continued and enforced by or against the Bank.

(2) Notwithstanding anything contained in any other law for the time being in force, where any proceeding for the winding up of a banking company under the Banking Companies Ordinance, 1962, is pending before the High Court of Bangladesh immediately before the appointed day in which the State Bank was appointed as Official Liquidator, the Bank shall be substituted in place of the State Bank as the Official Liquidator and shall be deemed always to have been so substituted.

7. Subject to the provisions of this Order and any other law for the time being in force, any person being a citizen of Bangladesh who, immediately before the appointed day, was an employee of the State Bank shall, as from that day, continue to be an employee of the Bank on the same terms and conditions as were applicable to him immediately before that day.

8. (1) The Head Office of the Bank shall be at Dhaka.

(2) The Bank shall have Offices at Dhaka, Chittagong, Khulna, Bogra, Rajshahi and Sylhet and may establish other offices, branches, and agencies in Bangladesh or with the prior approval of the Government anywhere outside Bangladesh.

9. (1) The Government may, from time to time, give such direction to the Bank as it may, after consultation with the Governor, consider necessary in the public interest.

(2) Subject to any such direction, the general superintendence and direction of the affairs and business of the Bank shall be entrusted to a Board of Directors which may exercise all the powers and do all acts and things that may be exercised or done by the Bank:

[Provided that until the first Board is constituted, the Governor may exercise all powers and do all acts and things as are required to be exercised or done by the Board.]¹

²[(3) The Board shall consist of-

- (a) the Governor;
- (b) a Deputy Governor to be nominated by the Government;
- (c) four Directors to be nominated by the Government, from amongst persons who, in the opinion of the Government, have had experience and shown capacity in the field of banking, trade, commerce, industry, or agriculture;
- (d) three Government officials to be nominated by the Government.]

10. (1) The Governor of the Bank shall be the Chief Executive Officer and shall, on behalf of the Board, direct and control the whole affairs of the bank.

(2) In the matters not specifically required by this Order or by regulations made thereunder, to be done by the Board, the Governor shall have powers of general superintendence and direction of the affairs and business of the Bank and may exercise all powers and do all acts and things which may be exercised or done by the Bank.

(3) The Governor shall be appointed ³[by the Government] on such salary and terms and conditions as may be determined by the Government except that neither the salary of the Governor nor his other terms and conditions of service shall be varied to his disadvantage after his appointment.

(4) One or more Deputy Governors shall be appointed ³[by the Government] on such salary and on such terms and conditions as

the Government may determine except that neither the salary of a Deputy Governor nor his other terms and conditions shall be varied to his disadvantages after his appointment

(5) Subject to the provisions of clause (7), the Governor or a Deputy Governor shall hold office for such period not exceeding five years as the Government may fix when appointing them, and shall be eligible for re-appointment.

(6) The Governor and a Deputy Governor shall devote their whole time to the affairs of the Bank

(7) The Government may require the Governor or a Deputy Governor to hold an office other than in the Bank, in which event the Governor or the Deputy Governor shall vacate his office, and the period during which he holds the other office shall not count towards his tenure of office as Governor, or Deputy Governor, as the case may be.

(8) The Governor, or a Deputy Governor, as the case may be, may, in addition to his duties as the Governor or a Deputy Governor, be entrusted by an order of the Government with such duties for such period as may be specified in the order.

(9) No person shall hold office as Governor or a Deputy Governor-

- (a) who is a member of the Legislature;
- (b) who is employed in any capacity in the public service of Bangladesh or holds any office or position for which any salary or other remuneration is payable out of public funds;
- (c) who is a Director, officer or employee of any other bank or of any other business concern;

Provided that nothing in this sub-clause shall apply where the Governor is entrusted with additional duties under clause (8);

- (d) who has reached the age of sixty-five years.

(10) The Government may grant leave to the Governor and a Deputy Governor for such period and on such terms and conditions as may be specified by the Government.

(11) Where the Governor during his term of office is incapacitated or is absent on deputation, leave or otherwise, the Government may appoint any person qualified under clause(9)

but who may not be qualified under sub-clause (b) of that clause to act for the time being as the Governor in his place.

11. (1) Meetings of the Board shall be convened by the Governor at least six times in each year and at least once in each quarter.

(2) Any three Directors may require the Governor to convene a meeting of the Board at any time and the Governor shall forthwith convene a meeting accordingly.

⁴[(3) The Governor or, if for any reason he is unable to attend, the Deputy Governor nominated under sub-clause(b) of clause (3) of Article 9, shall preside at meetings of the Board and in the event of any equality of votes, shall have a second or casting vote. In case the Deputy Governor is also unable to attend for any reason, any other Director, authorised by the Governor, shall preside over the meeting of the Board and shall have a second or casting vote.]

(4) No act or proceedings of the Board shall be questioned on the ground merely of the existence of any vacancy in, or any defect in the constitution of, the Board.

12. ⁵[(1) There shall be an Executive Committee consisting of -

- (a) the Governor;
- (b) the Director nominated under sub-clause (b) of clause (3) of Article 9;
- (c) one Director elected by the Board from amongst the Directors nominated under sub-clause(c) of clause (3) of Article 9; and
- (d) one Director appointed* by the Government from amongst the Directors nominated under sub-clause(d) of clause (3) of Article 9.]

⁶[(2) Omitted.]

(3) Except when the Board is in session, the Executive Committee shall deal with and decide any matter within the competence of the Board and shall keep minutes of its proceedings, which shall be submitted to the Board for information at its next meeting.

13. (1) No person shall be or shall continue to be a Director-

- (a) who is a Member of the legislature; or

- (b) who is a salaried Government official; or
- (c) who is, or at any time has been, adjudicated an insolvent or has suspended payment or has compounded with his creditors; or
- (d) who is found lunatic or becomes of unsound mind; or
- (e) who is an officer or employee of any bank or any financial institution; or
- (f) who is a Director of any bank other than the Bank, but he shall not be disqualified or cease to be a Director if he is a Director of a bank which is a society registered under the Co-operative Societies Act, 1912 or any other law for the time being in force relating to co-operative societies; or

Notes

Co-operative Societies Act, 1912 since repealed by the Co-operative Societies Ordinance, 1984, the reference of Co-operative Societies Act, 1912 be construed as reference to Co-operative Societies Ordinance, 1984 (Ordinance 1 of 1985)

- (g) who absents himself from three consecutive meetings of the Board without leave from the Board.

(2) Nothing in sub-clause (b) of clause (1) of this Article shall apply to the Government official nominated as Director under sub-clause 7[(d)] of clause (3) of Article 9.

14. (1) The Directors nominated under sub-clause 7[(c)] of clause (3) of Article 9 shall hold office for three years.

(2) A Director nominated under sub-clause 7[(d)] of clause (3) of Article 9 shall hold office at the pleasure of the Government.

(3) Directors shall on the expiry of their term of office be eligible for renomination.

15. (1) The Government may remove from office--

- (a) the Governor or ⁸[a Deputy Governor] if he becomes permanently incapable of performing his duties or subject to any of the disqualifications specified in clause (9) of Article 10 or has done any act which is a breach of the trust reposed in him, or if his continuance in office is regarded as manifestly opposed to the interests of the Bank; and

(b) any Director.

(2). (a) The Governor, ⁸[a Deputy Governor] or ⁸[a Director] may resign his office by statement to that effect in writing signed by him and addressed to the Government .

(b) A statement of resignation by a Deputy Governor or a Director shall be addressed as above through the Governor.

(c) On the acceptance of such a resignation by the Government, the office shall become vacant.

(3) Any Director vacating office under this Article shall not be eligible to become a Director until the expiry of the term of office for which he was nominated.

(4) In the event of a vacancy occurring, the Government shall fill the vacancy by nominating another Director.

CHAPTER-III

Business and functions of the Bank

16. The Bank is authorised to carry on and transact the several kinds of business hereinafter specified, namely:-

(1) The accepting of money on deposit without interest from and the collection of money for the Government, local authorities, banks and other persons:

⁹[(IA) The accepting of money on deposit, with or without interest, from and the collection of money for foreign Governments, banks, companies, institutions or concerns or foreign nationals;]

(2) (a) The purchase, sale and rediscount of bills of exchange and promissory notes drawn on and payable in Bangladesh and arising out of bonafide commercial or trade transactions bearing two or more good signatures, one of which shall be that of a scheduled bank, and maturing within one hundred eighty days from the date of such purchase or rediscount, exclusive of days of grace:

(b) The purchase, sale and rediscount of bills of exchange and promissory notes, drawn on and payable in Bangladesh and bearing two or more good signatures, one of which shall be that of a scheduled

bank or the apex co-operative bank and drawn or issued for the purpose of financing seasonal agricultural operations or the marketing of crops, and maturing within fifteen months from the date of such purchase or rediscount exclusive of days of grace;

Explanation-For the purpose of this sub-clause-

- (i) the expression "agricultural operations" includes animal husbandry and allied activities jointly undertaken with agricultural operations;
 - (ii) "crops" include products of agricultural operations;
 - (iii) the expression "marketing of crops" includes the processing of crops prior to marketing by agricultural producers or any organisation of such producers;
- (c) The purchase, sale and rediscount of bills of exchange and promissory notes drawn on and payable in Bangladesh and bearing two or more good signatures, one of which shall be that of the apex co-operative bank or a financial corporation and drawn or issued for the purpose of financing the production or marketing activities of cottage and small scale industries approved by the Bank and maturing within eighteen months from the date of such purchase or rediscount, exclusive of days of grace:

Provided that the payment of the principal and interest of such bills of exchange or promissory notes is guaranteed by the Government to the satisfaction to the Bank;

- (d) The making to a corporation declared eligible by the Government in consultation with the Bank of loans and advances--
 - (i) repayable on demand or on the expiry of fixed periods not exceeding ninety days from the date of such loan or advance, against securities of the-Government; or

- (ii) repayable on the expiry of fixed periods not exceeding eighteen months from the date of such loan or advance against securities of the Government of any maturity, or against bonds and debentures issued by the Corporation to which the loan or advance is made, and guaranteed by the Government and maturing within a period not exceeding eighteen months from the date of such loan or advance;
- (e) The purchase, sale and rediscount of bills of exchange and promissory notes drawn on and payable in Bangladesh and bearing the signature of a scheduled bank, and issued or drawn for the purpose of holding or trading in securities of the Government and maturing within ninety days from the date of such purchase or rediscount, exclusive of days of grace;
- (f) The purchase, sale and rediscount of bills of exchange and promissory notes drawn on and payable in Bangladesh and bearing two or more good signatures, one of which shall be that of a scheduled bank or the apex-co-operative Bank or any corporation approved by the Government and having as one of its objects the making of loans and advances in cash or kind, drawn and issued for financing the development of agriculture, or of agricultural or animal produce or the needs of industry, having maturities not exceeding ten years from the date of such purchase or rediscount;

Provided that the Bank may, from time to time, issue to a corporation which may have dealings with the Bank under this sub-clause any directions which can be issued to a banking company under the Banking Companies Ordinance, 1962 (LVII of 1962), and in the event of anybody, while carrying out any direction hereunder, either wilfully making a false statement or wilfully omitting to make material statement shall be punishable under sub-section (1) of section 83 of the said Ordinance, and in the event of any contravention or default in compliance with any direction, any Director or officer who is knowingly a party to the contravention or default shall be

punishable under sub-section (5) of section of the said Ordinance, and the provisions of Section 84 of the said Ordinance shall apply to such proceedings as if such corporation were a banking company:

Notes

The Banking Companies Ordinance, 1962 (LVII of 1962) has been repealed by the Banking Companies Ordinance, 1991 (Ord. XV of 1991), which was later repealed by the Banking Companies Act, 1991 (Act XIV of 1991). But consequential amendment or adaptation is yet to be made here. However, until the textual amendment is made, the reference of Banking Companies Ordinance, 1962 (LVII of 1962) and section of that Ordinance should be construed as reference to the Banking Company Act, 1991 (Act XIV of 1991) and the corresponding section thereof. Accordingly--

- (a) for "Banking Companies Ordinance, 1962 (LVII of 1962)" please read "Banking Companies Act, 1991 (Act XIV of 1991)";
 - (b) for "sub-section (1) of section 83 of the said Ordinance" please read "sub-section (2) of section 109 of the said Act";
 - (c) for "sub-section (5) of section of the said Ordinance" please read "sub-section (7) of that section";
 - (d) for "section 84 of the said Ordinance" please read "section III of the said Act".
 - (g) The purchase, sale and rediscount of such Government guaranteed debentures issued by a public company or corporation established by or under any law for the time being in force as the Bank may from time to time approve in this behalf;
 - (h) To guarantee, to the extent the Bank deems fit, issue of loans and debentures by the scheduled banks or financial institutions to rural credit institutions;
 - (i) To guarantee funds of scheduled banks in agricultural credit operations to the extent the bank deems fit;
- (3) (a) The purchase and sale of approved foreign exchange;

- (b) The purchase, sale and rediscount of bills of exchange including treasury bills drawn in or on any place in countries whose currency has been declared as approved foreign exchange and maturing within one hundred and eighty days from the date of purchase:

Provided that no such purchase, sale or rediscount shall be made in Bangladesh except with a scheduled bank;

- (c) The keeping of balances with banks in countries whose currency has been declared as approved foreign exchange;

(4) The making to local Authorities, scheduled banks or co-operative bank of advances and loans repayable on demand or on the expiry of fixed periods not exceeding ninety days against the security of -

- (a) stocks, funds and securities, other than immovable property, in which a trustee is authorised to invest trust money by any law for the time being in force in Bangladesh;
- (b) gold or silver or documents of title to the same;
- (c) such bills of exchange and promissory notes as are eligible for purchase or rediscount by the bank; and
- (d) promissory notes of any scheduled bank supported by documents of title relating to goods, such documents having been transferred, assigned or pledged to any such bank as security, for a cash credit or overdraft granted for bonafide commercial or trade transactions or for the purpose of financing seasonal agricultural operations or the marketing of crops;

(5) The making of loans and advances out of the Rural Credit fund established under Article 60 for the purpose specified therein;

(6) The making of loans and advances out of the Agricultural Credit Stabilisation Fund established under Article 61 for the purpose specified therein;

(7) The making of loans and advances out of the Industrial Credit Fund established under Article 62 for the purpose specified therein;

(8) The making of loans and advances out of the Export Credit Fund established under Article 63 for the purpose specified therein;

(9) The making to the Government of advances repayable in each case not later than three months from the date of the making of the advance;

(10) The making to institutions or banks, specially established for the purpose of promoting agricultural or industrial development in the country or co-operative banks of advances, and loans for such amounts and on such terms and conditions as the Board may decide from time to time;

(11) The purchase of holding and sale of shares and debentures of any company or corporation or institution as may be decided in consultation with the Government;

(12) The issue and purchase of telegraphic transfers, demand drafts and other kinds of remittances made payable at its own branches, offices or agencies;

(13) The drawing, accepting, making and issue, on its own account or account of the Government, as the case may be, of any bill of exchange, hundi, promissory note or engagement for the payment within or without Bangladesh, or foreign currency payable to bearer or to a banker on demand; but no such business shall be carried on or transacted without the previous approval of the Government;

¹⁰(13A) The issue of its own negotiable securities on such rate of interest as the Bank may decide;]

(14)(a) Subject to sub-clause (b), the purchase and sale of securities of countries whose currency has been declared as approved foreign exchange with an unexpired currency of note more than ten years:

- (b) The restrictions relating to maturity shall not apply to securities held by the Bank on the date on which this Order comes into force or any securities that may be received as assets including those transferred to and vested in the Bank under Article 5;

(15)(a) The purchase and sale of securities of the Government, or of such securities of a Local Authority as may be specified in

this behalf by the Government by notification in the Official Gazette on the recommendation of the Board;

- (b) Securities, debentures and shares fully guaranteed as to principal and interest by the Government shall be deemed for the purpose of this clause to be securities of the Government;
- (c) The amount of such securities held at any time in the Banking Department shall be so regulated that the total value of such securities shall not exceed the aggregate amount of the capital of the Bank, the Reserve Fund and four-fifths of the liabilities of the Banking Department in respect of deposits;

(16) The custody of monies, securities and other articles of value and the collection of the proceeds, whether principal, interest or dividends of any such securities;

(17) The sale and realisation of all property, whether movable or immovable, which may in any way come into the possession of the Bank in satisfaction, or part satisfaction of any of its claims;

(18) The acting as agent to the Government or any Local Authority in the transaction of any of the following kinds of business, namely:-

- (a) the purchase and sale of gold or silver or approved foreign exchange;
- (b) the purchase, sale, transfer and custody of bills of exchange, securities or shares in any company;
- (c) the collection of the proceeds, whether principal, interest or dividends or any securities or shares;
- (d) the remittance of such proceeds, at the risk of the principal, by bills of exchange payable either in Bangladesh or elsewhere;
- (e) and the management of public debt;

(19) The purchase and sale of gold coin and gold or silver bullion;

(20) The opening of an account with or the making of any agency arrangement with, and the acting as agent or correspondent of a bank incorporated in any country outside Bangladesh or the principal currency authority of any country

under the law for the time being in force in that country or any international or regional bank formed by such principal currency authorities, and the investing of the funds of the Bank in the shares and securities of any such international or regional bank:

¹¹ [(21)(a) Subject to sub-clauses (b) and (c), the borrowing of money for purposes of the business of the Bank and the giving of security for money so borrowed;

- (b) No money shall be borrowed under this clause from any person in Bangladesh other than a schedule bank for a period exceeding three months and an amount not at any time exceeding the amount of the capital of the Bank;
- (c) No money shall be borrowed under this clause from any foreign national in or outside Bangladesh other than foreign and international banks, companies, institutions or concerns;

(22) The making and issue of bank notes subject to the provisions of this Order;

(23) The performance of the functions of the Bank under the International Financial Organisations Order, 1972;

(24) Establish credits and give guarantees;

(25) The exercise of powers and functions and the performance of duties entrusted to the Bank under this Order or under any other law for the time being in force; and

(26) Generally, the doing of all such matters and things as may be necessary, incidental to or consequential upon the exercise of its powers or the discharge of its duties or functions under this Order.

✓ 17. (1) Where, in the opinion of the Board or of the Governor, circumstances so warrant, the Bank may, notwithstanding any limitation contained in sub-clauses (a) and (b) of clause (2) or sub-clause (a) and (b) of clause (3) or clause (4) of Article 16 -

- (a) purchase, sell or discount any of the bills exchange or promissory notes specified in sub-clause (a) or sub-clause (b) of clause (2) or sub-clause (b) of clause (3) of Article 16 though such bill or promissory note does not bear the signature of a scheduled bank;
- (b) make advances or loans repayable on demand or on the expiry of fixed periods not exceeding ninety days

against the various forms of security specified in clause (4) of Article 16 or against the security of goods or when the advance or loan is made to a banking company against such other form of security as the Bank may consider sufficient.

(2) Notwithstanding anything to the contrary contained in any other law for the time being in force, where a banking company, to which an advance or loan has been made under the provisions of sub-clause (b) of clause (1) is wound up, any sum due to the Bank in respect of such advance or loan shall, subject only to the claim, if any, of any other banking company in respect of any prior claim or advance made by such banking company against any security be a first charge on the asset of the banking company.

18. On the recommendation of the Board, the Government may, by notification in the official Gazette, declare the currency of any country to be approved foreign exchange for all or any of the purpose of this Order.

19. The Bank shall not, except as authorised under this Order-

(1) engage in trade or otherwise have a direct interest in any commercial, industrial or other undertaking except such interest as it may in any way acquire in the course of the satisfaction of any of its claims, but all such interest shall be disposed of at the earliest possible moment;

(2) purchase the shares of any other bank or of any company or grant advances or loans upon the security of any such shares;

(3) advance money on the mortgage, or otherwise on the security, of immovable property or documents of title relating thereto, except where such advance is made to any of its employees for building or purchasing a house for his personal use against the security of the house;

(4) become the owner of any immovable property except where ownership is necessary for the use of such property by the Bank, or for the residence, recreation or welfare of its employees;

(5) make unsecured advances and loans; and

(6) draw or accept bills payable otherwise than on demand.

12[(7) Omitted]

20. (1) The Bank shall undertake to accept monies for account of the Government, and to make payments up to the amount

standing to the credit of their accounts and to carry out its exchange, remittance and other banking operations, including the management of the public debt.

(2) (a) The Government shall entrust the Bank, on such conditions as may be agreed upon between the government and the Bank, with all their money, remittance, and banking transactions in Bangladesh, and in particular, shall deposit free of interest all its cash balances with the Bank.

(b) Nothing in this clause shall be deemed to prevent the Government from carrying on money transactions, at places where the Bank has no office, branch or agency or from holding at such places such balances as it may require.

(c) The Government shall entrust the Bank, on such conditions as may be agreed upon between the Government and the Bank, with the management of the public debt and with the issue of any new loans.

(3) In the event of any failure to reach agreement on the conditions referred to in this Article, the Government shall decide the conditions and its decision shall be final.

(4) Any agreement made under this Article shall be laid, as soon as may be after it is made, before the Legislature.

21. The Bank shall make public from time to time the standard rate at which it is prepared to buy or rediscount bills of exchange or other commercial paper eligible for purchase under this Order.

22. The Bank shall sell to or buy from any authorised dealer in Bangladesh approved foreign exchange at such rates of exchange at such places and on such conditions as the Government may, from time to time, by general or special order, determine.

Explanation.-In this Article, "authorised dealers" means a person for the time being authorised under section 3 of the Foreign Exchange Regulation Act, 1947 to deal in foreign exchange.

23. (1) The Bank shall have the sole right to issue Bank Notes made payable to bearer on demand in Bangladesh in accordance with the provisions hereinafter made.

(2) Any person contravening this authority or committing any other offence specified in Article 35 shall be liable to the penalties mentioned therein.

24. (1) Subject to the provisions of clause (2), all Bank Notes, Coins and Currency Notes and those which were in circulation in Bangladesh on the appointed day shall continue to be legal tender at any place in Bangladesh for the amount expressed therein and shall be guaranteed by the Government.

(2) On the recommendation of the Board, the Government may, by notification in the official Gazette, declare that with effect from such date as may be specified in the notification, any series of Bank Notes of any denomination shall cease to be legal tender save at such offices, branches and agencies, if any, of the Bank as may be specified in the notification.

25. Notwithstanding anything contained in Article 24, no Pakistan Bank note of the denominational value of five hundred rupees and one hundred rupees issued before 8th day of June, 1971 shall be legal tender in payment or on account of amount expressed therein.

26. (1) The issue of Bank Notes shall be conducted by the Bank in an Issue Department which shall be separated and kept wholly distinct from the Banking Department and the assets of the Issue Department shall not be subject to any liability other than the liabilities of the Issue Department as defined in Article 32.

(2) The Issue Department shall not issue Bank Notes to the Banking Department or to any person except in exchange for other Bank Notes or for such coin, bullion, approved foreign exchange or securities as are permitted under this Order to form part of the assets of the Issue Department.

27. Bank Notes made and issued by the Bank shall be in such denominations and of such design, form and material as may be approved by the Government on the recommendations of the Board.

28. The Bank shall not reissue Bank Notes which are torn, defaced or excessively soiled.

29. Notwithstanding anything contained in any enactment or rule or law to the contrary, no person shall as of right be entitled to recover from the Government or the Bank the value of any lost, stolen, mutilated or imperfect Bank Note.

Notes

If a note is mutilated, imperfect, lost or stolen, the bank is not bound to make the payment of the amount represented by the note. Whether such payment should be made depends upon the opinion of the officer concerned and so long it does not act mala fide and conforms to the principles of natural justice and further follows the procedure provided by the rules, his decision would not ordinarily be Justiceable. It is only in a case where a note is lost, stolen, mutilated or imperfect, the concerned officer seizes Jurisdiction to decide wheter or not he would make the grace payment. As the decision of the question whether a note is lost, stolen, mutilated or imperfect is not left under Article 29/^{to} the officer concerned, courts have always a Jurisdiction to investigate whether or not a note is lost, mutilated, stolen or imperfect. If in their opinion that note does not conform to any of these categories, the Government or the Bangladesh Bank is liable to make the payment and the payment can be enforced through the order of the court in such cases.

✓✓✓✓✓ 30. (1) The ^{of} assets of the Issue Department shall not be less than the total of its liabilities and shall be maintained as follows:-

- (a) of the total amount of the assets, assets of such value as the Government in consultation with the Bank, may, by notification in the official Gazette,
specify shall be held in gold coins, gold bullion, silver bullion, Special Drawing Rights, ¹³[Asian Monetary Units] ¹⁴[Islamic dinar] or approved foreign exchange, and
- ✓(b) the remainder of the assets shall be held in
 - (i) Taka coins; ✓
 - (ii) Taka securities of any maturity;
 - (iii) Such bills of exchange and promissory notes payable in Bangladesh as are eligible for purchase by the Bank under sub-clauses (a), (b) and (f) of clause (2) of Article 16;
 - (iv) Promissory notes obtained by the Bank in respect of advances and loans made under clause (4) of Article 16 against such securities

as are mentioned in sub-clauses (a) and (b) of that clause; and

- (v) Promissory notes obtained by the Bank in respect of advances and loans made under clause (10) of Article 16.

15(2) For the purpose of this Article, -

- (a) gold coin, gold bullion and silver bullion shall be valued at the market value of the fine gold or silver content thereof, as the case may be;
- (b) Taka coin shall be valued at its face value; and
- (c) Taka securities and securities specified in clause (4) shall be valued at the market value for the time being obtaining or face value whichever is less.]

(3) Of the gold coin and gold or silver bullion held as assets, not less than seventeen-twentieths shall be held in the custody of the Bank including its branches, offices or agencies, and the gold or silver belonging to the Bank which is in any other bank or in any mint or treasury or in transit may be reckoned as part of the assets.

(4) For the purpose of this Article, the approved foreign exchange which may be held as part of the assets shall be in any of the following forms, namely :-

- (a) balances standing to the credit of the Bank with the principal currency authority of a country whose currency is an approved foreign exchange, or at any bank in such country;
- (b) bills of exchange bearing two or more good signatures having a maturity not exceeding on hundred and eighty days and drawn on and payable at any place in a country whose currency is an approved foreign exchange; and
- (c) securities of a Government with an unexpired currency of not more than five years and payable in a currency which is an approved foreign exchange.

(5) Restrictions relating to maturity shall not apply to securities mentioned in clause (4) held by the Bank on the appointed day or any securities transferred to and vested in the Bank under Article 5.

31. Notwithstanding anything contained in the foregoing provisions, the Bank may, with the previous sanction of the Government, for periods not exceeding six months in the first instance, which may with the like sanction be extended from time to time by periods not exceeding three months at a time, hold as assets gold coin, gold or silver bullion, ¹⁶[Special Drawing Rights, Asian Monetary Units.] ¹⁷[Islamic dinars] or approved foreign exchange of less aggregate amount than that required by sub-clause (a) of clause (1) of Article 30.

32. (1) The liabilities of the Issue Department shall be an amount equal to the total of the amount of the Bank Notes for the time being in circulation.

(2) For the purpose of this Article, any Bank Note which has not been presented for payment within forty years from the first day of July following the date of its issue shall be deemed not to be in circulation and the value thereof shall, notwithstanding anything contained in clause (2) of Article 26, be paid by the Issue Department to the Banking Department; but any such Bank Note, if subsequently presented for payment, shall be paid by the Banking Department.

33. (1) The Bank shall issue Taka coin on demand in exchange for Bank Notes and Bank Notes on demand in exchange for coin which is legal tender in Bangladesh.

(2) The Bank shall in exchange for Bank Notes of five Taka or upwards supply Bank Notes of lower value or coins which are legal tender in Bangladesh under the Bangladesh Coinage Order, 1972, in such quantities as may in the opinion of the Bank be required for circulation. The Government shall supply such coins to the Bank on demand and if it fails to do so at any time the Bank shall be released during the period of such failure from obligation to supply them to the public.

(3) The Government shall take over from the Bank at such times and in such quantities as the Bank may, with the previous approval of the Government, determine, Taka coins which are not required for purpose of circulation against payment.

Notes

This Article imposes on the Bangladesh Bank an obligation to honour its Notes in coin whether they are legal tender or not. In the case of Bank Notes of five Taka or upwards, the Article

imposes obligation on Bangladesh Bank to supply coin or notes of lower denomination to the note tendered. The only direction which the Bank is given is as to the quantities of coins and notes respectively which it will give in exchange, but it must give one or the other or the both. [AIR 1946 Bom. 315- LIR 1947 Bom. 315 (DB)].

34. The Government shall not reissue any Taka coins taken over under clause (3) of Article 33 nor put into circulation any Taka coin except through the Bank and the Bank shall not dispose of Taka coin otherwise than for purpose of circulation or by delivery to the Government under the preceding Article,

35. (1) No person in Bangladesh other than the Bank or as expressly authorised by this Order, the Government shall draw, accept, or issue any Bill of Exchange, Hundi, Promissory Note or engagement for the payment of money payable to bearer on demand, or borrow, owe or take up any sum or sums of money on the Bills, Hundis or Notes payable to bearer on demand of any such persons, but such cheques, or Drafts including, Hundi, payable to bearer on demand or otherwise may be drawn on a person's account with a banker.

(2) Notwithstanding anything contained in the Negotiable Instruments Act, 1881, no person in Bangladesh other than the Bank, or as expressly authorised by this Order, the Government shall make or issue any Promissory Note expressed to be payable to the bearer of the instrument.

(3) Any person contravening the provision of this Article shall be punishable upon conviction with fine which may extend to double the amount of the Bill, Hundi, Promissory Note or engagement in respect whereof the offence is committed.

(4) No prosecution under this Article shall be instituted except on complaint made in writing on behalf of the Bank.

Notes

The expression payable to bearer on demand means that anybody without an endorsement from the holder of note can get payment. On the other hand, a hand note being payable to a particular person or to his order means that any person in possession of it cannot get payment. The only person entitled to the payment will be either the person in whose favour it is drawn or the endorsee from him. Where, therefore a handnote contained

the words that it was payable to the plaintiff or to his order, there was no question of the handnote being payable to bearer on demand. (AIR 1935 Cal. 353).

36. (1) Subject to clause (2), every scheduled bank shall maintain with the Bank a balance the amount of which shall not at the close of business on any day be less than five percent of the total of demand and time liabilities of such bank in Bangladesh.

(2) The requirement of this Article as to the maintenance of balances in the Bank may, from time to time, by notification in the Official Gazette, be varied or, for such period and subject to such condition as may be specified in the notification, be dispensed with by the Government.

18[2A) Notwithstanding anything contained in clauses (1) and (2), the Bank may, by notification in the official Gazette, direct that every scheduled bank shall with effect from such date as may be specified in the notification, maintain with the Bank in addition to the balance prescribed by or under clause (1) or (2) an additional daily balance the amount of which shall not be less than the rate or amount specified in the notification.

(2B) Where any scheduled bank maintains, in pursuance of a notification issued under clause (2A), any balance with the Bank, the amount of which is not less than that required to be maintained by such notification, the Bank may pay to the scheduled bank interest at such rate or rates as may be determined by the Bank from time to time on the amount by which such balance actually maintained is in excess of the balance which the scheduled bank would have to maintain if no such notification was issued;

Provided that no interest shall be payable on any such amount actually maintained as in excess of the balance required to be maintained under clause (2A).]

Explanation.- For the purpose of this Article, liabilities shall not include the paid-up capital or the reserves, or any credit balance in the profit and loss account of such bank or the amount of any loan taken from the Bank.

(3) Every scheduled bank shall send to the Bank returns signed by two responsible officers of such bank containing such information as may be deemed necessary for carrying out the purpose and object of this Order at such periods of time as the Bank may from time to time direct.

(4) If at the close of business on any day before the day fixed for the next return under the preceding clause, the balance held at the Bank by any scheduled bank is below the minimum fixed by clause (1) or varied under clause (2) ¹⁹[or required to be maintained under clause (2A)], such scheduled bank may be ordered by the Bank to pay the Bank in respect of such day penal interest at a rate three per cent above the Bank rate on the amount by which the balance with the Bank falls short of the fixed minimum, and if on the day on which the next return is due such balance is still below the fixed minimum as disclosed by this return, the rate of penal interest may be increased to a rate five per cent above the Bank rate in respect of that day and each subsequent day on which the balance held at the Bank at the close of business on the day is below the fixed minimum.

(5) When under the provisions of clause (4), penal interest at the increased rate of five per cent above the Bank rate has become payable by a scheduled bank, if thereafter on the day fixed for the next return under clause (3) the balance held at the Bank is still below the fixed minimum as disclosed by this return-

- (a) every director and officer of the scheduled bank, who is knowingly and wilfully a party to the default, shall by order of the Bank be punishable with fine which may extend to Taka five hundred and with a further fine which may extend to Taka five hundred for each subsequent day on which the default continues; and
- (b) the Bank may prohibit the scheduled bank from receiving after the said day any fresh deposit, and if default is made by the scheduled bank in complying with such prohibition, every director and officers of the Scheduled bank who is knowingly and wilfully a party to such default or who through negligence or otherwise contributes to such default shall by order of the Bank be punishable in respect to each default with fine which may extend to taka five hundred for each day after the first on which a deposit received in contravention of such prohibition is retained by the scheduled bank.

Explanation-In this sub-clause, "Office" includes Manager, Secretary, Branch Manager and Branch Secretary.

(6) Any scheduled bank failing to comply with the provisions of clause (3) shall, by order of the Bank, be liable to pay to the Bank a penalty of Taka one hundred for each day during which the failure continues.

(7) Whoever in any return under this Article wilfully or recklessly makes a statement false in any material particular or wilfully or recklessly omits to state a material particular shall, by order of the Bank, be punishable with fine which may extend to Taka one thousand in respect of each such return.

(8) The penalties imposed by clauses (4), (5), (6) and (7) shall be payable on demand made by the Bank and in the event of refusal by the defaulting bank, director or officer to pay on such demand, may be levied by a direction of the Civil Court having jurisdiction in the area where an office of the defaulting bank is situated, such direction, being made only upon application made in this behalf to the court by the Bank, with the previous sanction of the Government.

37. (1) The Bank shall maintain at all its offices and branches an up-to date list of banks declared by it to be scheduled banks under sub-clause (a) of clause (2).

(2) The Bank shall, by notification, in the Official Gazette--

(a) declare any bank to be scheduled bank which is carrying on the business of banking in Bangladesh and which-

(i) is a banking company as defined in clause (c) of section 5 of the Banking Companies Ordinance, 1962, or a co-operative bank, or a corporation or a company incorporated by or established under any law in force in any place in or outside Bangladesh ;

(ii) has a paid-up capital and reserves of an aggregate value of not less than Taka fifty lakhs;

Provided that in the case of a co-operative bank, an exception may be made by the Bank;

(iii) satisfies the Bank that its affairs are not being conducted in a manner detrimental to the interests of its depositors;

- (b) director the descheduling of any scheduled bank which ceases to fulfil the requirement mentioned in sub-clause (a) or goes into liquidation or otherwise wholly or partly ceases to carry on banking business:

Provided that the Bank may, on application of the scheduled bank concerned and subject to such conditions, if any, as it may impose, defer the making of a direction, under sub-clause (b) for such period as the Bank considers reasonable to give the scheduled bank an opportunity of fulfilling the requirements mentioned in paragraphs (ii) and (iii) of sub-clause (a);

- (c) alter the description in the list of scheduled banks whenever any scheduled bank changes its name.

Explanation-In clause (2) the expression "value" means the real or exchangeable and not the nominal value of the capital and reserves and the valuation made by the Bank shall be final.

38. The Bank may require any Corporation with which it has any transactions under Article 16 to furnish returns to in clause (3) of Article 36 and if it does so require, the provisions of clauses (6).(7) and (8) of Article 36 shall apply, so far as may be, to such Corporation as if it were a scheduled bank.

39. The Bank shall compile and publish, in such manner and at such times as the Government may direct, a consolidated statement from such information as may be received under this Order.

40. (1) The Bank shall prepare and transmit to the Government a weekly account of the issue Department and of the Banking Department in such form as the Government may, by notification in the official Gazette direct. The Government shall cause these accounts to be published weekly in the official Gazette.

(2) The Bank shall also, within two months from the date on which the annual accounts of the Bank are closed, transmit to the Government a copy of the annual accounts signed by the Governor, the Deputy Governor, if any, and the Chief Accounting Officer of the Bank, and certified by the Auditors together with a report by Board on the working of the Bank throughout the year, and the Government shall cause such accounts and report to be published in the Official Gazette.

