

The Bank Company Act, 1991

Act NO. 14 of 1991

An Act made to make provisions for banking companies

Whereas it is expedient to make provisions for banking companies therefore the following Act is hereby passed:

Chapter 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 on 14th February 1991.

2. Application of other Acts.- 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 Act for the time being in force.

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

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

4. Power to suspend operation of this Act.- (1) The Government if, on a representation made by the Bangladesh Bank in this behalf it is satisfied that it is expedient so to do, may by notification in the official Gazette suspend for at most 60 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) for such period or periods, not exceeding 60 days at one time, as it thinks fit, so however that the total period does not exceed one year.

(3) Notifications issued under this section shall be submitted to the national parliament as follows:

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a) if it is in session, within 10 days of the issue of the notification, and

b) if it is not in session, within 10 days of the beginning of the session 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, 1881 (II of 1882) and for the purpose of section 13 (3) includes such securities as the Government may, by notification in the official Gazette, declare to be approved securities for the purpose of this section.

b) "company" means any company which may be wound up under the Companies Act;

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 the Bangladesh Bank Order (P.O. NO. 127 of 1972) Article 2 (j);

g) "debtor" means-

1) any person, company or organisation accepting deposits of money on the basis of shared win and loss, or

2) any person, company or organisation taking advantage of financial opportunities on the basis of shared win and loss, purchase or lease on rent, or in any other way;

h) "new bank" means any bank denominated in the Bangladesh Banks (Nationalisation) Order, 1972 (P.O. No. 26 of 1972);

i) "creditor" means-

1) any person, company or organisation accepting deposits of money on the basis of shared win and loss, or

2) any company or financial organisation granting financial opportunities on the basis of shared win and loss, purchase or lease on rent, or in any other way;

j) "private company" has the same meaning as in the Companies Act;

k) "Bangladesh Bank" means Bangladesh Bank established under the Bangladesh Bank Order, 1972 (P.O. No. 127 of 1972);

l) "rule" means a rule made under this Act;

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m) "special bank" means any bank established or formed by or under any Act in force for the time being and includes such banks as the Government may, by notification in the official Gazette, declare special banks for the purpose of this Act;

n) "managing director" means-

1) in relation to a new bank, a managing director as defined in the Bangladesh Bank (Nationalisation) Order, 1972 (P.O. No. of 1972);

2) in relation to a special bank, a managing director as defined in the Act or the documents having the force of an Act, under which the said bank has been established or formed;

3) in relation to any other banking company, 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 banking company, and includes a director occupying the position of a managing director, by whatever name called;

o) "banking company" means any company transacting the business of banking in Bangladesh, and includes all new banks and special banks;

Explanation.- Any company which is mainly 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.

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 cheque, draft, order or otherwise;

qu) "temporary liability" means any liability other than demand liability;

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

s) "register" shall have the same meaning as in the Companies Act.

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

a) except new banks and special banks, the provisions of this Act shall have effect notwithstanding anything to the contrary contained in the memorandum or articles of a banking company, 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 this Act, be void.

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Chapter II

Business of Banking Companies

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7. Business of Banking Companies.- (1) In addition to the business of banking, a banking company may engage in all or any 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, hoondees, promissory notes, coupons, drafts, bills of lading, railway receipts, warrants, debentures, certificates, participation term certificates, term finance certificates, musharika certificates, modareka certificates, such other instruments as may

be approved by the Bangladesh Bank, and such other instruments and securities whether transferable or negotiable or not;

d) the granting and issuing of letters of credit, traveller's checks, and circular notes;

e) the buying, selling and dealing in gold and silver coins and coins of other metals;

f) the buying and selling of foreign exchange including foreign bank notes;

g) the acquiring, holding, issuing on commission, underwriting and dealing in stocks, funds, shares, debenture stock, obligations, participation term certificates, term finance certificates, musharika certificates, modareka certificates and such other instruments and investments of any kind as may be approved by the Bangladesh Bank;

h) the purchasing and selling of bonds, scrips or other forms of securities, participation term certificates, term finance certificates, musharika certificates, modareka certificates and, on behalf of the constituents of the Bangladesh Bank or others, such other instruments as may be approved by the Bangladesh Bank;

i) the negotiating of loans and advances;

j) the receiving of all kinds of bonds or other valuables on deposit or for safe custody or otherwise;

k) providing vaults for the safety of the deposits;

l) the collecting and transmitting of money against securities;

m) acting as agents for the Government, local authorities or any other person;

n) the carrying on of agency business of any description including the clearing and forwarding of goods and acting as a law agent on behalf of customers, but excluding the business of a managing agent or treasurer of a company;

o) contracting for public and private loans and negotiating and issuing the same;

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p) the effecting, insuring and underwriting of shares, stocks, debentures, debenture stock of any company, corporation or association and the lending of money for the purpose of any such issue;

qu) the carrying on and transacting of every kind of guarantee and indemnity business;

r) the buying and acquiring of any kind of property including merchandise, patents, designs, trademarks and copyrights, in addition to, at the normal business period of a bank, such or similar transactions as-

1) repurchase by the seller, or

2) selling in the way called purchase on rent, or

3) repayment of outstanding rates, or

4) leases, or

5) sharing out of revenues, or

6) financing in any other way;

s) bringing into possession any property which may satisfy or partly satisfy any of the claims of the banking company and the managing and borrowing of such property;

t) acquiring, holding and managing of 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;

u) undertaking and executing trusts;

v) undertaking the administration of movable and immovable property as executor, trustee or otherwise;

w) for the benefit of employees or ex-employees of the banking company or the dependants and connections of such persons-

1) establishing and supporting, or aiding in the establishment and support of associations, institutions, funds, trusts or any other establishment;

2) granting pensions and allowances;

3) making payments toward insurance;

4) subscribing to any exhibition or any object generally useful;

5) guaranteeing money for all these purposes.

x) the acquisition, construction, maintenance and alteration of any building or works necessary or convenient for the purpose of the banking company;

y) selling, improving, managing, exchanging, leasing, mortgaging or otherwise

transferring or turning into account or otherwise disposing of all or any part of the property or rights of the banking company;

z) 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 subsection;

aa) doing all such other things as are incidental or conducive to the promotion or advancement of the business of the company;

ab) any other form of business which the Government may, by notification in the official

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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 subsection (1).

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) any subsidiary company of a banking company formed for one or more of the purposes mentioned in subsection (1) of section 26;

b) any association of banks formed for the protection of their mutual interest and registered under section 26 of the Company Act.

Provided further that the Government may, by notification in the official Gazette, and subject to the conditions determined therein, grant the right to use the word "bank" or any of its derivatives as part of its name to any company completely or partly owned or controlled by the Bangladesh Bank, including non-banking companies.

9. Prohibition of certain forms of trading.- No banking company shall directly or indirectly deal in the buying, selling or bartering of goods, except in connection with the realisation of security given to or held by it, or 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 or with such of its business as is approved under section 7.

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

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 7 years from the acquisition thereof or from the commencement of this Act, whichever is later.

(2) Notwithstanding anything contained in subsection (1), the Bangladesh Bank may extend the period mentioned in subsection (1) by a period not exceeding 5 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 used by a banking company for its own genuine requirements shall be deemed to be property for its own use.

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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 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 profit of the company:

Provided that nothing contained in subclause (ii) shall apply to the

following commissions and bonuses given by a banking company, namely-

a) any bonus given 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 a concerned banking company or in accordance with the usual practice prevailing in the banking business; or

b) any commission given 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 excessive in the view of the Bangladesh Bank.

Explanation 1.- For the purpose of this sub-clause "remuneration" shall include wages, fees and advantages in addition to the wages given by a banking company to whatever person, but not money or allowances given in order to meet the expenses arising normally from the fulfilment of one's duties.

Explanation 2.- For the purpose of this sub-clause the Bangladesh Bank may, in order to decide whether a remuneration is excessive or not, take into consideration the following items, namely:-

a) the financial solvency of the banking company, the extension of its activities, the size of its business and the general tendency of its earning capacity;

b) the number of its branches and offices;

c) the competency, age and experience of the person receiving the remuneration;

d) the amount of the remuneration given to any other person employed in the banking company or to persons employed in similar positions in other banking companies in about the same condition;

e) the interest of its depositors;

c) shall be managed by any person-

i) who is a director of any other company not being a subsidiary company of

the said banking company or a company registered under section 26 of the

file:///J:/CGAP%20Virtual%20Library%20415_000.0/La...s/Laws/Bangladesh/Bank%20Company%20Act,%201991.htm (7 of 64 Companies Act, except with the previous approval of the Bangladesh Bank;

or

ii) who is engaged in any other business or vocation; or

iii) who had a contract with the company 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 extending five years at a time if the directors of the company so decide:

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

(2) Where a person holding the office of a chairman, director, manager or chief executive officer, by whatever name called, of a banking company is found by any court or 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 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 his office shall, with effect from the said date, become vacant.