41. (1) No suit or other legal proceedings shall lie against the Bank or any of its officer for anything which is in good faith done or intended to be done in pursuance of Article 36 or Article 37 or Article 38 or Article 39 or Article 40 or in pursuance of the provisions of Chapter IV.

(2) No suit or other legal proceedings shall lie against the Bank or any of its officers for any damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of Article 36 or Article 37 or Article 38 or Article 39 or Article 40 or in pursuance of the provisions of Chapter IV.

CHAPTER-IV

Collection and furnishing of Credit Information

42. In this Chapter, unless the context otherwise requires,-

- (a) "banking company" means the banking company as defined in section 5 of the Banking Companies Ordinance, 1962 (LVII of 1962) and includes the apex co-operative bank or any other banking or financial institution notified by the Government in this behalf;

Notes

The Banking Companies Ordinance, 1962 (LVII of 1962) having been repealed by Banking Companies Act, 1991 (Act XIV of 1991), the reference of the Banking Companies Ordinance, 1962 (LVII of 1962) may be construed as reference to Banking Companies Act, 1991 (Act XIV of 1991)

- (b) "borrower" means any person to whom any credit limit has been sanctioned by any banking company, whether availed of or not and includes-
- (i) in the case of a company or corporation, its subsidiaries;
 - (ii) in the case of a Hindu undivided family, any member thereof or any firm in which such member is a partner;
 - (iii) in the case of a firm, any partner thereof or any other firm in which such partner is a partner;
- and

- (iv) in the case of an individual, any firm in which such individual is a partner;
- (c) "credit information" means any information relating to-
 - (i) the amounts and the nature of loans or advances and other credit facilities granted by a banking company to any borrower or class of borrowers;
 - (ii) the nature of security taken from any borrower for credit facilities granted to him; and
 - (iii) the guarantee furnished by a banking company for any of its customers.

43. The Bank may -

- (a) collect, in such manner as it may think fit, credit information from every banking company; and
- (b) furnish such information to any banking company in accordance with the provisions of Article 45.

44. (1) For the purpose of enabling the Bank to discharge its functions under this Chapter, it may at any time direct any banking company to submit to it such statements relating to such credit information and in such form and within such time as may be specified by the Bank from time to time.

(2) A banking company shall, notwithstanding anything to the contrary contained in any law for the time being in force or in any instrument regulating the constitution thereof or in any agreement executed by it relating to the secrecy of its dealing with its constituents, be bound to comply with any direction issued under clause (1).

45. (1) A banking company may, in connection with any financial arrangement entered into or proposed to be entered into by it with any person, make application to the Bank in such form as the Bank may specify requesting it to furnish the applicant with such credit information as may be specified in the application.

(2) On receipt of an application under clause (1), the Bank may, as soon as may be, furnish the applicant with such credit information relating to the matters specified in the application, as may be in its possession:

Provided that the information so furnished shall not disclose the names of the banking companies which have submitted such information to the Bank.

(3) The Bank may in respect of each application levy such fees, as it may deem fit, for furnishing credit information.

46. (1) Any credit information contained in any statement submitted by a banking company under Article 44 or furnished by the Bank to any banking company under Article 45 shall be treated as confidential and shall not, except for the purpose of this Chapter, be published or otherwise disclosed.

(2) Nothing in this Article shall apply to --

- (a) the disclosure by any banking company, with the previous permission of the Bank, of any information furnished to the Bank under Article 44;
- (b) the publication by the Bank, if it considers necessary in the public interest so to do, of any information collected by it under Article 44, in such consolidated form as it may deem fit without disclosing the name of any banking company or its borrowers.

(3) Notwithstanding anything contained in any law for the time being in force, no court, tribunal or other authority shall compel the Bank or any banking company to produce or to give inspection of any statement submitted by that banking company to produce or to give inspection of any statement submitted by that banking company under Article 44 or to disclose any credit information furnished by the Bank to that banking company under Article 45.

47. No person shall have any right, whether in contract or otherwise, to any compensation for any loss incurred by reason of the operation of any of the provisions of this Chapter.

48. (1) If any banking company-

- (a) fails to submit any statement required under Article 44 or submits under the Article a statement which is false in any material particular; or
- (b) fails to comply with any condition imposed under this Chapter every director or other officer of the company and every other person who is knowingly a

party to the breach shall be punishable with fine which may extend to Taka two thousand.

(2) If any person discloses any credit information, the disclosure of which is prohibited under Article 46, he shall be punishable with imprisonment which may extend to six months or with fine which may extend to Taka one thousand or with both.

20[CHAPTER-V

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CHAPTER-VI

General

59. Securities of the value of Taka Three crores may be allocated for the purpose by the Government and shall be held by the Bank as the Reserve Fund.

60. (1) The Bank may establish and maintain a Fund to be called the Rural Credit Fund to which shall be credited.--

- (a) an initial sum of Taka 50 lakhs to be subscribed by the Government; and
- (b) appropriations of such amount from the surplus profits of the Bank as may be determined by the Bank in consultation with the Government.

(2) The Rural Credit Fund may be applied by the Bank to the following objects, namely:-

- (a) the making of medium-term loans and advance to co-operative bank, repayable on the expiry of a fixed period, not exceeding five years from the date of the

making thereof, against such security as the Bank may from time to time, specify in this behalf;

- (b) the making of medium- term and long-term loans and advances to rural credit agencies created or established by or under any law for the time being in force including scheduled banks on such terms and conditions as the Bank may, from time to time, specify in this behalf;
- (c) where the bank is satisfied that any co-operative bank or any scheduled bank to which a loan or advance as is referred to in clause (4) of Article 16 has been made is unable to repay the same in time, the converting of such loan or advance, into a medium-term loan or advance, as the case may be, in accordance with the provisions of sub-clause (a);
- (d) the making of short-term and medium- term loans and advances to scheduled banks as refinance against their loans and advances to co-operative societies or farmers or dealers supplying seed, machinery, fertiliser and other requisites of agriculture to farmers on credit;

Provided that such credit is granted on such terms and conditions as to security and otherwise, as may be laid down by the Bank; and

- (e) the financing of a system of guarantees in accordance with rules to be made by the Bank to cover a portion of the bonafide loss that a scheduled bank is proved to the satisfaction of the Bank to have incurred in any transaction of loan or advance made under sub-clause (d).

61. The Bank may establish and maintain a fund to be called "Agricultural Credit Stabilisation Fund" to which shall be credited:-

- (a) an initial sum of Taka 25 lakhs to be subscribed by the Government; and
- (b) appropriation of such amount from the surplus profits of the Bank as may be determined by the Bank in consultation with the Government;

- (c) the amount in the said Fund shall be applied by the Bank only to the making of loans and advances to apex co-operative Bank repayable on the expiry of a fixed period of not less than fifteen months and not exceeding five years from the date of making such loan or advance and on such terms and conditions as may be specified in this behalf by the Bank:

Provided that no such loans or advances shall be made--

- (i) except for the purpose of enabling the apex co-operative Bank to pay any dues in respect of bills of exchange and promissory notes, purchased or rediscounted by the Bank under sub-clause (f) of clause (2) of Article 16 or loans and advances made to it by the Bank under clause (6) of Article 16 and unless, in the opinion of the Bank, the apex co-operative Bank is unable to pay such dues in time due to drought, famine or natural calamities; and
- (ii) unless such loans and advances are fully guaranteed as to the repayment of the principal and payment of interest by the Government.

62. (1) The Bank may establish and maintain a Fund to be called the Industrial Credit Fund to which shall be credited--

- (a) an initial sum of Taka one crore to be subscribed by the Government, and
- (b) appropriations of such amount from the surplus profits of the Bank as may be determined by the Bank in consultation with the Government.

(2) The Industrial Credit Fund shall be applied by the Bank to the following objects, namely:-

- (a) the making of medium-term and long-term loans and advances to co-operative banks and such institutions as the Bank may deem fit repayable on the expiry of a fixed period, not exceeding five years from the date of the making thereof, against such security as the Bank may, from time to time, prescribe in this behalf;
- (b) the making of medium-term and long-term loans and advances to industrial credit agencies created or

established by or under any law for the time being in force on such terms and conditions as the Bank may, from time to time, prescribe in this behalf;

- (c) where the Bank is satisfied that any institution to which a loan or advance as referred to in clause (4) of Article 16 has been made is unable to repay the same in time, the converting of such loan and advance into a medium-term or long-term loan or advance, as the case may be, in accordance with the provisions of sub-clause (a); and

- (d) the financing of a system of guarantees in accordance with rules to be made by the Bank to cover a portion of any bonafide loss that a scheduled bank is proved to the satisfaction of the Bank to have incurred in any transaction of medium-term and long-term loan to a party seeking to establish an industrial project of small or medium size.

63. (1) The Bank may establish and maintain fund to be called the Export Credit Fund to which shall be credited--

- (a) an initial sum of Taka one crore to be subscribed by the Government, and
- (b) appropriations of such amount from the surplus profits of the Bank as may be determined by the Bank in consultation with the Government.

(2) The Export Credit Fund shall be applied by the Bank to the following objects, namely:-

- (a) the making of medium-term and long-term loans and advances to scheduled banks and other credit institutions created or established by or under any law for the time being in force, as refinance against their medium-term and long-term loans and advances given for financing exports from Bangladesh, on such terms and conditions as to security and otherwise as the Bank may, from time to time, lay down in this behalf;
- (b) the making of loans and advances, directly or through scheduled banks or other credit institutions created or established by or under any law for the time being in force, to private or Government

sponsored institutions in foreign countries, for the purpose of enabling them to import goods from Bangladesh, on such terms and conditions as the Bank may, from time to time, lay down in this behalf.

64. After making provision for bad and doubtful debts, depreciation in assets, contributions to staff superannuation fund and for all other matter for which provision is to be made by or under the Order or which are usually provided for by bankers, the balance of the profits shall be paid to the Government.

65. (1) Not less than two Auditors shall be appointed and their remuneration fixed by the Government.

(2) The Auditors shall hold office for such term not exceeding one year as the Government may fix while appointing them, and shall be eligible for re-appointment.

66. Without prejudice to anything contained in Article 65, the Government may at any time appoint the Comptroller and Auditors-General or such Auditors as it deems fit to examine and report upon accounts of the Bank.

67. (1) Every Auditor shall be supplied with a copy of the annual balance sheet and it shall be his duty to examine the same together with the accounts and vouchers relating thereto; and every Auditor shall have a list delivered to him of all books kept by the Bank, and shall at all reasonable time have access to books, accounts and other documents of the Bank and may, at the expense of the Bank, if appointed under Article 65 or at the expense of the Government if appointed under Article 66, employ Accountants or other persons to assist him in investigating such accounts and may, in relation to such accounts, examine any Director or Officer of the Bank.

(2) The Auditors shall make a report to the Government upon the annual balance sheet and accounts, and in every such report they shall state whether in their opinion the balance sheet is a full and fair balance sheet containing all necessary particulars and properly drawn up so as to exhibit a true and correct view of the state of affairs of the Bank, and, in case they have called for any explanation or information from the Board, whether it has been given and whether it is satisfactory.

68. The Bank shall have a special Agricultural Credit Department the function of which shall be:-

- (a) to maintain an expert staff to study all questions of agricultural credit and be available for consultation by the Government, apex co-operative Bank and other banking organisation; and
- (b) to co-ordinate the operations of the Bank in connection with agricultural credit and its relations with the apex co-operative Bank and any other organisation engaged in the business of agricultural credit.

69. The Research Department and the Statistics Department of the Bank shall have the power, subject to right and provisions guaranteed under other laws, to request from any natural or juridical person, as well as the Government, any data or information necessary for the proper execution of its duties,

70. Unless otherwise directed by the Government with reference to any place, the Bank shall appoint the Sonali Bank as its agent at all places in Bangladesh where it does not have an office or branch of the Banking Department and there is a branch of the Sonali Bank.

71. (1) For the purposes of section 124 of the Evidence Act, 1872, the provisions of Part IV of the Code of Civil Procedure, 1908, and the provisions of rule 27 of Order V, and rule 52 of Order XXI of the said Code, the Bank and any officer of the Bank acting in his capacity as such shall be deemed to be a public officer.

(2) The provisions of Section 123 of the Evidence Act shall apply to the unpublished records relating to the affairs of the Bank and the Governor shall be deemed to be the officer or head of the department concerned.

(3) Every officer of the Bank shall be deemed to be a public servant within the meaning of section 21 of the Penal Code (Act XLV of 1860).

72. Notwithstanding anything contained in any law for the time being in force, provident fund or pension granted by the Bank to its employees shall not be liable to seizure, attachment or sequestration by process of any Court in Bangladesh at the

instance of a creditor for any demand against the pensioner or in satisfaction of a decree or order of any such court.

73. The Bank shall not be liable to the payment of any stamp duty under the Stamp Act, 1899.

74. The Bank shall not be liable to the payment of customs duty on gold, silver, coins, currency notes, security, and any other goods that may be specified by the Government.

75. Notwithstanding anything contained in the Income-tax Act, 1922, or the Business Profits Tax Act, 1947, or any other law for the time being in force relating to income-tax, super-tax or business profits-tax, the Bank shall not be liable to pay any income-tax, super-tax or business profit tax on any of its income, profits or gains.

76. The Bank shall not be placed in liquidation save by order of the Government and in such manner and on such terms and conditions as it may direct.

77. (1) If in the opinion of the Government, the Bank fails to carry out any of the obligations imposed on it by or under this Order, the Government may, by notification in the official Gazette, declare the Board to be superseded, and thereafter the general superintendence and direction of the affairs of the Bank shall be entrusted to such agency as the Government may determine and such agency may exercise the power and do all acts and things which may be exercised or done by the Board under this Order.

(2) When action is taken under clause (1), the Government shall cause a full report of the circumstances leading to such action and of the action taken to be laid before the Legislature at the earliest possible opportunity and in any case within three weeks of the re-assembly thereof after the issue of the notification superseding the Board.

78. (1) Except in the performance of his duties under this Order, every employee of the Bank shall preserve and aid in preserving secrecy with regard to all matters relating to the affairs of the Bank not published by it, and with regard to all matters relating to the financial or monetary affairs of any institution, person, body of persons, any Government or authority whether in Bangladesh or outside that may come to his knowledge in the performance of his duties.

(2) Every such employee who communicates any such matter, except when required by law to do so or in the discharge of his duty as such, shall be guilty of an offence and shall on conviction by a court of competent jurisdiction be punished with imprisonment of either description for a term which may extend to six months or with fine which may extend to Taka five hundred or with both.

(3) No court shall take cognizance of any offence punishable under this Article except upon complaint in writing by a person authorised in this behalf by the Governor.

79. (1) The Governor may, by general or special order, delegate to a Deputy Governor, subject to such conditions and limitations, if any, as may be specified in the Order, such of the powers and functions exercisable by him under this Order or under any other law for the time being in force as he may deem necessary for the efficient administration of the functions of the Bank.

(2) The fact that a Deputy Governor exercises any power or does any act or thing in pursuance of this Order shall be conclusive proof of his authority to do so.

80. (1) The Bank may, notwithstanding anything contained in any law for the time being in force or any contract, depute any member of its staff for such period as it may deem fit to the Government or any institution and thereupon the person so deputed shall, during the period of his deputation, render such service to the Government or institution as it may require.

(2) Nothing contained in this Article shall empower the Bank to depute any member of its staff to the Government or any institution on any salary, emoluments or other terms and conditions which is or are less favourable to him than that or those to which he is entitled immediately before such deputation.

81. Whenever the Bank anticipates economic disturbances that are likely to threaten domestic monetary stability in Bangladesh or whenever abnormal movements in the money supply or in the price level are endangering such stability, it shall be the duty of the Bank-

- (a) to adopt such policies, and to cause such remedial measures to be taken, as are appropriate in the circumstances and authorised by the Order; and

- (b) to submit to the Government a detailed report which shall include as a minimum, an analysis of--
- (i) the causes of the anticipated economic disturbances or, of the actual abnormal movements of the money supply or the price level;
 - (ii) the probable effects of such disturbances or movements on the level or production, employment, and real income in Bangladesh; and
 - (iii) the measures which the Bank has already taken, and the further monetary, fiscal, or administrative measures which it proposes to take or recommends for adoption by the Government.

82. (1) Subject to the approval of the Government, the Board may make regulations consistent with this Order to provide for all matters for which provision is necessary or convenient for the purpose of giving effect to the provisions of this Order:

Provided that in the event of non-existence of the Board, the Governor may, with the approval of the Government, make regulations for the purpose of giving effect to the provisions of this Order and generally for carrying out the purpose of this Order.

(2) In particular and without prejudice to the generality of the foregoing provision, such regulations may provide for all or any of the following matters, namely:-

- (a) the manner in which meetings of the Board shall be transacted and the procedure to be followed at meetings thereof;
- (b) the conduct of the business of the Executive Committee;
- (c) the delegation of powers and functions of the Board, the Governor, Deputy Governor, Directors, or officers of the Bank;
- (d) the formation of committees of the Board, their supervision by the Board and the conduct of business in such committees;

- (e) recruitment of employees of the Bank including the terms and conditions of their service, constitution of superannuation, beneficial and other funds, with or without Banks contribution, for the employees of the Bank, their welfare, providing amenities, medical facilities, grant of loans and advances, their betterment and uplift;
- (f) the manner and from in which contracts binding on the Bank may be executed;
- (g) the provision of an official seal of the Bank and the manner and effects of its use;
- (h) the manner and forms in which the balance sheet of the Bank shall be drawn up, and in which the accounts shall be maintained;
- (i) the remuneration of Directors;
- (j) the relations of the scheduled banks with the Bank and the returns to be submitted by the scheduled banks to the Bank;
- (k) the regulations of clearing houses for the scheduled banks;
- (l) the circumstances which, and the conditions and limitations subject to which, the value of any lost, stolen, mutilated or imperfect Bank Note may be refunded as of grace;
- (m) the denomaiaon, form, issue, negotiability, encashment and repatriation of the instruments mentioned in clause (8) of Article 16;
- (n) generally, for making any provision necessary or convenient for the efficient conduct of the business, discharge of functions and for purposes of management of the Bank.

(3) Copies of all regulations made under this Article shall be available to the public on payment.

83. In all laws mentioned in this Order and in all other existing laws including the Banking Companies Ordinance, 1962, the Negotiable Instruments Act, 1881, the Trust Act, 1882, the Companies Act, 1913, the Foreign Exchange Regulations Act,

1947, the Banker's Books Evidence Act, 1891 and all rules, regulations, bye-laws, notification, Orders and instruments, references to State Bank of Pakistan shall, unless the context otherwise requires, be construed as reference to "Bangladesh Bank".

84. (1) The State Bank Act, 1956 (Act XXXIII of 1956) and the Bangladesh Bank (Temporary) order, 1971 (A. P. O. No. 2 of 1971) are hereby repealed.

(2) Any rules or regulations made, order passed, notification issued, thing done, action taken or proceeding commenced under any of the provisions of the State Bank Act, 1956 (Act XXXIII of 1956), the Bangladesh Bank (Temporary) Order, 1971 (A. P. O. No. 2 of 1971) or deemed to have been so made, passed, issued, done, taken or commenced, shall continue in force and be deemed to have been made or, as the case may be, passed, issued, done, taken or commenced under the corresponding provision of this Order.

ANNEX -1

1. The proviso was added by Ord, LVI of 1976.
2. Substituted by Ord, VI of 1975. This clause, prior to substitution, stood as under:-

"(3)" The Board shall consist of-

- (a) the Governor, and one or more Deputy Governors, to be appointed by the Government;
- (b) four Directors to be nominated by the Government from amongst the persons who, in the opinion of the Government, have had experience and shown capacity in the field of banking, trade, commerce, industry or agriculture;
- (c) one Government official to be nominated by the Government but he shall not have the right to vote."

3. Inserted by Ord. VI of 1975.

4. Substituted by Ord. LVI of 1976. This clause, prior to the substitution, stood as under:-

"(3) The Governor or, if for any reason he is unable to attend, the Deputy Governor shall preside at meetings of the Board and in the event of any equality of votes, shall have a second or casting vote. In case there is no Deputy Governor, any other Director, authorised by the Governor, shall preside over the meeting of the Board and he shall have a second or casting vote".

5. Substituted by LVI of 1976. This clause, prior to the substitution, stood as under.

"(1) There shall be an Executive Committee consisting of the Governor, Deputy Governors and one Director elected by the Board from among the Directors nominated by the Government under sub-clause (b) of clause 3 of Article 9".

6. Omitted *ibid*. Before omission, the clause stood as under:-

"(2) In addition to the members of the Executive Committee as constituted by clause (1), the person who shall be a member of the Board by virtue of sub-clause (c) of clause 3 of Article 9 shall be a member of the Executive Committee, but he shall not have the right to vote".

7. Substituted by Ord. LVI of 1976.
8. Substituted by Ord. LVI of 1976.
9. Inserted by Ord. VI of 1975.
10. Inserted by Act XVII of 1990.
11. Substituted by Ord. XXV of 1982. This clause, prior to the substitution, stood as under:-

"(21) (a) Subject to sub-clauses (b) and (c), the borrowing of money for a period not exceeding three months for the purpose of the business of bank, and the giving of security for money so borrowed;

(b) No money shall be borrowed under this clause from any person in Bangladesh other than a scheduled bank or from any person outside Bangladesh other than a bank which is the principal currency authority of any country under the law for the time being in force in that country;

(c) The total amount of borrowings from person in Bangladesh shall not at any time exceed the amount of the capital of the Bank".

12. Omitted by Ord. VI of 1975. Before omission it was as under:-

"(7) allow interest on deposits on current account."

13. Inserted by Act No. LXXII of 1974.

14. Inserted by Ord. VI of 1975.

15. Substituted by Ord. XLI of 1978. This clause, prior to the substitution, stood as under:-

"(2) For the purposes of this Article, gold, coin and gold bullion shall be valued at O. 118489 grammes of fine gold per Taka, silver bullion shall be valued at the market value of the fine silver content thereof, Taka coin shall be valued at its face value and Taka securities and securities specified in clause (4) shall be valued at the market rate for the time being obtaining or face value whichever is less".

16. Inserted by Act LXXII of 1974.

17. Inserted by Ord. VI of 1975.

18. Inserted by Ord. VI of 1975.

19. Inserted by Ord. VI of 1975.

20. Chapter V alongwith Articles 49, 50, 51, 52, 53, 54, 55, 56, 57 and 58 omitted by the Financial Institutions Act, 1993 (Act 27 of 1993). The Chapter and Articles, before omission, were as under:-

CHAPTER-V

Provisions relating to Non-Banking Institutions Receiving Deposits and Financial Institutions

49. The provisions of this Chapter shall not apply to a banking company as defined in section 5 of the Banking Companies Ordinance, 1962 or a banking institution notified under section 5 of that Ordinance or a co-operative Bank or a primary agricultural credit society or a primary credit society.

50. In this Chapter, unless the context otherwise requires,

- (a) "company" means a company as defined in section 2 of the Companies Act, 1913 and includes a foreign company within the meaning of section 2 of that Act;
- (b) "corporation" means a corporation incorporated by or established under any law in force;
- (c) "financial institution" means any non-banking institution-
 - (i) which carries on as its business or part of its business the financing, whether by way of making loans or advances or otherwise, of trade, industry, commerce or agriculture; or
 - (ii) which carries on as its business or part of its business the acquisition of shares, stock, bonds, debentures or debenture stock or securities issued by a Government or local authority or other marketable securities of a like nature; or
 - (iii) which carries on as its principal business hire-purchase transactions or the financing of such transactions.

Explanation.-For the removal of doubts, it is hereby declared that a company registered under section 3 of the Insurance Act,

1938 for any class of insurance business and a company, not being a banking company, a corporation or a firm, carrying on, as its principal business, the management, conduct or supervision, as the foreman or agent, of any transaction or arrangement by which it enters into an agreement with a number of subscribers that every-one of them shall subscribe a certain sum by instalments for a definite period and that each subscriber in his turn, as determined by lot or by auction or by tender or in such other manner as provided for in the agreement, shall be entitled to a prize amount shall be deemed to be, a financial institution as defined in this clause;

- (d) "firm" means a firm as defined in the Partnership Act, 1932;
- (e) "non-banking institution" means a company, corporation, co-operative society or firm.

51. The Bank may, if it considers necessary in the public interest so to do, by general or special order,-

- (a) regulate or prohibit the issue by any non-banking institution of any prospectus or advertisement soliciting deposits of money from the public; and
- (b) specify the conditions subject to which any such prospectus or advertisement, if not prohibited, may be issued.

52. (1) The Bank may at any time direct that every non-banking institution shall furnish to the Bank, in such form, at such intervals and within such time, such statement, information or particulars relating to or connected with deposits received by the non-banking institution, as may be specified by the Bank by general or special order.

(2) Without prejudice to the generality of the power vested in the bank under clause (1), the statements, information or particulars to be furnished under clause (1) may relate to all or any of the following matters, namely, the amount of the deposits, the purposes and periods for which, and the rates of interest and other terms and conditions on which, they are received.

(3) The Bank may, if it considers necessary in the public interest so to do, give directions to non-banking institutions either generally or to any non-banking institution or group of

non-banking institutions in particular, in respect of any matters relating to or connected with the receipt of deposits, including the rates of interest payable on such deposits, and the periods for which deposits may be received.

(4) If any non-banking institution fails to comply with any direction given by the Bank under clause (3), the Bank may prohibit the acceptance of deposits by that non-banking institution.

(5) If any question arises whether any amount borrowed or proposed to be borrowed by a non-banking institution is or is not a deposit, it shall be referred to the Bank whose decision thereon shall be final.

(6) Every non-banking institution receiving deposits shall if so required by the Bank and within such time as the Bank may specify, cause to be sent at the cost of the non-banking institution a copy of its annual balance-sheet and profit and loss account or other annual accounts to every person from whom the non-banking institution holds, as on the last day of the year to which the accounts relate, deposits higher than such sum as may be specified by the Bank.

53. (1) If the Bank is satisfied that for the purpose of enabling it to regulate the credit system of the country to its advantage, it is necessary so to do, it may-

- (a) require financial institutions either generally or any group of financial institutions or financial institution in particular, to furnish to the Bank in such form, at such intervals and within such time, such statement, information or particulars relating to the business of such financial institutions or institution, as may be specified by the Bank by general or special order;
- (b) give to such institutions either generally or to any such institution in particular, directions relating to the conduct of business by them or by it as financial institutions or institution.

(2) Without prejudice to the generality of the power vested in the Bank under sub-clause (a) of clause (1), the statement, information or particulars to be furnished by a financial institution may relate to all or any of the following matters.

namely, the paid-up capital, reserves or other liabilities, the investments, whether in Government securities or otherwise, the persons to whom, and the purposes and periods for which finance is provided and the terms and conditions, including the rates of interest, on which it is provided.

(3) In issuing directions to any financial institution under sub-clause (b) of clause (1), the Bank shall have due regard to the conditions in which, and the objects for which, the institution has been established, its statutory responsibilities, if any, and the effect the business of such financial institution is likely to have on trends in the money and capital markets.

54. It shall be the duty of every non-banking institution to furnish the statements, information or particulars called for, and to comply with any direction given to it under the provisions of this Chapter.

55. (1) The Bank may, at any time, for the purpose of verifying the correctness or completeness of any statement, information or particulars furnished to it by a non-banking institution or for the purpose of obtaining any information or particulars which a non-banking institution has failed to furnish on its being called upon to do so, cause an inspection to be made by one or more of its officers or employees or other persons (hereinafter referred to as the inspecting authority), of any such institution and its books and accounts.

(2) It shall be the duty of every director or member of any committee or other body for the time being vested with the management of the affairs of the non-banking institution or other officer or employee thereof to produce to the inspecting authority all such books, accounts and other documents in his custody or power and to furnish that authority with any statements and information relating to the business of the institution as that authority may require of him, within such time as may be specified by that authority.

(3) The inspecting authority may examine on oath any director or member of any committee or body for the time being vested with the management of the affairs of the non-banking institution or other officer or employee thereof, in relation to its business and may administer an oath accordingly.

56. (1) Whoever in any return, statement or information required or furnished by or under or for the purposes of any provision of this Chapter, wilfully makes a statement which is false in any material particular, knowing it to be false, or wilfully omits to make a material statement, shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

(2) If any person fails to produce any book, account or other document or to furnish any statement, information or particulars, which under this Chapter it is his duty to produce or furnish, or to answer any question relating to the business of a non-banking institution which he is asked by the inspecting authority under this Chapter, he shall be punishable with fine which may extend to Taka two thousand in respect of each offence, and if he persists in such refusal, with a further fine which may extend to Taka one hundred for everyday during which the offence continues.

(3) If any non-banking institution-

- (a) receives any deposits in contravention of any direction given to it under this Chapter; or
- (b) issues any prospectus or advertisement otherwise than in accordance with any order made under Article 51; or
- (c) fails to comply with the provisions of clause (6) of Article 52 or with the directions issued under clause (3) of that Article or sub-clause (b) of clause (1) of Article 53,

every director or member of any committee or other body for the time being vested with the management of the affairs of the non-banking institution, unless he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent it, shall be punishable with fine which may extend--

- (a) in the case of a contravention falling under sub-clause (a), to twice the amount of the deposits received;
- (b) in the case of a contravention falling under sub-clause (b), to twice the amount of the deposits called for by the prospectus or advertisement; and

(c) in any other case, to Taka two thousand.

57. No court shall take cognizance of any offence punishable under Article 56 except upon a complaint in writing made by an officer of the Bank, generally or specially authorised in writing in this behalf by the Bank, and no court inferior to that of a magistrate of the first class shall, try any such offence.

58. The provisions of this Chapter shall have effect notwithstanding any-thing inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law".

APPENDIX-III
THE BANKING COMPANIES ACT, 1991
(ACT 14 OF 1991)

[English version of
Bengali text]

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THE FIRST SCHEDULE THE SECOND SCHEDULE

THE BANKING COMPANIES ACT, 1991
(ACT 14 OF 1991)

[Amendment foot
Notes at ANNEX-2]

An Act to make provisions relating to banking companies

WHEREAS it is expedient to make provisions relating to banking companies;

It is hereby enacted as follows:

PART-I
PRELIMINARY

1. **Short title-**(1) This Act may be called the Banking Companies Act, 1991.

(2) It shall be deemed to have come into force with effect from the 24th February, 1991.

2. **Application of other laws not barred.**-The provisions of this Act shall be in addition to, and not, save as hereinafter expressly provided, in derogation of, the Companies Act, 1913 (VII of 1913), and any other law for the time being in force.

Notes

Banking Companies Act should be read as supplemental to and part of the Companies Act, 1913 (VII of 1913). Sections 171 and 232 of the Companies Act are applicable to winding up proceedings in respect of a bank. This section specifically provides that the provisions of this Act shall be in addition to and not in derogation of the Companies Act.

3. **Limited application of the Act to co-operative banks.**- Nothing in this Act shall apply to a co-operative bank registered under the Co-operative Societies Ordinance, 1984 (I of 1985), or any other law for the time being in force relating to co-operative

banks except that the Bangladesh Bank may carry out inspections of, and issue directions to, co-operative bank as prescribed for the banking companies under sections 44 and 45 of this Act.

Notes.

This section specifically lays down that none of the provisions of the Act, except the provisions of section 44 and section 45 shall apply to co-operative bank. According to the provisions of this section, Bangladesh Bank may, either on its own motion or on being directed to do so by the Government shall, cause an inspection to be made by one or more of its officers of any co-operative bank and its books and accounts and also cause a scrutiny of the affairs of a co-operative bank. Where the Bangladesh Bank is satisfied that, in the public interest, or in furtherance of monetary and banking policy or to prevent the affairs of any banking company being conducted in a manner detrimental to the interest of the depositors or in a manner prejudicial to the interest of the co-operative bank, or to secure the proper management of any banking company, it is necessary to issue directions to co-operative banks generally or to any co-operative bank in particular, it may issue necessary direction and the co-operative bank are bound to comply with such directions.

4. Power to suspend operation of the Act.-(1) The Government, if on a representation made by the Bangladesh Bank in this behalf is satisfied that it is expedient so to do, may, by notification in the official Gazette, suspend for a period, not exceeding sixty days, the operation of all or any of the provisions of this Act in relation to any specified banking company.

(2) The Government may, by notification in the official Gazette, extend from time to time, the period of any suspension under sub-section (1) by a period not exceeding sixty days at any one time, but the total period of suspension shall not exceed one year.

(3) A copy of any notification issued under this section shall be laid on the table of Parliament-

- (a) if it is in session, within ten days of the issue of the notification; and

- (b) if it is not in session, within ten days after it meets following the issue of the notification.

5. Definitions.-In this Act, unless there is anything repugnant in the subject or context-

- (a) "approved securities" means securities in which a trustee may invest money under clause (a), clause (b), clause (bb), clause (c) or clause (d) of section 20 of the Trust Act, 1882 (II of 1882), and for the purpose of sub-section ¹[(4)] of section 13, includes such other securities as the Government may, by notification in the official Gazette, declare to be approved securities for the purpose of that sub-section;
- (b) "company" means any company which may be wound up under the Companies Act, 1913 (VII of 1913);
- (c) "Companies Act" means Companies Act, 1913 (VII of 1913);
- (d) "demand liabilities" means liabilities which must be met on demand;
- (e) "secured loan or advance" means a loan or advance made on the security of assets the market value of which is not at any time less than the amount of such loan or advance, and "unsecured loan or advance" means a loan or advance not so secured, or that part of it which is not so secured;
- (f) "scheduled bank" has the same meaning as in Article 2(j) of the Bangladesh Bank Order, 1972 (P.O. No.127 of 1972);
- ²[(g) "debtor" includes a person, company or institution who receives financial benefit on the basis of sharing profit and loss, hire-purchase or leasing;]
- (h) "new bank" means a new bank as defined in the Bangladesh Banks (Nationalisation) Order, 1972 (P.O No. 26 of 1972);
- (i) "creditor" includes-

- 3[(i) such persons, company or institution who deposits money on the basis of participation of profit and loss,]
- (ii) a lending company or a financial institution from which financial accommodation or facility has been received on the basis of participation in profit and loss, mark-up in finance, hire purchase lease or otherwise;
- (j) "private company" has the same meaning as in the Companies Act, 1913 (VII of 1913);
- (K) "Bangladesh Bank" means the Bangladesh Bank established under the Bangladesh Bank Order, 1972, (P.O.No. 127 of 1972);
- (I) "rules" means rules made under this Act,
- (m) "specialised bank" means a bank established or constituted by or under any law for the time being in force and includes a bank declared by the Government, by notification in official Gazette, to be a specialised bank for the purposes of this Act;
- (n) "Managing Director" in relation to-
- (i) a new bank, means the Managing Director as defined in the Bangladesh Bank (Nationalisation) Order, 1972 (P.O.No.26 of 1972);
- (ii) a specialised bank, means the Managing Director as defined in the law or other instrument establishing or constituting it;
- (iii) any other banking company, means a director who, by virtue of an agreement with the banking company or of a resolution passed by the banking company in general meeting or by its Board of Directors or, by virtue of its memorandum or articles of association, is entrusted with the management of the affairs of the company, and includes a director occupying the position of a Managing Director, by whatever name called;

- The power*
- (o) "banking company" means any company which transacts the business of banking in Bangladesh and includes a new bank and a specialised bank:

Explanation.-Any company which is engaged in the manufacture of goods or carries on any trade and which accepts deposits of money from the public merely for the purpose of financing its business as such manufacturer or trader shall not be deemed to transact the business of banking within the meaning of this clause;

Notes

Power of receiving money on deposit from customers and honouring their cheques is the essential characteristics of banking. In the absence of such power, mere power of granting loans does not make company a banking company. A banking company comes into existence after it is licensed under this Act. The new banks established under the Bangladesh Banks (Nationalisation) Order, 1972 (P.O. No. 26 of 1972) and the specialised bank as defined in clause (m) have not been licensed as such. These banks have come into existence under special statute. Hence, they do not literally fall within the definition of banking company. In order to make it clear that, notwithstanding the above mentioned difference in the matter of authority of establishment, the new bank, i.e. Sonali, Agrani and Janata Bank and such other banks as are established by or under any special law are also banking companies, the words "and includes a new bank and a specialised bank" have been included in the definition.

(2) Transacting the business of banking should be the business of a company, and not that such business should have been transacted at any particular point of time. Notwithstanding that a banking company may not be transacting the business of banking at any particular point of time on account of supervening cause, it will not cease to be a banking company within the meaning of section 5(0) of the Act. The definition of a banking company does not mean that the company must, at the time in question, be able to accept deposits of money from the public repayable on demand or on such terms in which the money might have been deposited. It must mean that banking should be the primary business of the company even if, by reason of certain

supervening causes, it is not able for the time being to carry on the work of receiving deposits and of making payments.