(3) Any order made under sub-section (2) may provide that the said person shall not, without the permission of the Bangladesh Bank, 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 subsection (2) shall be made unless the concerned person has been given 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.

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

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

Explanation. - In this section-

a) the term "records" means any electronically or otherwise preserved ledger, day-book, cash book, account book and all other books used in the business of a banking company; and

b) the term "document" means any electronically or otherwise preserved voucher, cheque, bill, pay order, security for an advance and any other document supporting entries in the books of, or claims by or against, a banking company.

13. Minimum paid up capital and reserves.- (1) Unless it has paid-up capital and reserves of such aggregate value as is required by this section,-

- a) no banking company in existence 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, except the banking companies mentioned in clause a), shall commence its business after the commencement of this Act:

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.

(2) In the case of new banks and special banks the amount of the paid-up capital and reserves shall not be less than the amount determined in or under the Act under which the said banks have been established, or an amount representing 6 per cent. of the total demand and time liabilities of such company at the close of the last working day of the previous financial year, whichever is higher: Provided that the Bangladesh Bank may, by notification in the official Gazette, for any such bank change the conditions regarding the amount of the paid-up capital and reserves required under this subsection:

Provided further that in the case of new banks and special banks in complete dependence of the Government, the Government may provide additional money for the benefit of such banks the fair market value of whose revised capital and reserves has fallen below the lowest limit.

(3) The amount of paid-up capital and reserves of all banks except new banks and special banks shall not be less than one hundred million Takas, or an amount representing 6 per cent of the total demand and time liabilities of such company at the close of the last working day of the previous financial year, whichever is higher.

Provided that the Bangladesh Bank may, by notification in the official Gazette after consultation with the Government, for any bank change the conditions regarding the amount of the paid-up capital and reserves required under this subsection.

(4) In the case of a banking company incorporated outside Bangladesh the amount of its paid-up capital and reserves shall not at the close of any working day of such company be less than one hundred million Takas, or an amount representing 6 per cent of the total demand and time liabilities of such company in Bangladesh at the close of the last working day of the previous financial year, whichever is higher: Provided that no such banking company shall be deemed to have complied with the provisions of this subsection unless it deposits with the Bangladesh Bank the amount required under this subsection, either in cash or in unencumbered approved securities or partly in cash and partly in such securities or any other asset determined by the Bangladesh Bank:

Provided further that such a deposit shall be made by transfer of funds from outside Bangladesh or in the form of assets acquired out of remittable profits made from deposits in Bangladesh.

(5) Any amount deposited with the Bangladesh Bank under subsection (4) by any banking company incorporated outside Bangladesh shall, in the event of the company ceasing for any reason to carry on its banking business in Bangladesh, be an asset of the company and the claims of the creditors of the bank in Bangladesh on this amount shall be a first charge.

(6) If any dispute arises in computing the amount of the paid-up capital and reserves of any banking company, the decision of the Bangladesh Bank thereupon shall be final.

(7) If the Bangladesh Bank is convinced that any bank fails to preserve the minimum revised capital and reserves in accordance with this section, the banking company concerned shall be forced to pay such fine as may be prescribed.

14. Regulation of paid-up capital, subscribed capital and authorized capital and voting rights of share-holders. -(1) No banking company incorporated in Bangladesh, except new banks and special banks, shall commence its business in Bangladesh unless it satisfies the following conditions, namely:-

- a) that its subscribed capital is no less than one half of the authorized capital;
- b) that its paid-up capital is no less than one half of the subscribed capital;
- c) that if the capital is increased it complies with the conditions prescribed in clause a) and
- b) within such period, not exceeding two years, as the Bangladesh Bank may determine;
- d) that its capital consists of ordinary shares only;
- e) that, subject to the provisions contained in clause f), the voting rights of any of its

shareholders are proportionate to the contribution made by him to the paid-up capital of the company;

f) that the voting rights of any one shareholder, except those of the Government, do not exceed five per cent of the total voting rights of all the shareholders.

(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 filed against any person registered as the holder of a share in a banking company other than a new or special bank on the ground that the title to the said share has been vested in a person other than the registered holder:

Provided that nothing contained in this subsection shall apply in case that a suit or other proceeding is filed by one of the following persons, namely:-

a) any person having obtained the transfer of a share from a registered shareholder in accordance with the laws relating to the transfer of shares;

b) any other person acting on behalf of a minor or lunatic person on the ground that he holds as the registered holder the share on behalf of the minor or lunatic.

(3) Every chairman, managing director, director or chief executive officer, by whatever name called, and all of his family members, of any banking company except new and special banks shall transmit to the Bangladesh Bank through that banking company accounts containing full particulars of the extent and value of his holding of shares, assets and obligations, whether directly or indirectly, in the said banking company or any other company and of any change in the extent of such holding or any variation in the rights and duties attaching thereto and such other information relating to those shares, assets and obligations as the Bangladesh Bank may, by order, require and in such form and at such time as may be specified by the Bangladesh Bank in the order.

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15. Election of new directors.- (1) The Bangladesh Bank may, by order, require any banking company except new and special banks to call a general meeting of the company within two months from the date of the order or within such further time as the order may allow in this behalf, to elect in accordance with the provisions of this ordinance new directors.

(2) Every director elected under subsection (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.

(4) The Bangladesh Bank may, by general order, make provisions to the effect that no banking company except new and special banks shall appoint its managing directors or chief executive officers, whatever be the name of the office, without the previous approval of the Bangladesh Bank and no managing director or chief executive officer appointed in this way shall be removed from his office, acquitted or dismissed without the previous approval of the Bangladesh Bank.

16. Restriction on the period of office of directors.- (1) No person except the chief executive officer of a banking company, by whatever name called, shall hold the office of a director for more than six years in continuance.

Explanation.- In this subsection a period of six years in continuance shall be equivalent to a interval of no less than three years.

(2) No person having hold an office for a period of six years without cessation according to subsection

(1) shall be again eligible as director unless three years have passed since the end of the said period.

17. Vacancy of the office of a director.- (1) If any director of an banking company fails to-

a) pay advances or loans accepted by him or instalments or interests on that advances or loans, or

b) pay the money he is bound to for any security, or

c) accomplish any duty to be accomplished by him and the responsibility for which he has taken on in writing,

and the said banking company gives him order through a notice by the Bangladesh Bank to pay the said advances, loans, instalments, interests or money or to accomplish the said duties and he fails to accomplish those duties and payments within two months after receipt of the order, in that case the office of director shall be vacant beginning from the expiry of the said term.

(2) Whoever has received a notice under sub-section (1) may, within thirty days after receipt of the notice, send his statements on the subject in question, if any, in written form to the Bangladesh Bank, and a copy thereof to the banking company who issued the notice.

(3) The decision of the Bangladesh Bank on any statement under subsection (2) shall be final.

18. Some rules concerning benefits for directors.- (1) Notwithstanding anything contained in any other Act or memorandum of association, no banking director shall take from the bank any financial or

other privilege except the regular fees for participation in the meetings of the Executive Board of the bank or money determined by the Board for the performance of any duty considered important for the file:///J:/CGAP%20Virtual%20Library%20415_000.0/La...s/Laws/Bangladesh/Bank%20Company%20Act,%201991.htm (11 of 6 commercial interest of the bank and which, therefore, has been conferred upon him by the Executive Board unanimously.

(2) If any director of a banking company carries on, while being involved in the management of any commercial institution or holding no less than ten per cent of that institution in possession, any business other than the banking business of the banking company with the said institution, then he shall, at the general meeting, present a detailed report thereof to the banking company.

19. Restrictions on commission of sale of shares, brokerage, discount etc. - Notwithstanding anything to the contrary in sections 105 and 105 A of the Companies Act, no banking company shall pay out directly or indirectly by way of commission, brokerage, discount or remuneration or otherwise in respect of any shares issued by it, any amount exceeding two and one-half per cent 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 seven 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 a floating charge is certified in writing by the Bangladesh Bank as not being detrimental to the interests of the depositors of the banking company.

(2) Any charge mentioned in subsection (1) shall, without the certificate of the Bangladesh Bank, be invalid.

(3) Any banking company aggrieved by the refusal of certificate under subsection (1) by the Bangladesh Bank 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 subsection (3) or of the Bangladesh Bank where no such appeal has been preferred shall be final.

22. Restrictions on the payment of dividends.- (1) No banking company except new and special banks shall pay any dividend on its shares, unless-

a) all its capitalised expenses including preliminary expenses, organisation expenses, commission for share selling and brokerage, losses and other items have been completely written off, or

b) it manages to preserve constantly six per cent of its temporary and demand deposits as discharged and reserved capital.

(2) Notwithstanding anything to the contrary contained in subsection (1) or in the Companies Act, any banking company may pay dividends on its shares without writing off under the following circumstances:

a) in any case where the depreciation of its investments in approved securities has not

file:///J:/CGAP%20Virtual%20Library%20415_000.0/La...s/Laws/Bangladesh/Bank%20Company%20Act,%201991.htm (12 of 6 actually been capitalised or otherwise accounted for as a loss,

b) in any case where adequate provision for the depreciation in the value of its investments in shares, debentures or bonds (other than approved securities) has been made to the satisfaction of the auditor of the banking company,

c) in any case where adequate provision for bad debts has been made to the satisfaction of the auditor of the banking company.

23. Restrictions on the employment of common directors.- (1) No banking company incorporated in Bangladesh, except new and special banks, shall have, without the permission of the Bangladesh Bank, as a director any person who is-

a) a director of any other banking company, or a director of an institution lending money without being engaged in the business of banking;

b) a director of companies which are entitled to exercise voting rights in excess of twenty per cent of the total voting rights of all the shareholders of the banking company:

Provided that the provisions of this subsection do not apply to directors appointed by the Government.

(2) If immediately before the commencement of this Ordinance any person holding office as a director of a banking company is also a director of companies which are entitled to exercise voting rights in excess of twenty per cent of the total voting rights of all the shareholders of the banking company, he shall, from such commencement within such period 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 companies as are not, on the strength of their shares of the said banking company, entitled to exercise voting rights in excess of twenty per cent of the total voting rights of all the shareholders 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 if the amount in such fund together with the amount in the share premium account is not less than its paid-up capital or the amount of the premium settled from time to time in this behalf for any banking company by the Bangladesh Bank, shall, out of the profit as disclosed in the profit and loss account prepared under section 38 and before any money is transferred to the Government or declared as profit, transfer to the reserve fund a sum equivalent to not less than twenty per cent of that profit.

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

Provided that the Bangladesh Bank may extend the period for such report or condone any delay in the making of such report.

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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 with the Bangladesh Bank or its agent, or both banks in equal parts, a sum equivalent to not less than five per cent. of its time and demand liabilities:

Provided that the Bangladesh Bank may, in any particular case, change, by notification in the official Gazette and subject to the conditions settled therein in this behalf, the requirements relating to the cash reserve or repeal, on previous approval by the Government, such requirements.

Explanation.- (1) For the purpose of this section "liability" shall not include the paid-up capital or the cash reserves or the 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, if the Bangladesh Bank requires any information regarding funds reserved in accordance with the provisions of subsection (1), submit a report containing that information and signed by two officers of the said company to the Bangladesh Bank.

(3) Every banking company failing to submit a report in accordance with the provisions of subsection (2) shall be punishable by the Bangladesh Bank with a fine of no more than 2500 Takas for every day it fails so to do.

(4) If a report submitted under subsection (1) shows that the banking company which submitted the report maintained an amount of cash less than the amount determined under subsection (1) at the close of any working day preceeding the submission of the report, the Bangladesh Bank may order the banking company to pay it for those days a penal interest on the said deficit exceeding by three per cent the bank rate, and if a subsequent report shows again that the said banking company maintained an amount of cash less than the amount determined under subsection (1) at the close of any working day preceeding the day determined for the submission, the Bangladesh Bank may order the banking company to pay it for those days a penal interest on the said deficit exceeding by five per cent the bank rate.

(5) If a banking company has been ordered on the basis of a report submitted by itself to pay a penal interest exceeding by five per cent the bank rate under subsection (4) and if a subsequent report shows that it maintains an amount of cash less than the amount determined under subsection (1), the Bangladesh Bank may order the said banking company not to accept new deposits from such date as the Bangladesh Bank may determine, and if the said banking company accepts any deposit in disregard of that order, the Bangladesh Bank may inflict a fine of no more than 5000 Takas on it for every day it does so, to be paid to the Bangladesh Bank.

(6) Any fine inflicted under this section shall be realised within such period as the Bangladesh Bank may determine and if it has not been realized within the said period, it shall be recoverable as public demand.

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

- a) the undertaking and executing of trusts;
- b) the undertaking of the administration of any property as executor, trustee or otherwise;
- c) the provision of safe vaults in order to provide for the security of the deposits;
- d) the undertaking of the business of banking in accordance with the directions of the

shariat;

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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 of the business of banking on the basis of deposits received from nonresidents in foreign cash and which are freely transferable;

f) with the previous permission of the Government, the promoting of such business as may, in the opinion of the banking company, help to expand and develop the business of banking in Bangladesh, advance the interests of the people or be useful in any other way.

(2) Save as provided in subsection (1), no banking company shall hold shares in any company whether as pledgee, mortgagee or absolute owner of an amount exceeding the lesser of the following amounts, namely:-

a) thirty per cent of the total amount of the paid-up and reserve capital of the said company, or

b) thirty per cent of the paid-up capital of the said company:

Provided that no banking company which is, on the date of commencement of this Act, holding shares of an amount exceeding the amount approved by this subsection shall be liable to any penalty therefore, if the said banking company-

i) reports the matter without delay to the Bangladesh Bank, and

ii) reduces the amount of the said shares to the amount approved by the provisions of this subsection within such period, not exceeding two years from the commencement of this Act, as the Bangladesh Bank may determine.

(3) Notwithstanding anything contained in subsection (2), no banking company shall, 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 concerned or interested.

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

a) shall make any loans or advances on the security of its own shares;

b) shall, without security, make any loan or advance to any of the following persons or institutions, or make any loan or advance in cases where those persons or institutions are guarantors-

i) any of its directors;

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ii) any member of the family of any of its directors;

iii) any commercial institution or private company in which the banking company itself, or any of its directors or any member of the family of any of its directors is involved as director, owner or shareholder;

iiii) any public limited company which is in some way or other controlled by the company itself, or any of its directors or any member of the family of any of its directors, or the shares of which are held by any of the said persons to such an extent as to give it control of no less than twenty per cent of the voting rights.

(2) No banking company shall give to any of the following persons or institutions any loan or advance without the approval of the majority of the directors, excluding the director concerned,-

a) any of its directors; or

b) any person, commercial institution or company in which any of the directors of the said banking company is interested as partner, director or guarantor.

Explanation.- For the purpose of this subsection "director" shall include the director's wife, husband, father, mother, son and daughter.

(3) No banking company shall, without the previous permission in writing of the Bangladesh Bank, give to any person or institution, directly or indirectly, any benefit the aggregate value of which exceeds-

a) 15 per cent of the total capital of the said banking company; or

b) 25 per cent of the total capital of the said banking company where the security of the said benefits has been provided by such financial securities as might be easily put on the market for sale.

Explanation.- (1) "Benefit" shall mean any loan, advance or any other loan benefit, or financial

guaranties or any such obligation as any banking company has taken on in behalf of any person or institution; and

(2) "Total capital" shall mean paid-up capital and reserve fund including those various kinds of security which are in accordance with the provisions of the Bangladesh Bank under section (13), certificates of indebtedness, deposits, obligations etc. .

(4) Every banking company shall, before the close of the month to which the report relates, submit to the Bangladesh Bank a report in the prescribed form and manner, and in the said report the following particulars shall be mentioned-

a) all loans and advances granted by it to companies, private as well as public, in which the banking company or any of its directors is interested as director; and

b) all loans and advances granted by it to public companies in which the banking company or any of its directors is interested as managing agent or guarantor.

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(5) If on examination of any report submitted under subsection (4) it appears to the Bangladesh Bank that any loans or advances referred to in that subsection have been granted to the detriment of the interests 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 restrictions on the granting of such loans or advances, and may direct the banking company to secure the repayment of loans or advances granted in this way within such time as may be specified in the order.

28. Restrictions on the respite of loans.- (1) No banking company shall, without the previous approval of the Bangladesh Bank, grant respite of loans taken from it by any of the following persons or institutions,-

a) any of its directors, and his family members;

b) a commercial institution or company in which any director of the banking company is interested as landowner, co-director, managing agent; and

c) any such person in which any director of the banking company is interested as partner or landowner.

(2) Any respite of loans in disregard of the provisions of subsection (1) shall be illegal, and whoever is responsible for such a respite shall be punishable with imprisonment for no more than three years or a fine of no more than thirty thousand Takas or both.