- (p) "banking" means the accepting, for the purpose of lending or investment of deposits of money from the public, repayable on demand or otherwise, and withdrawable by draft, order or otherwise;

Notes.

Definition of banking is fairly wide. Acceptance of deposits for purposes of investing or lending but repayable on demand or otherwise would fall within the mischief of such definition. The definition of 'banking' makes it clear that receiving of money on deposit from customers and honouring their cheques is the essential characteristics of banking. This essence of banking is the relationship which is brought into existence at the time of deposit. That is the core of banking. Lending of money may be one phase of banking business, but it is not the main phase or the distinguishing phase.

- (q) "time liabilities" means liabilities which are not demand liabilities;

²³[(qq) "mudaraba certificate" means a certificate issued on the basis of mudaraba;

(qqq) "mudaraba" means such an agreement in terms of which a bank conducted in accordance with the Islamic Shariah provides capital for anything and the customer employs his efficiency, efforts, labour and intelligence;

(qqqq) "musharika certificate" means a certificate issued on the basis of musharika;

(qqqqq) "musharika" means such an agreement under which a portion of capital of anything is provided by a bank conducted in accordance with the Islamic Shariah and the other portion is given by the customer and in which profit is distributed in such proportion as mentioned in the agreement and loss is distributed in proportion to the capital.]

- (r) "gold", includes gold in the form of coin, whether legal tender or not, or in the form of bullion or ingot, whether refined or not;

- (s) "registrar" has the same meaning as in the Companies Act, 1913 (VII of 1913)

6. Act to override memorandum, articles, etc.-Save as otherwise expressly provided in this Act,-

- (a) the provisions of this Act shall have effect notwithstanding anything to the contrary contained in the memorandum or articles of association of a banking company, not being a new bank or a specialised bank, or in any agreement executed by it, or in any resolution passed by the banking company in general meeting or by its Board of Directors, whether the same be registered, executed or passed, as the case may be, before or after the commencement of this Act; and
- (b) any provision contained in the memorandum, articles, agreement or resolution aforesaid shall, to the extent to which it is repugnant to the provisions of the Act, become or be void, as the case may be.

PART-11

BUSINESS OF BANKING COMPANIES

7. Form of business in which banking company may engage.-

(1) In addition to the business of banking, a banking company may engage in any one or more of the following forms of business, namely:-

- (a) the borrowing, raising, or taking up of money;
- (b) the lending or advancing of money either upon or without security;
- (c) the drawing, making, accepting, discounting, buying, selling, collecting and dealing in bills of exchange, hundis, promissory notes, coupons, drafts, bill of lading, railway receipts, warrant, debentures, certificates, scrips, participation term certificates, term finance certificates, musharika certificates, moderaka certificates and such other instrument as may be approved by the Bangladesh Bank, and other instruments, and securities, whether transferrable or negotiable or not;

- (d) the granting and issuing of letter of credit, traveller's cheques, credit card and circular notes;
- (e) the buying, selling and dealing in gold, silver and other metal coin, ✓
- (f) the buying and selling of foreign exchange including foreign bank notes; ✓
- (g) the acquiring, holding, issuing on commission, underwriting and dealing in stock, funds, shares, debenture stock, bonds, obligations, securities, participation term certificates, term finance certificates, musharika certificates, ⁴[mudaraba] certificates and such other instruments as may be approved by the Bangladesh Bank and investments of all kinds;
- ✓ (h) the purchasing and selling of bonds, scrips or other forms of securities, participation term certificates, term finance certificates, ⁴[mudaraba] certificates, musharika certificates and such other instruments as may be approved by the Bangladesh Bank on behalf of constituents or others, the negotiating of loans and advances;
- (i) the receiving of all kinds of bonds, scrips of valuable on deposit or for safe custody or otherwise;
- (j) the providing of safe deposit vaults;
- (K) the collecting and transmitting of money and securities;
- (l) acting as agents for the Government or local authority or any other person or persons;
- (m) the carrying on of agency business of any description including the clearing and forwarding of goods, giving of receipts and discharges and otherwise acting as an attorney on behalf of customers, but excluding the business of a managing agent or treasurer of a company;

- (n) contracting for public and private loans and negotiating and issuing the same;
- (o) undertaking risks of shares, stock, debentures, or debenture stock of any company, corporation or association and the lending of money for the purpose of any such issue;
- (p) carrying of and transacting every kind of guarantee and indemnity business;
- (q) purchase or acquisition in the normal course of its banking business of any property, including commodities, patents, designs, trade marks and copy rights with or without buy back arrangements by the seller or for sale in the form of hire purchase or on deferred payment basis with markings or for leasing or licensing or for rent sharing or for any other mode of financing;
- (r) managing, selling and realising any property which may come into the possession of the company in satisfaction or part satisfaction of any of its claims;
- (s) acquiring and holding and generally dealing with any property or any right, title or interest in any such property which may form the security or part of the security for any loans or advances or which may be connected with any such security;
- (t) undertaking and executing trusts;
- (u) undertaking the administration of estates as executor, trustee or otherwise;
- (v) establishing and supporting or aiding in the establishment and support of associations, institutions, funds, trusts and conveniences calculated to benefit employees or ex-employees of the company or the dependants or connections of such persons; granting pensions and allowances and making payments towards insurance; subscribing to or guaranteeing moneys for charitable or benevolent objects or for any exhibition or for any public, general or useful object;

- (w) the acquisition, construction, maintenance and alteration of any building or works necessary or convenient for the purposes of the company;
- (x) selling, improving, managing, developing, exchanging, leasing, mortgaging, disposing of or turning into account or otherwise dealing with all or any part of the property and rights of the company;
- (y) acquiring and undertaking the whole or any part of the business of any person or company, when such business is of a nature enumerated or described in this sub-section;
- (z) doing all such other things as are incidental or conducive to the promotion or advancement of the business of the company;
- (za) any other form of business which the Government may, by notification in the official Gazette, specify as a form of business in which it is lawful for a banking company to engage.

(2) No banking company shall engage in any form of business other than those referred to in sub-section (1).

Notes

This section provides that in addition to banking business, a banking company may engage in any one or more of the different kinds of business specified in sub-section (1) of this section. This indicates the main or real business of banking company is banking. But such companies usually carry on and are permitted to carry on other kinds of business which are incidental to or essential for the main business. But a banking company is expressly prohibited from carrying on any kind of auxiliary, incidental or allied business other than those specified in sub-section (1) of this section.

8. Use of the word "Bank" or any of its derivatives.- Every company carrying on the business of banking in Bangladesh shall use the word "Bank" or any of its derivatives as part of its name and no company other than a banking company shall use in its name any word calculated to indicate that it is a banking company:

Provided that nothing in this section shall apply to-

- (a) subsidiary of banking company formed for one or more of the purposes mentioned in sub-section (1) of section 26 whose name indicates that it is a subsidiary of that banking company; and
- (b) any association of banks formed for the protection of their mutual interests and registered under section 26 of the Companies Act:

Provided further that the Government may, subject to such conditions, if any, as it may deem fit, by notification in the official Gazette, authorise a company wholly or partly owned or controlled by the Bangladesh Bank, not being a banking company, to use in its name the word "Bank" or any of its derivatives.

9. Prohibition of trading.- Except as authorised under section 7, no banking company shall directly or indirectly deal in the buying or selling or bartering of goods, except in connection with the realisation of security given to or held by it, or engage in any trade or buy, sell or barter goods, for others otherwise than in connection with bills of exchange received for collection or negotiation;

²⁴[Provided that nothing of this section shall apply to the direct or indirect buying, selling or bartering of any articles or goods of a banking company conducted in accordance with the Islamic Shariah].

Explanation.-For the purpose of this section, "goods" means every kind of movable property, other than actionable claims, stocks, shares, money, bullion and specie, and all instruments referred to in clause (c), (d), (g) and (h) of section 7 (1).

10. Disposal of non-banking assets.-(1) Notwithstanding anything contained in section 7, no banking company shall hold any immovable property howsoever acquired, except such as is required for its own use, for any period exceeding seven years from the acquisition thereof or from the commencement of this Act, whichever is later, or any extension of such period as in this section provided.

(2) Notwithstanding anything contained in sub-section (1), Bangladesh Bank may in any particular case extend the

aforesaid five years where it is satisfied that such extension would be in the interest of the depositors of the banking company.

(3) For the purpose of this section, "property" a substantial portion of which is in use by banking company for its own genuine requirements shall be deemed to be property for its own use.

11. Prohibition of employment of Managing Agents and restrictions on certain forms of employment.- (1) No banking company -

- (a) shall employ or be managed by a Managing Agent or
- (b) shall employ or continue the employment of any person-

- (i) who is, or at any time has been, adjudicated insolvent, or has suspended payment, or has compounded with his creditors, or who is, or has been, convicted by a criminal court of an offence involving moral turpitude;
- (ii) whose remuneration or part of whose remuneration takes the form of commission or of a share in the profits of the company;

Provided that nothing contained in this sub-clause shall apply to the payment by a banking company of-

- (a) any bonus in pursuance of a settlement or award arrived at or made under any law relating to industrial disputes or in accordance with any scheme framed by such banking company or in accordance with the usual practice prevailing in banking business; or
- (b) any commission to any broker, including guarantee broker, cashier-contractor, clearing and forwarding agent, auctioneer or any other person, employed by the banking company under a contract otherwise than as a regular member of the staff of the company; or

- (iii) whose remuneration is, in the opinion of the Bangladesh Bank, excessive; or

Explanation 1:- For the purpose of this sub-clause, the expression "remuneration", in relation to a person employed or continued in employment, shall include salary, fees and perquisites but shall not include any allowances or other amounts paid to him for the purpose of reimbursing him in respect of the expenses actually incurred by him in the performance of his duties.

Explanation 2:- In forming its opinion under the aforesaid sub-clause, the Bangladesh Bank may have regard, among other matters, to the following:

- (i) the financial conditions and history of the banking company, its size and area of operation, its resources, the volume of its business and the trend of its earning capacity;
- (ii) the number of its branches or offices;
- (iii) the qualifications, age and experience of the person concerned;
- (iv) the remuneration paid to other person employed by the banking company or to any person occupying a similar position in any other banking companies similarly situated; and
- (v) the interests of its depositors;
- (vi) shall not be managed by any person-
 - (a) who is a director of any other company, not being a subsidiary company of the banking company, or a company registered under section 26 of the Companies Act, 1913, except with the previous approval of the Bangladesh Bank, or
 - (b) who is engaged in any other business or vocation; or

- (c) who has a contract with the company for its management for a period exceeding five years at any one time:

Provided that any contract with the company for its management may be renewed or extended for a further period not exceeding five years at a time if and so often as the director so decide;

Provided further that nothing in this clause shall apply to a director, other than the managing director, of a banking company by reason only of his being such director.

(2) Where a person holding the office of chairman or director or manager or chief executive officer, by whatever name called, of a banking company is, or has been found by any court, tribunal or other authority to have contravened the provision of any law and the Bangladesh Bank is satisfied that the contravention is of such a nature that the association of such person with the banking company is or will be detrimental to the interests of the banking company or its depositors or otherwise undesirable, the Bangladesh Bank may make an order that that person shall cease to hold the office with effect from such date as may be specified therein and thereupon, that office shall, with effect from the said date, become vacant.

(3) Any order made under sub-section (2) in respect of any person may also provide that he shall not, without the previous permission of the Bangladesh Bank in writing, in any way, directly or indirectly, be concerned with, or take part in the management of, the banking company or any other banking company for such period not exceeding five years as may be specified in the order.

(4) No order under sub-section (2) shall be made in respect of any person unless he has been given an opportunity of making a representation to the Bangladesh Bank against the proposed order:

Provided that it shall not be necessary to give any such opportunity if, in the opinion of the Bangladesh Bank, any delay would be detrimental to the interests of the banking company or its depositors.

²⁵[(4A) If any officer of any banking company is dismissed from the service on the charge of misappropriation, corruption forgery

or moral turpitude, he shall be ineligible for appointment in future in the service of any banking company.]

(5) Any decision or order of the Bangladesh Bank made under this section shall be final for all purpose.

Notes

The principle underlying the provisions of this section is to check unhealthy manipulations between two or more banks in giving employment to any person as Managing Director. It makes comprehensive provision with a view to prevent employment of managing agent whose remuneration is to be based upon the profits of the banking company. It also lays down certain disqualifications for the employment of persons by a banking company. The wording of the provisions do not, however, mean a director of a banking company. In spite of this section, if it is not free from doubt whether a banking company can engage a part-time worker to develop any kind of banking business in a locality with remuneration based upon the profits of that branch of activities of the company.

12. Restriction on removal of records and documents.- No banking company shall remove from Bangladesh to a place outside Bangladesh any of its records and documents relating to its business in the head office or at its branches, whether they are functioning or not, without the prior permission in writing of the Bangladesh Bank.

Explanation:- In this section, the term "records" means electronically or otherwise kept ledgers, day-books, cash books, accounts books and all other books used in the business of a banking company and the term "documents" means electronically or otherwise kept vouchers, cheques, bills, pay-orders, securities for advance and any other documents supporting entries in the books of, or claims by or against a banking company.

13. Requirement as to minimum paid-up capital and ⁵[reserve fund].- ⁶[(1) When the total value of paid-up capital and reserve fund is not equal to the amount mentioned in this section-

- (a) no-banking company in existence on the commencement of this Act shall, after the expiry of

two years from such commencement, carry on business in Bangladesh; and

- (b) no other banking company, other than those mentioned in clause (a), shall, after the commencement of this Act, commence its business:

Provided that the Bangladesh Bank may, if it thinks fit in any particular case, extend the period referred to in this subsection by a further period not exceeding one year.]

(2) A new bank or a specialised bank shall have paid-up capital and ⁵[reserve fund] which shall not be less than the amount specified in the relevant law or instrument establishing or constituting it or six percent of its total demand and time liabilities at the close of the last working day of the ²⁶[accounting] year, whichever is higher:

Provided that the Bangladesh Bank may, by notification in the official Gazette, vary the requirement of paid-up capital and ⁵[reserve fund] amount of any such bank:

Provided further that if the value of the paid-up capital and reserves of a new bank exclusively owned by the Government or a specialised bank falls below the lowest limit, then the Government shall arrange for additional capital for it.

(3) A banking company, other than a new bank or a specialised bank, shall have paid-up capital and [reserve fund]⁵ which shall not be less than an amount equivalent to taka ⁷[twenty crores] or six percent of the total demand and time liabilities of the banking company as at the close of the last working day of the ²⁶["accounting"] year, whichever is higher:

Provided that the Bangladesh Bank may, in consultation with the Government, vary, by notification in the official Gazette, the requirement of paid-up capital and ⁵[reserve fund] in any particular case.

(4) In the case of a banking company incorporated outside Bangladesh, the aggregate value of its paid-up capital and [reserve fund]⁵ shall not, at the close of any day, be less than ⁷[taka ten crores] or an amount representing six percent of the total demand and time liabilities of such company in Bangladesh as at the close of the last working day of the ²⁶[accounting] year, whichever is higher:

Provided that a banking company shall not be deemed to have complied with the provisions of this sub-section unless it deposits and keeps deposited with the Bangladesh Bank an amount not less than what is required to be maintained under this sub-section, either in cash or in unencumbered approved securities or partly in cash and partly in such securities or in such other assets as may be prescribed by the Bangladesh Bank:

Provided further that a deposit so made with the Bangladesh Bank shall be by transfer of funds by the banking company from outside Bangladesh or in the form of assets acquired by the banking company out of remittable profits made by it from deposits in Bangladesh.

(5) Any amount deposited and kept deposited with the Bangladesh Bank under sub-section (4) by any banking company incorporated outside Bangladesh shall, in the event of the company ceasing for any reason to carry on banking business in Bangladesh, be an asset of the company on which the claim of all the creditors of the company in Bangladesh shall be a first charge.

(6) If any dispute arises in computing the aggregate value of the paid up capital and [reserve fund]⁵ of any banking company, a determination thereof by the Bangladesh Bank shall be final.

(7) If the Bangladesh Bank finds that any bank has failed to maintain the minimum paid-up capital and in accordance with the provision of this section, it will be liable to such fine as may be prescribed.

²⁷[Explanation:- For the purposes of this section, the paid up capital, reserve fund, liabilities shown in the profit and loss statement, the loan taken from the Bangladesh Bank and inter-bank liabilities shall not be considered in determining the demand and time liabilities.]

²⁸[13A - Risk-based capital of asset - (1) Bangladesh Bank may, with the prior approval of the Government, prepare at any time, the policy regarding the reservation of risk-based capital of assets.]

(2) Upon the preparation of the policy under sub-section (1) and its implementation, there shall not be any application of the provision for reservation of capital against demand and time liabilities specified in sub-section (2), (3) and (4) of section 13."]

14. Regulation of paid-up capital, subscribed capital and authorised capital and voting rights of share-holders.-(1) No banking company, not being a new bank or a specialised bank, incorporated in Bangladesh shall commence business in Bangladesh unless it satisfies the following conditions, namely:

- (a) that the subscribed capital of the company is not less than one-half of the authorised capital;
- (b) that the paid-up capital of the company is not less than one-half of the subscribed capital;
- (c) that if the capital is increased, the conditions under clause (a) and (b) shall be complied with within such period not exceeding two years as the Bangladesh Bank may allow;
- (d) that the capital of the company consists of ordinary shares only;
- (e) that, subject to the provisions contained in clause (f), the voting rights of any one share holder are strictly proportionate to the contribution made by him to the paid up capital of the company;
- (f) that the voting rights of any one share-holder, except those of the Government, do not exceed five percent of the total voting rights of all the share holders.

(2) Notwithstanding anything contained in any law for the time being in force or in any contract or instrument, no suit or other proceeding shall be maintained against any person registered as the holder of a share in a banking company, other than a new bank or a specialised bank, on the ground that the title to the said share vests in a person other than the registered holder:

Provided that nothing contained in this sub-section shall bar a suit or other proceeding-

- (a) by a transferee of the share on the ground that he has obtained from the registered holder a transfer of the share in accordance with any law relating of such transfer; or

- (b) on behalf of a minor or a lunatic on the ground that the registered holder holds the share on behalf of the minor or lunatic.

(3) Every chairman, managing director or chief executive officer, by whatever name called, of a banking company, other than a new bank or a specialised bank, shall furnish to the Bangladesh Bank through that banking company returns containing full particulars of the extent and value of his holding of shares, whether directly or indirectly, in the banking company and of any change in the extent of such holding or any variation in the rights attaching thereto and such other information relating to those shares as the Bangladesh Bank may, by order, require and in such form and at such time as may be specified in the order.

²⁹[14A. Restriction on buying shares of banks, etc.- (1) The shares of a bank shall not be centralised in any person, company or among members of a family and no person, company or members of a family shall buy more than ten percent share of a bank either personally, jointly or in both.

(2) The buyer shall, at the time of buying share, submit oath or declaration to the effect that he is not buying the share benami or as nominee of another person and that he has not bought any share benami before.

(3) If the oath or declaration submitted under sub-section (2) is proved false at any time, then all the shares of the person, who submitted the oath or declaration, in the concerned bank shall be forfeited to the Bangladesh Bank.

(4) if any person holds shares more than the shares specified in sub-section (1) from immediately before the commencement of the Banking companies (Amendment) Act, 1995 (Act.....25.....of 1995), he may, within one year from the date of commencement of that amendment, sell the additional shares to any person who was not a member of the said company or the said family or to a company or organisation which has no share in the said company.

(5) If the shares specified in sub-section (4) are not sold within the period mentioned therein, in that case the said additional share shall be vested in the Government or in such organisation as

fixed by the Government in this behalf and the Government or, as the case may be, the organisation shall pay the value of the said share at the rate which is less in between the face-value and market value.

(6) Nothing in this section shall be applicable in the case of the Government.

Explanation:- In this section, "family" means and includes the wife, husband, father, mother, son, daughter, brother, sister of any person and any other person dependant of such person.]

Notes.

The restriction does not affect a company. Hence, there is no restriction on buying the share of a bank exceeding five per cent by a company.

15. Election of new directors.-(1) The Bangladesh Bank may, by order, require any banking company, other than a new bank or a specialised bank, to call a general meeting of the shareholders of the company within such time, not less than two months from the date of the order, as may be specified therein or within such further time as the Bangladesh Bank may allow in this behalf, to elect, in accordance with the voting rights permissible under this Act, fresh directors, and the banking company shall be bound to comply with the order.

(2) Every director elected under sub-section (1) shall hold office until the date up to which his predecessor would have held office, if the election had not been held.

(3) Any election duly held under this section shall not be called in question in any court.

³⁰[(4) The Bangladesh Bank may, by order, make provisions to the effect that, every banking company, other than a new bank or specialised bank, shall obtain the prior approval of the Bangladesh Bank before the appointment of its Adviser, if any, Managing Director or chief executive officer, by whatever named called, and such appointed Adviser, Managing Director or chief executive officer shall not be dismissed, released or removed without obtaining the prior approval of the Bangladesh Bank.]

³¹[15A. Filling of the post of chief executive officer etc.- (1) Notwithstanding anything contained in this Act or in any other law for the time being in force, whosoever temporarily

discharging the responsibilities of the post of the chief executive officer, by whatever named called, of any banking company shall be liable to be responsible for discharging the total responsibilities of the post.

(2) Notwithstanding anything contained in subsection (1), the post of the chief executive officer of any banking company shall not be kept vacant for a consecutive period of more than three months.

(3) Where the post of the chief executive officer of any banking company is not filled in within the time specified in sub-section (2), the Bangladesh bank may appoint an Administrator for the discharge of the responsibilities of chief executive officer and the company concerned shall bear the expenses on account of the pay and other facilities of the Administrator."]

¹⁰[16. Omitted.

17. Vacation of office of Director.-(1) If any director of a banking company fails to-

- (a) pay any advance or loan received by him or any instalment thereof or interest therein;
- (b) pay any amount due on any guarantee; or
- (c) do or perform any act agreed to or undertaken in writing to be done or perform by him and such failure continues for a period of two months after notice in writing had been served on him by the banking company through the Bangladesh Bank calling upon him to make the payment or to do or perform the act, his post will fall vacant with the expiry of the said period.

(2) Any person receiving a notice under sub-section (1) may explain his conduct to the Bangladesh Bank, with a copy of the explanation to the banking company which issued the notice, within thirty days from the date of receipt of such notice.

(3) The decision of the Bangladesh Bank on the explanation sent under sub-section (2) shall be final.

³²[(4) Notwithstanding anything contained in this section, the amount due to the bank shall be realised by adjusting the share value of the Director whose post has fallen vacant."]

18. Certain privileges of Directors:-(1) Notwithstanding anything contained in any other law or memorandum and Articles of Association, any Director of any banking company shall not accept any financial benefit other than fees fixed for attending meetings of the Board of Directors and such money as may be determined by the Directors by unanimous decision for doing any work in the interest of the business of the company.

(2) Where any director of a banking company execute any business transaction other than banking business with any business establishment where he is associated or he has at least 10 percent share, the banking company shall submit a report on that in its general meeting.

19. Restriction on commission, brokerage, discount, etc, on sale of shares.- Notwithstanding anything to the contrary in section 105 and 105A of the Companies Act, 1913 (VII of 1913), no banking company shall pay out directly or indirectly by way of commission, brokerage, discount or remuneration in any form in respect of any shares issued by it, any amount exceeding in the aggregate two and one-half percent of the paid-up value of the said shares.

20. Prohibition of charge on unpaid capital.-No banking company shall create any charge upon any unpaid capital of the company and any such charge, if created, shall be invalid.

21. Prohibition of floating charge on assets.-(1) Notwithstanding anything contained in section 7, no banking company shall create a floating charge on the undertaking or any property of the company or any part thereof, unless the creation of such floating charge is certified in writing by the Bangladesh Bank as not being detrimental to the interests of the depositors of such company.

(2) Any such charge created without obtaining the certificate of the Bangladesh Bank shall be invalid.

(3) Any banking company aggrieved by the refusal of a certificate under sub-section (1) may, within ninety days from the date on which such refusal is communicated to it, appeal to the Government.

(4) The decision of the Government, where an appeal has been preferred to it under sub-section (3), or of the Bangladesh Bank where no such appeal has been preferred, shall be final.

Notes.

This section prohibits every banking company from creating a floating charge on its undertaking or any property or any part thereof unless the creation of such a floating charge is certified in writing by the Bangladesh Bank as not being detrimental to the interests of the depositors of such company. The floating charge, if created, without obtaining the Bangladesh Bank's certificate is invalid. The word "undertaking" has been employed to mean the entire organisation i.e. the banking company concerned.

22. Restrictions as to payment of dividend.-(1) No banking company, other than a new bank or a specialised bank, shall pay any dividend on its shares if-

- (a) all its capitalised expense, including preliminary expenses, organisation expenses, share-selling commission, brokerage, amounts of losses incurred and any other item of expenditure not represented by tangible assets, have not been completely written off;
- (b) it fails to maintain a minimum of six percent of its total ¹¹[demand and time liability] as paid-up and reserve capitals.

(2) Notwithstanding anything to the contrary contained in sub-section (1) or in the Companies Act, 1913 (VII of 1913), a banking company may pay dividends on its shares without writing off-

- (a) the depreciation, if any, in the value of its investments in approved securities in any case where such depreciation has not actually been capitalised or otherwise accounted for as a loss;
- (b) the depreciation, if any, in the value of its investments in shares, debentures or bonds, other than approved securities, in any case where adequate provision for such depreciation has been made to the satisfaction of the auditor of the banking company;
- (c) the bad debts, if any, in any case where adequate provision for such debts has been made to the satisfaction of the auditor of the banking company.

23. Prohibition of common directors.-(1) ¹²[Notwithstanding anything contained in any other law for the time being in force or in any Memorandum and Articles of Association of a company, except] with the permission of the Bangladesh Bank, no banking company, other than a new bank or a specialised bank, incorporated in Bangladesh shall have as a director any person who is-

(a) a director of any other banking company or financial institution not engaged in banking business;

¹³[(aa) a director of a insurance company;

(aaa) an external auditor, legal adviser, adviser or otherwise engaged in any responsibility of profit of the banking company;

(aaaa) an adviser of any other banking company;]

(b) a director of companies which among themselves are entitled to exercise voting rights in excess of twenty percent of the total voting rights of all the share-holders of the banking company.

Provided that in case of a director appointed by the Government, the prohibition shall not apply.

¹⁴[(1A) If any person who can not be a director under sub-section (1) becomes a director, the Bangladesh Bank may remove such person from the post of director:

Provided that the director shall be given an opportunity to show cause before such removal:

Provided further that the Bangladesh Bank shall complete all actions against the said director within a period not exceeding three months from the date of the fact of such directorship comes to the knowledge of that bank.]

(2) If, immediately before the commencement of this Act, any person holding office as a director of a banking company is also a director of companies which among themselves are entitled to exercise voting rights in excess of twenty percent of the total voting rights of all the share-holders of the banking company, he shall, within such period from such commencement as the Bangladesh Bank may specify in this behalf-

- (a) either resign his office as a director of the banking company: or
- (b) choose such number of companies as among themselves are not entitled to exercise voting rights in excess of twenty percent of the total voting rights of all the share-holders of the banking company as companies in which he wishes to continue to hold the office of a director and resign his office as a director in the other companies.

24. Reserve fund.-(1) Every banking company incorporated in Bangladesh shall create a reserve fund and , unless the amount in such fund together with the amount, if any, in the share premium account is not less than its paid- up capital or such sum as may be determined by Bangladesh Bank from time to time in case of a banking company shall, out of the balance of profit of each year as disclosed in the profit and loss account prepared under section 38 and before any amount is transferred to Government or dividend is declared, transfer to the reserve fund a sum equivalent to not less than twenty percent of such profit.

(2) Where a banking company appropriates any sum or sums from the reserve fund or the share premium account, it shall, within twenty -one days from the date of such appropriation, report the fact to the Bangladesh Bank explaining the circumstances relating to such appropriation:

Provided that the Bangladesh Bank may, in any particular case, extend the said period of twenty one day by such period as it thinks fit or condone any delay in the making of such report.

25. Cash reserve.-(1) Every banking company, not being a scheduled bank, shall maintain in Bangladesh by way of cash reserve in cash with itself or in current account opened with Bangladesh Bank or its agent or partly, in cash with itself and partly in such account or accounts a sum equivalent to five percent of its demand and time liabilities in Bangladesh:

Provided that the Bangladesh Bank may, by notification in the official Gazette, vary the requirement of cash reserve in any particular case subject to such conditions as may be specified in the notification or, with the prior approval of the Government, dispense with the said requirement accordingly.

Explanation: In this section "liabilities" shall not include the paid-up capital or the reserves or any credit balance in the profit and loss account of the banking company or the amount of any loan taken from the Bangladesh Bank.

(2) Every banking Company, not being a scheduled bank, shall send to the Bangladesh Bank returns as required under sub-section (1) signed by two responsible officers of such bank containing such information as may be deemed necessary at such periods of time as the Bangladesh Bank may, from time to time, direct.

(3) If any banking company fails to submit returns under sub-section (2), it shall be punishable by Bangladesh Bank of penalty of an amount not exceeding taka two thousand and five hundred for each day of such failure.

(4) If at the close of business on any day before the day fixed for the next return under sub-section (2), the balance held by any banking company, not being a scheduled bank, is below the minimum fixed by sub-section (1), such banking company may be ordered by the Bangladesh Bank to pay the Bangladesh Bank in respect of such day penal interest at a rate of three percent above the bank rate on the amount by which the balance falls short of the fixed minimum, and if on the day on which the next return is due, such balance is still below the fixed minimum as disclosed by this return, the rate of penal interest may be increased to a rate five percent above the bank rate in respect of that day and each subsequent day on which the balance at the close of business on the day is below the fixed minimum.

(5) When under the provision of sub-section (4), the penal interest at the increased rate of five percent above the bank rate has become payable by a banking company, and if thereafter on the day fixed for the next return, the balance held at the Bangladesh Bank is still below the fixed minimum as disclosed by this return, the Bangladesh Bank may prohibit the banking company from receiving, after the said day, any fresh deposit, and shall by the order of the Bangladesh Bank be liable to penalty not more than taka five thousand in respect of default for each day after the first on which a deposit is received in contravention of such prohibition.

(6) The penalties imposed under this section shall be payable on demand made by the Bangladesh Bank and if it is not paid within the said period, it will be realisable as public demand.

26. **Subsidiary Companies:**-(1) A banking company shall not form any subsidiary company except a subsidiary company formed for one or more of the following purposes, namely:

- (a) the undertaking and executing of trusts;
- (b) the undertaking of the administration of estates as executor, trustee or otherwise;
- (c) the providing of safe deposit vaults;
- (d) carrying on business of banking according to principles of Sharia;
- (e) with the previous permission in writing of the Bangladesh Bank:-
 - (i) the carrying on of the business of banking exclusively outside Bangladesh;
 - (ii) the carrying on the business of banking based on freely transferable deposits in foreign currency obtained from non-residents;
- (f) the undertaking of such other business, which the Bangladesh Bank may, with prior approval of the Government, consider to be conducive to expansion and improvement of banking in Bangladesh or to be otherwise useful or necessary in public interest.

(2) Save as provided in sub-section (1), no banking company shall hold shares in any company whether as pledgee or mortgagee or absolute owner of an amount exceeding-

- (a) thirty percent of its own paid-up share capital and reserves, or
- (b) thirty percent of the paid-up capital of that company, whichever is less:

Provided that any banking company which is on the date of commencement of this Act holding any shares in contravention of the provisions of this sub-section shall not be liable to any penalty therefor if it-

- (i) reports the matter without delay to the Bangladesh Bank, and
- (ii) brings its holding of share in conformity with the said provisions within such period, not exceeding two years, as the Bangladesh Bank may think fit to allow.

(3) Notwithstanding anything contained in sub-section (2), a banking company shall not, after the expiry of one year from the date of commencement of this Act, hold shares, whether as pledgee, mortgagee or absolute owner, in any company in the management of which any managing director or manager of the banking company is in any manner concerned or interested.

Notes.

This section restricts the scope of formation of subsidiary companies by a banking company, as well as the holding of shares in other companies. A banking company may form a subsidiary company for the purposes referred to in this section. A banking company can not be permitted to form subsidiaries for carrying on one or more kinds of business which it is permitted to engage in under clauses (a) to (Za) of sub-section (1) of section 7 of this Act.

27. Restriction on loans and advances.-(1) No banking company shall-

- (a) make any loans or advances against the security of its own shares; or
- (b) grant unsecured loans or advances to, or make loans and advances on, the guarantee of-
 - (i) any of its directors;
 - (ii) any of the family members of any of its directors;
 - (iii) any firm or private company in which the banking company or any of the persons referred to in subclause (i) or sub-clause (ii) is interested as director, proprietor or partner; or
 - (iv) any public limited company which is managed by any director of the banking company or by any member of family of any of its directors

and in which any of the persons as aforesaid has such share by which he is empowered to vote for 20% or more of the share holding of the company.

(2) No banking company shall make loans or advance to any of its directors or to individuals, firms or companies in which it or any of its directors is interested as partner, director or guarantor, as the case may be, without the approval of the majority of the directors of that banking company, excluding the director concerned.

Explanation.-In this sub-section, "director" includes the wife, husband, father, mother, ¹⁵[son, daughter, brother, ³³[sister and others dependants on the Director]

(3) No banking company shall, without the prior written approval of Bangladesh Bank, allow, either directly or indirectly, any such facility to any person or institution the value of which-

- (a) is more than the value of 15% of the total capital of that banking company;
- (b) is more than the value of 25% of the total capital of that banking company, where the facility is secured by easily saleable financial securities:

[Provided that the Bangladesh Bank shall not allow facility more than 100% of capital of the banking company to any person or institution owned by the same partners either directly or indirectly.]¹⁶

Explanation 1.-"Facility" means any loan, advance or any other credit facility, financial guarantee or any such liability a banking company has accepted on behalf of a person or an institution.

Explanation 2. "Total Capital" means paid-up capital and reserve fund maintained by the concerned banking company under section 13.

(4)¹⁷[The managing Director of every banking company] shall, before the close of the month succeeding that to which the return relates, submit to the Bangladesh Bank a return in the prescribed form and manner, showing particulars of-

- (a) all loans and advances granted by it to companies, private as well as public in which it or any of its directors is interested as a director; and
- (b) all loans and advances granted by it to public companies in which it or any of its directors is interested as managing agent or guarantor.

(5) If on examination of any return submitted under sub-section (4), it appears to the Bangladesh Bank that any loans or advances referred to in that sub-section have been granted to the detriment of the interest of the depositors of the banking company, the Bangladesh Bank may, by order in writing, prohibit the banking company from granting any such further loans or advances or impose such restrictions on the grant thereof as it thinks fit, and may, by like order, direct the banking company to secure the repayment of any such loans or advances within such time as may be specified in the order.

Notes.

Indiscriminate advances and loans to directors and their concerns has proved to be main reason for close down of many banks in many countries. This reason proved to be fatal in the development of banking in our country. The need for imposing restrictions on loans and advances to directors and their concerns was felt from long ago. But an absolute and unqualified ban on such transaction was not perhaps considered advisable for various reasons. One of such reason is that, such ban could have deprived the banks of the advantages of having experienced and important industrialist magnate in their Board of Directors. Hence for the time being, certain restrictions on loans and advances have been imposed by this section.

28. Restriction on power to remit debts.-(1) A banking company shall not, except with the prior approval of the Bangladesh Bank, remit in whole or in part any debt due to it by-

- (a) any of its directors, and the member of his family;
- (b) any firm or company in which any of its directors is interested as director, partner, managing agent or guarantor; or
- (c) any individual, who has interest with any of its directors as his partner or guarantor.

(2) Any remission made in contravention of the provisions of sub-section (1) shall be void and of no effect, and any person committing such remission shall be punishable with imprisonment which may extend to three years and shall also be liable with a fine not exceeding taka thirty thousand or with both.

29. Power of Bangladesh Bank to control advances by banking companies.-(1) Whenever the Bangladesh Bank is satisfied that it is necessary or expedient in the public interest to do so, it may determine the policy in relation to advances to be followed by banking companies generally or by any banking company in particular, and, when the policy has been so determined, all banking companies or the banking company concerned, as the case may be, shall be bound to follow the policy as so determined.