29. Power of the Bangladesh Bank to control the giving of advances.- (1) Whenever the Bangladesh Bank is satisfied that it is necessary or expedient so to do, 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 shall be bound to follow the policy so determined.

(2) Without prejudice to the generality of the power vested in the Bangladesh Bank under subsection (1), the Bangladesh Bank may give directions, strictly to be complied with, to banking companies either generally or to any banking company or group of banking companies in particular with regard to the following items,-

a) the upper limit of the loan to be given;

b) the ratio to be maintained between the total amount of an advance and loans of little amount or of other kind;

c) the purposes for which advances may or may not be given;

d) the upper limit of advances to be given to any banking company or any group of banking companies or person or assembly of persons;

e) the limit of interests on secured advances and advances; and

f) the rate of interest to be charged on advances.

(3) Whenever a banking company fails to comply with any direction referring to a subject mentioned in clause (a) and (b) of subsection (1), the Bangladesh Bank may order that banking company to deposit at file:///J:/CGAP%20Virtual%20Library%20415_000.0/La...s/Laws/Bangladesh/Bank%20Company%20Act,%201991.htm (17 of 6 the Bangladesh Bank such amount of money as the latter may determine; and the said banking company shall be bound to comply with such directions on such conditions as the Bangladesh Bank may determine:

Provided that the Bangladesh Bank may not order the said banking company to deposit any amount exceeding the amount in regard of which the said failure did happen.

(4) The Bangladesh Bank may at any definite time, by an order in written form, release the money or part of the money deposited at the Bangladesh Bank under subsection (3) to the depositing banking company on or without any condition.

30. Jurisdiction of Courts regarding interest rates.- Notwithstanding any Act for the time being in force, no transaction between a banking company and any of its debtors shall be triable by a Court on the mere ground of excessiveness of the interest rate taken by the banking company.

31. Licensing of banking companies.- (1) Save as hereinafter provided, no banking company shall carry on banking business in Bangladesh without a licence issued in this behalf by the Bangladesh Bank. (2) Whenever issuing a licence under subsection (1), the Bangladesh Bank may impose any condition it thinks fit.

(3) Every banking Company in existence on the commencement of this Ordinance, before the expiry of six month 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 subsection (1) shall be deemed to prohibit a banking company in existence on the commencement of this Act from carrying on banking business, if-

- a) its application under this section is under consideration, or
- b) it has not, by notice, been informed by the Bangladesh Bank that a licence can 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 month in the case of banking companies incorporated outside Bangladesh referred to in subsection (1) of section 13 or of such further period as the Bangladesh Bank may under the proviso to that subsection 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 banking 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 the claims of its present or future depositors in full;
- b) that the affairs of the company are not being or are not likely to be conducted in a manner detrimental to the interests of its present or future depositors;
- c) that, in the case of a banking company incorporated outside Bangladesh, the Government or law of the country in which it is incorporated provides the same facilities to the company as the Government or law of Bangladesh grants to companies incorporated in Bangladesh, and that the company complies with all the provisions of this Act applicable to companies incorporated outside Bangladesh.

(5) The Bangladesh Bank may cancel a licence granted to a banking company under this section on account of the following reasons, namely:-

- a) if the company ceases to carry on banking business in Bangladesh;
- b) if the company at any time fails to comply with any of the conditions imposed upon it under subsection (1); or
- c) if at any time that company fails to fulfil any of the conditions referred to in subsection (4):

Provided that before cancelling a licence under clause b) and c) , the Bangladesh Bank, unless it is of opinion that the delay will be prejudicial to the interests 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 fulfilment of the provisions of those clauses.

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

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

32. Restrictions on opening of new, and transfer of existing places of business.- (1) Without the previous permission in writing of the Bangladesh Bank-

- a) no banking company shall open a new place of business in any part of Bangladesh or change the location of an existing place of business; and
- b) no banking company incorporated in Bangladesh shall open a new place of business outside Bangladesh or change the location of an existing place of business outside Bangladesh.

(2) The provisions of subsection (1) shall not apply to the opening for a period not exceeding one month of new places of business for the purpose of offering bank services temporarily on the occasion of

exhibitions, melas, conferences or other like occasions:

Provided that information of such opening is 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 subsection (1) to any banking company, require to be satisfied by an inspection under section 44 or otherwise regarding any subject of that banking company.

33. Maintenance of liquid assets.- (1) Every banking company shall maintain in Bangladesh in cash, gold or unencumbered approved securities valued at a price not exceeding the current market price, an amount which shall not at the close of business on any day be less than the percentage of its time and demand liabilities the Bangladesh Bank determines from time to time.

Explanation.- For the purposes of this section, "unencumbered approved securities" shall include the approved securities which the banking company has lodged with another institution for an advance or any other kind of credit; but this definition shall include only such amount of the value of the securities as has not been drawn.

(2) In computing the amount referred to in subsection (1), amounts deposited by any banking company incorporated outside Bangladesh with the Bangladesh Bank under subsection (3) of section 13, amounts deposited by any banking company within Bangladesh in current account with the Bangladesh Bank or any of its agents or both and amounts maintained with the Bangladesh Bank as balancing deposits shall be deemed to be cash.

(3) The Bangladesh Bank shall determine the method of ascertaining assets and liabilities and the ratio of assets to be maintained continually.

(4) Every banking company shall, before the close of the month to which the report relates, submit to the Bangladesh Bank a monthly report in the prescribed form and manner, which shall contain the following informations, namely:-

- a) its assets maintained in accordance with this section; and
- b) its time and demand liabilities in Bangladesh at the close of each Thursday during the month, and if any Thursday is a public holiday under the Negotiable Instruments Act, 1881 (XXVI of 1881), at the close of the proceeding working day.

(5) Where it appears to the Bangladesh Bank that a banking company at any time fails to maintain liquid assets to the extent determined, that banking company shall be bound to pay for the deficit in the mentioned assets a fine in form of the highest interest rate taken by the Bangladesh Bank for the granting of loans.

34. Assets in Bangladesh.- (1) On the close of any working day the assets in Bangladesh of every banking company shall not be less in value than such amount of its present time and demand liabilities as the Bangladesh Bank may prescribe by law:

Provided that the percentage so determined shall under no circumstances exceed eighty per cent of those liabilities.

(2) Every banking company shall, before the close of the month succeeding that to which the report relates, submit to the Bangladesh Bank a report in the prescribed form and manner, which shall contain the following particulars, namely:-

- a) its assets maintained in accordance with this section;
- b) its time and demand liabilities in Bangladesh at the close of every Thursday during a month or if any Thursday is a public holiday under the Negotiable Instruments Act, 1881 (XXVI of 1881), at the close of the proceeding working day.

(3) For the purpose of this section-

- a) all or any of the following bills or securities shall, even if held outside Bangladesh, be deemed assets in Bangladesh,
 - i) export bills claimed in Bangladesh or import bills claimed and payable in Bangladesh and expressed in a currency approved by the Bangladesh Bank;
 - and
 - ii) securities approved by the Bangladesh Bank:

Provided that such assets as in the opinion of the Bangladesh Bank cannot properly be regarded as assets shall be excluded.

- b) "liabilities in Bangladesh" shall not include the paid-up capital or the reserves or credits mentioned in the profit and loss account of the banking company.

35. Unclaimed assets and valuables.- (1) In the case that-

a) at any branch in Bangladesh of any banking company there has been no business connection with regard to an amount payable in Bangladeshi currency of anyone other than the Government, a minor or a Court for a period of ten years from such date as is specified in the following clauses, namely:-

i) in the case of fixed term deposits, from the expiry of the term; and

ii) in the case of other deposits, from the date of the last transaction or the last acknowledged receipt of a statement of account or the last request for such a statement; or

b) a dividend to be paid on a deposit, a bonus, a profit or any other payable amount has not been claimed or paid for the period of ten years from the date it was to be claimed or paid; or

c) one branch of a banking company has transmitted to another of its branches a cheque, draught or bill of exchange and the amount of money has not been paid to it for a period of ten years from the date of issue, certification or acceptance of that cheque, draught or instrument; or

d) an approved security, share, article or valuable given into custody of a banking company, henceforth generally and particularly referred to as valuables, has not been inspected or recognized by the depositor for a period of ten years from his last inspection or recognition,

the banking company shall transmit within three month by registered post a written notice together with a form to acknowledge receipt to the last address given or transmitted of the creditor of that amount, cheque, draught or bill of exchange or a person acting in his behalf and the depositor of the valuables.