(2) Without prejudice to the generality of the power conferred by sub-section (1), the Bangladesh Bank may give directions to banking companies either generally or to any banking company or group of banking companies in the following matters, namely:-

- (a) credit ceilings to be maintained;
- (b) the minimum ratio of small loans or other loans to the total advances to be maintained;
- (c)- the purpose for which advances may or may not be made;
- (d) the limit upto which advances may be given to any banking company or group of banking companies, a person or group of persons;
- (e) secured advance and ceiling of interest on advance;
- (f) the rates of interest to be charged on advances.

(3) If any default is made by a banking company in complying with the direction given under clause (a) and (b) of sub-section (2), the banking company shall, by order of the Bangladesh Bank, be liable to deposit such amount as may be determined by it and the banking company shall, subject to the conditions specified by that Bank, be bound to comply with the direction:

Provided that Bangladesh Bank shall not order to deposit an amount which is higher than the amount in respect of which the default has been made.

(4) The amount deposited with the Bangladesh Bank under sub-section (3) or any part thereof may be released by it to the banking company conditionally or unconditionally by written order.

Notes.

This section empowers the Bangladesh Bank to determine policy in relation to advances to be followed by banking companies generally or to any banking company in particular. It also empowers the Bangladesh Bank to impose penalty in the case of default in complying with the direction given under this section. The effect of this section is to bring an effective control of the Bangladesh Bank over banking companies.

30. Rates of interest not to be subject to scrutiny by courts.-Notwithstanding anything contained to the contrary in any law for the time being in force, a transaction between a banking company and its debtor shall not be re-opened by any court ³⁴[only on the ground that the rate of interest charged by the banking company in respect of such transaction is excessive and that in the case of banks conducted in accordance with Islami Shariah, the rate of profit or rent in business was excessive.]

Notes.

This section provides that the rates of interest charged by banking companies from the debtors shall not be re-opened in a court notwithstanding anything contained in any law for the time being in force. This section applies only to the interest till realisation of the debt. In Indian Banking regulation Act, 1949, similar provision exists in section 21-A. In Bank of India Vs Karnam Rango Road and others (1988) 64. Comp. Cas. 477. the Karnatak High Court has held that section 21-A is a restraint on the power of the court to re-open any account maintained by a bank relating to transactions with its customers on the ground that the rate of interest charged in the opinion of the court is excessive or unreasonable.

31. Licensing of banking companies.-(1) Save as hereinafter provided, no company shall carry on banking business in

Bangladesh unless it holds a licence issued in that behalf by the Bangladesh Bank.

(2) At the time of issuing licence under sub-section (1), the Bangladesh Bank may impose such conditions as it may think fit to impose.

(3) Every banking company in existence on the commencement of this Act before the expiry of six months from such commencement, and every other company before commencing banking business in Bangladesh shall apply in writing to the Bangladesh Bank for a licence under this section:

Provided that nothing in sub-section (1) shall be deemed to prohibit banking company in existence on the commencement of this Act from carrying on banking business if-

- (a) its application is under consideration for granting a licence under this section; or
- (b) it is not informed by the Bangladesh Bank by notice that a licence shall not be granted to it:

Provided further that the Bangladesh Bank shall not give a notice as aforesaid to a banking company in existence on the commencement of this Act before the expiry of the period of two years in the case of banking companies incorporated in Bangladesh and of six months in the case of banking companies incorporated outside Bangladesh referred to in sub-section (1) of section 13 or of such further period as the Bangladesh Bank may under the provision to that sub-section think fit to allow.

(4) Before granting any licence under this section, the Bangladesh Bank may require to be satisfied by an inspection of the books of the company or otherwise that all or any of the following conditions are fulfilled, namely:

- (a) that the company is or will be in a position to pay its present or future depositors in full as their claims accrue;
- (b) that the affairs of the company are not being or are not likely to be conducted in a manner detrimental to the interest of its present or future depositors;
- (c) that, in the case of a company incorporated outside Bangladesh, the government or law of the country in which it is incorporated provides the same facilities

to banking companies registered in Bangladesh as the Government or law of Bangladesh grants to banking companies incorporated outside Bangladesh and that the company complies with all the provisions of this Act applicable to banking companies incorporated outside Bangladesh.

(5) The Bangladesh Bank may cancel a licence granted to a banking company under this section.

- (a) if the company ceases to carry on banking business in Bangladesh; or
- (b) if the company at any time fails to comply with any of the conditions imposed upon it under sub-section (2); or
- (c) if, at any time, any of the conditions referred to in sub-section (4) ceases to be fulfilled:

Provided that before cancelling a licence under clause (b) or clause (c) of this sub-section on the ground that the banking company has failed to comply with or has failed or ceased to fulfil any of the conditions referred to therein, the Bangladesh Bank, unless it is of opinion that the delay will be prejudicial to the interest of the company's depositors or the public, shall grant to the company on such terms as it may specify, an opportunity of taking the necessary steps for complying with or fulfilling such condition.

(6) Any banking company aggrieved by the decision of the Bangladesh Bank cancelling a licence under this section may, within thirty days from the date on which such decision is communicated to it, appeal to the government.

(7) The decision of the Government where an appeal has been preferred to it under sub-section (6) or of the Bangladesh Bank where no such appeal has been preferred shall be final.

Notes.

This section provides a comprehensive system of licensing banks by Bangladesh Bank. The grant of licence in case of banks incorporated in Bangladesh is depended upon the maintenance of a satisfactory financial condition coupled with the additional qualification in case of foreign banks. A licence is not necessarily a permit. A licence is intended to regulate a business, while a permit would be one without which a business can never

be started so that a permit may amount to a prohibition of the business in regard to persons who are unable to obtain the same. There is sufficient legislative guidance for the granting of licence in the Act and in this section in particular. No banking company can commence or carry on banking business in Bangladesh until it holds a licence granted to it by the Bangladesh Bank for the purpose. In the case of banking companies to be started before granting a licence to them the Bangladesh Bank may require to be satisfied whether the conditions given are fulfilled. In India, in Sajjan Bank (p) Ltd. V. Reserve Bank (30 Comp. Cas. 146), it has been held that such provisions prescribe only a system of licencing, having for its object the regulation of the business of banking and does not violate fundamental right of any person to carry on the business of banking.

2. Company working without licence.- Bangladesh Bank can requisition from a company or a person information and documents if such company or person, in its view, is transacting business in contravention of section 27(1) of the Act. If Bangladesh Bank, after making enquiries, finds such transaction of business to be in contravention thereof, it may issue a declaration to that effect, after giving such company or person an opportunity of showing cause against proposed action. For this purpose, acceptance of deposits with promise to repay on some future date would be enough to bring the act of company within the prohibition imposed by this section.

32. Restrictions on opening of new and transfer of existing places of business.-(1) No banking company shall without first obtaining the prior permission in writing of the Bangladesh Bank-

- (a) open a new place of business in any part of Bangladesh or change the location of an existing place of business situated in any part of Bangladesh; and
- (b) open a new place of business outside Bangladesh or change the location of an existing place of business situated in that country or area.

(2) Nothing in this section shall apply to the opening for a period not exceeding one month for the purpose of affording

banking facilities to the public on the occasion of an exhibition, a conference or a fair or any other like occasion :

Provided that intimation of such opening shall be given to the Bangladesh Bank within one week of the date of opening.

(3) The Bangladesh Bank may, before giving the permission referred to in sub-section (1) of this section to any banking company, require to be satisfied by an inspection under section 44 or otherwise regarding such aspects of the company's affairs as the Bangladesh Bank may deem necessary.

33. Maintenance of liquid assets.-(1) Every banking company shall maintain in Bangladesh in cash, gold or unencumbered approved securities the value of which shall not at the close of business on any day be less than such percent of the total of its time and demand liabilities in Bangladesh as Bangladesh Bank decides from time to time.

Explanation: For the purposes of this section, "unencumbered approved securities" of a banking company shall include its approved securities lodged with another institution for an advance or any other credit arrangement to the extent to which such securities have not been drawn against or availed of.

(2) In computing the amount provided for in sub-section (1), any deposit required under the provision to sub section (3) of section 13 to be made with the Bangladesh Bank by a banking company incorporated outside Bangladesh and any balance maintained in Bangladesh by a banking company in current account with the Bangladesh Bank or its agent or both or in profit and loss sharing term deposit account with the Bangladesh Bank shall be deemed to be cash maintained.

(3) The manner of determining assets and liabilities and the proportion of class wise maintainable assets shall be fixed by the Bangladesh Bank.

(4) Every banking company shall, before the close of the month succeeding the month to which the return relates, furnish to the Bangladesh Bank a monthly return in the prescribed form and manner showing:-

- (a) particulars of the company's assets maintained in accordance with this section; and
- (b) its time and demand liabilities in Bangladesh at the close of business on each Thursday during the

month, or if any Thursday is a public holiday under the Negotiable Instruments Act, 1881 (XXVI of 1881), at the close of business on the preceding working day.

(5) If Bangladesh Bank is of the opinion that any banking company fails to maintain liquid assets as fixed by Bangladesh Bank, that company shall be compelled to pay penalty at the maximum rate of interest on loan to be fixed by Bangladesh Bank for the short fall amount.

Notes:

The requirement of maintenance of liquid assets as laid down in this section is based upon the need for the maintenance of a minimum percentage of liquid assets by banking companies. In order to meet the demands of its depositors, a bank must be in a position to pay such amounts as may be reasonably required by them at all times. A bank which does not maintain sufficient liquid assets to meet such demands is likely to get into difficulties although its total assets may exceed the total liabilities of its depositors. Needless to mention that, one of the causes of large number of bank failures in various countries in the recent years was found to be comparatively small percentage of liquid assets kept by the banks. This necessitated the provision of this section for maintenance of liquid assets for each bank.

34. Assets in Bangladesh.-(1) At the close of business on any day the assets in Bangladesh of every banking company shall not be less in value than an amount representing such percentage of its time and demand liabilities in Bangladesh as may be prescribed by the Bangladesh Bank from time to time:

Provided that the percentage so prescribed shall not exceed eighty percent of the above liabilities.

(2) Every banking company shall, before the close of the month succeeding that to which the return relates, furnish to the Bangladesh Bank in the prescribed form and manner a monthly return showing-

- (a) particulars of the company's assets maintained in accordance with this section, and

- (b) its time and demand liabilities in Bangladesh at the close of business on every Thursday or if any Thursday is a public holiday under the Negotiable Instrument Act, 1881 (XXVI of 1881), at the close of business on the preceding working day.

(3) For the purposes of this section-

- (a) "assets in Bangladesh" shall be deemed to include export bills drawn in, and import bills drawn on and payable in Bangladesh and expressed in such currencies as the Bangladesh Bank may, from time to time, approve in this behalf and also such securities as the Bangladesh Bank may approve in this behalf notwithstanding that all or any of the said bills or securities are held outside Bangladesh, but shall exclude such assets as in the opinion of the Bangladesh Bank cannot properly be regarded as assets;
- (b) "liabilities in Bangladesh" shall not include the paid-up capital or the reserves or any credit balance in the profit or loss account of the banking company.

35. Unclaimed deposits and valuable articles.-(1) Where-

- (a) a debt payable in Bangladesh currency by a banking company by reason of a deposit, not being a deposit in the name of a minor or Government or a court of law, at a branch of the banking company in Bangladesh in respect of which no transaction is made for ten years from the date mentioned below:
- (i) in the case of a deposit made for fixed period, from the day on which the fixed period terminated, and
- (ii) in the case of any other deposit, from the day on which the last transaction took place or a statement of account was last requested or acknowledged by the creditor, whichever is later, or
- (b) a dividend, bonus, profit or other sum of money whatsoever which has become due on a deposit and a

period of ten years reckoned from the date on which the dividend, bonus, profit or other sum of money, as the case may be, became due and payable or,

- (c) a cheque, draft, or bill of exchange including an instrument drawn by one branch of the banking company upon another such branch payable in Bangladesh currency has been issued, certified or accepted by a banking company at a branch of the banking company in Bangladesh and no payment has been made in respect thereof for a period of ten years from the date of issue, certification or acceptance; or
- (d) a security share, goods or any valuable article, hereinafter collectively and individually called "valuable article", lying in safe custody with a banking company has not been inspected or acknowledged by the person who deposited the valuable article with the banking company for a period of ten years from the day on which it was last inspected or acknowledged by such person,

the banking company shall give forthwith a three month's notice in writing by registered post acknowledgement due to the creditor or the beneficiary of the cheque, draft or bill of exchange or the person in whose name the valuable articles stand in the book of the banking company, on his address last made known by him to the banking company.

(2) If, on the expiry of three months period from the date of service of notice under sub-section (1), no acknowledgement or reply is received from the addressee, the banking company shall take following measures, namely:-

- (a) in the case of an amount mentioned in subsection (1), an amount to the said amount including interest under that sub-section shall be paid to Bangladesh Bank;
- (b) in the case of cheques, draft or bill of exchange mentioned under sub-section (1), the amount that would be owing if the instrument had been presented

for payment including interest, if any, shall be paid to Bangladesh Bank:

- (c) in the case of the valuable articles mentioned under sub-section (1), they shall be delivered to the Bangladesh Bank in accordance with the terms of the debt or instrument or of the arrangement under which the valuable article is lying in the safe custody of the banking company; and after the payment or delivery made as above, the banking company shall not have liabilities in respect of the debt or instrument or articles.

(3) A notice required to be given by sub-section (1) -

- (a) may, in the case of a firm or a Hindu undivided family, be addressed to any member of the firm or the manager or any adult male member of the family and, in the case of any other association of persons, to the principal officer thereof;
- (b) may be given to a duly authorised agent of the person to whom it is required to be given or, where he has died, to his legal representative or where he has been declared an insolvent, to his assignee, provided the banking company has had notice of appointment of the agent or of the death or insolvency of the person to whom it is required to be given;
- (c) shall, in the case of joint creditor or more than one beneficiary of a cheque, draft or bill of exchange or valuable article standing in the name of more than one person, be deemed to be sufficient notice to all such persons if given to any one of them; and
- (d) shall, notwithstanding the fact that it is miscarried or the addressee is dead or insane or has become insolvent or the envelope or wrapper is returned with the postal endorsement "addressee is untraceable" or any other like endorsement, be deemed to have been served on the fifteenth day following the day on which the envelope or wrapper in which it is contained is posted, if it is properly addressed, prepaid and posted, provided the banking company has had no notice of the death, insanity or

insolvency of the person to whom it is required to be given.

(4) A certificate in writing under the signature of an employee of the banking company whose duty it is to address, prepay and post letters on behalf of the banking company to the effect that the envelope or wrapper containing a notice required to be given by sub-section (1) was addressed, prepaid and posted shall be conclusive evidence of its having been so addressed, prepaid and posted.

(5) As soon as an amount is paid by a banking company to the Bangladesh Bank under sub-section (2), it shall cease to bear interest or rank for a share of profit or loss notwithstanding anything to the contrary contained in the terms of the debt or instrument or any law for the time being in force.

(6) Where any banking company has paid an amount or delivered a valuable article to the Bangladesh Bank under sub-section (2), the banking company shall preserve and continue to preserve all signature cards and signing authorities and other documents relating to the debt or instrument or article, as the case may be, until it is informed by the Bangladesh Bank in writing that they need not be preserved any longer.

(7) Nothing in the Limitation Act, 1908 (IX of 1908), or in any other law for the time being in force shall affect the liability of a banking company towards the Bangladesh Bank under sub-section (2).

(8) Every banking company shall, within thirty days after the close of each calendar year, submit to the Bangladesh Bank a return in the prescribed form and manner of all unclaimed amounts and articles remaining unpaid or undelivered, as the case may be, in the books of the banking company after the expiry of ten years as reckoned under sub-section (1).

(9) The Bangladesh Bank shall publish in the official Gazette and not less than two newspapers once each quarter for a period of one year a list of the amounts and articles received by the Bangladesh Bank under sub-section (2) and not claimed by any person:

Provided that it shall not be necessary to include in a list so published such amounts and articles of such value as the Government may from time to time determine.

(10) Any banking company which has paid any amount or delivered any article to the Bangladesh Bank in accordance with sub-section (2) may, within thirty days from the date of such payment or delivery, as the case may be, submit to the Bangladesh Bank its claim as regards lien, counter-claim or right or set-off in relation to the amount so paid or article so delivered.

(11) Any person who claim to be entitled to any money or article paid or delivered to the Bangladesh Bank under sub-section (2) may submit his claim to the Bangladesh Bank.

(12) Subject to sub-section (10), (13) and (15), the Bangladesh Bank may pass such order on a claim submitted to it under sub-section (10) or sub-section (11) as it may deem fit, and, where the Bangladesh Bank makes any payment or delivers any article to any person submitting a claim under sub-section (11), a receipt given by him shall be a good discharge to the Bangladesh Bank.

(13) If any action involving a dispute about the ownership of any amount or article paid or delivered to the Bangladesh Bank under sub-section (2) is pending in any court before the expiry of one year following the year in which the amount or article is so paid or delivered to the Bangladesh Bank and the Bangladesh Bank receives an intimation from the court or otherwise about such dispute, it shall retain the amount or article in the custody and dispose of it in accordance with the decision of the court.

(14) Subject to sub-section (10), (13) and (15), any amount or article in respect of which no claim is preferred or about the disposal of which no information is received from any person before the expiry of one year following the year in which the amount or article is received by the Bangladesh Bank under sub-section (2) shall, on the expiry of the said period of one year, cease to be claimable and shall become the absolute property of, and vest in, the Government.

(15) Notwithstanding anything contained in sub-section (1) about the giving of a notice by a banking company to any creditor or beneficiary of any cheque, draft or bill of exchange or the person in whose name any article stands, or in sub-section (9) about the publication by the Bangladesh Bank of the list of

unclaimed amounts or articles, the procedure to be followed and the manner of disposal of debts, instruments and articles in a case where the person concerned is not for the time being residing in Bangladesh shall be such as may be determined by the Government from time to time.

(16) Any decision of the Bangladesh Bank under sub-section (12) about the acceptance, satisfaction or otherwise of the lien, right or set-off or counter-claim of a banking company or, as the case may be, the entitlement of any person to any money or article received by the Bangladesh Bank under sub-section (2) shall be final and shall not, except as provided in sub-section (17), be called in question in any manner by or before any court, tribunal or other authority.

(17) Any person aggrieved by a decision of the Bangladesh Bank under sub-section (12) may, within one month from the date of the decision, prefer an appeal to such officer of the Bangladesh Bank superior in rank to the officer by whom the decision appealed against was given as may be authorised in this behalf by the Governor of the Bangladesh Bank.

(18) For the purpose of adjudicating and determining any claim under sub-section (10) or sub-section (11) or deciding any appeal under sub-section (17), the Bangladesh Bank shall follow such procedure as may be prescribed and shall have the same powers as are vested in a court under the Code of Civil Procedure, 1908 (Act V of 1908), when trying a suit in respect of the following matters, namely:-

- (a) enforcing the attendance of any person and examining him on oath;
- (b) compelling the production of documents and material projects; and
- (c) engaging commission for the examination of witnesses.

(19) Any proceeding before the Bangladesh Bank under this section shall be deemed to be a judicial proceeding within the meaning of section 228 of the Penal Code, 1860 (Act XLV of 1860), and the Bangladesh Bank shall, for the purposes of any such proceeding under this section, be deemed to be a civil court within

the meaning of section 480 of the Code of Criminal Procedure, 1898 (Act V of 1898)

(20) No court fee shall be payable for filing, exhibiting or recording any document in, or obtaining any document from the Bangladesh Bank in any proceeding under this section.

Notes

In order to enable the Bangladesh bank to have up to date position regarding the credit balances in the accounts that have remained for ten years or more, the provisions of this section have been made. Where it is a case of fixed deposit, the said period of ten years is to be started from the date of maturity of the deposits. In Canadian Bank law, there exist a similar provision. But in that country the period has been fixed to be five years. Moreover, in that country deposits, etc. remaining unpaid for a certain period are, as per provision of law, required to be paid over to the Government .

36. Half-yearly returns and power to call for other returns and information.- (1) Every banking company shall, before the close of the month succeeding the half-year to which the return relates, submit to the Bangladesh Bank a half-yearly return in the prescribed form and manner showing its assets and liabilities in Bangladesh as they stood at the close of business on the thirty-first day of December, in the first half of the financial year, and thirtieth day of June in the second half.

(2) The Bangladesh Bank may, at any time, by notice in writing, require banking companies generally, or any banking company in particular, to furnish it within the time specified therein or such further time as the Bangladesh Bank may allow, with any statement or information relating to the business or affairs of such banking company or companies, including any business of affairs with which such banking company or companies is or are concerned.

(3) Without prejudice to the generality of the power under subsection (2), the Bangladesh Bank may call for information, at such intervals as it may deem necessary, regarding the investment of banking companies in industry, commerce and agriculture.

Notes

The half yearly return in the prescribed form and manner showing its assets and liabilities at the close of the business on the thirty-first day of December in the first half of the financial year, and thirtieth day of June in the second half, is required to be submitted not later than the close of the month succeeding the half year. Sub-section (2) of this section authorises the Bangladesh Bank at any time to require a banking company to furnish it with any statement and information relating to the business of the banking company. The right to call information and statements from commercial banks is now recognised in most countries. In England, the Bank of England has been authorised under Bank of England Act, 1945 to call for any information and statement, provided it does not affect the privacy of an account.

37. Power to publish information.- The Bangladesh Bank, if it considers it in the public interest to do so, may publish any information obtained by it regarding overdue loans and advances of more than 30 days under this Act in such consolidated or in any other form as it thinks fit.

38. Accounts and balance sheet.- (1) At the expiration of each financial year, every banking company incorporated in Bangladesh, in respect of all business transacted by it, and every banking company incorporated outside Bangladesh, in respect of all business transacted through its branches in Bangladesh, shall prepare with reference to that year a balance sheet and profit and loss account as on the last working day of the year in the forms set out in the First Schedule, or as near thereto as circumstance admit.

(2) The balance sheet and profit and loss account shall be signed-

- (a) in the case of a banking company incorporated in Bangladesh, by the managing director or the Chief Executive of the company and where there are more than three directors of the company, by at least three of those directors, or where there are not more than three directors, by all the directors; and

- (b) in the case of a banking company incorporated outside Bangladesh, by the manager or agent of the principal office of the company in Bangladesh and by another officer next in seniority to the manager or agent.

(3) Notwithstanding that the balance sheet of a banking company is under sub-section (1) required to be prepared in a form other than the form marked 'E' in the Third Schedule to the Companies Act, 1913 (VI of 1913), the requirements of that Act relating to the balance sheet and profit and loss account of a company shall, in so far as they are not inconsistent with this Act, apply to the balance sheet or profit and loss account, as the case may be, of a banking company.

(4) The Bangladesh Bank may, after giving not less than three months notice of its intention to do so, from time to time by a notification in the official Gazette, amend the form set out in the First Schedule.

Explanation.- For the purpose of this section, "year" means 35[accounting] year unless otherwise directed by the Bangladesh Bank in the case of any banking company.

Notes

Form 'E' of the Third Schedule to the Companies Act, 1913 was the usual form for preparing balance sheet of all companies including banking companies. But that Form does not, in the opinion of experts, suit the special requirement of banking companies. Sub-section (1) of this section prescribe special form of balance sheet and profit and loss account for preparation of annual accounts of banking companies. In order to validate the arrangement of separate forms for preparing balance sheet and profit and loss account of banking companies, the provision of sub-section(3) of this section is inserted.

39. Audit.- (1) The balance sheet and profit and loss account prepared in accordance with section 38 shall be audited by a person duly qualified under the Bangladesh Chartered Accountants Order, 1973 (P.O. No-2 of 1973), or any other law for the time being in force to be an auditor of companies.

(2) The auditor under sub-section (1) shall have the powers of, exercise the functions vested in, and discharge the duties and be subject to the liabilities and penalties imposed on, auditors of Companies by section 145 of the Companies Act, 1913 (V11 of 1913).

(3) In addition to the matters which under the aforesaid Act the auditor is required to state in his report, he shall also state-

- (a) whether or not the financial statement shows a true picture of profit and loss for the period covered by such audit;
- (b) whether or not financial statement have been prepared correctly according to general accounting procedure;
- (c) whether or not the financial statement has been prepared in accordance with the provisions of relevant existing laws or rules and the instructions issued by the Bangladesh Bank in respect of accounts;
- (d) whether or not adequate provisions have been made for realisation of doubtful advance or other doubtful assets;
- (dd) whether or not, the repayment limit of advance or loan fixed by the Bangladesh Bank from time to time is satisfactory or not;
- (e) whether or not financial statement has been prepared according to the standard prescribed by Bangladesh Bank in consultation with the professional accountants of Bangladesh;
- (f) whether or not the banking company has properly preserved and consolidated all records and accounts received from its branches;
- (g) whether or not the informations and explanations required by him have been found to be satisfactory;
- (h) any other matter which he considers should be brought to the notice of the shareholders of the company;

(4) If an auditor, in the course of the performance of his duties as in auditor of a bank, is satisfied that-

- (a) there has been a serious breach or non-observance of the provisions of this Act;
- (b) a criminal offence involving fraud or dishonesty has been committed;
- (c) the capital of the bank has fallen below 50% due to the loss incurred;
- (d) serious irregularities have occurred, including irregularities jeopardising the security of the creditors, or
- (e) doubt exists whether the claims of creditors are still covered by the assets or not;

he shall immediately report the matter to the Bangladesh Bank.

Notes

Accounts of banking companies are audited by qualified chartered accountants chartered qualification have been prescribed under the Bangladesh Chartered Accountants Order, 1973 (P.O. NO. 2 of 1973). As such, balance sheet and profit and loss account of a banking company is required to be audited by a person duly qualified under that Order. Similar provisions are found in the banking laws of many other countries. In Belgium, the auditor of a bank has to be approved by the banking authorities of the country. An auditor in Belgium is empowered to watch on the affairs of the bank. He can even restrain a banking company from carrying out any action which, in his opinion, is irregular. His power is, of course, subject to the control and direction of the banking authorities. In Canada, independent auditors are not permitted to be appointed for more than two years in succession. In Sweden, audit of a bank is conducted by a team of three auditors, one of whom must be appointed by the banking authority.

In dealing with bank accounts and all other accounts of a similar nature, the auditor must never forget that his responsibilities are not confined to safeguarding the interest of the proprietors. His report carries great weight with the public. He guarantees the safety of the customers deposit. He would

reasonably be blamed if, after he had signed without remark the usual auditors report on an apparently sound balance sheet, the bank were afterwards discovered insolvent. [AIR 1960 Kerala 309 (DB)]

¹⁹[39A. Special audit.-(1) If, after considering the audit or inspection report submitted under section 39 or section 44 respectively, the Bangladesh Bank is satisfied that it is necessary to audit the activities or part of the activities of any banking company, the Bangladesh Bank may cause the activities or part of the activities of that banking company to be audited by persons mentioned in section 39 (1).

(2) The auditor of the banking company concerned shall co-operate at the time of special audit under this section.]

Notes

Provision for special audit has been inserted in the Act by Banking Companies (Amendment) Act, 1993 (Act XIII of 1993). This section enables the Bangladesh Bank to order special audit of any banking company. Where the Bangladesh Bank, after considering the audit and inspection report, is of the opinion that special audit should be made of a banking company, it may order for such audit and the Banking company concerned is bound to co-operate in the special audit.

³⁶[39B.-Auditors to be declared disqualified.-Where there is reasonable ground for the Bangladesh Bank to be satisfied in this behalf that, any auditor engaged in auditing any banking company has neglected in discharging his responsibilities or the auditor has failed in discharging the responsibilities entrusted on him, then Bangladesh may, on the recommendation and enquiry of the committee constituted by it in this behalf, declare the auditor disqualified to audit any banking company for a period not exceeding two years:

Provided that before the giving of any such declaration, the auditor shall be given an opportunity of being heard.

(2) Any person aggrieved by any declaration under sub-section (1) may, within fifteen days from the date of declaration under that sub-section, appeal to the Board of Directors of the Bangladesh Bank and the decision of the Board shall be final in this behalf.]

40. Submission of returns.- The accounts and balance sheet referred to in section 38 together with the auditors report duly approved by the Board of Directors or, as the case may be, by the share-holders in the annual general meeting shall be published in the prescribed manner, and three copies thereof shall be furnished as returns to the Bangladesh Bank within three months of the close of the period to which they relate:

Provided that the Bangladesh Bank may extend the said period for the submission of such returns by a further period not exceeding three months.

41. Copies of balance sheets and accounts to be sent to registrar.- Where a banking company in any year submits its balance sheet and accounts in accordance with the provisions of section 40 it may, or when it is a private company, shall, at the same time send to the registrar three copies of such balance sheet and accounts and of the auditor's report, and where such copies are so sent, it shall not be necessary for the company, to file copies of the balance sheet and accounts with the registrar as required by sub-section (1) of section 134 of the Companies Act, 1913 (VII of 1913), and such copies so sent shall be chargeable with the same fees and shall be dealt with in all respects as if they were filed in accordance with that section.

42. Display of audited balance sheet by banking companies incorporated outside Bangladesh.-Every banking company incorporated outside Bangladesh shall-

- (a) not later than the first Monday in February of any year in which it carries on business, display in a conspicuous place in its principal office and in every branch office in Bangladesh, a copy of its last audited balance sheet and profit and loss account prepared under section 38 and shall keep it so displayed until replaced by a copy of the subsequent balance sheet and profit and loss account so prepared;
- (b) in addition, display in like manner copies of its complete audited balance sheet and profit and loss account relating to its banking business as soon as they are available and shall keep the copies so

displayed until copies of such subsequent accounts are available.

43. Accounting provisions of this Act not retrospective.- Nothing in this Act shall apply to the preparation of accounts by a banking company and the audit and submission thereof in respect of any accounting year which has expired prior to the commencement of this Act and notwithstanding the other provisions of this Act, such accounts shall be prepared, audited and submitted in accordance with the law in force immediately before the commencement of this Act.

44. Inspection.-(1) Notwithstanding anything to the contrary contained in the Companies Act, 1913 (VII of 1913), the Bangladesh Bank at any time, may, either on its own motion or on being directed to do so by the Government shall, cause an inspection to be made by one or more of its officers of any banking company and its books and accounts; and the Bangladesh Bank shall supply to the banking company a copy of its report on such inspection.

(2) Notwithstanding anything to the contrary contained in any law for the time being in force and without prejudice to the provisions of sub-section (1), the Bangladesh Bank, at any time, may also cause a scrutiny to be made by any one or more of its officers, of the affairs of any banking company and its books and accounts; and a copy of the report of the scrutiny shall be furnished to the banking company if the banking company makes a request for the same or if any adverse action is contemplated against the banking company on the basis of the scrutiny.

(3) It shall be the duty of every director or other officer or employee of the banking company or its external auditors to produce to any officer making an inspection under sub-section (1) or a scrutiny under sub-section (2) all such books, accounts and other documents in his custody or power and to furnish him with any statements and information relating to the affairs of the banking company as the said officer may require of him within such time as the said officer may specify.

(4) Any person making an inspection under sub-section (1) or a scrutiny under sub-section (2) may examine on oath any director or other officer or employee of the banking company or

its external auditor in relation to its business, and may administer an oath accordingly.

* (5) The Bangladesh Bank shall, if it has been directed by the Government to cause an inspection to be made, and may in any other case, report to the Government on any inspection or scrutiny made under this section, and the Government, if it is of opinion after considering the report that the affairs of the banking company are being conducted to the detriment of the interest of its depositors, may, after giving such opportunity to the banking company to make a representation in connection with the report as, in the opinion of the Government, seems reasonable, by order in writing-

- (a) prohibit the banking company from receiving fresh deposits; and
- (b) direct the Bangladesh Bank to apply under section 64(4) for the winding up of the banking company:

Provided that the Government may defer, for such period as it may think fit, the passing of an order under this sub-section, or cancel or modify any such order upon such terms and conditions as it may think fit to impose.

(6) The Government may, after giving reasonable notice to the banking company, publish the report submitted by the Bangladesh Bank or such portion thereof as may appear necessary.

Explanation:- For the purpose of this section, the expression "banking company" shall mean-

- (i) in the case of banking company incorporated outside Bangladesh, all its branches in Bangladesh; and
- (ii) in the case of a banking company incorporated in Bangladesh-
 - (a) all its subsidiaries formed for the purpose of carrying on the business of banking exclusively outside Bangladesh; and
 - (b) all its branches whether situated in Bangladesh or outside Bangladesh.

(7) Notwithstanding anything contained in any law for the time being in force, a banking company unless it is directed by any court or the Bangladesh Bank shall not be compelled by any other authority to furnish or disclose any information or statement, doing which, if the banking company claims, would involve disclosure or information of confidential nature relating to-

- (i) any reserve fund not shown as such in its published balance sheet; or
- (ii) any particulars in respect of bad and doubtful debts which have not been shown in its published balance sheet.

Notes

This section has been incorporated with a view to safeguard the interest of shareholders and depositors of banking companies and to check malpractices in such companies. In accordance with the provision of this section, the central bank i.e. the Bangladesh Bank may cause inspection of any banking company at any time. In addition to the general power of inspection, the central bank may also conduct scrutiny of the affairs of the banking companies in order to achieve the above objectives.

45. Power of the Bangladesh Bank to give directions.- (1) Where the Bangladesh Bank is satisfied that-

- (a) in the public interest; or
- (b) in furtherance of monetary and banking policy; or
- (c) to prevent the affairs of any banking company being conducted in a manner detrimental to the interest of the depositor or in a manner prejudicial to the interest of the banking company; or
- (d) to secure the proper management of any banking company generally;

It is necessary to issue directions to banking companies generally or to any banking company in particular, it may, from time to time, issue such directions as it deems fit, and the banking companies or the banking company, as the case may be, shall be bound to comply with such directions.

(2) The Bangladesh Bank may, on representation made to it or on its own motion, modify or cancel any direction issued under sub-section (1), and in so modifying or cancelling any direction may impose such conditions as it thinks fit, subject to which the modification or cancellation shall have effect.

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46. Power of Bangladesh Bank to remove directors etc, from office.- (1) Where the Bangladesh Bank is satisfied that it is necessary to remove the chairman, director or chief executive, by whatever named called, of a banking company in the public interest or to prevent the affairs of a banking company being conducted in a manner detrimental to the interest of its depositors or to secure the proper management of the banking company, the Bangladesh Bank may, for reasons to be recorded in writing, by order, remove from office, such chairman or director or chief executive of the banking company.

(2) Before an order under sub-section (1) is made, the chairman, director or the chief executive shall be given a reasonable opportunity of making a representation to the Bangladesh Bank against the proposed order:

Provided that if, in the opinion of the Bangladesh Bank, any delay would be detrimental to the public interest or the interest of the banking company or its depositors, the Bangladesh Bank may at the time of giving the aforesaid opportunity or at any time thereafter and pending the consideration of the aforesaid representation, if any, by order direct that-

- (i) the chairman or, as the case may be, director or chief executive shall not, with effect from the date of the order (a) act as such chairman or director or chief executive of the banking company, or (b) in any way, whether directly or indirectly be concerned with, or take part in the management of the banking company; and
- (ii) any person authorised by the Bangladesh Bank in this behalf shall act as such chairman or director or chief executive of the banking company.

(3) Where any order under sub-section (1) is made in respect of a chairman or director or chief executive of a banking company, he shall cease to be a chairman or, as the case may be, a director, chief executive of the banking company and shall not in any way,

whether directly or indirectly, be concerned with, or take part in, the management of the banking company or any other banking company for such period not exceeding three years as may be specified in the order.

(4) Any person appointed as chairman or director or chief executive under sub-section (2) shall-

- (a) hold office during the pleasure of the Bangladesh Bank subject to such conditions as may be specified in the order of his appointment and, subject thereto, for such period, not exceeding one year as the Bangladesh Bank may specify; and
- (b) not incur any obligation nor liability for anything which is done or is intended to be done in his capacity in the course of discharge of his duties as such chairman or director or chief executive.

(5) No person removed from office under sub-section (1) shall be entitled to claim any compensation for the loss or termination of office.

(6) Nothing of this section shall apply to the case of chairman, director or chief executive, by whatever name called, nominated or appointed by the Government. ✓

Notes

Section 46 has been introduced in order to maintain purity of banking institution. Action can be taken under this section even for mismanagement or irregularities prior to the date of coming into force of this section. (KLR 1986 CC 279- 1986 CLC 2179).

47. Power of the Bangladesh Bank to supersede Board of Directors of a banking company.-(1) Where the Bangladesh Bank is satisfied that -

- (a) the activities of the Board of Directors, by whatever name called, of a banking company is or is likely to be detrimental to the interest of the banking company or its depositors or otherwise undesirable; or
- (b) for all or any of the reasons mentioned in sub-section (1) of section 46,

It is necessary to do so, the Bangladesh Bank may, for reasons to be recorded in writing, by order, supersede the Board of Directors of a banking company with effect from such date and for such period as may be specified in the order.