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(2) Three months after the transmission of the notice referred to in subsection (1) a letter of receipt or a response still not having been received, the said company shall, as the case may be, take the following measures, namely:-

a) in the case of an amount of money referred to in subsection (1), the payment of an amount of money equivalent to that amount plus the interests to the Bangladesh Bank;

b) in the case of a cheque, draught or bill of exchange referred to in subsection (1), the payment of an amount of money equivalent to the amount plus the interest if any the bank were to pay on presentation of the cheque etc. to the Bangladesh Bank;

c) in the case of valuables referred to in subsection (1), the transmission of those valuables subject to the conditions of the liability, instrument or direction under which they had been given into custody of the banking company to the Bangladesh Bank; and after such payment or transfer that company shall no longer hold any responsibility with regard to those amounts, cheques, draughts or bills of exchange.

(3) A notice to be given under subsection (1),-

a) shall be transmitted , in the case of a commercial institution, to one of its members or managers or, in the case of a joint Hindu family, to one of its adult members and, in the case of an association consisting of individuals, to its chief officer;

b) shall be transmitted to the representative duly authorized by the recipient or, in case of the recipient's death, to his legal representative or, in case of the recipient being declared insolvent, to his assignee:

Provided that the banking company shall be informed about the appointment by the recipient of a representative or the recipient's death or his being declared insolvent;

c) shall, in case of there being joint creditors of a cheque or draught or bill of exchange or more than one recipient of a benefit or valuables given into custody in the name of more than one person, be deemed to have been transmitted to all persons concerned if transmitted to any of them.

d) shall, notwithstanding that the notice reached another person in spite of the recipient's address having been properly written on the cover or envelope, the postage stamp fixed and the notice thrown in a mail box or the recipient died, got mentally deranged or insolvent without the banking company being informed about it before transmitting the notice or the post department recorded a statement regarding the cover or envelope containing the notice to such or similiar effect that "the recipient has gone away", after the expiry of fifteen days beginning from the date on which the cover or envelope has been thrown in a mail box, be deemed to have been duly passed.

(4) If there exists a signed confirmation of the officer responsible for the fixing of postage stamps and

mail to such effect that a notice to be passed under sub-section (1) has been thrown in a mail box after the address had been properly written and the postage stamp fixed on the cover or envelope containing it, such confirmation shall be deemed bearing conducive evidence of the transmission of the notice.

(5) Notwithstanding anything to the contrary contained in the conditions of the debt concerned or in any instrument or in the provisions of any other Act, after the transmission of an amount under subsection (2) by a banking company to the Bangladesh Bank no interest shall be paid on that amount nor a balance be computed on it.

(6) Any banking company shall after the transmission of any amount of money or transfer of instruments or valuables under subsection (2) to the Bangladesh Bank preserve the signature card and other documents connected therewith as well as documents attesting the signature and it shall continue to do so unless informed by the Bangladesh Bank that there be no necessity for such preservation.

(7) Nothing contained in the Limitation Act, 1908 (IX of 1908) or any other Act in force for the time being shall cancel any responsibility under subsection (2) of a banking company toward the Bangladesh Bank.

(8) Any banking company holding subject to subsection (1) after the expiry of full ten years unclaimed amounts of money or valuables unpaid or, as the case may be, not returned, shall within the last thirty days of every fifth year submit an account of all those amounts and valuables in the form and manner prescribed by law to the Bangladesh Bank.

(9) The Bangladesh Bank shall publish in the official Gazette and not less than two dailies for the period of one year once in three month a list containing all amounts of money and valuables it is going to seize under subsection (2):

Provided that there shall be no necessity to publish a list of such unclaimed amounts and valuables, if the Government comes to decide to the effect that there shall be no necessity to publish a list of the amounts and valuables seized by the Bangladesh Bank.

10) Whatever banking company has deposited an amount of money or valuables at the Bangladesh Bank under subsection (2) may, within thirty days after such depositing, claim its previous title to that amount of money or those valuables from the Bangladesh Bank or that it be given back or laid aside.

11) Whoever claims an amount of money or valuables deposited or transferred under subsection (2) shall submit his claim to the Bangladesh Bank.

12) The Bangladesh Bank may, subject to the provisions of subsection (10), (13) and (15), decree that a claim submitted under subsection (10) and (11) be reasonable, and, with view to a claim submitted under subsection (11), the Bangladesh Bank shall be, after handing over the amount of money or the valuables against a receipt from the receiver, released from any obligation in this matter.

13) An objection relating to an amount of money or valuables transferred to the Bangladesh Bank under subsection (2) being submitted for decision to a Court within one year after such transfer and the Bangladesh Bank not being informed about it by the Court or otherwise, the Bangladesh Bank shall put that amount of money or those valuables under its custody and provide for its transfer in accordance with the decision of the Court.

14) Subject to the provisions of subsection (10), (13) and (15), if no claim to an amount of money or valuables transferred to and received by the Bangladesh Bank under subsection (2) has been made within one year after such transfer and reception or if the Bangladesh Bank has not been informed thereabout from whatever part, no person shall, after expiry of that year, make claim to that amount of money or those valuables and it shall be property of the Government and conferred to it.

15) Notwithstanding anything contained in subsection (1) regarding the passing of a notice by a banking company to a creditor of a cheque, draught or exchange bill or anything contained in subsection (9) regarding the publishing of unclaimed amounts of money or valuables by the Bangladesh Bank, certificates of indebtedness or valuables shall, in case of a person not residing in Bangladesh, be handed over in accordance with the forms and manners prescribed by the Government.

16) The decision of the Bangladesh Bank subject to subsection (12) on any amount of money or any valuables received by the Bangladesh Bank under subsection (2), whether it approves and fulfills the claim of a banking company to its previous title or its claim that such amount or valuables be given back or laid aside or decides otherwise, or, as the case may be, on any matters relating to the title of any person shall be final, and it shall not be possible to raise any question before a Court, tribunal or any other authority otherwise than in the way determined in subsection (17).

17) Whoever is affected by and objects to a decision made by the Bangladesh Bank under subsection

(12), may, within thirty days from such decision, file an appeal to the officer determined by the Governor of that bank, who shall, however, hold a higher position than the officer who made the decision.

18) When discussing or settling a claim made under subsection (10) or (11) or an appeal filed under subsection (17), the Bangladesh Bank shall act in the way determined by law and when deciding a case it shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908 (Act V of 1908) with regard to the following subjects, namely:-

- a) to ensure the presence of a person and to take his evidence on oath;
- b) to enforce the presentation of instruments and other bonds;
- c) to appoint a commission to take the deposition of a witness.

19) Any proceeding to be settled by the Bangladesh Bank under this section shall be deemed a judicial proceeding in accordance with the provision of Section 228 of the Penal Code, 1860 (Act XLV of 1860) and the Bangladesh Bank shall be deemed a Civil Court in accordance with the provision of Section 480 of the Code of Criminal Procedure, 1898 (Act V of 1898) when carrying on a proceeding under this section.

20) At a proceeding under this section no court fees shall be paid for the bringing forward, showing or writing down of any document or the taking of any document from the Bangladesh Bank.

36. Half-yearly report etc. - (1) Every banking company shall submit every half year, on the thirty-first day of December and the thirtieth day of June, a report showing its assets and liabilities in Bangladesh in the prescribed form and manner to the Bangladesh Bank.

(2) The Bangladesh Bank may, by notice in writing, require banking companies generally, or any banking company in particular, to furnish it within the time specified therein with statements and informations etc. relating to the banking business including other forms of business the banking company may be engaged in.

(3) The Bangladesh Bank may, without prejudice to the generality of the power granted under subsection (2), call from time to time for information regarding the investments of a banking company in industrial enterprises, commerce or agriculture.

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37. Power to publish information.- The Bangladesh Bank may, if it considers it in the public interest so to do, publish in consolidated form or otherwise any information relating to loans or advances seized under this Act and outstanding for more than thirty days.

38. Accounts and balance sheet.- (1) At the expiration of each financial year every banking company incorporated inside or outside Bangladesh shall, in respect of all business transacted by it and through its branches within that year, prepare a balance sheet and profit and loss account as well as a financial report as on the last working day of the year in the forms set out in the first schedule or as near thereto as possible.

(2) The balance sheet, profit and loss account and financial report of any banking company-

- a) shall be signed in the case of a banking company incorporated in Bangladesh, by its managing director or its principal officer and where there are more than three directors of the banking company, by at least three of those directors, and where there are not more than three directors, by all of them;
- b) shall be signed 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 forms relating to the submitting of a balance sheet, profit and loss account and financial report of a banking company differ from the form E of the Third Schedule of the Companies Act, the provisions of that Act shall, in the case of submitting such balance sheet, profit and loss account and financial report, be applicable to the extent they are consistent with the provisions of this Act.

(4) The Bangladesh Bank may amend the forms set out in the First Schedule:

Provided that, no less than three month before such amendment, it gives notice in the official Gazette of its intention so to do.