(2) The period of ^{সম্পূর্ণ/অস্থায়ী}supersession specified in an order under sub-section (1) may from time to time be extended by the Bangladesh Bank so, however, that the total period of supersession does not exceed two years.

(3) All powers and duties of the Board of directors shall, during the period of supersession, be exercised and performed by such person as the Bangladesh Bank may from time to time appoint in this behalf.

(4) The provisions of sub-section (2), (3), (4) and (5) of section 46 shall, with the necessary modifications, apply to an order made under this section.

48. Limitations.- (1) No order under section 46 or section 47 shall be made except by the Governor of the Bangladesh Bank on a report by a standing committee set up by the Bangladesh Bank for the purpose.

(2) Any person or banking company aggrieved by an order made by the Governor of the Bangladesh Bank under section 46 or section 47 may make an appeal to the Board of Directors of the Bangladesh Bank whose decision shall be final.

(3) No action taken under this section or section 46 or section 47 shall be called in question by or before any court, tribunal or other authority.

49. Further powers and functions of the Bangladesh Bank.- (1) The Bangladesh Bank may -

- (a) caution or prohibit banking companies generally or any banking company in particular against entering into any particular transaction or class of transactions,
- (b) require banking companies generally, or any banking company in particular, to refrain from taking such actions as it may specify in relation to any matter relating to the business of such banking

company or companies, or to take such action in relation thereto as the Bangladesh Bank thinks fit;

- (c) on a request from the banking companies concerned and subject to the provisions of section 76, assist as intermediary or otherwise, in proposals for the amalgamation of such banking companies.,
- (d) during the course, or after the completion, of any inspection of a banking company under section 44, by order in writing and on such terms and conditions as may be specified therein-
 - (i) require the banking company to call a meeting of its directors for the purpose of considering any matter relating to it arising out of the affairs of the banking company, or require an officer of the banking company to discuss any such matter with an officer of the Bangladesh Bank,
 - (ii) depute its officer to observe the proceedings at any meeting of the Board of directors of the banking company or of any committee or of any other body constituted by it and require the banking company to give an opportunity to the officer so deputed to be heard at such meetings and also require such officer to send a report of such proceedings to the Bangladesh Bank;
 - (iii) require the Board of Directors of the banking company or any committee or any other body constituted by it to give in writing to any officer specified by the Bangladesh Bank in this behalf at his usual address all notice of, and other communications relating to, any meeting of the Board, committee or other body constituted by it;
 - (iv) appoint its officer to observe the manner in which the affairs of the banking company or its branches are being conducted;

- (v) require the banking company to make, within such time as may be specified in the order, such changes in the management as the Bangladesh Bank may consider necessary in consequence of the state of affairs disclosed during or by the inspection.

(2) The Bangladesh Bank shall make an annual report to the Government on the trend and progress of banking in the country and in that report suggestion for the strengthening of banking business throughout the country and the steps required to be taken in that behalf shall be stated.

50. Certain provisions of the Act not to apply to certain banking companies.-(1) The provisions of section 13, 14(1), 24, 25, 33 and 34 shall not be applicable to a banking company.-

- (a) which has been refused a licence under section 31 or whose licence has been cancelled under that section;
- (b) which has been prohibited from accepting fresh deposits by a compromise, arrangement or scheme sanctioned by a court or by any order made in any proceeding relating to such compromise, or scheme; or
- (c) which has been prohibited from accepting deposits by virtue of any alteration made in its memorandum of association.

(2) Where the Bangladesh Bank is satisfied that any such banking company as is referred to in sub-section (1) has repaid, or has made adequate provision for repaying all deposits accepted by the banking company either in full or to the maximum extent possible, the Bangladesh Bank may, by notice published in the official Gazette, notify that the banking company, has ceased to be a banking company within the meaning of this Act and thereupon all the provisions of this Act applicable to such banking company shall cease to apply to it, except as respects things done or omitted to be done before such notice.

PART III
ILLEGAL BANKING TRANSACTIONS BY
COMPANIES, ETC.

51. Power to call for certain information, etc.- Where it appears to the Bangladesh Bank that a company or any other person is transacting the business of banking in contravention of section ²⁰[31(1)], the Bangladesh Bank may-

- (a) direct the company or such other person, or any person who is, or has, at any time, been, dealing, doing business or associated in any manner with the company or such other person, to give or furnish to the Bangladesh Bank within the specified period such information, documents or records respecting any business carried on by the company or such other person as may be within its or his knowledge or in or under its or his possession, custody or control;
- (b) authorise any person to enter and search any premises and seize books, accounts or other documents or records respecting any business carried on by the company or such other person as may be in or under the possession, custody or control of the company or such other person or a person who is, or has at any time been, dealing, doing business or associated in any manner with the company or such other person, or any officer or employee of the company or of such other person or of the person dealing, doing business or associated with the company or such other person;
- (c) inspect or examine any of its books, accounts or other documents or records referred to in clause (b) and question any person, officer or employee;
- (d) exercise, as far as may be applicable, in relation to the company or such other person, or any person who is, or has at any time been, dealing, doing business or associated with it or him as aforesaid.

the powers conferred on the Bangladesh Bank by sub-section (1), (2), (4) and (5) of section 44.

52. Power to make declaration.- (1) Where the Bangladesh Bank, after making such enquiries as it may deem fit, is of opinion that a company or person referred to in section 51 is transacting in any manner or from whatsoever the business of banking in contravention of section ²¹[31(1)], the Bangladesh Bank may, after giving the company or such person an opportunity of showing cause against the proposed action being taken, make a declaration to that effect.

(2) The Bangladesh Bank shall publish, or cause to be published, a declaration, made under sub-section (1) in the newspaper and, upon such publication, the company or such other person or the chief executive, by whatever name called, or directors of the Company or the manager, officers, employees or agents of the company or such person, or any other person referred to in sub-sections (1), (3) or (4) of section 54 or section 55 shall not be allowed to plead ignorance of the making of such declaration.

(3) A declaration under sub-section (1) shall, for the purpose of this Part, be conclusive proof of the fact stated therein.

53. Consequences of a declaration under section 52.- A company or other person in respect of which or whom a declaration has been made under section 52(1) shall, on the publication of such declaration, cease to function or to transact business and any transaction with such company or person, or with any person acting or purporting to act for and on behalf of such company or person, on or after the publication of the declaration as aforesaid, shall be void.

Notes

(1) The crux of the adjudication which the Bangladesh Bank has to make under this section is the finding as to whether or not the petitioner is carrying on the business of banking in contravention of laws and the Governor of the Bangladesh Bank has lawful authority to proceed against any such company under this section.

Show cause notice.- If the authority of the Governor of the Bangladesh Bank to the issue of a show cause notice is questioned, it may be argued that a show cause notice never

requires an authority for being issued. By itself a show cause notice can not do any harm to any one and one may even elect to ignore it. A show cause notice is issued really for the benefit of a person to whom it is issued, and he can not, therefore, feel aggrieved on account of it. However, what may cause grievance is the pendency of proceedings in which a show cause notice is issued. [PLD 1980 Lah. 658.]

54. Deposit of cash and preservation of assets, etc.-(1) Notwithstanding anything contained in section 53, where a declaration under section 52 (1) has been made in respect of a company or other person, every person who has, in his possession or custody, or under his control, any money, movable properties, shares, securities of any description or title deeds relating to property which belongs to the company or such other person shall forthwith deposit, or cause to be deposited, such moneys, movable properties, shares, securities and title deeds with any new bank or any person authorised by them in this behalf.

(2) If any person who is required by sub-section (1) to deposit, or to cause to be deposited, any moneys, movable properties, shares, securities or title deeds fails to do so within two days of the publication of the declaration under section 52(1), any person authorised by the Bangladesh Bank in this behalf may enter and search any premises and seize such moneys, movable properties, shares, securities or title deeds and deposit, or cause to be deposited, the same in accordance with sub-section (1).

(3) Until such time as an official liquidator, official assignee, interim receiver, or official receiver, as the case may be, appointed by the court on an application made under section 56 takes over the possession, custody or control of any books, documents, records and assets of a company or person in respect of which or whom a declaration under section 52(1) has been made, including any actionable claims to which such company or person is, or appears to be, entitled, the chief executive, by whatever name called, and a director of such company or a manager, officer and agent, of such company or person, and every other person who may have in or under his possession, custody or control such books, documents, records, assets or claims, shall preserve, and in preserving such books, documents, records,

assets and claims and shall, without prejudice to any other liability that he may incur, be jointly and severally liable for any loss or damage.

(4) Every person who is, or becomes, indebted in any manner to a company or person in respect of which or whom a declaration under section 52(1) has been made shall, during the period between the date on which such declaration is published and the date on which an order for winding up or, as the case may be, an order of adjudication is made by the court, repay the amount of the debt by depositing it in the manner provided for in sub-section (1) and shall inform the Bangladesh Bank in writing of his having done so.

(5) In computing the period prescribed by the Limitation Act, 1908 (IX of 1908), for any suit, appeal or application under section 52(1) in respect of anything arising from actions which, immediately before the commencement of this Act, were pending against a company or person in respect of which or whom a declaration under section 52(2) has been made, or in respect of any action to the filing of which the company or person may be entitled, the period commencing on the publication of such declaration and ending on the day on which an order for winding up or, as the case may be, an order of adjudication is made by the court shall be excluded.

55. Statement of assets and liabilities to be submitted to Bangladesh Bank.- Within three days of the publication of a declaration under section 52 in respect of a company or other person, or within such further time as the Bangladesh Bank may, by order in writing, allow, the chief executive, by whatever name called, and every director of the company or such person, and every other person having a claim or liability against or towards the company or such person shall submit to the Bangladesh Bank a statement showing the assets and liabilities of the company or such person so far as may be known to him.

56. Consequential provisions for winding up, etc.-(1) Where the declaration made under section 52(1) is in respect of a person other than an individual or a company, such person shall, irrespective of the number of members of which it consists, be deemed to be an unregistered company which may be wound up under Part IX of the Companies Act, 1913 (VII of 1913).

(2) Where a declaration has been made under section 52(1) in respect of a registered or an unregistered company, the High Court Division shall, upon an application made by the Bangladesh Bank within seven days of the publication of the declaration or within such further time as the Government may allow, make an order for the winding up of the said company.

(3) The Provisions of Part VI, other than those of sections 64,66 and 76 and Part VII shall, in so far as they relate to winding up of a banking company, apply to an application made under sub-section (2) and to the winding up proceedings following such application.

(4) Notwithstanding anything contained in the Insolvency Act, 1920 (V of 1920), a declaration made under section 52(1) in respect of an individual shall constitute an effective ground for adjudging the individual an insolvent and the court competent to adjudge him an insolvent shall, upon an application made by the Bangladesh Bank within seven days of the publication of the declaration in pursuance of sub-section (2) of section 52 or of such further time as the Government may allow, pass an order of adjudication against such individual without further proof and follow thereafter the provisions of the Insolvency Act, 1920 (V of 1920), for the administration and distribution of the property of the insolvent:

Provided that the court shall not have the power to subsequently annul the adjudication and accept any composition or scheme or arrangement.

PART IV

PROHIBITION OF CERTAIN ACTIVITIES IN RELATION TO BANKING COMPANIES

57. Punishment for certain activities in relation to banking companies.- (1) No person shall..

- (a) obstruct any person from lawfully entering or leaving any office or place of business of a banking company or from carrying on any business there, or
- (b) hold, within the office or place of business of any banking company, any demonstration which is violent or which prevents, or is calculated to

prevent, the transaction of normal business of the banking company, or

- (c) act in any manner calculated to undermine the confidence of the depositors in the banking company.

(2) Whoever contravenes any provision of sub-section (1) without any reasonable excuse shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to twenty thousand taka, or with both,

(3) For the purposes of this section "banking company" includes the Bangladesh Bank also.

PART-V

ACQUISITION OF THE UNDERTAKING OF BANKING COMPANIES

58. Acquiring undertaking of banking companies.-(1) If, upon receipt of a report from the Bangladesh Bank, the Government is satisfied that a banking company-

- (a) has, on more than one occasion, failed to comply with the directions given to it in writing under section 29 or section 45, in so far as such directions related to banking policy; or
- (b) is being managed in a manner detrimental to the interest of its depositors;

and that,-

- (i) in the interest of the depositors of such banking company;
- (ii) in the interest of banking policy; or
- (iii) for the better provision of credit generally or of credit to any particular section of the company or in any particular area;

it is necessary to acquire the undertaking of such banking company, the government may, after such consultation with the Bangladesh Bank as it thinks fit, by notification in the official Gazette, acquire the undertaking of such company, hereinafter referred to as the acquired bank, with effect from such date as may be specified in this behalf by the Government, hereinafter referred to as the appointed day:

Provided that no undertaking of any banking company shall be so acquired unless such banking company has been given a reasonable opportunity of showing cause against the proposed action.

Explanation: In this Part, "undertaking" in relation to a banking company incorporated outside Bangladesh, means the undertaking of the company in Bangladesh.

(2) Subject to the other provisions contained in this Part, on the appointed day, the undertaking or the acquired bank and all

the assets and liabilities of the acquired bank shall stand transferred to, and vest in, the Government.

(3) The undertaking of the acquired bank and its assets and liabilities shall be deemed to include all rights, powers, authorities and privileges and all property, whether movable or immovable, including, in particular, cash balances, reserve funds, investments, deposits and all other interests and rights in, or arising out of, such property as may be in the possession of, held by, the acquired bank immediately before the appointed day and all books, accounts and documents relating thereto, and shall also be deemed to include all debts, liabilities and obligations, of whatever kind, then existing of the acquired bank.

(4) Notwithstanding anything contained in sub-section (2), the Government may, if it is satisfied that the undertaking of the acquired bank and assets and liabilities should, instead of vesting in the Government, or continuing to be so, vest in a company established under any scheme made under this Part or in any corporation, hereinafter in this Part referred to as the transferee bank, the Government may, by notification in the official Gazette, direct that the said undertaking, including the assets and liabilities thereof, shall vest in the transferee bank either on the publication of the notified order or on such other date as may be specified in this behalf by the government.

(5) Where the undertaking of the acquired bank and the assets and liabilities thereof vest in the transferee bank under sub-section (4), the transferee bank shall, on and from the date of such vesting, be deemed to have become the transferee of the acquired bank and all the rights and liabilities in relation to the acquired bank shall, on and from the date of such vesting, be deemed to have been the rights and liabilities of the transferee bank,

(6) Unless otherwise expressly provided by or under this Part, all contracts, deeds, bonds, agreements, powers of attorney, grants of legal representation and other instruments of whatever nature subsisting or having effect immediately before the appointed day and to which the acquired bank is a party or which are in favour of the acquired bank shall be of as full force and effect against or in favour of the Government or, as the case may be, of the transferee bank, and may be enforced or acted upon as fully and effectually as if in the place of the acquired bank the

Government or the transferee bank had been a party thereto or as if they had been issued in favour of or against the Government or the transferee bank, as the case may be.

(7) If, on the appointed day, any suit, appeal or other proceeding of whatever nature is pending by or against the acquired bank, the same shall not abate, be discontinued or be, in any way, prejudicially affected by reason of the transfer of the undertaking of the acquired bank or of anything contained in this Part; but the suit, appeal or other proceeding may be continued, prosecuted and enforced by or against the Government or the transferee bank, as the case may be.

59. Power of the Government to make scheme.- (1) The Government may, after consultation with the Bangladesh Bank, make a scheme for carrying out the purposes of this Part in relation to any acquired bank.

(2) In particular and without prejudice to the generality of the foregoing power, the said scheme may provide for all or any of the following matters, namely,

- (a) the corporation, or the company incorporated for the purpose, to which the undertaking including the property, assets and liabilities of the acquired bank may be transferred, and the capital, constitution, name and office thereof;
- (b) the constitution of the first Board of Management, by whatever name called, of the transferee bank, and all such matters in connection therewith or incidental thereto as the Government may consider to be necessary or expedient;
- (c) the continuance of the services of all the employees of the acquired bank in the Government or in the transferee bank, as the case may be, on the same terms and conditions as were enjoyed by them in the acquired bank,
- (d) the continuance of the right of any person who, on the appointed day, is entitled to or is in receipt of, a pension or other superannuation or compassionate allowance or benefit, from the acquired bank or any provident, pension or other fund or any authority

administering such fund, to be paid by, and to be received from the Government or the transferee bank, as the case may be;

- (e) the manner of payment of the compensation payable in accordance with the provisions of this Part to the share-holders of the acquired bank, or where the acquired bank is a banking company incorporated outside Bangladesh, to the acquired bank in full satisfaction of their, or as the case may be, its claims;
- (f) the provision, if any, for completing the effectual transfer to the Government or the transferee bank of any asset or any liability which forms part of the undertaking of the acquired bank in any country outside Bangladesh;
- (g) such incidental, consequential and supplemental matters as may be necessary to secure that the transfer of the business, property, assets and liabilities of the acquired bank to the Government or transferee bank, as the case may be, is effectual and complete.

(3) The Government may, after consultation with the Bangladesh Bank, by notification in the official Gazette, add to, amend or vary any scheme made under this section.

(4) Every scheme made under this section shall be published in the official Gazette.

(5) Copies of every scheme made under this section shall be laid before Parliament as soon as may be after it is made.

(6) The provisions of this Part as to any scheme made thereunder shall have effect notwithstanding anything to the contrary contained in any other provisions of this Act or in any other law or any agreement, award or other instrument for the time being in force.

(7) Every scheme made under this section shall be binding on the Government or, as the case may be, on the transferee Bank and also on all members, creditors, depositors and employees of the acquired bank and of the transferee bank and on any other person having any right, liability, power or function in relation

to, or in connection with, the acquired bank or the transferee bank, as the case may be.

60. Compensation to be given to share-holders of the acquired bank.-(1) Every person who, immediately before the appointed day, is registered as a holder of shares in the acquired bank or, where the acquired bank is a banking company incorporated outside Bangladesh, the acquired bank shall be given by the Government, or the transferee bank, as the case may be, such compensation in respect of the transfer of the undertaking of the acquired bank as is determined in accordance with such principles as the Government may determine by rules made in this behalf.

(2) Nothing contained in sub-section (1) shall affect the inter rights of the holders of any share in the acquired bank and any other person who may have any interest in such shares and such other person shall be entitled to enforce his interest against the compensation awarded to the holder of such share, but not against the Government or the transferee bank.

(3) The amount of compensation to be given in accordance with the principles contained in the rules made under sub-section (1) shall be determined in the first instance by the Government or the transferee bank, as the case may be, in consultation with the Bangladesh Bank, and shall be offered by it to all those to whom compensation is payable under the same sub-section in full satisfaction thereof.

(4) If the amount of compensation offered in terms of sub-section (3) is not acceptable to any person to whom the compensation is payable, such person may, before such date as may be notified by the Government in the official Gazette, request the Government in writing, to have the matter referred to the Tribunal constituted under section 61.

(5) If, before the date notified under sub-section (4), the Government receives requests, in terms of that sub-section, from the share-holders holding not less than one-fourth in value of the paid-up share capital of the acquired bank or, where the acquired bank is a company incorporated outside Bangladesh, from the acquired bank, the Government shall have the matter referred to the Tribunal for decision.

(6) If, before the date notified under sub-section (4), the Government does not receive request as provided in that sub-section, the amount of compensation offered under sub-section (3), and where a reference has been made to the Tribunal under sub-section (5), the amount determined by it, shall be the compensation payable under sub-section (1) and shall be final and binding on all parties concerned.

61. Constitution of the Tribunal.-(1) The Government may, for the purpose of this Part, constitute a Tribunal which shall consist of a Chairman and two other members.

(2) The Chairman shall be a person who is, or has been, a judge of the Supreme Court and, of the two other members, one shall be a person who, in the opinion of the Government, has had experience of banking and finance and the other shall be a person who is a chartered accountant within the meaning of the Chartered Accountants Order, 1973 (P. O. No. 2 of 1973).

(3) If, for any reason, a vacancy occurs in the office of the Chairman or any other member of the Tribunal, the Government may fill in the vacancy by appointing another person thereto in accordance with the provisions of sub-section (2) and any proceeding may be continued before the Tribunal, so constituted, from the stage at which the vacancy occurred.

(4) The Tribunal may, for the purpose of determining any compensation payable under this Part, choose one or more persons having special knowledge or experience of any relevant matter to assist it in the determination of such compensation.

62. Tribunal to have powers of a civil court.-(1) The Tribunal shall have the powers of a civil court, while trying suit, under the Code of Civil Procedure, 1908 (Act V of 1908) in respect of the following matters, namely:

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of documents;
- (c) receiving evidence on affidavits;
- (d) issuing commissions for the examination of witnesses or documents.

(2) Notwithstanding anything contained in sub-section (1) or in any other law for the time being in force, the Tribunal shall not compel the Government, or the Bangladesh Bank-

- (a) to produce any books of account or other documents which the Government, or the Bangladesh Bank, claims to be of a confidential nature;
- (b) to make any such books or documents part of the record of the proceedings before the Tribunal;
- (c) to allow inspection of any such books or documents to any party before it or to any other person.

63. Procedure of the Tribunal.-(1) The Tribunal shall have power to regulate its own procedure.

(2) The Tribunal may hold the whole or any part of its inquiry in camera (close door).

(3) Any clerical or arithmetical error in any order of the Tribunal or any error arising therein from any accidental slip or omission may, at any time, be corrected by the Tribunal either of its own motion or on the application of any of the parties.

PART-VI

SUSPENSION OF BUSINESS AND WINDING UP OF BANKING COMPANIES

64. Suspension of business.-(1) The High Court Division may, on the application of a banking company which is temporarily unable to meet its obligations, make an order, a copy of which it shall cause to be forwarded to the Bangladesh Bank, staying the commencement or continuance of all actions and proceedings against the company for a fixed period of time on such terms and conditions as it shall think fit and proper, and may, from time to time, extend the period so that the total period of moratorium shall not exceed six months.

(2) No such application shall be maintainable unless it is accompanied by a report of the Bangladesh Bank indicating that, in the opinion of the Bangladesh Bank, the banking company will be able to pay its debts if the application is granted:

Provided that the High Court Division may, for sufficient reasons, grant relief under this section even if the application is not accompanied by such report, and where such relief is granted, the High Court Division shall call for a report from the Bangladesh Bank on the affairs of the banking company, on receipt of which it may either rescind an order already passed or pass such further orders thereon as may be just and proper in the circumstances.

(3) When an application is made under sub-section (1), the High Court Division may appoint a special officer who shall forthwith take into his custody or under his control all the assets, books, documents, effects and actionable claims to which the banking company is or appears to be entitled and shall also exercise such other powers as the High Court Division may deem fit to confer on him having regard to the interest of the depositors of the banking company.

(4) Where the Bangladesh Bank is satisfied that the affairs of a banking company in respect of which an order under sub-section (1) has been made are being conducted in a manner detrimental to the interest of the depositors, it may make an application to the High Court Division for the winding up of the company, and where any such application is made, the High Court Division shall not make any order extending the period for which the commencement or continuance of all actions and proceedings against the company were stayed under that sub-section.

Notes

(1) This section provides that when a banking company is temporarily unable to meet its obligations, it may apply to the High Court Division praying for an order staying the commencement and continuance of all actions and proceedings against it for a period not exceeding six months. Such suspension of business is generally called a moratorium. An application is required to be accompanied by a report of the Bangladesh Bank indicating that, in its opinion the banking company will be able to pay its debts if the application is granted. The High Court Division, however, has power to grant the relief even without the application being accompanied by a report from the Bangladesh Bank. In such a case, the High Court Division has to call for a report from the Bangladesh Bank on the affairs of the banking company and is empowered to rescind or amend the order. During

the period of moratorium, the High Court Division may appoint a special officer to take possession and control of the assets, books documents, effects and actionable claims of the company and confer on him suitable powers.

(2) Moratorium:- Where the Bank is not in a position to realize its outstanding within six months and to pay off its debts within that period, a moratorium which can avail only for a maximum period of six months should not be granted to it. ILR (1954) 4 Raj. 338(DB)]

65. Winding up by High Court Division.-(1) Notwithstanding anything contained in section 153, section 162 and section 271 of the Companies Act, 1913 (VII of 1913), but without prejudice to its powers under sub-section (1) of section 64 of this Act, the High Court Division shall order the winding up of a banking company-

- (a) if the banking company is unable to pay its debts; or
- (b) if an application for its winding up has been made by the Bangladesh Bank under section 64 or this Act.

(2) The Bangladesh Bank shall make an application under this section for the winding up of a banking company if it is directed to do so by an order under clause (b) of sub-section (5) of section 44.

(3) The Bangladesh Bank may make an application under this section for the winding up of a banking company,--

- (a) if the banking Company--
 - (i) has failed to comply with the requirements under section 13; or
 - (ii) has, by reason of the provisions of section 31, become disentitled to carry on banking business in Bangladesh;
 - (iii) has been prohibited from receiving fresh deposits by an order under clause (a) of sub-section (5) of section 45 or under sub-clause (b) of clause (5) of Article 36 of the Bangladesh Bank Order, 1972 (P.O. No. 127 of 1972); or
 - (iv) having failed to comply with any requirement of this Act, other than the requirement laid down in section 13, has continued such failure.

after notice in writing of such failure has been conveyed to it;

- (v) contravened any provision of this Act and continue such contravention after the Bangladesh Bank conveys the banking company about the contravention by notice in this behalf,
- (b) if in the opinion of the Bangladesh Bank--
 - (i) a compromise or arrangement sanctioned by a court in respect of the banking company cannot be worked satisfactorily with or without modification; or
 - (ii) the returns, statements or information furnished to it under or in pursuance of the provisions of this Act disclose that the banking company is unable to pay its debts; or
 - (iii) the continuance of the banking company is prejudicial to the interest of its depositors.

(4) Without prejudice to the provisions contained in section 163 of the Companies Act, 1913 (VII of 1913) a banking company shall be deemed to be unable to pay its debts if-

- (a) it has refused to meet any lawful demand made at any of its offices or branches within two working days; or
- (b) such demand is made at a place where there is an office and if Bangladesh Bank certifies that the banking company is unable to pay its debts; or
- (c) Bangladesh Bank certifies in writing that the banking company is unable to pay its debts.

(5) Bangladesh Bank shall submit an application under sub-section (1) to the Registrar of the Supreme Court.

Notes

While passing an order for the winding up of a banking company, the court has to take into consideration the relevant provisions of both the Companies Act and the Banking companies Act. If it is satisfied that the affairs of a banking company are such as to call for an action for winding up, it

should not hesitate to do so. Provisions of the section are not restricted by provisions of sections 162 and 271 of Companies Act. [AIR 1954 Punj, 21-ILR 1954 Punj, 566 (DB)]. Section 65(1) is unlike the law of companies in general which aims at the protection of stock-holders. The law of banking companies is meant to safeguard the interests of depositors. All the provisions of the Banking Companies Act are aimed at achieving this object, particularly the provisions in the matter of liquidation. A banking company cannot escape the operation of the provisions of the Banking Companies Act by cessation of business.-[AIR 1952 Trav. Co 170 - ILR 1951 Trav- Co, 398 (DB)]. Section 65(1) does not say either expressly or by necessary implication that the demand should be made under the hand of a creditor. It is enough if the demand is made on behalf of a creditor such as by the commissioner appointed by the Court. [ILR 1955 Mad. 445 (DB)]

A combined reading of section 162 and 173 of Companies Act, 1913 and section 65 of this Act indicate that a bank can be wound up if the conditions laid down by either Act are complied with. Expression "without prejudice to the provisions contained in section 163 of the Companies Act" can only mean that the petitioner can rely either upon section 163 of the Companies Act, or section 65 of the Banking Companies Act. [ILR (1955) Mad. 445 (DB)]The two provisions are in the alternative. However, the conditions laid down in the Banking Companies Act are more stringent from the standpoint of the Bank. Section 163 (1) of the Companies Act introduces a section stating that if a bank does not pay the amount within three weeks from a demand made on it of a sum exceeding Tk. 500, the company shall be deemed to be unable to pay its debts. Under this section the demand shall be made by a creditor to whom the company is indebted by serving the same on the company by registered post or otherwise at its registered office and sub-section (2) enables the creditor to issue a demand through his agent or legal adviser. The provisions of section 65(1) are not in derogation of section 153 of the Companies Act in their application to a banking company which is unable to pay its debts. Section 65 does not touch the powers of the Court to sanction a scheme of arrangement between a banking company and its creditors or any class of them or between such company and its members or any class of them, if that scheme of arrangement or compromise is covered by the provisions of section 153 of the Companies Act .

66. Court Liquidator.-(1) When, having regard to the number of proceedings for the winding up of banking companies or the extent of the work involved in such proceedings, the Government is of the opinion that it is necessary or expedient to attach a court liquidator to the High Court Division, it may, in consultation with the Bangladesh Bank, appoint a court liquidator for such time as the Government may think fit for the purpose of conducting all proceedings for the winding up of banking companies and performing such duties in reference thereto as the High Court Division may impose.

(2) Where there is a court liquidator appointed under subsection (1) and an order is passed by the High Court Division for the winding up of any banking company, then notwithstanding anything contained in section 171 or section 175 of the Companies Act, 1913 (VII of 1913), the court liquidator shall become the official liquidator of the banking company.

(3) Where there is a court liquidator attached to the High Court Division and any proceeding for the winding up of a banking company, in which any person other than the Bangladesh Bank or the court liquidator has been appointed as official liquidator, is pending before the High Court Division immediately before the commencement of this Act or the date on which the court liquidator is so attached to the High Court Division, whichever is later, then notwithstanding anything contained in section 176 of the Companies Act, 1913 (VII of 1913), the person appointed as official liquidator shall, on such commencement or, as the case may be, on the aforesaid date, be deemed to have vacated his office as such and the vacancy so caused shall be deemed to be filled in by the appointment of the court liquidator as the official liquidator:

Provided that where the High Court Division, after giving the court liquidator and the Bangladesh Bank an opportunity of being heard, is of opinion that the appointment of the court liquidator would be detrimental to the interest of the depositors of the banking company, it may direct the person appointed as the official liquidator to continue to act as such.

67. Bangladesh Bank etc. to be official liquidator.- Notwithstanding anything contained in section 50, or in section 175 of the Companies Act, 1913 (VII of 1913), where in any proceeding for the winding up of a banking company by the High Court Division the Bangladesh Bank applies for an order appointing the Bangladesh Bank or any individual as the official liquidator of the banking company in that proceeding, the application shall ordinarily be granted and the liquidator, if any, functioning in such proceeding shall vacate office upon such appointment.

68. Application of Companies Act to liquidators.- (1) All the provisions of the Companies Act, 1913 (VII of 1913) relating to a liquidator, and so far as they are not inconsistent with this Act, shall apply to or in relation to a liquidator appointed under section 66 or section 67.

(2) Any reference to the "official liquidator" in this Part and Part VII shall be construed as including a reference to any liquidator of a banking company.

69. Stay of proceedings.- Notwithstanding anything to the contrary contained in section 173 of the Companies Act, 1913 (VII of 1913), the High Court Division shall not make any order staying the proceedings in relation to the winding up of a banking company until the High Court Division is satisfied that an arrangement has been made whereby the company can pay its depositors in full as their claims accrue.

70. Preliminary report by official liquidator.- Notwithstanding anything to the contrary contained in section 177B of the Companies Act, 1913 (VII of 1913), where a winding up order has been made in respect of a banking company, whether before or after the commencement of this Act, the official liquidator shall submit a preliminary report to the High Court Division within two months from the date of winding up order or, where the order is given before such commencement, an interim report shall be sent to the High Court Division two months before such commencement where the following shall be included, namely:

- (a) the information regarding his security as required by the Companies Act;

- (b) the cash amount with him or under his control belonging to the said company on the date of submission of report;
- (c) the assets which are likely to be collected in cash amount before expiry of the said period of two months:

Provided that the High Court Division may, if it thinks fit in any particular case, extend the period of two months referred to in this section by a further period of one month.

71. Notice to preferential claimants, etc.-(1) Within fifteen days from the date of the winding up order of a banking company or, where the winding up order has been made before the commencement of this Act, within one month from such commencement, the official liquidator shall, for the purpose of making an estimate of the debts and liabilities of the banking company, other than its liabilities and obligations to its depositors, by notice served in such manner as the Bangladesh Bank may direct, call upon -

- (a) every claimant entitled to preferential payment under section 230 of the Companies Act, 1913 (VII of 1913), and
- (b) every secured and every unsecured creditor,

to send to the official liquidator, within one month from the date of the service of the notice, a statement of the amount claimed by him.

(2) Every notice under sub-section(1) sent to a claimant having a claim under section 230 of the Companies Act, 1913 (VII of 1913), shall state that if a statement of the claim is not sent to the official liquidator before the expiry of the period of one month from the date of the service, the claim shall not be treated as a claim entitled to be paid under that section in priority to all other debts but shall be treated as an ordinary debt due by the banking company.

(3) Every notice under sub-section (1) sent to a secured creditor shall require him to value his security before the expiry of the period of one month from the date of the service of the notice and shall state that if a statement of the claim together with the valuation of the security is not sent to the official liquidator

before the expiry of the said period then the official liquidator shall himself value the security and such valuation shall be binding on the creditor.

(4) If a claimant fails to comply with the notice sent to him under sub-section (1)-

- (a) in the case of a claimant, his claim will not be entitled to be paid in priority to all other debts, but shall be treated as an ordinary debt due by the banking company;
- (b) in the case of a creditor, the official liquidator shall himself value the security and such valuation shall be binding on the creditor.

72. Power to dispense with meetings of creditors, etc.- Notwithstanding anything to the contrary contained in sections 178A and 183 of the Companies Act, 1913 (VII of 1913), the High Court Division may, in the proceeding for winding up a banking company, dispense with any meeting of creditors or contributories or with the appointment of a committee of inspection if it considers that no object will be secured thereby sufficient to justify the delay and expense.

73. Booked depositors credit to be deemed proved.- In any proceedings for the winding up of a banking company, every depositor of the banking company shall be deemed to have filed his claim for the amount shown in the books of the banking company as standing to his credit and, notwithstanding anything to the contrary contained in section 191 of the Companies Act, 1913 (VII of 1913), the High Court Division shall presume such claim to have been proved, unless the official liquidator shows that there is reason for doubting its correctness.

74. Preferential payments to depositors.- (1) In every proceeding for the winding up of a banking company where a winding up order has been made, whether before or after the commencement of this Act, within three months from the date of the winding up order or, where the winding up order has been made before such commencement, within three months therefrom the preferential payments referred to in section 230 of the Companies Act, 1913 (VII of 1913), in respect of which statements of claims have been sent within one month from the

date of the service of the notice referred to in section 71, shall be made by the official liquidator or adequate provision for such payment shall be made by him.

(2) In the case of preferential payments under sub-section (1), payment of money shall be made as mentioned hereunder, namely:-

- (a) in the first phase, to every depositor on the savings bank accounts of the banking company, a sum of Taka two thousand and five hundred or the balance at his credit, whichever is less;
- (b) in the second phase, in order to pay the creditors, other depositors of the banking company, fifty per cent of the balance at his or its credit or a sum of Taka two thousand and five hundred, whichever is less:

Provided that the sum total of the amount paid under clause (a) and clause (b) to any one person who, in his own name and not jointly with any other person, is a depositor in the savings bank account of the banking company and also a depositor in any other account shall not exceed the sum of two thousand and five hundred taka only.

(3) Where within the aforesaid period of three months, full payment cannot be made of the accounts required to be paid under clause (a) or clause (b) of sub-section (2) with the assets in cash, the official liquidation shall pay within that period to every depositor under clause (a) or, as the case may be, clause (b) of that sub-section on a pro-rata basis so much of the amount due to the depositors under that clause as the official liquidator is able to pay with those assets; and shall pay the rest of that amount to every such depositor as and when sufficient assets are collected by the official liquidator in cash.

(4) After payments have been made to the depositors in accordance with sub-section (1), (2) and (3), the official liquidator shall pay the dues of the general creditors on pro-rata basis and thereafter the official liquidator shall, as and when the assets of the company are collected in cash, make payment on a pro rata basis as aforesaid, of the further sums, if any, which may remain due to the depositors referred to in clause (a) and clause (b) of sub-section (2).

(5) In order to enable the official liquidator to have in his custody or under his control in cash as much of the assets of the banking company as possible, the securities given to every secured creditor may be redeemed by the official liquidator-

- (a) where the amount due to the creditor is more than the value of the securities as assessed by him or, as the case may be, as assessed by the official liquidator, on payment of such value, and
- (b) where the amount due to the creditor is equal to or less than the value of the securities as so assessed, on payment of the amount due:

Provided that were the official liquidator is not satisfied with the valuation made by the creditor, he may apply to the High Court Division for making a valuation.

(6) When any claimant, creditor or depositor to whom any payment is to be made in accordance with the provisions under sub-section (1),(2), (3), (4) and (5) cannot be found or is not readily traceable, adequate provisions shall be made by the official liquidator for such payment.

(7) For the purpose of this section, the payments specified in each of the following clauses shall be treated as payments of a different class, namely:

- (a) payments to preferential claimants under section 230 of the Companies Act, 1913 (VII of 1913);
- (b) payments under clause (a) of sub-section (2) to the depositors in the savings bank accounts;
- (c) payments under clause (b) of sub-section (2) to the other depositors;
- (d) payments to the general creditors;
- (e) payments to the depositors in addition to those specified in clause (a) and clause (b) of sub-section (2).

(8) The payments of each different class specified in sub-section (7) shall rank equally among themselves and be paid in full unless the assets are insufficient to meet them, in which case they shall abate in equal proportion.

75. Restriction on voluntary winding up.-Notwithstanding anything to the contrary contained in section 203 of the Companies Act, 1913 (VII of 1913), no banking company which holds a licence granted under section 31 may be voluntarily wound up unless the Bangladesh Bank certifies in writing that the company is able to pay in full all its debts to its creditors as they accrue, and without prejudice to the provisions contained in sections 218 and 220 of that Act, the High Court Division shall, on application of the Bangladesh Bank, order the winding up of the company by the High Court Division if at any stage during the voluntary winding up proceedings the company is not able to meet such debts as they accrue.

Notes

Section 65 to 75 of this Act lay down the provisions for winding up of a banking company. The High Court Division has to order the winding up of a banking company if it is unable to pay the debts, or if the company is under a moratorium and the Bangladesh Bank makes an application for its winding up on the ground that its affairs are being conducted in a manner prejudicial to the interests of its depositors. The Bangladesh Bank has, however, no option not to apply for the winding up of the banking company if it is directed to do so by the Government under section 44 of this Act. The Bangladesh Bank may apply for winding up of a company if-

- (i) the banking company fails to comply with the requirements as to the minimum paid up capital and reserves;
- (ii) the banking company is disentitled to carry on the banking business for want of licence;
- (iii) the banking company has been prohibited from receiving fresh deposits by the Bangladesh Bank;
- (iv) the banking company has failed to comply with the requirements of the Act and continues to do so even after the Bangladesh Bank calls upon it to do so, etc.

76. Restriction on compromise or arrangement between banking company and creditors.- (1) Notwithstanding anything contained in any law for the time being in force, the High Court Division shall not sanction compromise or arrangement between a banking company and its creditors or any class of them or

between such company and its members or any class of them or sanction any modification in any such compromise or arrangement unless the compromise or arrangement or modification, as the case may be, is certified by the Bangladesh Bank in writing as not being incapable of being worked and as not being detrimental to the interest of the depositors of such banking company.

(2) Where an application under section 30 of the Companies Act, 1913 (VII of 1913) is made in respect of a banking company, the High Court Division may direct the Bangladesh Bank to make an inquiry in relation to the affairs of the banking company and the conduct of its directors and, when such a direction is given, the Bangladesh Bank shall make such enquiry and submit its report to the High Court Division.

77. Power of Bangladesh Bank to apply to Government for suspension of business by a banking company and to prepare scheme of reconstitution or amalgamation.-(1) Notwithstanding anything contained in the foregoing provisions of this Part or in any other law or any agreement or other instrument for the time being in force, where it appears to the Bangladesh Bank that there is good reason to do so, the Bangladesh Bank may apply to the Government for an order of moratorium in respect of a banking company.

(2) If after considering the application submitted under sub-section (1), it is accepted, the Government may make an order of moratorium staying the commencement or continuance of all actions and proceedings against the company for a fixed period of time on such terms and conditions as it thinks fit:

Provided that the Government shall not extend the period so however that the total period of moratorium exceeds six months.

(3) Except as otherwise provided by any direction given by the Government in the order made by it under sub-section (2) or at any time thereafter, the banking company shall not during the period of moratorium make any payment to any depositor or discharge any liabilities or obligations to any other creditor.

(4) During the period of moratorium, if the Bangladesh Bank is satisfied that in the public interest or in the interests of the depositors, or in order to secure the proper management of the

banking company or in the interest of the banking system of the country as a whole, it is necessary to do so for the reconstitution of the banking company or for the amalgamation of the banking company with any other banking institution in this section referred to as "the transferee bank", then Bangladesh Bank may prepare such scheme.

(5) The scheme aforesaid may contain provisions for all or any of the following matters, namely:

- (a) the constitution, name and registered office, the capital, assets, powers, rights, interests, authorities and privileges, the liabilities, duties and obligations of the banking company on its reconstitution or, as the case may be, of the transferee bank;
- (b) in the case of amalgamation of the banking company, the transfer to the transferee bank of the business, properties, assets and liabilities of the banking company on such terms and conditions as may be specified in the scheme;
- (c) any change in the Board of Directors or the appointment of a new Board of Directors of the banking company on its reconstitution or, as the case may be, of the transferee bank and the authority by whom, the manner in which, and the other terms and conditions on which, such change or appointment shall be made and in the case of appointment of a new Board of Directors, the period for which such appointment shall be made;
- (d) the alteration of the memorandum and articles of association of the banking company on its reconstitution or, as the case may be, of the transferee bank for the purpose of altering the capital thereof or for such other purposes as may be necessary to give effect to the reconstitution or amalgamation;
- (e) the continuation by or against the banking company on its reconstitution or, as the case may be, the transferee bank, of any actions or proceedings pending against the banking company immediately

before the date of the order of moratorium under sub-section(2);

- (f) the reduction of the interest or right which the members, depositors and other creditors have in or against the banking company before its reconstitution or amalgamation to such extent as the Bangladesh Bank considers necessary in the public interest or in the interest of the members, depositors and other creditors or for the maintenance of the business of the banking company;
- (g) the payment in cash or otherwise to depositors and other creditors in full satisfaction of their claim-
 - (i) in respect of their interest or rights in or against the banking company before its reconstitution or amalgamation; or
 - (ii) where their interest or rights aforesaid in or against the banking company has or have been reduced under clause (f), in respect of such interest or rights as so reduced;
- (h) the allotment to the member of the banking company for shares held by them therein before its reconstitution or amalgamation, whether their interest in such shares has been reduced under clause (f) or not, or shares in the banking company on its reconstitution or, as the case may be, in the transferee bank and, where any members claim payment in cash and not allotment of shares or where it is not possible to allot shares to any members, the payment in cash to those members in full satisfaction of their claim---
 - (i) in respect of their interest in shares in the banking company, before its reconstitution or amalgamation; or
 - (ii) where such interest has been reduced under clause (f), in respect of their interest in shares as so reduced;

- (i) the continuance of the services of all the employees of the banking company in the banking company itself on its reconstitution or, as the case may be, in the transferee bank at the same remuneration and on the same terms and conditions of service, which they were getting or, as the case may be, by which they were being governed, immediately before the date of the order of moratorium under sub-section (2):

Provided that the scheme shall contain a provision that-

- (i) the banking company shall pay or grant not later than the expiry of the period of three years from the date on which the scheme is sanctioned by the Government, to the said employees the same remuneration and the same terms and conditions of service as are, at the time of such payment or grant, applicable to employees of corresponding rank or status of a comparable banking company to be determined for this purpose by the Bangladesh Bank, whose determination in this respect shall be final;
- (ii) the transferee bank shall pay or grant, not later than the expiry of the aforesaid period of three years, to the said employees the same remuneration and the same terms and conditions of services as are, at the time of such payment or grant, applicable to the other employees of corresponding rank or status of the transferee bank subject to the qualifications and experience of the said employees being the same as or equivalent to those of such other employees of the transferee bank and where any doubt or difference arises as to whether the qualification and experience of any of the said employees are the same as or equivalent to the qualifications and experience of the other employees of corresponding rank or status of the transferee bank, the doubt or difference shall be referred,

before the expiry of a period of three years from the date of the payment or grant mentioned in that clause, to the Bangladesh Bank whose decision thereon shall be final:

- (j) notwithstanding anything contained in clause (i), where employees of the banking company as specifically mentioned in the scheme under (i), or where employees of the banking company have, by notice in writing, given to the banking company or, as the case may be, the transferee bank, at any time before the expiry of one month next following the date on which the scheme is sanctioned by the Government, intimation of their intention of not becoming employees of the banking company on its reconstitution or, as the case may be, of the transferee bank, the payment to such employees of compensation, if any, and such pension, gratuity, provident fund and other retirement benefits ordinarily admissible to them under the rules or authorisation of the banking company immediately before the date of the order of moratorium;
- (k) any other terms and conditions for the reconstitution or amalgamation of the banking company;
- (l) such incidental, consequential and supplemental matters as are necessary to secure that the reconstitution or amalgamation shall be fully and effectively carried out.

(6) A draft copy of the scheme prepared by the Bangladesh Bank shall be sent to the banking company and also to the transferee bank and any other banking company concerned in the amalgamation for suggestions and objections, if any, within such period as the Bangladesh Bank may specify for this purpose.

(7) The Bangladesh Bank may make such modifications, if any, in the draft scheme as it may consider necessary in the light of the suggestions and objections received with reference to provision under sub-section(6).

(8) After the action under sub-section (6) and (7) taken, the scheme shall be placed before the Government for its sanction and the Government may sanction the scheme without any modification or with such modifications as it may consider necessary; and the scheme as sanctioned by the Government shall come into force on such date as the Government may specify in this behalf:

Provided that different dates may be specified for different provision of the scheme.

(9) On and from the date of the coming into operation of the scheme or any provision thereof, the scheme or such provision shall be binding on the following:-

- (a) the banking company or, as the case may be, the transferee bank and any other banking company concerned in the amalgamation;
- (b) all the members, depositors and other creditors;
- (c) employees of each of those companies and of the transferee bank, and
- (d) other person having any right or liability in relation to any of those companies or the transferee bank including the trustees or other persons managing or connected in any other manner with any provident fund or other fund maintained by any or those companies or the transferee bank.

(10) On and from the date of the coming into operation of the scheme, all properties and assets of the banking company shall stand transferred to, and vest in, and all properties, assets and liabilities of the banking company shall become the properties, assets and liabilities of the transferee bank.

(11) If any difficulty arises in giving effect to the provisions of the scheme, the Government may by order do anything not inconsistent with such provisions which appears to it necessary or expedient for the purpose of removing the difficulty.

(12) Copies of the scheme or of any order made under sub-section (II) shall be laid before Parliament, as soon as may be after the scheme has been sanctioned by the Government or, as the case may be, the order has been made.

(13) Where any scheme for amalgamation of any banking company is approved, any business acquired by the transferee bank under the scheme or under any provision thereof shall, after the coming into operation of the scheme or such provision, be carried on by the transferee bank in accordance with the law governing the transferee bank:

Provided that for the purpose of giving full effect to the scheme, government may, with the recommendation of the Bangladesh Bank, by notification in the official Gazette, exempt the application of any provision of such law for such period not exceeding seven years.

(14) Nothing in this section shall be deemed to prevent the amalgamation with a banking company by a single scheme of several banking companies in respect of each of which an order of moratorium has been made under this section.

(15) The provisions of this section and of any scheme made under it shall have effect notwithstanding anything to the contrary contained in any other provision of this Act or in any other law or any agreement, or other instrument for the time being in force.

Notes.

Where in the opinion of the Bangladesh Bank, good reasons are there for applying to the Government, it may apply to the Government for an order of moratorium in respect of a banking Company. After an order of the Government being passed, the commencement and continuance of all actions and proceedings against the banking company are stayed for a period not exceeding six months. During the period of moratorium, the Bangladesh Bank may prepare a scheme for reconstruction of the company and its amalgamation with any other bank.

The Bangladesh Bank made an application under this section to the Government in the matter of Bangladesh Commerce and Credit (International) Limited, and an order of moratorium was passed in respect of the said banking company. The Eastern Bank Ltd. is the creation of action taken under this section.

PART VII

SPEEDY DISPOSAL OF WINDING UP PROCEEDINGS

78. Part VII to override other laws.- The provisions of this Part and the rules made thereunder shall have effect notwithstanding anything inconsistent therewith contained in the Companies Act, 1913 (VII of 1913) or any other law for the time being in force or any instrument having effect by virtue of any such law; the provisions of any such law or instrument, in so far as the same are not varied by, or inconsistent with, the provisions of this Part or rules made thereunder, shall apply to all proceedings under this Part.

79. Power of High Court Division to decide all claims in respect of banking companies.- The High Court Division shall, save as otherwise expressly provided in section 80, have exclusive jurisdiction to entertain and decide on the following cases, whether such cases has arisen or arises before or after the date of the order for the winding up of the banking company or before or after the commencement of this Act:-

- (a) any claim made by or against a banking company which is being wound up, including claims by or against any of its branches in Bangladesh;
- (b) any application made under section 153 of the Companies Act, 1913 (VII of 1913), by or in respect of a banking company;
- (c) any question of priorities or any other question whatsoever, whether of law or fact, which may relate to or arise in the course of the winding up of a banking company.

80. Transfer of pending proceedings.- (1) Where a winding up order is made or has been made in respect of a banking company, no suit or other legal proceeding in respect of which the High Court Division has jurisdiction under this Act, and which is pending in any other court immediately before the commencement of this Act or the date of the order for the winding up of the banking company, whichever is later, shall be proceeded with except in the manner hereinafter provided.

(2) The official liquidator shall, within three months from the date of the winding up order or the commencement of this Act,

whichever is later, or such further time as the High Court Division may allow, submit to the High Court Division a report containing a list of all such pending proceedings under sub-section (1) together with particulars thereof.

(3) On receipt of a report under sub-section (2), the High Court Division may, if it so thinks fit, give the parties concerned an opportunity to show cause why the proceedings should not be transferred to itself and, after making an enquiry in such manner as may be provided by rules made under section 97, it shall make such order as it deems fit transferring to itself all or such of the pending proceedings as may be specified in the order and such proceedings shall thereafter be disposed of by the High Court Division.

(4) If any proceeding pending in a court is not so transferred to the High Court Division under sub-section (3), such proceeding shall be continued in the court in which the proceeding was pending.

81. Settlement of list of debtors.- (1) Notwithstanding anything to the contrary contained in any law for the time being in force, the High Court Division may settle in the manner hereinafter provided a list of debtors of the banking company which is being wound up.

(2) Subject to any rules that may be made under section 120, the official liquidator shall, within six months from the date of the winding up order or the commencement to this Act, whichever is later, from time to time, file to the High Court Division lists of debtors containing such particulars as are specified in the Second Schedule.

(3) On receipt of any list under sub-section (2), the High Court Division shall, wherever necessary, cause notices to be issued on all persons affected and, after making an enquiry in such manner as may be provided by rules made under section 97, it shall make an order settling the list of debtors .

(4) At the time of the settlement of any such list, the High Court Division shall pass an order for the payment of the amount due by each debtor and make such further orders as may be necessary in respect of the relief claimed, including reliefs

against any guarantor or in respect of the realisation of any security.

(5) Every such order shall, subject to the provisions for appeal, be final and binding for all purposes as between the banking company on the one hand and the person against whom the order is passed and all persons claiming through or under him on the other hand, and shall be deemed to be a decree in a civil suit.

(6) The High Court Division shall issue a certificate in respect of an order made under sub-section(4), which shall be deemed to be a certified copy of the decree for all purposes including execution and shall specify the following matters, namely:-

- (a) the reliefs granted;
- (b) names and descriptions of the parties against whom such reliefs have been granted;
- (c) the amount of costs awarded;
- (d) by whom, and out of what funds and in what proportions, such costs are to be paid.

(7) At the time of settling the list of debtors or at any other time prior or subsequent thereto, the High Court Division shall have the following powers, namely:-

- (a) to pass any order in respect of a debtor on the application of the official liquidator for the realisation, management, protection, preservation or sale of any property given as security to the banking company;
- (b) to give such powers to the official liquidator to carry out the aforesaid directions under clause (a) as the High Court Division thinks fit.

(8) The High Court Division shall have power to sanction a compromise in respect of any debt and to order the payment of any debt by instalments.

(9) In any case in which any such list is settled *ex parte* as against any person, such person may, within thirty days from the date of the order settling the list, apply to the High Court Division for an order to vary such a list, so far as it concerns him, and if the High Court Division is satisfied that he was prevented by any

sefficient cause from appearing on the date fixed for the settlement of such list and that he has a good defence to the claim of the banking company on merits, the High Court Division may vary the list and pass such orders in relation thereto as it thinks fit:

Provided that the High Court Division may, if it so thinks fit, entertain the application even after the expiry of the said period of thirty days.

(10) Nothing in this section shall--

- (a) apply to a debt which has been secured by a mortgage of immovable property, if a third party has any interest in such immovable property; or
- (b) prejudice the rights of the official liquidator to recover any debt due to a banking company under any other law for the time being in force.

82. Special provisions to make calls on contributories.- Notwithstanding that the list of contributories has not been settled under section 184 of the Companies Act, 1913 (VII of 1913), the High Court Division may, if it appears to it necessary or expedient to do so, at any time after making a winding up order, make a call on and order payment thereof by any contributory, if such contributory has been placed on the list of contributories by the official liquidator and has not appeared to dispute his liability.

83. Documents of banking company to be evidence.-(1) Entries in the books of account or other documents of a banking company which is being wound up shall be admitted in evidence in all proceedings by or against the banking company.

(2) The books of account and other documents or their copies may be proved by the production provided that in the case of proving their copies, they shall have to be certified by the official liquidator under his signature and stating that it is a true copy of the original entries and that such original entries are contained in the books of account or other documents of the banking company in his possession.

(3) Notwithstanding anything to the contrary contained in the Evidence Act, 1872 (Act I of 1872), all such entries in the books of account or other documents of a banking company

shall, as against the directors of the banking company in respect of which the winding up order has been made before the commencement of this Act, be prima facie evidence of the truth of all matters purporting to be therein recorded.

84. Public examination of directors and audit.-(1) Where an order has been made for the winding up of a banking company, the official liquidator shall submit a report whether in his opinion any loss has been caused to the banking company since its formation by any act or omission of any person in the promotion or formation of the banking company or of any director or auditor of the banking company.

(2) If, on consideration of the report submitted under subsection (1), the High Court Division is of the opinion that any person who has taken part in the promotion or formation of the banking company or has been a director or an auditor of the banking company should be publicly examined, it shall hold a public sitting on a date to be appointed for that purpose and direct that such person, director or auditor shall attend and shall be publicly examined as to the promotion or formation or the conduct of the business of the banking company, or as to his conduct and dealings in so far as they relate to the affairs of the banking company:

Provided that no such person shall be publicly examined unless he has been given an opportunity to show cause as to why he should not be so examined.

(3) The official liquidator shall take part in the examination and for the purpose may, if specially authorised by the High Court Division in that behalf, employ such legal assistance as may be sanctioned by the High Court Division.

(4) Any creditor or contributory may also take part in the examination either personally or by any person entitled to appear before the High Court Division.

(5) Any person required to be examined under this section shall be examined on oath and he shall answer all such questions as the High Court Division may put or allow to be put to him.

(6) A person ordered to be examined under this section may, at his own cost, employ any person entitled to appear before the High Court Division who shall be at liberty to put to him such questions as the High Court Division may deem just for the

purpose of enabling him to explain or qualify any answer given by him;

Provided that if he is, in the opinion of the High Court Division, exculpated from any charges made or suggested against him, the High Court Division may allow him such costs in its discretion as it may deem fit.

(7) Statement obtained by cross-examination shall be taken down in writing and after it is read by or read over to the person examined it will be signed by him and such statement-

- (a) may be used in evidence against him in any proceeding, civil or criminal,
- (b) shall be opened to the inspection of any creditor or contributory at all reasonable times.

(8) Where on such examination the High Court Division is of the opinion, whether a fraud has been committed or not-

- (a) that a person who had been a director of the banking company was not fit to be a director of a company; or
- (b) that a person who has been an auditor of the banking company or a partner of a firm acting as such auditor is not fit to act as an auditor of a company or to be a partner of a firm acting as such auditor.

the High Court Division may make an order that, that person shall not, without the leave of the High Court Division,

- (i) be a director of, or
- (ii) in any way, whether directly or indirectly, be concerned or take part in the management of any company or,
- (iii) act as an auditor of, or be partner of a firm acting as auditor of,

any company for such period not exceeding five years as may be specified in the order.

85. Special provisions for assessing damages against delinquent directors, etc.-(1) Where an application is made to the High Court Division under section 235 of the Companies Act, 1913 (VII of 1913), against any promoter, director, manager, liquidator or officer of a banking company for repayment or

restoration of any money or property and the applicant makes out a prima facie case against such person, the High court Division shall make an order against such person to repay or restore the money or property unless he proves that he is not liable to make the repayment or restoration:

Provided that where such an order is made jointly against two or more such persons, they shall be jointly and severally liable to make the repayment or restoration of the money or property.

(2) Where an application is made to the High Court Division under section 235 of the Companies Act, 1913 (VII of 1913), and the High Court Division has reasons to believe that a property belongs to any promoter, director, manager, liquidator or officer of the banking company, whether the property stands in the name of such person or of any other person as the ostensible owner, the High Court Division may, at any time, whether before or after making an order under sub-section (1), direct the attachment of such property or such portion thereof as the High Court Division may think fit, and when the property so attached stands in the name of an ostensible owner, it shall remain subject to attachment unless the ostensible owner can prove to the satisfaction of the High Court Division that he is the real owner and the provisions of the Code of Civil Procedure, 1908 (Act V of 1908), relating to attachment of property shall, as far as may be, apply to such attachment.

86. Duty of directors and officers of banking company to assist in the realisation of property.- Every director or other officer of a banking company which is being wound up shall give such assistance to the official liquidator as he may reasonably require in connection with the realisation and distribution of the property of the banking company.

87. Special provision for punishing offences in relation to banking companies being wound up.-The High Court Division may, if it thinks fit, take cognizance of and try in a summary way any offence punishable under this Act or under the Companies Act, 1913 (VII of 1913), alleged to have been committed by any person who has taken part in the promotion or formation of the banking company which is being wound up or any director, manager or officer thereof.

(2) When trying any such offence as aforesaid, the High Court Division may also try any other offence not referred to in sub-section (1) which is an offence with which the accused may, under the Code of Criminal Procedure, 1898 (Act V of 1898), be charged at the same trial.

(3) In any case tried summarily under sub-section (1),-

(a) the High Court Division-

- (i) need not summon any witness, if it is satisfied that the evidence of such witness will not be material;
- (ii) shall not be bound to adjourn a trial for any purpose unless such adjournment is, in the opinion of the High Court Division, necessary in the interest of justice;
- (iii) shall, before passing any sentence, record, judgement embodying the substance of the evidence and also the particulars specified in section 263 of the Code of Criminal Procedure, 1898 (Act V of 1898), so far as that section may be applicable;

(b) nothing contained in section 262(2) of the Code of Criminal Procedure, 1898 (Act V of 1898), shall apply to any such trial.

(4) All offences in relation to winding up alleged to have been committed by any person specified in sub-section (1) which are punishable under this Act or under the Companies Act, 1913 (VII of 1913), and which are not tried in a summary way under sub-section (1) shall, notwithstanding anything to the contrary contained in that Act or the Code of Criminal Procedure, 1898 (Act V of 1898), or in any other law for the time being in force, be taken cognizance of and tried by a judge of the High Court Division other than the judge for the time being dealing with the proceedings for the winding up of the banking company.

(5) Notwithstanding anything to the contrary contained in the Code of Criminal Procedure, 1898 (Act V of 1898), the High Court Division may take cognizance of any offence under this section without the accused being committed to it for trial.

88. Public examination of directors and auditors, etc., in respect of a banking company under scheme or arrangement.-(1) Where an application for sanctioning a compromise or arrangement in respect of a banking company is made under section 153 of the Companies Act, 1913 (VII of 1913), or where such sanction has been given and the High Court Division is of the opinion, whether on a report of the Bangladesh Bank or otherwise, that any person who has taken part in the promotion or formation of that banking company or has been a director or auditor thereof should be publicly examined, it may direct such examination of such person and the provisions of section 84 shall, as far as may be, apply to such banking company as they apply to a banking company which is being wound up.

(2) Where a compromise or arrangement is sanctioned under section 153 of the Companies Act, 1913 (VII of 1913), in respect of a banking Company, the provisions of section 235 of that Act and of section 85 of this Act shall, as far as may be, apply to such banking company as they apply to a banking company which is being wound up as if the order sanctioning the compromise or arrangement were an order for the winding up of that banking company.

(3) Where a scheme of reconstitution or amalgamation of a banking company has been sanctioned by the Government under section 77 and the Government is of the opinion that any person who has taken part in the promotion or formation of that banking company or has been a director or auditor thereof should be publicly examined, the Government may apply to the High Court Division for the examination of such person and if, on such examination, the High Court Division finds, whether a fraud has been committed or not, that such person is not fit to be a director of a company or to act as an auditor of a company or to be a partner of a firm acting as such auditor, the Government shall make an order that such person shall not, without the leave of the Government, be a director of, or in any way, whether directly or indirectly, be concerned or take part in the management of any company or, as the case may be, act as an auditor of, or be a partner of a firm acting as such auditor of any company for such period not exceeding five years as may be specified in the order.

(4) Where a scheme of reconstitution or amalgamation of a banking company has been sanctioned by the Government under section 77, the provisions of section 235 of the Companies Act, 1913 (VII of 1913), and those of section 85 of this Act, shall, as far as may be, apply to the banking company as they apply, to banking company which is being wound up, as if the order sanctioning scheme or reconstitution or amalgamation, as the case may be, were an order for the winding up of the banking company; and any reference in the said section 235 to the application of the official liquidator shall be construed as a reference to the application of the Government.

89. Special provisions for banking companies working under schemes of arrangement at the commencement of this Act.- Where any compromise or arrangement sanctioned in respect of a banking company under section 153 of the Companies Act, 1913 (VII of 1913), is being worked at the commencement of this Act, the High Court Division may, if it so thinks fit, on the application of such a banking company---

- (a) excuse any delay in carrying out any of the provisions of the compromise or arrangements; or
- (b) allow the banking company to settle the list of its debtors in accordance with the provisions of section 81 and in such a case, the provisions of the said section shall, as far as may be, apply to the banking company as they apply to a banking company which is being wound up as if the order sanctioning the compromise or arrangement were an order for the winding up of the banking company.

90. Appeals.-An appeal shall lie from any order or decision of the High Court Division in a civil proceeding under this Act when the amount of value of the subject matter of the claim exceeds fifty thousand taka.

(2) The High Court Division may, by rules, provide for an appeal against any order made under section 87 and the conditions subject to which any such appeal would lie.

(3) Subject to the provisions of sub-section (1) and sub-section (2) and notwithstanding anything contained in any other law for the time being in force, every order or decision of the High Court

Division shall be final and binding for all purposes in between the banking company on the one hand, and all persons who are parties thereto and all persons claiming through or under them or any of them on the other hand.

91. Special period of limitation.-(1) Notwithstanding anything to the contrary contained in the Limitation Act, 1908 (IX of 1908), or in any other law for the time being in force, in computing the period of limitation prescribed for a suit or application by a banking company which is being wound up, the period commencing from the date of the presentation of the petition for the winding up of the banking company shall be excluded.

(2) Notwithstanding anything to the contrary contained in the Limitation Act, 1908 (IX of 1908), or section 235 of the Companies Act, 1913 (VII of 1913), or in any other law for the time being in force, there shall be no period of limitation for the recovery of arrears of calls from any director of a banking company which is being wound up or for the enforcement by the banking company against any of its directors of any claim based on a contract, express or implied; and in respect of all other claims by the banking company against its directors, the period of limitation shall be twelve years from the date of accrual of such claims or five years from the date of the first appointment of the liquidator, whichever is longer.

(3) The provisions of this section, in so far as they relate to banking companies being wound up, shall also apply to a banking company in respect of which a petition for the winding up has been presented before the commencement of this Act.

92. Bangladesh Bank to tender advice in winding up proceedings.-Where in any proceeding for the winding up of a banking company in which any person other than the Bangladesh Bank has been appointed as the official liquidator and the High Court Division has directed the official liquidator to obtain the advice of the Bangladesh Bank on any matter, which it is hereby empowered to do, it shall be lawful for the Bangladesh Bank to examine the records of any such proceeding and tender such advice on the matter as it may think fit.

93. Power to inspect.-(1) The Bangladesh Bank shall, on being directed to do so by the Government or by the High Court

Division, cause an inspection to be made by one or more of its officers of a banking company which is being wound up and its books and accounts.

(2) After the inspection under sub-section (1), the Bangladesh Bank shall submit its report to the Government or, as the case may be, the High Court Division.

(3) If the Government, on consideration of the report of the Bangladesh Bank, is of the opinion that there has been a substantial irregularity in the winding up proceedings, it may bring such irregularity to the notice of the High Court Division for such action as the High Court Division may think fit.

(4) On receipt of the report of the Bangladesh Bank under sub-section (2) or on any irregularity being brought to its notice by the Government under sub-section (3), the High Court Division may, if it deems fit, after giving notice to and hearing the Government in regard to the report, give such directions as it may consider necessary.

94. Power to call for returns and information.- The Bangladesh Bank may, at any time, by notice in writing, require the liquidator of a banking company to furnish it, within such time as may be specified in the notice or such further time as the Bangladesh Bank may allow, any statement or information relating to or connected with the winding up of the banking company; and it shall be the duty of every liquidator to comply with such requirements.

Explanation:- For the purpose of this section and section 93, a banking company working under a compromise or arrangement but prohibited from receiving fresh deposits, shall, as far as may be, deemed to be a banking company which is being wound up.

95. District Magistrate to assist official liquidator in taking charge of property of banking company being wound up.-(1) For the purpose of enabling the official liquidator or the special officer appointed under this Act to take into his custody or under his control, all properties, effects and actionable claims to which a banking company, which has been ordered to be wound up, is or appears to be entitled, the official liquidator or the special officer, as the case may be, may, if he deems it necessary in the interest of speedy liquidation, request in writing the District

Magistrate, within whose jurisdiction any property, books of account or other documents of such banking company may be situated or be found, to take possession thereof, and the District Magistrate shall, on such request being made to him, take possession of such property, books of account or other documents and forward them to the official liquidator or the special officer.

(2) For the purpose of securing compliance with the provisions of sub-section (1), the District Magistrate may take or cause to be taken such steps and use or cause to be used such force as may, in his opinion, be necessary.

96. Enforcement of orders and decisions of High Court Division.- (1) All orders made in any civil proceeding by the High Court Division may be enforced in the same manner in which decrees of such court made in any suit pending therein may be enforced.

(2) Notwithstanding anything to the contrary contained in the Code of Civil Procedure, 1908 (V of 1908), a liquidator may apply for the execution of a decree by a Court, other than the one which made it, on production of a certificate granted under section 81(6) and on his certifying in writing the amount remaining due or relief remaining unenforced under the decree.

(3) Without prejudice to the provisions of sub-section (1) or sub-section (2), any amount found due to the banking company by an order or decision of the High Court Division may, with the leave of the High Court Division, be recovered in the same manner as an arrear of land revenue.

97. Power of High Court Division to make rules.- The High Court Division may make rules consistent with this Act and the rules made under section 121 prescribing--

- (a) the manner in which enquiries and proceedings under Parts VI and VII may be held;
- (b) the offences which may be tried summarily;
- (c) the authority to which, and the conditions subject to which, appeals may be preferred and the manner in which such appeals may be filed and heard; and
- (d) any other matter for which provision has to be made for enabling the High Court Division to effectively exercise its function under this Act.

98. Reference to directors, etc., shall be construed as including references to past directors, etc:- For the removal of doubts, it is hereby declared that any reference in this Part to a director, manager, liquidator, officer or auditor of a banking company shall be construed as including a reference to any past or present director, manager, liquidator, officer or auditor of the banking company.

99. Part II not to apply to banking companies being wound up.- Nothing contained in Part II shall apply to a banking company which is being wound up.

100. Validation of certain proceedings.-Notwithstanding anything contained in section 79 or any other provision of this Part, no proceeding held, judgment delivered or decree or order made before the commencement of this Act by any court other than the High Court Division under this Act shall be invalid or be deemed to have been invalid by reason of the fact that such proceeding, judgment, decree or order was held, delivered or made by a court other than the High Court Division.

101. Power of Government to make rules for the preservation of records.- The Government may, after consultation with the Bangladesh Bank and by notification in the official Gazette, make rules specifying the periods for which a banking company shall preserve its books, accounts, paid instruments and other documents.

102. Return of paid instruments to customers.- (1) Where a banking company is required by its customer to return to him a paid instrument before the expiry of the period specified by rules made under section 101, the banking company shall not return the instrument except after making and keeping in its possession a true copy of all relevant parts of such instrument, such copy being made by a mechanical or other process which in itself ensures the accuracy of the copy.

(2) The banking company shall be entitled to recover from the customer the cost of making such copies of the instrument.

Explanation: In this section, "customer" includes a Government department and a corporation incorporated by or under any law.

103. Nomination for payment of depositors money.- (1) Where a deposit is held by a banking company to the credit of one or more persons, the depositor or, as the case may be, all the depositors together may nominate, in the prescribed manner, one person to whom, in the event of the death of the sole depositor or the death of all the depositors, the amount of deposit may be returned by the banking company:

Provided that the depositor or, as the case may be, all the depositors together may cancel the said nomination in the prescribed manner and may give fresh nomination.

(2) Where the nominated person under sub-section (1) is a minor, the said depositor or, as the case may be, all the depositors may decide in the prescribed manner as to who shall receive the deposited money after their death.

(3) Notwithstanding anything contained in any other law for the time being in force or in any disposition, whether testamentary or otherwise, in respect of such deposit, where a person is determined under sub-section (1) or where a person is conferred under sub-section (2), he shall, on the death of the sole depositor or, as the case may be, on the death of all the depositors, become entitled to all the rights of the sole depositor or, as the case may be, of all depositors, in relation to such deposit to the exclusion of all other persons.

(4) Payment by a banking company in accordance with the provisions of this section shall constitute a full discharge by the banking company of its liability in respect of the deposit:

Provided that nothing contained in this sub-section shall affect the right of claim which any person may have against the person to whom any payment is made under this section.

104. Notice of claims of other persons regarding deposits not receivable.-No notice of the claim of any person, other than the person or persons in whose name a deposit is held by a banking company, shall be receivable by the banking company, nor shall the banking company be bound by any such notice even though expressly given to it:

Provided that nothing contained in this sub-section shall affect authority from a court of competent jurisdiction relating to such deposit is produced before a banking company, the banking

company shall take due note of such decree, order, certificate or other authority.

105. Nomination for return of articles kept in safe custody with banking company.-(1) Where any person leaves any article in safe custody with a banking company, such person may nominate, in the prescribed manner, one person to whom, in the event of the death of the person leaving the article in safe custody, such article may be returned by the banking company:

Provided that such person may cancel the said nomination in the prescribed manner and may give fresh nomination.

(2) Where the nominee under sub-section. (1) is a minor, it shall be lawful for the person making the nomination to appoint in the prescribed manner any person to receive the article deposited in the event of his death during the minority of the nominee.

(3) The banking company shall, before returning any article under this section to the nominee or the person appointed under sub-section (1) or (2), prepare, in such manner as may be directed by the Bangladesh Bank from time to time, an inventory of the said articles which shall be signed by such nominee or person and shall deliver a copy of the inventory so prepared to such nominee or person.

(4) Notwithstanding anything contained in any other law for the time being in force or in any disposition, whether testamentary or otherwise, in respect of such article, where a nomination made or a person appointed under sub-section (1)&(2), the nominee or the person appointed on the death of the depositor shall become entitled to receive the articles from the banking company to the exclusion of all other persons.

(5) Where articles kept in safe custody under this section have been returned in the prescribed manner, it shall be deemed that liability of the banking company concerned has been discharged:

Provided that nothing contained in this section shall affect the right or claim which any person may have against the person to whom the article is returned in pursuance of this sub-section.

106. Notice of claims of other persons regarding articles not receivable.- No notice of the claim of any person, other than the person or persons in whose name any article is held by a banking company in safe custody, shall be receivable by the banking company, nor shall the banking company be bound by any such notice even though expressly given to it:

Provided that where any decree, order, certificate or other authority from a court of competent jurisdiction relating to such articles is produced before a banking company, the banking company shall take due note of such decree, order, certificate or other authority.