Explanation.- Unless there exists a direction of the Bangladesh Bank to the contrary, in the case of special banks, year in this section means quinquennium.

39. Audit.- (1) The profit and loss account and financial report of a banking company shall be audited in accordance with the balance sheet prepared under section 38 by a person 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 and approved by the Bangladesh Bank to be qualified to audit a banking

company.

(2) The auditor referred to in subsection (1) shall have the powers and duties of, and shall be subject to the obligations and penalties imposed on, auditors of companies by Section 145 of the Companies Act.

(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 standing and the profits and losses of the company in the period concerned are truly reflected in the financial report;

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b) whether or not the financial report has been correctly prepared in accordance with the usual accounting methods;

c) whether or not the financial report has been made in accordance with the current rules and laws and the regulations issued by the Bangladesh Bank with regard to accounts;

d) whether or not sufficient provisions have been made for such advances and property assets as are doubtful;

e) whether or not the financial report, on discussion with professional accountants from Bangladesh, has been approved as being in accordance with the regulations for accounts issued by the Bangladesh Bank;

f) whether or not the reports and accounts obtained from the branch offices of a banking company have been duly kept and consolidated;

g) whether or not the information and explanations required by the auditor have been found to be satisfactory;

h) any other matter which the auditor considers should be brought to the notice of the shareholders of the company;

(4) Where an auditor discharging his duty as auditor of a banking company is satisfied to the effect that-

a) any provision of this Act has been seriously transgressed or a serious irregularity has occurred in fulfilling those provisions;

b) there has occurred a criminal offence of fraud or dishonesty;

c) on account of losses the capital has fallen under eighty five per cent;

d) the payment of the creditors demands is no longer guaranteed or any other serious irregularity has occurred; or

e) there exists any doubt as to the sufficiency of the company's assets to meet the demands of the creditors;

he shall without any delay inform the Bangladesh Bank on those subjects.

40. Submission of reports.- The accounts, balance sheets and reports referred to in section 38 and the auditor's report as approved by the Management Board, or as the case may be, by the shareholders in the General Meeting of the company shall be published in the prescribed manner and three copies of each shall be furnished to the Bangladesh Bank within three month of the close of the period to which those accounts, balance sheets and reports relate:

Provided that the Bangladesh Bank may extend the period for submitting the reports by a further period not exceeding three month.

41. Transmission of balance sheets etc. to Registrar.- Where a banking company in any year submits its financial report, profit and loss account, balance sheet and the auditor's report in accordance with the provisions of section 40 it may, when it is a private company, at the same time send also to the registrar three copies of that balance sheet, account and report, and where such copies have been sent, it shall not be necessary for the company to send again copies of that balance sheet, account and report to the registrar as required by the provisions of section 134 (1) of the Companies Act, and those copies shall be charged with the fees to be paid in accordance with that section and they shall be deemed in all respects file:///J:/CGAP%20Virtual%20Library%20415_000.0/La...s/Laws/Bangladesh/Bank%20Company%20Act,%201991.htm (26 of 6

copies submitted under that section.

42. Display of audited balance sheets by banking companies incorporated outside Bangladesh.-

Every banking company incorporated outside Bangladesh-

a) shall display a copy of the last balance sheet and profit and loss account prepared under section 38 at any day proceeding the first Monday of February of the year which follows the year that balance sheet and account relates to in a conspicuous place in its principal office and every branch office in Bangladesh and shall keep it uninterruptedly displayed until its subsequent balance sheet and account are displayed in the same manner;

b) every such banking company shall in addition display in like manner copies of its complete audited balance sheet and profit and loss account relating to its business as soon

as they are available and shall keep the copies uninterruptedly displayed until such subsequent balance sheet and account are displayed.

43. Accounting provisions not retrospective.- Nothing in this Act shall apply to the preparation and auditing of an account of a banking company and the submission thereof in respect of any accounting year which has expired prior to the commencement of this Act, and notwithstanding anything contained in 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, the Bangladesh Bank may at any time and, on being directed by the Government, shall, by one or more of its officers, carry out an inspection of any banking company and its ledgers and accounts and shall, after such inspection, supply to the banking company a copy of the report prepared on the basis of that inspection.

(2) Notwithstanding anything to the contrary contained in any other Act in force for the time being, and without prejudice to the provision of subsection (1), the Bangladesh Bank may at any time, by one or more of its officers, examine in detail the ledgers and accounts of any banking company and shall, if requested by the banking company so to do or if considering a proposal to take any measure against it on the basis of such examination, supply to that banking company a copy of the report prepared on the basis of that examination.

(3) It shall be the duty of the directors, officers and employees of a banking company or of its external auditors, to produce, on demand from the person making an inspection under subsection (1) or an examination under subsection (2), the ledgers, accounts or other documents of the banking company concerned and all statements and informations relating to it within such time as the inspector or examiner may specify.

(4) The person making an inspection under subsection (1) or an examination under subsection (2) may examine on oath any director, officer or employee or external auditor of the banking company concerned with regard to any subject related to that banking company.

(5) The Bangladesh Bank shall, if it has been directed by the Government to carry out an inspection or examination under this section, and, in any other case, may, after the termination of that inspection or examination, submit a report thereof to the Government and the Government, if it is, on consideration of the report, of the opinion that the affairs of the banking company are being conducted to the detriment of the interests of its depositors, may, after giving reasonable opportunity to that company to make a representation in connection with that report, by order in writing,-

a) prohibit the banking company from taking fresh deposits; and
b) direct the Bangladesh Bank to apply under section 66 for the winding up of the banking company:

Provided that the Government may defer, modify or annul any order given under this section upon such conditions as it may think fit to impose.

(6) The Government may, after giving reasonable notice to the banking company concerned, publish the complete report submitted by the Bangladesh Bank or any portion of it.

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

a) in the case of a banking company incorporated outside Bangladesh, all its branches in Bangladesh; and
b) in the case of a banking company incorporated in Bangladesh, all its branches outside Bangladesh (its subsidiary banking companies and all its branches situated in or outside Bangladesh).

(7) Notwithstanding anything contained in any other Act in force for the time being, where a banking company claims that a report or information requested by any authority other than a Court or the Bangladesh Bank be secret to such a degree that its submission or publication would mean to publish informations on any of the following subjects, namely:-

i) such reserve fund as has not been shown in the balance sheet; or
ii) unrealisable credits or credits the realisation of which is doubtful, not shown in it.

in that case the banking company shall not be bound to submit that report or publish that information unless ordered by a Court or the Bangladesh Bank.

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

a) in the public interest, or

b) to provide for the improvement of the monetary policy or banking policy, or
c) to prevent the affairs of any banking company being conducted in a manner detrimental to the interests of the depositors or in a manner prejudicial to the interests of the banking company; or

d) to secure the proper management of any banking company,

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

(2) The Bangladesh Bank may, on representation made to it or on its own motion, cancel or modify any direction issued under subsection (1); and such cancellation or modification may be subject to any condition.

46. Power of the Bangladesh Bank to remove a director etc. of a banking company.- (1) Where the Bangladesh Bank is satisfied that it is necessary to remove a chairman or director or principal executive officer, by whatever name he be called, of a banking company in order to prevent its affairs being conducted in a manner prejudicial to the interests of the banking company or its depositors or to secure in the public interest the proper management of the banking company, it may, after committing its reasons to writing, issue direction that such chairman, director or principal executive officer be removed from his office.

(2) Before issuing a direction under subsection (1), the person affected shall be given reasonable opportunity to make a representation:

Provided that, notwithstanding anything contained in subsection (2), where the Bangladesh Bank is of the opinion that a delay arising from giving such opportunity will be prejudicial to the public interest or to the interest of the banking company or its depositors, it may at any time, when or after giving the abovementioned opportunity or while deciding on a representation made under that subsection, give, by a direction in written form, order that-

a) the said chairman or director or principal executive officer shall, from the date on which the direction in writing comes into effect, cease to act as chairman, director or principal officer or cease to take any part in the management of the company in any manner, directly or indirectly; and

b) whoever is temporarily appointed for this purpose by the Bangladesh Bank shall act as chairman or, as the case may be, director or principal executive officer.

(3) Where a chairman or director or principal executive officer of a banking company has been removed under subsection (1), he shall not be reinstated as chairman or, as the case may be, director or principal executive officer, and he shall not, for the term of the direction which shall not exceed three years, be connected with or take part in any manner, directly or indirectly, in the management of that banking company or any other banking company.

(4) Chairmen, directors or principal executive officers appointed under subsection (2) shall-

a) subject to the conditions determined in their letter of appointment, occupy that position for the period, not exceeding one year, determined by the Bangladesh Bank and in dependance of the Bangladesh Bank being satisfied or not; and

b) not be responsible, financially or otherwise, for anything carried out in accomplishment of the duties of their offices.

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(5) No person removed under subsection (1) may claim any compensation on account of thus having been removed.

(6) Nothing contained in this section shall apply to any chairman, director or principal executive officer, by whatever name he be called, chosen or appointed by the Government.

47. Power of the Bangladesh Bank to dismiss the Board of Directors of a banking company.- (1)

Where the Bangladesh Bank is satisfied-

a) that the Board of Directors of a banking company, by whatever name it be called, conducts its affairs in a manner detrimental or prejudicial to the interest of the banking company or its depositors; or

b) that, for any or all of the reasons mentioned in subsection (1) of section 46, it is necessary to dismiss that Board of Directors, it may, after committing its reasons to writing, dismiss that Board of Directors by a direction; and the direction to dismiss that Board shall come into effect from such date and be in force for such period as is mentioned therein.

(2) The Bangladesh Bank may extend, from time to time, the period of a direction issued under subsection (1), provided that the total period shall not exceed two years, all extensions included.

(3) A Board of Directors being dismissed, the person appointed in this behalf from time to time by the Bangladesh Bank shall have all the powers and functions, and accomplish all the duties of the Board.

(4) The provisions of subsection (2), (3), (4) and (5) of section 46 including their necessary modifications shall be applicable to a direction issued under this section.

48. Restrictions.- (1) No person other than the Governor of the Bangladesh Bank shall issue a direction under section 46 or 47:

Provided that the Governor shall issue the above mentioned direction on the basis of a report of the permanent committee established in this behalf.

(2) Whoever has been affected by a direction from the Governor of the Bangladesh Bank under section 46 or 47 may appeal to the Board of Directors of the Bangladesh Bank and whatever that Board decides thereupon shall be final.

(3) It shall not be possible to raise any question before any Court, Tribunal or any other authority with regard to any measure taken, direction issued or decision made under this section or section 46 or 47, nor shall it be possible to raise any question before any Court, Tribunal or any other authority against such measure, direction or decision.

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 action 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 under section 44, by order in writing and on such 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 or arising out of the affairs of the banking company, or require any officer of the banking company to discuss any such matter with an officer of the Bangladesh Bank;

ii) depute one of its officers to watch 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 that officer to be heard at such meetings, and require that officer to send a report of the proceeding at such meetings to the Bangladesh Bank;

iii) require the banking company to send to any officer specified by the Bangladesh Bank all notices of, and other communications relating to, any meeting of the Board of Directors of the banking company or of any committee or of any other body constituted by it;

iv) appoint one of its officers to observe the manner in which the affairs of the banking company or of any of its branches are being conducted;

v) within the prescribed time, require the banking company to make, within such time as the Bangladesh Bank may specify in the order, such changes in its management as the Bangladesh Bank may consider necessary in consequence of the state of affairs disclosed during or after the inspection.

(2) The Bangladesh Bank shall make an annual report to the Government on its activities to provide for the progress and development of the banking business in the country, including in such report its suggestions for the strengthening of the banking business throughout the country.

50. Certain provisions of the Act not to apply to certain banking companies.- (1) The provisions of section 13, subsection (1) of section 14, and sections 24, 25, 33 and 34 shall not apply to any of the following banking companies, namely:-

a) companies which have been refused a licence under section 13 or the licence of which has been cancelled;

b) companies which have 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, arrangement or scheme;

c) companies which have been prohibited from accepting fresh deposits by virtue of any file:///J:/CGAP%20Virtual%20Library%20415_000.0/La...s/Laws/Bangladesh/Bank%20Company%20Act,%201991.htm (31 of 6 alteration made in its memorandum of association.

(2) Where the Bangladesh Bank is satisfied that any such banking as is referred to in subsection (1) has repaid, or has made adequate provision for repaying all deposits accepted by it, either in full or to the maximum extent possible, the Bangladesh Bank may, by notice in the official Gazette, notify that the banking company has ceased to be a banking company within the meaning of this Act, and after such notification all the provisions of this Act shall cease to apply to such banking company:

Provided that such notification shall be of no effect regarding things done or omitted to be done by such banking company before such notice.

Chapter III

Illegal banking of companies etc.

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51. Power to call for certain informations etc. .- Where the Bangladesh Bank is of opinion that any banking company or any other person is violating in the course of carrying through a banking business the provisions of subsection (1) of section 32, it may-

a) within the prescribed time require that company or person, or any person being or, at any time, having been engaged in or connected with the business of banking, to submit all informations, documents or records within their knowledge, possession, responsibility or charge, which are related to the abovementioned business;

b) authorize any person to enter and search any place of such company or person, or of any such person as is or, at any time, has been engaged in or connected with the business of banking, and to seize all books, account-books, documents and records relating to the banking business within the possession, charge or responsibility of that person or company, or of any of its officers or employees.

c) inspect or examine any of the books, account-books, documents or records referred to in clause b); and it may question any person, officer or employee referred to in that clause;

d) apply, with regard to such company or person, or any person, officer or employee referred to in clause b), all powers given to the Bangladesh Bank under subsection (1), (2), (4) and (5) of section 44.

52. Power to make public announcements.- (1) Where the Bangladesh Bank thinks it reasonable to believe (if, after reasonable investigation, it maintains such belief) that any banking company or any person referred to in section 51 is violating in the course of carrying through a banking business the file:///J:/CGAP%20Virtual%20Library%20415_000.0/La...s/Laws/Bangladesh/Bank%20Company%20Act,%201991.htm (32 of 6 provision of subsection (1) of section 32, it may make a public announcement to this effect:

Provided that, before making such announcement, that company or person shall be given opportunity to present arguments against the announcement proposed.

(2) Any announcement of the Bangladesh Bank under subsection (1) shall be published in a daily newspaper and, after such announcement, no company, nor its principal executive officer, nor any of its directors, managers, officers, employees or agents, nor any other person referred to in subsection (1), (3) or (4) of section 54 or in section 55 may pretend not to be informed about it.

(3) For the purpose of this chapter, any announcement made under subsection (1) shall be conclusive evidence with regard to any matter referred to therein.

53. Consequence of announcements made under section 52.- No banking company or person regarding which an announcement under section 52 has been made, shall continue its activities and transactions and no transaction carried through after such announcement with such company or person, or any person being active in its behalf or considered to be active in such way, shall be valid.

54. Disposal etc. of cash deposits and assets.- (1) Notwithstanding anything contained in section 53, a banking company or person relating which an announcement under subsection (1) of section 52 has been made shall, as fast as possible, deposit all money, immovable property, shares, possessory titles or other instruments in its possession or responsibility or under its custody or control or in the possession or responsibility, or under the custody or control, of anybody being active in its behalf, with a new bank or a person authorized by it.

(2) Where a person referred to in subsection (1) fails to deposit in accordance therewith the money, immovable property, shares, possessory titles or other instruments within two days after an

announcement under subsection (1) of section 52 has been made, the Bangladesh Bank may authorize for this purpose any person to enter and search any place and to seize and deposit in accordance with subsection (1) that money, immovable property and those shares, possessory titles and other instruments.

(3) The books, account-books, documents, records and assets of any company or person referred to in subsection (1) of section 52 shall be kept by the public liquidator, public attorney, interim receiver or public receiver appointed by a court on the basis of an application under section 56, or, before being relieved of the responsibility of having those books, account-books, documents, records and assets in possession or under custody, by the principal executive officer or director of the company or a manager, officer and agent of that company or person, or by any other person having those books, account-books, documents, records and assets in its possession or responsibility or under its custody or control, and whoever keeps those books, account-books, documents, records and assets shall, so long as he does so, be responsible for any loss or damage occurring to them.

(4) Whoever is indebted to a company or person referred to in an announcement under subsection (1) of section 52 shall, within the period extending from the date of publishing such announcement to the date of ordering the company to be wound up or a court pronouncing a judgement, pay back his debts in the way laid down in subsection (1), and inform the Bangladesh Bank thereof in writing.

(5) Where a suit, appeal or application against a company or person referred to in an announcement under subsection (1) of section 52 or any proceeding arising from such suit, appeal or application is in consideration before the commencement of this Act, allowance shall be made of the period extending from the date of publishing such announcement to the date of ordering the company to be wound up or a court pronouncing a judgement, in computing the period of limitation provided in the Limitation Act, 1908 (IX of 1908).