107. Release of contents of safety lockers.-(1) Where an individual is the sole hirer of a locker from a banking company, whether such locker is located in the safe deposit vault of such banking company or elsewhere, such individual may nominate one person to whom, in the event of the death of such individual, the banking company may give access to the locker and liberty to remove the contents of the locker.

(2) Where any such locker is hired from a banking company by two or more individuals jointly, and, under the contract of hire, the locker is to be operated under joint signatures of two or more of such hirers, such hirers may nominate one or more persons to whom, in the event of the death of such joint hirer or hirers, the banking company may give, jointly with the surviving joint hirer or joint hirers, as the case may be, access to the locker and liberty to remove the contents of such locker.

(3) Every nomination under sub-section (1) or sub-section (2) shall be made in the prescribed manner.

(4) The banking company shall before permitting the removal of the contents of any locker by any nominee or jointly by any nominee and survivors as aforesaid, prepare in such manner as may be directed by the Bangladesh Bank from time to time, an inventory of the contents of the locker which shall be signed by such nominee, or jointly by such nominee and survivors and shall deliver a copy of the inventory as prepared to such nominee or nominees and survivors.

(5) On the removal of the contents of any locker by any nominee or jointly by any nominee and survivors as aforesaid,

the liability of the banking company in relation to the contents of the locker shall stand discharged:

Provided that nothing contained in this section shall affect the right of claim which any person may have against the person to whom the article to be returned.

(6) No suit, prosecution or other legal proceeding shall lie against a banking company for any damage caused or likely to be caused, for allowing access to any locker, and liberty to remove the contents of such locker, in pursuance of the provisions of sub-section (1) or sub-section (2), as the case may be,

108. Notice of claims of other persons regarding contents of safety lockers not receivable.- No notice of the claim of any person, other than hirer or hirers of a locker, shall be receivable by a banking company nor shall the banking company be bound by any such notice even though expressly given to it:

Provided that where any decree, order, certificate or other authority from a court of competent jurisdiction relating to the locker or its contents is produced before the banking company, the banking company shall take due note of such decree, order, certificate or other authority.

PART-VIII

MISCELLANEOUS

109. Penalties.-(1) Whoever deals in banking business without having been licensed to do so or whoever deals in banking business after the licence therefor is cancelled, he shall be punished with imprisonment not exceeding seven years and shall also to be liable to fine.

(2) Whoever, in any return, balance sheet or other documents or in any information required or furnished by or under or for the purpose of any provision of this Act, wilfully makes a statement which is false in any material particular, knowing it to be false, or wilfully omits to make a material statement, shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine.

(3) If advances are made by a banking company in contravention of section 27(1) and (2), every director or other officer of the banking company shall be punishable with imprisonment for a term which may extend to three years and shall also be liable with a fine not exceeding twenty thousand taka.

(4) If any person fails to produce any book of account or other document or to furnish any statement or information which under sub-section (2) of section 44 it is his duty to produce or furnish, or to answer any question relating to the business of a banking company which he is asked by an officer making an inspection or scrutiny under that section, he shall be punishable with a fine which may extend to two thousand taka in respect of each offence, and if he persists in such refusal, to a further fine which may extend to one hundred taka for every day during which the offence continues.

(5) If any deposits are received by a banking company in contravention of an order under clause (a) of section 44 (5), every director or other officer of the banking company, unless he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent it, shall be deemed to be guilty of such contravention and shall be punishable with a fine which may extend to twice the amount of the deposit so received.

(6) If any person fails to comply with any conditions or obligations under a scheme sanctioned under section 77(7), he shall be punishable with fine which may extend to two thousand taka, and where a contravention or default is a continuing one, with a further fine which may extend to one hundred taka for every day, during which the contravention or default continues.

(7) If any person contravenes any other provision of this Act or any order, instruction, condition or rule made, given or imposed under the said law, he shall be punishable with imprisonment with fine which may extend to two thousand taka and where the contravention is a continuing one, with a further fine which may extend to one hundred taka for every day, during which the contravention continues.

(8) Where the person contravening any provision of this Act or any order, instruction, condition, rule, approved scheme

thereunder is a company, any director, manager, secretary or other officer of the banking company, shall be responsible for the management of the company, who is held responsible for the contravention unless he proves that the contravention has been committed beyond his knowledge or he took sufficient precaution to prevent the contravention.

22[(9) Whoever commits an offence punishable under sub-section (3), (4), (5), (6) and (7), the Bangladesh Bank may before instituting suit against him, ask him to show cause as to why he should not be fined, and in case that Bank is not satisfied with his reply or if he does not reply, the Bangladesh Bank may fine him of such amount ³⁷[as mentioned in the aforesaid sub-sections], in this behalf from time to time.

(10) If the fine imposed under sub-section (9) is paid within 14 days from the date of such imposition, the Bangladesh Bank shall not take any legal action under the aforesaid sections for the offence committed by him under such section, but if he fails to pay fine, the Bangladesh Bank shall institute suit against him in the court.]

110. Chairman, director etc., to be public servants.- Every chairman, director, auditor, liquidator, manager and any other employee of a banking company shall be deemed to be a public servant as defined in section 21 of the Penal Code, 1860 (Act XLV of 1860).

111. Cognizance of offences.- No court shall take cognizance of any offence punishable under section 109 except upon complaint in writing made by an officer of the Bangladesh Bank generally or specifically authorised in writing in this behalf by the Bangladesh Bank.

112. Procedure to impose punishment by Bangladesh Bank.- If Bangladesh Bank wants to impose any punishment to any banking company, it may do so only in respect of such contravention of the provisions under this Act which are not cognizable by court and for that it shall constitute an enquiry committee in the prescribed manner and the enquiry committee shall give an opportunity of hearing to banking company

concerned and thereafter the Bangladesh Bank may impose the punishment as per law.

113. Application of fines.- A court imposing any fine under this Act may direct that the whole or any part thereof shall be applied in or towards payment of the costs of the proceedings, or in or towards the rewarding of the person on whose information the fine is recovered.

114. Special provisions for private banking companies.-The exemptions, whether express or implied, in favour of a private company in sections 17, 77, 83B, 86H, 91B and 91D, and section 144(5) of the Companies Act, 1913 (VII of 1913) shall not operate in favour of a private company which is a banking company.

115. Restriction on acceptance of deposits withdrawable by cheques.-No person, other than a banking company, the Bangladesh Bank, or any other banking institution, firm or other person notified by the Government in this behalf, on the recommendation of the Bangladesh Bank, shall accept from the public deposits of money withdrawable by cheque:

Provided that nothing contained in this section shall apply to any savings bank scheme run by the Government.

116. Change of name by a banking company.-Notwithstanding anything contained in section 11 of the Companies Act, 1913 (VII of 1913), the Government shall not signify its approval to the change of name of any banking company unless the Bangladesh Bank certifies in writing that it has no objection to such change.

117. Alteration of memorandum of a banking company.-Notwithstanding anything contained in the Companies Act, 1913 (VII of 1913), no application for the confirmation of the alteration of the memorandum of a banking company shall be maintainable unless the Bangladesh Bank certifies that there is no objection to such alteration.

118. Certain claim for compensation barred.- No person shall have any right, whether in contract or otherwise, to any compensation for any loss incurred by reason of the operation of any of the provisions contained in sections 11, 15, 23, 45, 49, 75 and 77 or by reason of the compliance by a banking company with any order or direction given to it under this Act.

119. Exchange of information.-Banking companies may exchange on confidential basis amongst themselves, either directly or indirectly, information about their respective clients.

120. Power of Government to make rules.-(1) The Government may, after consultation with the Bangladesh Bank, makes rules for the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide-

- (a) the details to be included in the returns required to be submitted under this Act;
- (b) the manner in which such returns shall be submitted;
- (c) the form in which the list of debtors shall be submitted to the court under provisions in Part V and VII by the official liquidator;
- (d) particulars of the subjects that shall be included in the above list;
- (e) any other subject which can or shall be regulated under the provisions of this Act.

(3) All rules made under this section shall be subject to the condition of previous publication, and the date to be specified under clause (3) of section 23 of the General Clauses Act, 1897 (X of 1897), shall not be less than six months from the date on which the draft of the proposed rules was published.

(4) The Government may, by rules made under this section, annul, alter or add to, all or any of the provisions of the Second Schedule.

121. Power to exempt in certain cases.-The Government may, in consultation with the Bangladesh Bank, declare by notification in the official Gazette that any or all of the provisions of this Act shall not apply to any banking company or to any class of banking companies either generally or for such period as may be specified.

122. Protection of action taken in good faith.-No suit or other legal proceeding shall lie against the Government, or the Bangladesh Bank or any officer of the Government or the Bangladesh Bank for anything which is in good faith done or

intended to be done in pursuance of this Act or for any damage caused to or likely to be caused by anything in good faith done or intended to be done in pursuance of this Act.

123. Repeal and saving.-(1) The Banking Companies Ordinance, 1962 (LVII of 1962), is hereby repealed.

(2) Notwithstanding the repeal under sub-section (1), anything done or any action taken in the exercise of any power conferred by any provision thereof shall, for all purposes, be deemed to have been done or taken in the exercise of powers conferred by this Act, as if this Act had been in force on the day such thing was done or such action was taken.

The First Schedule
(See Section 38)
Form-A

Capital and Liabilities	Form of Balance Sheet	Property and Assets			
<p>1. Capital: (a)</p> <p style="padding-left: 20px;">Authorised Capital shares of Tk. each</p> <p style="padding-left: 20px;">Issued Capital Shares of Tk. each</p> <p style="padding-left: 20px;">Subscribed Capital Shares of Tk. each Amount called up at Tk. per share.</p> <p style="padding-left: 20px;">Less calls unpaid</p> <p style="padding-left: 20px;">Add forfeited share</p> <p>2. RESERVE FUND & OTHER RESERVES</p> <p>3. DEPOSITS AND OTHER ACCOUNT:</p> <p style="padding-left: 20px;">Fixed Deposits</p> <p style="padding-left: 20px;">Saving Bank Deposits</p> <p style="padding-left: 20px;">Current Accounts, Contingency</p>	<p>Tk. Ps. Tk. Ps.</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p>	<p>1. CASH :</p> <p style="padding-left: 20px;">In hand and with Bangladesh Bank and Sonali Bank (including foreign currency notes) ...</p> <p>2. BALANCES WITH OTHER BANKS (showing whether on deposit or current account):</p> <p style="padding-left: 20px;">(i) In Bangladesh</p> <p style="padding-left: 20px;">(ii) Outside Bangladesh</p> <p>3. MONEY AT CALL & SHORT NOTICE.</p> <p>4. INVESTMENTS (stating mode of valuation, e.g., cost or market value). (d)</p> <p style="padding-left: 20px;">(i) Securities of the Government and other trustee Securities, including treasury Bills of the Government.</p> <p style="padding-left: 20px;">(ii) Shares (classifying into preference, ordinary, deferred and other classes of shares and showing separately shares fully paid-up and partly paid up).</p> <p style="padding-left: 20px;">(iii) Debentures of Bonds</p>	<p>Tk. Ps. Tk. Ps.</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p>	<p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p>	<p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p>

Current Accounts, Contingency Accounts etc.	-----	-----	(iii) Debentures of Bonds		
			(iv) Other investments (to be classified under proper heads)		
			(v) Gold	-----	
4. BORROWINGS FROM OTHER BANKING COMPANIES, AGENTS, ETC :			5. ADVANCES:		
(i) In Bangladesh	-----	-----	(Other than bad and doubtful debts for which provision has been made to the satisfaction of the auditors)		
(ii) Outside Bangladesh	-----	-----	(I) Loans, Cash Credits, Overdraft, etc.		
Particulars :			(i) In Bangladesh	-----	-----
(i) Secured (Stating the nature of securities)			(ii) Outside Bangladesh	-----	-----
(ii) Unsecured	-----	-----	(II) Bills Discounted and purchased: (excluding treasury Bills of the Government)		
5. BILLS PAYABLE			(i) Payable in Bangladesh		
6. BILLS FOR COLLECTION BEING BILLS RECEIVABLE AS PER CONTRA:			(ii) Payable outside Bangladesh....	-----	
(i) Payable in Bangladesh			Particulars of Advances :		
(ii) Payable outside Bangladesh..	-----	-----	(i) Debts considered good in respect of which the banking company is fully secured.		
7. OTHER LIABILITIES: (B)	-----		(ii) Debts considered good for which the banking company holds no other security than the debtor's personal security.		
8. ACCEPTANCE, ENDORSEMENTS AND OTHER OBLIGATIONS PER CONTRA :	-----				

9. PROFIT AND LOSS :

Profit as per last balance sheet

Less appropriations

Add profit for the year brought from the
profit & loss Account

----- -----

10. CONTINGENT LIABILITIES : (C)

- (iii) debts considered good secured by the personal liabilities of one or more parties in addition to the personal security of the debtors.....
- (iv) Debts considered doubtful or bad, not provided for
- (v) Debts due by directors or officers of the banking company or any of these either severally or jointly with any other persons.
- (vi) Debts due by companies or firms in which the directors of the banking company are interested as directors partners or managing agents or in case of private companies, as members.....
- (vii) Maximum total amount of advances including temporary advances made at any time during the year to directors or managers or officers of the banking company or any of them either severally or jointly with any other person: (e)
- (viii) Maximum total amount of advances, including temporary advances granted during the year to the companies or firms in which the directors of the

banking company are interested
as directors, partners or
managing agents or in the case
of private companies, as
members: (c)

(ix) Due from banking companies
.....

6. BILLS RECEIVABLE BEING
BILLS FOR COLLECTION AS PER
CONTRA :

(i) Payable in Bangladesh

(ii) Payable outside Bangladesh ..

7. CONSTITUENTS' LIAABILITIES
FOR ACCEPTANCES,
ENDORSEMENTS AND OTHER
OBLIGATIONS PER CONTRA.

8. PREMISES LESS DEPRECIATION: (f)

9. FURNITURE AND FIXTURES
LESS DEPRECIATION : (f)

10. OTHER ASSETS, INCLUDING
SILVER (to be specified): (g)

11. NON-BANKING ASSETS
ACQUIRED IN SATISFACTION OF
CLAIMS

(stating mode of valuation): (h)

TOTAL: _____

12. PROFIT AND LOSS --- TOTAL :

Notes

(a) Capital :

- (i) The various classes of capital, if any, should be distinguished.
 - (ii) Shares issued as fully paid-up pursuant to any contract without payments being received in cash should be stated separately.
 - (iii) Where circumstances permit, issued and subscribed capital and amount called up may be shown as one item, e.g. Issued and Subscribed Capital
... Shares of Tk.
paid-up.
 - (iv) In the case of banking companies incorporated outside Bangladesh, the amount of deposit kept with the Bangladesh Bank under sub-section (3) of section 13 of the Banking Companies Act, 1991 (Act 14 of 1991), should be shown under this head; the amount, however, should not be extended to the outer column.
- (b) Under this heading may be included such items as the following: Pension or insurance funds, unclaimed dividends, advance payments and unexpired discounts, liabilities to subsidiary companies and any other liabilities.
- (c) These should be classified under the following categories:
- (i) Claims against the banking company not acknowledged as debts.
 - (ii) (A) Money for which the banking company is contingently liable showing separately the amount of any guarantee given by the banking company on behalf of directors or officers.
 - (B) Money for which the banking company is contingently liable showing separately the

amount of guarantees given by the banking company favouring:

1. Government
2. banks and other financial institutions
3. others

(iii) Arrears of cumulative preference dividends

(iv) Liabilities on Bills of Exchange re-discounted.

(v) Liability on account of outstanding Forward Exchange Contracts.

(d) Where the value of the investments shown in the outer column of the balance sheet is higher than market value, the market value shall be shown separately in brackets.

(e) Maximum total outstanding balance in all such accounts as a unit on any day during the year should be given under this heading

(f) Premises wholly or partially occupied by the banking company for the the purposes of business should be shown against "premiss less depreciation". In the case of fixed capital expenditure, the original cost, and additions thereto and reductions there from during the year should be stated, as also the total depreciation written off or where sums have been written off on a reduction of capital or revaluation assets, every balance sheet after the first balance sheet subsequent to the reduction or revaluation should show the reduced figures with the date and amount of the reduction made. Furniture, fixture and other assets which have been completed and written off need not be shown in the balance sheet.

(g) These should be classified under the following categories:

(i) Investment in shares of subsidiary companies;

(ii) Stationery and stamps on hand;

(iii) Interest accrued on investment but not collected, commission and brokerage on shares and debentures and other income receivable;

(iv) Advance deposit and advance rent;

- (v) Preliminary, formation and organisation expenses, renovation/ development expenses and prepaid expenses;
 - (vi) Branch adjustments;
 - (vii) Suspense Account;
 - (viii) Others;
- (h) Value shown shall not exceed the market value and in case where the market value is not ascertainable, the estimated reliable value.

General Instructions: The corresponding figures (to be nearest Taka, if so desired) for the year immediately preeding the year to which the profit and loss account relates should be shown in separate columns.

FORM-B

FORM OF PROFIT AND LOSS ACCOUNT

profit and Loss Account for the year ended

Expenditure					
			June		
	Tk. Ps.	Tk. Ps.			
					INCOME (LESS PROVISIONS MADE DURING THE YEAR FOR BAD & DOUBTFUL DEBTS AND OTHER USUAL OR NECESSARY PROVISIONS)

1. Interest paid on deposits, borrowing etc.					
2. Salaries and Allowances and Provident Fund (showing separately salaries and allowances to managing director, manager or chief executive officer)					1. Interest and discount.
3. Directors' and local Committee Members' fee and allowances.					2. Commission, Exchange and Brokerage.
					3. Rents
					4. Net profit on sale of investment, gold and silver land, premises and other assets (not credited to reserves or any particular fund or account).

4. Rent, Taxes, Insurance,
Lighting etc.

5. Law Charges

6. Postage, Telegram and Stamps

7. Auditors' Fees.

8. Depreciation on and repairs to
the banking company's
property.

9. Stationery, Printing,
Advertisement, etc.

10. Loss from sale of or dealing
with non-banking assets.

11. Other expenditure.

12. Balance of Profit.

Total _____

5. Income from non-banking
assets, and profit from sale of
or dealing with such assets.

6. Other receipts.

7. Loss (if any)

Total _____

: Net loss on sale or revaluation of investments, gold and silver, land premises and other assets, if any, may be deducted from income.

The Second Schedule

[See section 81 (2)]

List of debtors

1. The official liquidator shall, from time to time, submit lists of debtors to the High Court, each list being verified by an affidavit.

2. Every such list shall contain the following particulars:

- (a) names and addresses of the debtors;
- (b) amount of debt due to the banking company by each debtor;
- (c) rate of interest, if any, and the date up to which such interest has been calculated in the case of each debtor;
- (d) description of papers, writings and documents, if any, relating to each debt; and
- (e) relief or reliefs claimed against each debtor.

3. (a) In every such list, the official liquidator shall distinguish between the debts for which the banking company holds any security other than a personal security and the debt for which no security or only a personal security is given.
- (b) In the case of secured debtors, particulars of the securities claimed by the banking company, and whenever possible their estimated value, and the names and addresses of person or persons, if any, having an interest in the securities or the right of redemption therein.
- (c) In case the debt is guaranteed by any person or persons, the name and addresses of the guarantor or guarantors with particulars as to the extent to which the debt is guaranteed and description of document, papers or writings in support of such guarantee.

4. If the debtor is adjudged insolvent either before or after he has been included in any such list, but before such list is settled, there shall be substituted in his place the names and address of his legal representative as far as the official liquidator is able to ascertain.

ANNEX-2

1. Substituted by the Banking Companies (Amendment) Act, 1993,
2. Substituted *ibid*. The clause, before substitution, was as under:
"(g) "debtor" includes (i) a person, company or institution who accept deposit on the basis of sharing profit and loss, or (ii) also a person, company or institution who receives financial benefit on the basis of sharing profit and loss, hire-purchase or leasing";
- (3) Substituted *ibid*, The clause, before substitution, was as under:-
"(i) a person from whom deposits have been received on the basis of participation in profit and loss,"
4. Substituted *ibid*, for "mudaraka".
5. Substituted *ibid*, for "reserves".
6. Substituted *ibid*, The sub-section, before substitution, was as under:-
"(i) Unless it has paid-up capital and reserves of such aggregate value as is hereinafter required by this section-
(a) no banking company existing on the commencement of this Act shall, after the expiry of two years from such commencement, if it is incorporated in Bangladesh and of six months if it is incorporated outside Bangladesh, carry on business in Bangladesh, and
(b) no other banking company, other than those mentioned in clause (a), shall, after the commencement of this Act, commence or carry on business in Bangladesh:
Provided that the Bangladesh Bank may, if it thinks fit in any particular case, extend the period referred to in this sub-section by a further period not exceeding one year, in the case of banking companies incorporated in Bangladesh and six months in the case of banking companies incorporated outside Bangladesh."
7. Substituted *ibid*, for "one hundred million".
8. Inserted *ibid*.
9. Omitted *ibid*, The following were omitted:-

" and the appointee may not be dismissed or relieve by the appointing authority of such a bank or his services may not be terminated without obtaining consent of the Bangladesh Bank in writing beforehand."

10. Omitted *ibid*,

11. Substituted *ibid*,

12. Substituted *ibid*, for "Except"

13. Inserted *ibid*,

14. Inserted *ibid*,

15. Substituted *ibid*, for "son or daughter".

16. Proviso added, *ibid*,

17. Substituted *ibid*, for "Every banking company".

18. Inserted *ibid*,

19. Inserted *ibid*,

20. Substituted *ibid*, for "32(1)"

21. Substituted *ibid*, for "32(1)."

22. Added *ibid*,

23. Inserted by the Banking Companies (Amendment) Act, 1995 (Act 25 of 1995) ,

24. Added *ibid*,

25. Inserted *ibid*,

26. Substituted *ibid*, for "Previous financial".

27. Added *ibid*,

28. Inserted *ibid*,

29. Substituted *ibid*, for section 14A, which was inserted under Sl. No. 8 above.

30. Substituted *ibid*,

f

APPENDIX-111-A
THE PENAL CODE, 1860
(ACT XLV OF 1860)

Provisions relating to banking companies, etc.

462A. Penalty for negligent conduct of bank officers and employees.-Whoever, being an officer or employee of a banking company, by his negligent conduct in dealing with a banking transaction allows any customer of the company or any other person to cause loss of property to the company shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Explanation. An officer or employee of a banking company shall be guilty of negligent conduct if in discharging his duties he fails, either wilfully or negligently, to follow any direction of law prescribing the mode in which such duties are to be discharged.

Scope and application

The offence is cognizable. The accused can be arrested without warrant. It is bailable, not compoundable and triable by Metropolitan Magistrate or Magistrate of the first or second class.

462B. Penalty for defrauding banking company. -Whoever fraudulently receives any benefit from a banking company in the course of any banking transaction shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Explanation.-In section 462A and in this section "banking company" means.

(a) banking Company as defined in section 5(o) of the Banking Companies Act, 1991 (Act 14 of 1991);

(b) a bank constituted under the Bangladesh Banks (Nationalisation) Order, 1972 (P.O. No. 26 of 1972);

(c) a financial institution as defined in section 2 (f) of the Financial Institutions Act, 1993 (Act 27 of 1993);

(d) Bangladesh Shilpa Rin Sangstha established under the Bangladesh Shilpa Rin Sangstha Order, 1972 (P.O.No.128 of 1972);

(e) Bangladesh Shilpa Bank established under the Bangladesh Shilpa Bank Order, 1972 (P. O. No. 129 of 1972);

(f) Bangladesh House Building Finance Corporation established under the Bangladesh House Building Finance Corporation Order, 1973 (P.O. No. 7 of 1973);

(g) Bangladesh Krishi Bank established under the Bangladesh Krishi Bank Order, 1973 (P. O. No. 27 of 1973);

(h) Investment Corporation of Bangladesh established under the Investment Corporation of Bangladesh Ordinance, 1976 (XL of 1976);

(i) Grameen Bank established under the Grameen Bank Ordinance, 1983 (XLVI of 1983);

(j) Rajshahi Krishi Unnayan Bank established under the Rajshahi Krishi Unnayan Bank Ordinance, 1986(LVIII of 1986);

(k) a bank conducted in accordance with Islamic shariah.

Scope and application

The offence is cognizable. The accused can be arrested without warrant. It is bailable, not compoundable and triable by Metropolitan Magistrate or Magistrate of the first or second class.

Of currency-Notes and Bank-Notes

489A. Counterfeiting currency-notes or bank-notes. -Whoever counterfeits, or knowingly performs any part of the process of counterfeiting any currency-note or bank-note shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation.-For the purposes of this section and of sections 489B, 489C and 489D, the expression " bank-note" means a promissory note or engagement for the payment of money to bearer on demand issued by any person carrying on the business of banking in any part of the world, or issued by or under the authority of any State or Sovereign Power, and intended to be used as equivalent to, or as a substitute for, money.

Scope and application

Counterfeiting Currency-notes or bank-notes:

For the counterfeiting of a currency note under s. 489A both ability and materials of a particular kind are required; if either of them be absent then there cannot be an attempt to counterfeit. On the other hand to constitute an offence under s. 489 it is not necessary to prove that the accused had ability to produce a counterfeit note with materials in his possession. 51 A. 470: 27 A.L.J. 127.

The offence is cognizable. The accused cannot be arrested without warrant. It is not bailable, not compoundable and triable by Court of Sessions.

489B. Using as genuine, forged or counterfeit currency-notes or bank-notes.-Whoever sells to, or buys or receives from, any other person, or otherwise traffics in or uses as genuine, any forged or counterfeit currency-note or bank-note, knowing or having reason to believe the same to be forged or counterfeit, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Scope and application

489B and 489C: Joint trial under section 489B and 489C when offences are distinct and separate is illegal. 6 DLR 336.

Using as genuine forged or counterfeit currency notes or bank-notes:

When a person knowingly sells a forged note to another he is guilty under this sec. whether the purchaser knows it to be forged or not, 94 I.C. 414 : 27 Punj. L. R. 514 : 1926 Lah.

The object of the legislature is to stop the circulation of forged notes by punishing persons who, knowing or having reason to believe them to be forged, do any act leading to their circulation.

Brief statement of the offence: The offence is cognizable. The accused can be arrested without warrant. It is not bailable, not compoundable and triable by Court of Session.

CHARGE

The charge should run as follows:

I (name and office of the Magistrate etc.) hereby charge you (name of the accused) as follows:-

That you, on or about the -day of-at-sold to x (or bought from X, etc.) a forged (or counterfeit) currency note, to wit-knowing (or having reason to believe) the same to be forged (or counterfeit), and that you thereby committed an offence punishable under section 585 of the Penal Code and within my cognizance.

And I hereby direct that you be tried by this court on the said charge.

489C. Possession of forged or counterfeit currency-notes or bank-notes. - whoever has in his possession any forged or counterfeit currency-note or bank note knowing or having reason to believe the same to be forged or counterfeit and intending to use the same as genuine or that it may be used as genuine, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Scope and application

Possession of forged or counterfeit currency notes or bank notes:

The mere possession or forged notes is not an offence under the Penal Code. In order to bring a case under this section it is not only necessary to prove that the accused was in possession of forged notes but it should also be established (1) that at the time of his possession of the notes he knew them to be forged or had reason to believe them to be so and (2) that he intended to use them as genuine or that they might be used as genuine. 31 Punj. L. R. 867; 11 Lah. 555; 1931 cr. c. 88; 1931 Lah. 24.

The onus is on the prosecution to prove circumstances which lead clearly, undubitably and irresistibly to the inference that the accused had the intention to foist the notes on the public 31 Punj. L. R. 867; 11 Lah. 555; 1931 Cr.c. 88.

In order to sustain a conviction under this section it is essential to establish that the accused intended to use the forged notes as genuine or that they might be used as genuine. Thus where the accused produced four counterfeit currency notes from under a radio in his tea shop, he was held guilty upon the section- 1976 Cr LJ 228. A made up note is not a forged one since no mechanical process is involved-1982 Cr LJ 32. Where the accused was living

in his house with other members of the family at the time when a bag containing the counterfeit currency notes was recovered from his house, it was held that in the absence of proof that the bag belonged to the accused and that it was kept in his exclusive possession he can not be held guilty for actual or conscious possession of the currency notes-1972 CrLJ 1441.

Essential Ingredient: Mens rea is an essential ingredient of the offence punishable under section 489C of the Code-(1986) 3 Crimes 60.

Brief statement of the offence:

The offence is cognizable. The accused can be arrested without warrant. It is bailable, not compoundable and triable by Metropolitan Magistrate or Magistrate of the first class.

CHARGE

The charge should run as follows:

I (name and office of the Magistrate etc.) hereby charge you (name of the accused) as follows:-

That you, on or about the-day-of at-had in your possession a forged (or counterfeit) currency note (or bank note) to wit-knowing (or having reason to believe) the same to be forged (or counterfeit) and intending to use the same genuine or that it may be used as genuine, and that you thereby committed an offence punishable under section 489C of the Penal Code and within my cognizance.

And I hereby direct that you be tried by this court on the said charge.

489D. Making or possessing instruments or materials for forging or counterfeiting currency-notes or bank-notes. -whoever makes, or performs any part of the process of making, or buys or sells or disposes of, or has in his possession, any machinery, instrument or material for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for forging or counterfeiting any currency-note or bank-note, shall be punished with imprisonment or life, or with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.

scope and application

Making or possessing instruments or materials for forging etc., currency notes or Bank notes:

In a prosecution under this sec. the prosecution is to prove the state of mind of the accused that he had possession of the materials for the purpose of being used for counterfeiting a currency note. In such case the counterfeit need not be perfect. Where it appeared that the accused possessed the materials and the expert gave evidence that it could be used for the purpose of counterfeiting, the accused, could be presumed to have had the intention to counterfeit and he was liable to be convicted. 19d28 All.759: 26 A.

To convict a person under s. 489D for using a forged note as genuine, the possession of the note does not, necessitate his explaining the possession, but the prosecution must prove that he knew it to be forged when he passed it. 811.C.551: 25 cr. L.J. 935.21 M.L.J. 766.

Brief statement of the offence:

The offence is cognizable. The accused can be arrested without warrant. It is not bailable, not compoundable and triable by Court of Sessions.

CHARGE

The charge should run as follows:

I (name and office of the Magistrate etc.) hereby charge you (name of the accused) as follows:-

That you, on or about the -day of-at-made (or performed any part of the process of making, or bought or sold disposed of, or had in your possession) an instrument (or material) to wit- for the purpose of being used (or knowing or having reason to believe that it was intended to be used) for forging (or counterfeiting a currency note (for a bank note) to wit.-and that you thereby committed an offence punishable under section 489D of the Penal Code and within my cognizance.

And I hereby direct that you be tried by this court on the said charge.

489E.-Making or using documents resembling currency-notes or bank-notes. (1) whoever makes, or uses to be made, or uses for any

purpose what so ever, or delivers to any person, any document purporting to be, or in any way resembling, or so nearly resembling as to be calculated to deceive, any currency-note or bank-note shall be punished with fine which may extend to one hundred taka.

(2) If any person, whose name appears on a document the making of which is an offence under sub-section (1), refuses, without lawful excuse, to disclose to a police-officer on being so required the name and address of the person by whom it was printed or otherwise made, he shall be punished with fine which may extend to two hundred taka.

(3) Where the name of any person appears on any document in respect of which any person is charged with an offence under sub-section-(1) or on any other document used or distributed in connection with that document it may, until the contrary is proved, be presumed that that person caused the document to be made.

APPENDIX-IV
THE FINANCIAL INSTITUTIONS ACT, 1993
(Act No. XXVII of 1993)

[English version of
Bengali text.]

Sections Marginal note

1. Short title.
2. Definitions.
3. Act to override other laws.
4. Licencing of financial institution.
5. Inquiry about persons suspected to be engaged in financing business.
6. Minimum capital.
7. Restriction on opening of branch.
8. Cancellation of licence.
9. Reserve fund.
10. Restriction on payment of dividends.
11. Exhibition of balance sheet.
12. Furnishing information.
13. Acknowledgement of deposit.
14. Restrictions on credit facilities, etc.
15. Restrictions on trade of financial institution.
16. Restrictions on investments.
17. Restrictions on holding immovable property.
18. Power of the Bangladesh Bank to determine certain matters.
19. Holding of liquid assets.
20. Inspection.
21. Communication of inability to meet obligation to the Bangladesh Bank.

22. Action by the Bangladesh Bank in case of failure of financial institution.
23. Submission of accounts to the Bank.
24. Appointment and duties of auditors.
25. Disqualification of directors.
26. Removal of the Chairman, Chief Executive, Board of Directors or any director.
27. Moratorium, reconstruction and amalgamation.
28. Amalgamation of financial institution.
29. Winding up of financial institution by the High Court Division.
30. Penalty for financing business without licence.
31. Penalty for failing to co-operate in enquiry under section 5.
32. Penalty for false information for licence.
33. Penalty for disobeying the conditions of licence.
34. Penalty for violation of provisions of section 7.
35. Penalty for violation of provisions of section 14.
36. Penalty for failing to maintain liquid asset.
37. Penalty for failure to supply account books, etc., at the time of enquiry under section 30.
38. Penalty for violation of control rules of Bangladesh Bank.
39. Penalty for association of persons disqualified under section 25 with financial institution.
40. Penalty for false representation as a financial institution.
41. Penalty for false entry in account books, etc.
42. Penalty for offence not otherwise provided.
43. Power for Bangladesh Bank to impose penalty.
44. Cognizance of offence.
45. Publication of list of financial institution.

46. Amendment of Articles of Association of financial institution.
47. Protection of action taken in good faith.
48. Power of exemption in certain cases.
49. Power to make regulations.
50. Amendment of P.O. No. 127 of 1972.
51. Repeals and Savings.

The Financial Institution Act, 1993
(Act No. XXVII of 1993)

An Act to provide for licensing and control of financial institution and for matters connected therewith;

It is hereby enacted as follows:-

PART-I
PRELIMINARY

1. Short title. - This Act may be called the Financial Institutions Act, 1993.

2. Definitions.-In this Act, unless the context otherwise requires,-

- (a) "auditor" means any person appointed in accordance with the provisions of this Act for the audit of the accounts of any financial institution;
- (b) "Bangladesh Bank" means the Bangladesh Bank established under the Bangladesh Bank Order, 1972 (President's Order No. 127 of 1972);
- (c) "building society" means any association which saves and gives loan for house building and property purchases;
- (d) "company" means a company registered under the Companies Act, 1913 (Act VII of 1913);
- (e) "Companies Act" means the Companies Act, 1913 (VII of 1913);
- (f) "credit facilities" means-
 - (i) the granting by a financial institution of advances, loans and other facilities whereby a financial institution undertakes to bear the liabilities on behalf of the customer; or
 - (ii) the incurring by a financial institution of other liabilities on behalf of a customer;
- (g) "deposit" means a loan of money at interest or repayable at a premium but does not include a loan

to a company or other body corporate upon terms involving the issue of debentures or other securities;

- (h) "depositor" means a person entitled to repayment of a deposit whether made by him or not;
- (i) "director" includes any person occupying the position of director of a financial institution, by whatever name called, and includes a person in accordance with whose directions or instructions the directors of the financial institution are accustomed to act and an alternate or substitute director;
- (j) "financial institution" means a non-banking institution which-
 - (i) gives loans or advances for industry, commerce, agriculture or housing, or
 - (ii) carries on business of the underwriting or acquisition of, or the investment or reinvestment in, shares, stock, bonds, debentures or debenture stock or securities issued by the Government or any local authority, or
 - (iii) carries on business of hire purchase transactions including leasing of machinery or equipment; or
 - (iv) finances venture capital, and includes merchant bank, investment company, mutual association, mutual company, leasing company or building society;
- (k) "financing business" means the business carried on by a financial institution;
- (l) "investment company" means a company or trust that uses its capital to invest in other companies;
- (m) "leasing company" means a company which carries on as its business or part of its business the leasing of machinery or equipment or financing of such leasing operations;

- (r) "person" includes any company or association or body of individuals, whether incorporated or not.

3. Act to override other laws.-Notwithstanding anything contained in any other law for the time being in force, the provisions of this Act shall apply.

PART-II

FINANCIAL INSTITUTION LICENCE, ETC.

4. Licencing of financial institution.-(1) No person shall carry on financing business in Bangladesh unless he holds a licence of financial institution issued by the Bangladesh Bank.

(2) Every financial institution in existence shall, before the expiry of three months from the date of commencement of this Act, apply in writing to the Bangladesh Bank for a licence under this section:

Provided that nothing in sub-section (1) shall be deemed to prohibit a financial institution in existence on the date of commencement of this Act, if-

- (a) its application under this section remains under considerations;
- (b) Bangladesh Bank has not informed by notice that licence shall not be granted to it.

(3) Before issuing licence under this section, the Bangladesh Bank has to be satisfied on the following matters of the proposed financial institution, namely:-

- (a) financial condition;
- (b) characteristics of the management;
- (c) adequacy of the capital and earning prospect;
- (d) the objectives as specified in the memorandum of Association;
- (e) public interest.

(4) The Bangladesh Bank may issue licence of financial institution subject to such conditions as it may think fit to impose.

(5) The Bangladesh Bank may, after giving an opportunity of being heard, amend any condition of the licence of any financial institution and insert new condition in it.

5. Inquiry about persons suspected to be engaged in financing business.- If it appears to the Bangladesh Bank or if that Bank has reason to believe that, any person is carrying on financing business in violation of the provisions of section 4, the Bangladesh Bank may-

- (a) order that person to produce before it such information, documents, files, books, accounts, or records as is available with him or under his custody or control;
- (b) authorise any person to enter and make search of the premises of the suspected person under clause (a) and seize the concerned informations, documents, files, books, accounts or records.

6. Minimum capital.- (1) The Bangladesh Bank shall determine the minimum capital of any financial institution.

(2) If the issued capital and paid up capital of a financial institution falls short of the minimum capital determined under sub-section (1), it shall not be granted licence under this Act, and the existing licence, if any, shall be liable to be cancelled.

7. Restriction on opening of branch.- (1) No financial institution shall, without written prior approval of the Bangladesh Bank, open its new branch or office within or outside Bangladesh and change the location of existing branch or office.

(2) The Bangladesh Bank shall, after considering an application of a financial institution under sub-section (1) on the basis of the matters specified in section 4 (3), grant permission or reject the application and the decision of the Bangladesh Bank in this respect shall be final.

8. Cancellation of licence. - (1) The Bangladesh Bank may cancel a licence granted under this Act on the following conditions, namely:-

- (a) ceasing to carry on the business for which it has been licensed;
- (b) goes into liquidation or suspension of business;

- (c) furnishing false and misleading information or document for obtaining licence;
- (d) carrying on business detrimental to the interest of depositors;
- (e) insufficient assets to cover the liabilities of its depositors;
- (f) carrying on business while paid up capital is less than the minimum capital;
- (g) contravening the conditions of licence;
- (h) conviction of the financial institution or any of its directors for any offence under this Act.

(2) Notwithstanding anything contained in subsection (1), no licence of any financial institution shall be cancelled unless it is called upon to show cause by a written 15 days notice as to why its licence shall not be cancelled.

(3) The financial institution concerned shall forthwith be informed of the fact of the cancellation and the notice thereof shall have to be published in the official Gazette.

(4) The financial institution whose licence has been cancelled shall not, from the date of the publication of the notice under subsection (3), transact any financing business other than those required for the purpose of winding up of financial business with the approval of the Bangladesh Bank.

(5) The provisions of sub-section (4) shall not prejudice the right or claim of any person against the financial institution or of the financial institution against any person.

PART - III

RESERVE FUND, DIVIDENDS, BALANCE SHEET, ETC.

9. Reserve fund. - Every financial institution shall maintain a reserve fund in such manner as may be prescribed by regulations.

10. Restriction on payment of dividends.- No financial institution shall pay dividend on its share until all its capitalised expenditure including preliminary expenses.

organisation expense, share selling commission, brokerage, losses incurred and any item of expenditure not represented by tangible assets has been completely written off.

11. Exhibition of balance sheet.- Every financial institution shall exhibit through out the year, in a conspicuous position in every office and branch of that financial institution, a copy of its last audited balance sheet together with the full and correct names of all persons who are directors of the financial institution and a copy of such balance sheet shall be published in at least one daily newspaper, not later than 6 onths after the end of each year.

12. Furnishing information.-The Bangladesh Bank may require any financial institution to furnish any information and every financial institution shall be bound to furnish the required information in such manner and within such time as may specified by Bangladesh Bank.

PART - IV REGULATION OF BUSINESS

13. Acknowledgement of deposit.-Where a financial institution has accepted money from any person as a deposit, it shall forthwith issue to that person a document which evidences the indebtedness of the institution in respect of that deposit.

14. Restrictions on credit facilities, etc.- (1) ~~No~~ financial institution shall-

- (a) accept any deposit which is repayable on demand by cheque, draft or order drawn by the depositor;
- (b) deal in gold or foreign exchange of whatever kind;
- (c) grant to any person, firm, corporation or company or to any group of companies or persons which such person, firm, corporation or company is able to control or influence any credit facilities in excess of 30% of the capital funds or, with the approval of the Bangladesh Bank, in excess of 100% of the capital funds of the financial institution;
- (d) grant loans which exceed 30% of its total credit facilities or such other percentage as the Bangladesh Bank may from time to time determine; or

- (e) grant unsecured advances, unsecured loans or unsecured credit facilities which in the aggregate and outstanding at any one time exceed 10% of the paid up share capital and reserves of the financial institution to any firm in which any of its directors, whether jointly or severally, has any interest.
- (f) advance, loan or allow credit facilities as mentioned clause (e) to any persons or group of persons referred to in that clause exceeding five lacs taka.

Explanation.-In this sub-section, "directors" includes the wife, husband, father, mother, son, daughter, son-in-law, son's wife, father-in-law and mother-in-law of the director.

(2) In sub-section (1) (e) "unsecured advances", "unsecured loans" or "unsecured credit facilities" shall mean advances, loans or credit facilities made without security or collateral or in respect of any advance, loan or credit facility made with security or collateral, any part thereof which at any time exceeds the market value of the assets constituting that security or collateral, or where the Bangladesh Bank is satisfied that there is no established market value, on the basis of a valuation approved by the Bangladesh Bank.

(3) No financial institution shall give any loans or advance making its own share as security.

(4) All the directors of a financial institution shall be liable jointly and severally to indemnify a financial institution against any loss arising from the making of any unsecured advance, loan or credit facility under sub-section (1) and (2).

15. Restrictions on trade of financial institution.- (1) No financial institution shall engage, whether alone or with others, in the wholesale or retail trade including the import or export trade, except for the purpose of carrying on its financing business.

(2) A financial institution shall not carry on any kind of business other than financing business and the business specified in this Act.

16. Restrictions on investments.- No financial institution shall acquire or hold any part of the share capital of or otherwise have a direct interest in, any financial, commercial, agricultural,

industrial or other undertaking exceeding 25% of the paid-up share capital reserves of that financial institution:

Provided that nothing of this sub-section shall apply to such shareholding as the financial institution may acquire in the course of realising debts due to it, which shareholding shall, however, be disposed of at the earliest suitable moment.

17. **Restrictions on holding immovable property.**-No financial institution shall purchase or hold any immovable property of value exceeding 25% of the financial institution's paid-up share capital and reserves:

Provided that nothing in this section shall apply to the holding of immovable property as may be necessary for the purpose of providing amenities for its staff or which has been acquired in the interest of security for repayment of debt.

18. **Power of the Bangladesh Bank to determine certain matters.**-The Bangladesh Bank may, by order, determine the following matters, namely:-

- (a) the maximum rates of interest that financial institutions shall pay on different types or classes of deposits;
- (b) the maximum amount that financial institutions may receive from any person.
- (c) the maximum repayment periods for loans granted by financial institutions;
- (d) the maximum rates of interest on different types or classes of loans or advances granted by financial institutions and the methods of computing such interest;
- (e) the maximum amount of loans or advances which financial institutions may grant to any person or class of persons;
- (f) the reserves to be maintained with the Bangladesh Bank; and
- (g) any other matter of public interest or financial policy.

PART-V MINIMUM LIQUID ASSETS

19. Holding of liquid assets.- (1) Every financial institution shall maintain a liquid assets as may be fixed by the Bangladesh Bank from time to time.

(2) For the purpose of this section, "liquid assets" means all or any of the following, namely: -

- (a) notes and coins that are legal tender in Bangladesh;
- (b) net balances at banks in Bangladesh;
- (c) net money at call in Bangladesh;
- (d) Bangladesh Treasury bills;
- (e) other assets that the Bank may prescribe.

PART -VI INSPECTION

20. Inspection.- (1) Notwithstanding anything to the contrary contained in the Companies Act, 1913 (VII of 1913), the Bangladesh Bank may, at any time, cause an inspection to be made by one or more of its officers of any financial institution and its books, accounts and transactions.

(2) Without prejudice to the provisions of sub-section (1), the Bangladesh Bank may, at any time, cause a scrutiny to be made by any one or more of its officers of a financial institution if it has reason to believe that the financial institution is carrying on its business in a manner detrimental to the interests of its depositors and other creditors or has insufficient assets to cover its liabilities to the public, or is contravening the provisions of this Act.

(3) The Bank may appoint any auditor, other than the auditor appointed by the financial institution under section 144 of the Companies Act, to exercise the powers under sub-sections (1) and (2).

(4) For the purpose of an inspection or investigation under this section, a financial institution shall afford the officers of the Bangladesh Bank access to its books, accounts and other documents and shall give such information and facilities as may be required to conduct the investigation:

Provided that such books, accounts and documents shall not be required to be produced at such times and at such places as would interfere with proper conduct of the normal daily business of that financial institution.

21. Communication of inability to meet obligation to the Bangladesh Bank.-If any financial institution has reason to doubt that it is likely to become unable to meet the obligations of its customers or it is likely to be compelled to suspend payments of its customers, it shall forthwith inform the Bangladesh Bank of such doubt.

22. Action by the Bangladesh Bank in case of failure of financial institution.- (1) Where-

- (a) a financial institution informs the Bangladesh Bank of its possible inability in accordance with the provisions of section 21;
- (b) after an inspection under section 20, the Bangladesh Bank is of the opinion that a financial institution is carrying on its business in a manner detrimental to the interest of its depositors, or has become insolvent or is likely to become unable to meet its obligations, or has contravened or failed to comply with any conditions attached to its licence;

the Bangladesh Bank, after giving the financial institution an opportunity of being heard, by order, take any one or more of the following actions, namely:-

- (i) require the financial institution concerned to do or not to do any act in relation to its financing business;
- (ii) appoint a person to conduct its business properly at the cost of the financial institution;
- (iii) assume control of and carry on the business of that financial institution or direct some other person to assume control of and carry on the business of that financial institution.

(2) The Bangladesh Bank may, upon representation made to it or on its own motion, modify or cancel any action taken by it

under subsection (1) and, in so modifying or cancelling any action, may impose such conditions as it thinks fit.

(3) Notwithstanding anything contained in this section, the Bangladesh Bank may, for reasons specified in this section, file an application to the High Court Division for the winding up of the financial institution concerned.

(4) Where the Banks has assumed control of the business of a financial institution, it shall remain in control of, and continue to carry on, the business of that financial institution in the name of and on behalf of the financial institution until such time as the Bangladesh Bank is satisfied that the reasons for which it assumed control of the business have ceased to exist, or that it is no longer necessary that the Bangladesh Bank should remain in control of the business for the protection of the depositors of the financial institution, and the financial institution shall be bound to give all necessary facilities to the Bangladesh Bank for the proper conduct of its business under this sub-section.

(5) The remuneration and other terms and conditions of service of persons appointed under this section for the control and management of any financial institution shall be determined by the Bangladesh Bank and the financial institution concerned shall bear such expenses and the expenditure on account of other items for its control.

PART-VII

SUBMISSION OF ACCOUNTS AND AUDIT

23. Submission of accounts to the Bank.-The directors of a financial institution shall submit to the Bangladesh Bank a copy of the profit and loss account and balance sheet made in accordance with the Companies Act.

24. Appointment and duties of auditors.-(1) Notwithstanding the provisions of the Companies Act, every financial institution shall, subject to the approval of Bangladesh Bank, appoint an auditor annually.

(2) If any financial institution fails to appoint an auditor or, if, in the opinion of the Bangladesh Bank, it is desirable that another auditor should act with the auditor appointed under sub-section (1), the Bangladesh Bank may appoint an auditor for any financial institution and the remuneration to be paid by the financial institution to that auditor shall be fixed by that Bank.

(3) The duties of an auditor appointed under this section shall be to carry out, for the year in respect of which he is appointed, an audit of the accounts of the financial institution and to make a report on the basis of that audit.

(4) Besides the duties under sub-section (3), the Bangladesh Bank may impose upon the auditor such other duties as may be specified by it and the auditor shall be entitled to additional remuneration for such additional duties.

(5) The auditor's report made under this section shall be attached with the balance sheet and the profit and loss account and a copy thereof shall be transmitted to the Bangladesh Bank.

(6) If an auditor, in the course of the performance of his duties as an auditor of a financial institution, is satisfied that-

- (a) there has been a serious breach or non-observance of the provisions of this Act or a criminal offence involving fraud or dishonesty has been committed; or
- (b) the capital funds of the financial institution has been reduced by 50% due to losses incurred; or

- (c) serious irregularities have occurred including irregularities that jeopardise the security of the creditors, or
- (d) there is doubt if the assets are sufficient to meet the claims of the creditors,

he shall immediately report the matter to the Bangladesh Bank.

25. Disqualification of directors.- (1) No person shall be eligible to be a director, or to continue as a director or to be appointed to any post in connection with the management of a financial institution, if he-

- (a) has been, or was, at any time, adjudged insolvent;
- (b) had at any time suspended payments of creditors;
- (c) has been exempted from payment of creditors by mutual arrangement;
- (d) has been convicted of an offence involving moral turpitude.

(2) No person who has been a director of, or directly concerned with the management of, a financial institution declared wound up under this Act shall, without the previous approval of the Bangladesh Bank, be appointed as director or to any post in connection with the management of any other financial institution.

(3) Notwithstanding anything contained in any other law for the time being in force, no person who is a director of any other financial institution or any banking company or insurance company shall be eligible to be a director of any financial institution.

26. Removal of the Chairman, chief executive, Board of Directors or director.- (1) Where the Bangladesh Bank is satisfied that, in order to prevent the affairs of a financial institution being conducted in a manner detrimental to the interest of its depositors or ensure the proper management of a financial institution in the public interest, it is necessary to remove its Chairman, director, chief executive or Board of directors, the Bangladesh Bank may, for reasons to be recorded in writing, by

order, remove Chairman, director, chief executive or the Board of Directors.

(2) Before any orders is given under sub-section (1), the person concerned shall be given an opportunity of being heard.

PART -VIII

MORATORIUM, RECONSTRUCTION, ETC OF FINANCIAL INSTITUTION

27. Moratorium, reconstruction and amalgamation.- (1) If the Bangladesh Bank is satisfied that in the interest of the depositors it is necessary to do so, it may make an order of moratorium of the business of a financial institution for a period not exceeding six month:

Provided that the Bangladesh Bank may extend the said period for further six months.

(2) During the period of moratorium, if the Bangladesh Bank is satisfied that in the public interest or in the interest of the depositors or in order to secure the proper management of the financial institution or in the interest of the financial system of the country as a whole, it is necessary to do so for the reconstruction of the financial institution, or for the amalgamation of the financial institution with any other financial institution, in this section referred to as "the transferee institution", then the Bangladesh Bank may prepare such scheme.

(3) The scheme aforesaid may contain provisions for all or any of the following matters, namely:

- (a) the name, registered office, capital assets, transferee institution, powers, rights, interests, authorities, privileges, liabilities and obligations of the reconstructed institution or, as the case may be, transferee institution.
- (b) in the case of amalgamation of the financial institution, the transfer to the transferee institution of the business, properties, assets and liabilities of the financial institution on such terms and conditions as may be specified in the scheme;

- (c) any change in the Board of Directors, or the appointment of a new Board of Directors, of the financial institution on its reconstitution or, as the case may be, of the transferee institution and the authority by whom, the manner in which, and the other terms and conditions on which, such change or appointment shall be made and in the case of appointment of a new Board of Directors, the period for which such appointment shall be made;
- (d) the alteration of the memorandum and articles of association of the financial institution on its reconstitution or, as the case may be, of the transferee institution for the purpose of altering the capital thereof or for such other purpose as may be necessary to give effect to the reconstitution or amalgamation;
- (e) the continuation by or against the financial institution on its reconstitution or, as the case may be, the transferee institution, of any actions or proceedings pending against the financial institution immediately before the date of the order of moratorium under sub-section (1);
- (f) the reduction of the interest or right which the members, depositors and other creditors have in or against the financial institution before its reconstitution or amalgamation to such extent as the Bangladesh Bank considers necessary in the public interest or in the interest of the members, depositors and other creditors or for the maintenance of the business of the financial institution;
- (g) the payment in cash or otherwise to depositors and other creditors in full satisfaction of their claim-
 - (i) in respect of their interest or rights in or against the financial institution before its reconstitution or amalgamation ; or
 - (ii) where their interest or rights aforesaid in or against the financial institution has or have

been reduced under clause (f) in respect of such interest or rights as so reduced;

- (h) the allotment to the member of the financial institution for shares held by them therein before its reconstitution or amalgamation, whether their interest in such shares has been reduced under clause (f) or not, or shares in the financial institution on its reconstitution or, as the case may be, in the transferee institution and, where any members claim payment in cash and not allotment of shares or where it is not possible to allot shares to any members, the payment in cash to those members in full satisfaction of their claim-
 - (i) in respect of their interest in shares in the financial institution before its reconstitution or amalgamation; or
 - (ii) where such interest has been reduced under clause (f), in respect of their interest in shares as so reduced;
- (i) the continuance of the services of all the employees of the financial institution in the financial institution itself on its reconstitution or, as the case may be, in the transferee institution at the same remuneration and on the same terms and conditions of service, which they were getting or, as the case may be, by which they were being governed, immediately before the date of the order of moratorium under sub-section (1), provided that the scheme shall contain a provision that-
 - (i) the financial institution shall pay or grant not later than the expiry of the period of three years from the date on which the scheme is sanctioned by the Government, to the said employees the same remuneration and the same terms and conditions of service as are, at the time of such payment or grant, applicable to employees of corresponding rank or status of a comparable financial institution to be determined for this purpose by the Bangladesh

Bank, whose determination in this respect shall be final;

- (ii) the transferee institution shall pay or grant, not later than the expiry of the aforesaid period of three years, to the said employees the same remuneration and the same terms and conditions of services as are, at the time of such payment or grant, applicable to the other employees of corresponding rank or status of the transferee institution subject to the qualifications and experience of the said employees being the same as or equivalent to those of such other employees of the transferee institution and where any doubt or difference arises as to whether the qualification and experience of any of the said employees are the same as or equivalent to the qualifications and experience of the other employees of corresponding rank or status of the transferee institution, the doubt or difference shall be referred, before the expiry of a period of three years from the date of the payment or grant mentioned in that clause, to the Bangladesh Bank whose decision thereon shall be final;
- (j) notwithstanding anything contained in clause (i), where any of the employees of the financial institution are specifically mentioned in the scheme under clause (i), or where any employees of the financial institution have, by notice in writing, given to the financial institution or, as the case may be, the transferee financial institution, at any time before the expiry of one month next following the date on which the scheme is sanctioned by the Government, intimation of their intention of not becoming employees of the financial institution on its reconstitution or, as the case may be, of the transferee institution, the payment to such employees of compensation, if any, and such pension, gratuity, provident fund and other retirement benefits ordinarily admissible to them

under the rules or authorisation of the financial institution immediately before the date of the order of moratorium;

- (k) any other terms and conditions for the reconstitution or amalgamation of the financial institution;
- (l) such incidental, consequential and supplemental matters as are necessary to secure that the reconstitution or amalgamation shall be fully and effectively carried out.

(4) A draft copy of the scheme prepared by the Bangladesh Bank shall be sent to the financial institution and also to the transferee institution and any other financial institution concerned in the amalgamation or reconstitution for suggestions and objections, if any, within such period as the Bangladesh Bank may specify for this purpose.

(5) The Bangladesh Bank may make such modifications, if any, in the draft scheme as it may consider necessary in the light of the suggestions and objections received with reference to provision under sub-section. (4)

(6) After the action under sub-section (4) and (5) is taken, the scheme shall be placed before the Government for its sanction and the Government may sanction the scheme without any modification or with such modifications as it may consider necessary; and the scheme as sanctioned by the Government shall come into force on such date as the Government may specify in this behalf;

Provided that different dates may be specified for different provisions of the scheme.

(7) On and from the date of the coming into operation of the scheme or any provision thereof, the scheme or such provision shall be binding on the following:

- (a) the financial institution or, as the case may be, the transferee institution and any other financial institution concerned in the amalgamation;
- (b) all the members, depositors and other creditors;
- (c) employees of each of those institutions and of the transferee institution, and

- (d) other persons having any right or liability in relation to any of those institutions or the transferee institution including the trustees or other persons managing or connected in any other manner with, any provident fund or other fund maintained by any of those companies or the transferee institution.

(8) On and from the date of the coming into operation of the scheme, all properties and assets of the financial institution shall stand transferred to, and vest in, and all properties, assets and liabilities of the financial institution shall become the properties, assets and liabilities of the transferee institution.

(9) If any difficulty arises in giving effect to the provision of the scheme, the Government may, by order, do anything not inconsistent with such provision which appears to it necessary or expedient for the purpose of removing the difficulty.

(10) Where any scheme for amalgamation of any financial institution is approved, any business acquired by the transferee institution under the scheme or under any provision thereof shall, after the coming into operation of the scheme or such provision, be carried on by the transferee institution in accordance with the law governing the transferee institution:

Provided that for the purpose of giving full effect to the scheme, Government may, with the recommendation of the Bangladesh Bank, by notification in the official Gazette, exempt the application of any provision of such law for such period not exceeding seven years.

(11) Nothing in this section shall be deemed to prevent the amalgamation of a financial institution by a single scheme with several financial institutions in respect of each of which an order of moratorium has been made under this section.

(12) The provision of this section and of any scheme made under it shall have effect notwithstanding anything to the contrary contained in any other provision of this Act or in any other law or any agreement, or other instrument for the time being in force.

28. Amalgamation of financial institution.-(1) No financial institution shall, without the prior approval of the Bangladesh

Bank, be amalgated with any other financial institution or buy majority shares of any other financial institution.

(2) In the interest of proper consideration of any application under sub-section (1), the Bangladesh Bank may call for any information from the applicant and shall not reject an application without affording the applicant an opportunity of being heard.

29. Winding up of financial institution by the High Court Division.-Notwithstanding anything contained in the Companies Act, the High Court Division may, on the application of the Bangladesh Bank, order for the winding up of a financial institution, if-

- (a) the licence of the financial institution has been cancelled;
- (b) the financial institution is unable to meet its liabilities;
- (c) the financial institution has been convicted for violation of any provision of this Act.

PART-IX

OFFENCES AND PENALTIES

30. Penalty for financing business without licence.-Whoever deals in financing business without having licensed to do or whoever deals in financing business after the licence therefor is cancelled shall be punished with a fine which may extend to five lacs taka, or with imprisonment for a term which may extend to two years, or with both.

31. Penalty for failing to co-operate in enquiry under section 5-(1) Whoever, being suspected of carrying on financing business, intentionally refuses to submit any required information, document, files, books, accounts and records to the enquiry officer at the time of an enquiry under section 5 or non-co-operates in the enquiry proceeding shall be punished with fine which may extend to two lacs taka or with imprisonment for a term which may extend to one year, or with both.

(2) Whoever, being accused under sub-section (1), disobeys an order of the court to submit any information or records to the

court shall be punished with the same penalties as is specified in the said sub-section.

32. Penalty for false information for licence.-Whoever gives false or misleading information in the application for licence under this Act shall be punished with fine which may extend to ten lacs taka, or with imprisonment for a term which may extend to three years, or with both.

33. Penalty for disobeying the conditions of licence.-Whoever fails to comply with the conditions of licence under this Act shall be punished with fine which may extend to ten lacs taka, and if he fails to comply with the conditions shall be punished with fine of one lac taka for each day.

34. Penalty for violation of provisions of section 7.-If any financial institution carries on financing business violating the provisions of section 7, it shall be punished with fine of one lac taka for each day's violation.

35. Penalty for violation of provisions of section 14.-If any financial institution gives credit facilities in violation of provisions of section 14, it shall be punished with fine which may extend to twenty lac taka.

36. Penalty for failing to maintain liquid asset.-If any financial institution fails to maintain liquid assets in accordance with the provisions of section 19, it shall be punished with fine at the rate of one percent for each day's shortage.

37. Penalty for failure to supply accounts books, etc, at the time of enquiry under section 30.-If any financial institution fails to supply accounts books, accounts, information or any other necessary documents at the time of enquiry under section 20, it shall be punished with fine which may extend to five lac taka.

38. Penalty for violation of control rules of Bangladesh Bank.-If any financial institution does not comply with the action taken by the Bangladesh Bank under section 22, it shall be punished with fine of taka ten lacs.

39. Penalty for association of persons with financial institution.-Whoever, being disqualified under sub-section (1) and (2) of section 25, associates with any financial institution shall be punished with fine which may extend to taka ten lacs, or with

imprisonment for a term which may extend to three years, or with both, and whoever become director of any financial institution in violation of the provision of sub-section (3) of that section shall be punished with fine of one lac taka.

40. Penalty for false representation as a financial institution.-If any institution, without having been licensed under this Act, functions as a licensed financial institution, every owner, partner, director, manager, secretary or any other officer or agent of that institution shall, unless he proves that such violation was made beyond his knowledge or he tried utmost to prevent the violation or he was not in any way associated with the violations, be punished with fine which may extend to ten lac taka, or with imprisonment for a term which may extend to three years, or with both.

41. Penalty for false entry in account book, etc.- (1) Any person who, being a director, manager or auditor, wilfully makes or causes to be made false entry in any book of accounts, accounts, statement, document of business or other document, hereinafter referred to as the said document, or wilfully conceals or destroys anything of the said documents shall be punished with fine which may extend to ten lacs taka, or with imprisonment which may extend to three years, or with both.

(2) Whoever wilfully submits any false information in response of a requirement of this Act or under or for the purposes of this Act for any statement, report or other documents, or whoever wilfully omits to give any information in any such statement, report or other document, shall be punished with the same punishment as mentioned in sub-section (1).

42. Penalty for offence not otherwise provided.-Whoever does any act or omits to do any act which amounts to violation of the provisions of this Act or any order under the provision of this Act for which no penalty is expressly provided, he shall be punished with fine which may extend to one lac taka.

43. Power of Bangladesh Bank to impose penalty.- (1) Whoever commits an offence punishable under sections 31, 33, 34, 35, 36, 37, 38, 39 or 42, the Bangladesh Bank may, without instituting case against him, ask him to show cause why he should not be punished with fine, and if that Bank is not satisfied with the causes shown or if he does not show any cause, the Bangladesh

Bank may punish him with fine of such amount not exceeding the amount determined by it in this behalf from time to time.

(2) If the concerned person pays the amount within 14 day of the imposition of the fine, no legal proceeding shall be taken against him, but if he fails to pay the amount within the period aforesaid, the Bangladesh Bank shall institute the case in the court for the offence committed by the person concerned.

PART-IX MISCELLANEOUS

44. Cognizance of offence.-(1 No offence under this Act shall be tried in any court other than the Sessions Court.

(2) No offence shall be accepted for trial without a written complain lodged by the Bangladesh Bank or any officer authorised by that Bank.

45. Publication of list of financial institution.-(1) The Bangladesh Bank shall, by notification in the official Gazette, publish the name and address of a financial institution simultaneously with the granting of its licence.

(2) The Bangladesh Bank shall supply to the Government list of financial institutions within the month of July every year.

46. Amendment of Article of Associations of financial institution.-(1 Notwithstanding anything contained in the Companies Act, no application for amendment in the Articles of Association of any financial institution shall be accepted unless it is accompanied by a certificate of the Bangladesh Bank stating that there is no objection to the concerned amendment in the Articles of the Association.

(2) If any financial institution violates the provisions of sub-section (1), it shall be punished with fine of fifty thousand taka for each day of violation.

47. Protection of action taken in good faith.-No suit, proceeding or other legal proceedings shall lie against the Government or Bangladesh Bank or against any officer or employee or either for anything which is in good faith done or intended to be done under this Act for any damage caused or likely to be caused by any such thing.

48. Power of exemption in certain cases.-The Bangladesh Bank may, in consultation with the Government, declare, by notification in the official Gazette, that any or all of the provisions of this Act shall not apply to any financial institution or any class of financial institution either generally or specifically or for such period as may be specified in the notification.

49. Power to make regulations.-(1) The Bangladesh Bank may, with the previous approval of the Government, make regulations for the purpose of giving effect to the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing powers, such regulations may-

- (a) prescribe fees to be charged under this Act; and
- (b) regulate advertisement of financial institutions.

50. Amendment of P.O. No 127 of 1972-In the Bangladesh Bank Order, 1972 (P.O.No. 127 of 1972), Chapter V alongwith Articles 49, 50, 51, 52, 53, 54, 55, 56, 57 and 58 shall be omitted.

51. Repeals and Savings- (1) The Financial Institutions Ordinance, 1993 (Ord. No. 6 of 1993) is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under this Act.

APPENDIX-IV-A

THE FINANCIAL INSTITUTIONS REGULATIONS, 1994

[English version
Bengali text]

In exercise of the Powers conferred by section 49 of the Financial Institutions Act, 1993 (Act 27 of 1993), the Bangladesh Bank, with the previous approval of the Government, is pleased to make the following regulations, namely:-

1. Short title. -These regulations may be called the Financial Institutions Regulations, 1994.
2. Definitions.-In these regulations, unless there is anything repugnant to the subject or context,-
 - (a) 'Act' means the Financial Institutions Act, 1993 (Act 27 of 1993);

(b) 'Form' means a Form appended to these regulations;

(c) 'licence' means a license issued under regulation 3.

3. Licencing of financial institution.-(1) Any company seeking to carry on financial business shall, if it is a company registered in Bangladesh, apply to Bangladesh Bank in Form 1, and if it is a company registered in foreign country, in Form 2;

Provided that in the case of any financial institution in existence on the date of commencement of these regulations and which has applied under section 4 (2) of the Act, it shall not be necessary for that institution to apply under this sub-regulation and Bangladesh Bank shall grant the licence in accordance with the the other provision of these regulations.

(2) In the case of consideration of an application mentioned in sub-regulation (1) or the proviso thereof, if the Bangladesh Bank is satisfied with respect to the matters specified in 4 regulation, the Bangladesh Bank shall grant licence to the applicant institution in such Form as may be prescribed by it and any condition which is in conformity with the Act or these regulations may be imposed in that licence.

(3) The Bangladesh Bank may, for the purpose of granting licence, direct the applicant to submit any information or documents and the applicant shall be bound to comply with such directions.

4. Matters of consideration for granting licence. The Bangladesh Bank shall not grant licence unless it is satisfied with respect to the following matters before granting licence, namely:-

- (a) the applicant institution is a public limited company registered in Bangladesh or in any other country and the financing business has been specified as principal objective in its Memorandum of Association;
- (b) in the case of existing financial institution, the Bangladesh Bank has to be satisfied, in consideration of its three years audited balance sheet and profit and loss statement that the institution is capable of carrying on the financing business;
- (c) in the case of a company registered in Bangladesh, the name, address and detail statement of profession of its

sponsors and directors and their subscribed and paid-up capital, and in the case of a company registered in a foreign company, the name, address and financial positions of its chief executive in Bangladesh;

- (d) in the case of a company registered in Bangladesh, the amount of its paid-up capital or the said capital and reserve capital collectively is equal to taka 5 crores or 6 percent of its total liability, whichever is higher, and in the case of a company registered in foreign country, it shall maintain the availability of the same financial resource;
- (e) public interest.

5. Liquid asset.-Every institution receiving loan from individual person shall maintain liquid assets of at least 10% percent of its total liability.

6. Reserve fund. - (1) Every company registered in Bangladesh shall, after getting licence, always maintain the minimum financial resource as mentioned in regulation 4 (d) and it shall create a reserve fund for that purpose and if the total amount kept in its share premium account, if any, and the total amount of the said reserve fund is less than of the quality the paid up capital, then that company shall, before declaration of dividend on the basis of profit as stipulated in the profit and loss statement, transfer at least 20% percent to its reserve fund, and such transfer shall continue until the amount of reserve fund and paid-up capital collectively become equal to the amount fixed under the said regulation.

(2) Every company registered in any foreign country shall, after getting licence, keep in Bangladesh in the form of reserve fund taka 5 (five) crores or 6% percent of its liability, whichever is higher, in such manner as may be determined by the Bangladesh Bank from time to time.

7. Opening of branch- A financial institution intending to open new branch or shift the place of any branch shall apply to the Bangladesh Bank in Form-3 and, if the Bangladesh Bank, in consideration of the provisions of section 4(3) of the Act and regulation 4, is satisfied about the application, shall grant the application in writing.

FORM - 1

**[See regulation 3 (1) of the Financial Institutions
Regulations, 1994]**

Application Form for licence of financing business by
company registered in Bangladesh.

General Manager,
Banking Control Division,
(Non-Banking Financial Institution Sub-Division),
Bangladesh Bank,
Head office, Dhaka,

Dear Sir,

I hereby apply in accordance with the provisions of the
Financial Institutions Regulations, 1994 to carry on financial
business in Bangladesh, Necessary information required in this
respect ar given below:

1. Name of the applicant company:
2. Address of the registered office:
3. Character of the company (public/private):
4. Date of the registration :
(Registration certificate to be submitted)
5. Management:
 - (a) Name, address and particulars of business, share and
profession of Directors.
 - (b) Name, qualification, experience, age and pay and
allowances of the proposed Chief Executive officer.
6. Capital structure:
 - (a) Authorised capital:
 - (b) Paid-up capital:
 - (c) Reserve fund:
7. Memorandum and Articles of Association of the company
(please submit)
8. Other relevant informations, if any,

The informations given above are true and correct to the best of
my knowledge and belief.

Yours faithfully

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On behalf of the Company

FORM - 2**[See regulation 3 (1) of the Financial Institutions Regulations, 1994]**

Application Form for licence of financing business by company registered in foreign country.

General Manager,
Banking Control Division,
(Non-Banking Financial Institution Sub-Division),
Bangladesh Bank,
Head Office, Dhaka.

Dear Sir,

I hereby apply in accordance with the provisions of the Financial Institutions Regulations, 1994 to carry on financial business in Bangladesh. Necessary information required in this respect are given below :

1. Name of the applicant company;
2. Address of the registered office;
3. Character of the company (public/private);
4. Date of the registration "
(Registration certificate to submitted)
5. Name of the country of registration of the company.
6. Address of correspondence in Bangladesh
7. Management:

Name, qualification, experience, salary or proposed salary and allowances of the chief executive in Bangladesh.

8. Amount of reserve fund in Bangladesh.
9. Memorandum and Articles of Association of company (please submit).
9. Other information, if any.

The informations given above are true and correct to the best of my knowledge and belief,

Yours faithfully,

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on behalf of the company

FORM - 3

[See regulation 7 of the Financial Institutions Regulations, 1994]

Application Form for opening of new branch or transfer of

existing branch,
 General Manager,
 Banking Control Division,
 (Non-Banking Financial Institution Sub-Division)
 Bangladesh Bank,
 Head office, Dhaka.

Dear Sir,

I hereby apply in accordance with regulation 7 of the Financial Institutions Regulations, 1994, for opening new branch/ transfer of existing branch. Necessary information are submitted for this purpose.

1. Name of the Financial Institution:
2. Number of non-profit branch:

Name of the branch	Date of opening of branch	Amount of loss in the last year	Loan taken	Loan given	Remarks.
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4. Particulars of proposed branch:
 - (a) Location:
 - (b) **Reasons for opening of new branch :**
 - (i) Area of operation of the proposed branch or population of the area:
 - (ii) Main trade, business and other economic activities of the area (with statistics):
 - (iii) Existing business facilities of the area (Location of neighbouring branch of other financial institution):
 - (iv) Possibility of receiving and giving loan within next 12 months.

5. Transfer of existing branch:
 - (a) Present address:
 - (b) Address of the proposed place of the branch:
 - (c) Reasons for transfer:
 - (i) Population of the area where shifting is proposed:
 - (ii) Main trade, business and other economic activities of the area (with statistics):
 - (iii) Existing business facilities of the area (Location of neighbouring branch of other financial institution):
6. Capital structure of the Financial Institution:
 - (a) Authorised capital:
 - (b) Paid-up capital:
7. Initial expenditure:
8. other information, if any:

The information given above are true and correct to the best of my knowledge and belief.

Yours faithfully.

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On behalf of the Company