55. Submission of a report on assets and liabilities to the Bangladesh Bank.- Where an announcement under section 52 has been published with regard to a banking company or a person, the principal executive officer and every director of that company, and the managers, directors and agents of that company or person, and whoever has a claim against that company or person, shall, within three day after the publication of the announcement or such extended period as is approved by the Bangladesh Bank, submit a report to it on all the assets of that company or person under their custody.

56. Accessory provisions for winding up etc. - (1) Where an announcement under subsection (1) of section 52 regards not a person in particular or a company, but a group of persons, this group of persons shall be deemed under Part IX of the Company Act an unregistered company subject to winding up.

(2) Where an announcement under subsection (1) of section 52 has been published with regard to a banking company, registered or unregistered, the Highcourt Division may on the basis of an application made by the Bangladesh Bank, within seven days from such publication or within such further time as the Government may specify, give order to wind up the company.

(3) All the provisions of chapter six and seven except section 64, 66 and 76 applicable in the case of a banking company being wound up shall be applicable in the case of an application made under subsection (2) and the proceedings arising therefrom.

(4) Notwithstanding anything contained in the Insolvency Act, 1920 (V of 1920), where an announcement under subsection (1) of section 52 has affected an individual, it shall be considered an adequate reason for declaring that individual insolvent and the court authorized to declare it insolvent may, on the basis of an application made by the Bangladesh Bank, within seven days from the publication of an announcement under subsection (2) of this section or within such further time as the Government may specify and without any further evidence, give order to declare that individual insolvent and the provisions of the aforementioned Act shall be followed in distributing and managing the property of that insolvent:

Provided that the court shall not be entitled to cancel that order subsequently or to approve any compromise or any other disposition with regard to that person.

Chapter four

Prohibition of certain activities in relation to banking companies

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57. Punishments 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 do anything which obstructs, or is calculated to obstruct, the usual activities and transactions of the banking company; or
c) act in any manner calculated to undermine the confidence of the depositors in the banking company.

(2) Whoever violates any provision of subsection (1) without any reasonable excuse shall be punishable with imprisonment of no more than two years or a fine of no more than twenty thousand Takas or both.

(3) For the purpose of this section, "banking company" shall include Bangladesh Bank.

Chapter five

Acquisition of the undertakings of banking companies

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58. Acquisition of the undertakings 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 relate to banking policy, or

b) is being managed in a manner detrimental to the interests of its depositors, and that in the interest of the depositors of such banking company, or in the interest of banking policy, or for the better provision of credit generally or of credit in any particular area, it is necessary to acquire the undertaking of such banking company, the Government may, after consultation with the Bangladesh Bank, by notified order, acquire the undertaking of such company, hereinafter referred to as the acquired bank, with effect from such date as may be specified in the order, hereinafter referred to as the appointed date:

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

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Explanation.- In this chapter, "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 date, the undertaking of the acquired bank and all the assets and liabilities of the acquired bank shall stand transferred to, and vest in, the Government.

(3) The assets and liabilities of the undertaking of an acquired bank shall include all rights, powers, authorities, privileges and all property, whether movable or immovable, including 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, or held by, the acquired bank immediately before the appointed date and all its account books, records and documents and shall also include all its debts, liabilities and obligations, of whatever kind.

(4) Notwithstanding anything contained in subsection (2), if the Government is satisfied that the undertaking of the acquired bank and its assets and liabilities should, instead of vesting in the Government, or continuing to so vest, 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, it may, by an order notified 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 the order.

(5) Where the undertaking of the acquired bank and the assets and liabilities thereof vest in the transferee bank under subsection (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 all 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, bonds, powers of attorney, grants of legal representation and other instruments of whatever kind subsisting or having effect immediately before the appointed date 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 the transferee bank as if in the place of the acquired bank the Government or, as the case may be, the transferee bank had been a party thereto or as they had been issued in favour of the Government or the transferee bank, as the case may be.

(7) If, on the appointed date, any suit, appeal or other legal proceeding is pending by or against the

acquired bank, the same shall be continued and shall be deemed to have been filed 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 chapter 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 company, or the corporation, to which the undertaking including the assets and liabilities of the acquired bank may be transferred, and the constitution, capital, name and office thereof;

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b) the constitution of the first Board of management, by whatever name called, of the transferee bank, and all such matters in connection therewith as the Government may consider to be necessary or expedient;

c) the continuance of the services of 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 on which they had been employed at the acquired bank;

d) the continuance of the right of any person who, on the appointed date, 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 the Government or the transferee bank, as the case may be, the same pension, allowance or benefit so long as he observes the conditions on which the the pension, allowance or benefit was granted;

e) the manner of payment of the compensation payable in accordance with the provisions of this chapter to the share-holders of the acquired bank, and 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 for completing the effectual transfer to the Government or the transferee bank, as the case may be, of any asset or 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 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 the Parliament as soon as it may be after it is made.

(6) The provisions of this part in relation to schemes shall have effect notwithstanding anything to the contrary contained in any other provisions of this Act or in any other law or any agreement, ward or other instrument for the time being in force.

(7) Every scheme made under this section shall be binding on the Government or 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 or power in relation to, or in connection with, the acquired bank or the transferee bank.

60. Compensation to be given to the share-holders of the acquired bank.- (1) Every person who, immediately before the appointed date, 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 the prescribed principles.

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

(3) The amount of compensation to be given under sub-section (1) shall be determined in the first instance by the Government or, as the case may be, the transferee bank, in consultation with the

Bangladesh Bank and in accordance with the rules made under the said sub-section, and shall be offered by it to all those to whom compensation is payable under the said 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 the Government receives requests under sub-section (4) from shareholders holding shares not less than one-fourth in value of the paid-up capital of the acquired bank, or, where the acquired bank is a banking company incorporated outside Bangladesh, from the acquired bank, the Government shall have the matter referred to the Tribunal for decision.

(6) If the Government does not receive any requests under sub-section (4), the amount of compensation offered under sub-section (3), or where any such request has been received and referred to the Tribunal in accordance with the provision of 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 chapter, constitute a Tribunal consisting of one Chairman and two other members.

(2) The Chairman of the Tribunal 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 in banking and commercial matters 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 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 reconstituted, from the stage at which the vacancy occurred.

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

62. The Tribunal to have powers of a civil Court.- (1) The Tribunal shall have the powers of a civil Court, while trying a 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 and documents etc..

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

- a) to produce any books of accounts or other documents which the Government, or the Bangladesh Bank, claims to be of a confidential nature, or
- b) to make any such books or documents parts of the record of the proceedings before the Tribunal, or
- c) to give 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.

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

Chapter six

Suspension of business and winding up of banking companies.

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

(2) No application under subsection (1) shall be receivable unless it is accompanied by a report of the Bangladesh Bank to the effect that the banking company which made the application will be able to pay its debts:

Provided that in the case of an application not accompanied by such report the High Court Division may, if it thinks reasonable, grant remedy under this section to that company, and if such remedy is granted, shall call for a report from the Bangladesh Bank on the affairs of the banking company, on receipt of which it may either rescind its order or pass such further order as it may think fit and proper.

(3) When an application under subsection (1) is submitted, 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 may confer on him, having regard to the interests 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 subsection (1) has been made, are being conducted in a manner detrimental to the interests of its depositors, it may make an application to the High Court Division for the winding up of that banking company, and where such application has been made, the High Court Division shall not extend the period of an order to stay proceedings under that subsection.

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

- a) the banking company is unable to pay its debts;
- b) the Bangladesh Bank makes an application for its winding up under this section or section 64.

(2) The Bangladesh Bank shall make an application under this section for the winding up a banking company if it is directed so to do by an order under clause b) of subsection (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 specified under section 13; or
- ii) has by reasons of the provisions of section 31 become disentitled to carry on banking business in Bangladesh;
- iii) has been inhibited from receiving fresh deposits by an order under clause a) of subsection (5) of section 44, or under clause b) of subsection (5) of Article 36 of the Bangladesh Bank Order, 1972 (P.O. No. 127 of 1972);

or

iv) has failed to comply with any requirement of this Ordinance other than the requirements laid down in section 13, and after being informed about its failures by a notice in writing, continues so to do;

v) has contravened any provision of this Ordinance and continues such contravention beyond such period as may be specified in that behalf by the Bangladesh Bank from time to time, after notice in writing of such contravention has been conveyed to it; or

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 modifications; or

ii) the returns, statements or information furnished to it under or in pursuance of the provisions of this Ordinance disclose that the banking company is unable to pay its debts; or

iii) the continuance of the banking company is prejudicial to the interests of its depositors.

(4) Without prejudice to the provisions contained in section 163 of the Companies Act, 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 elsewhere and the Bangladesh Bank certifies that the banking

company is unable to pay its debts; or

c) the Bangladesh Bank certifies in writing that the banking company is unable to pay its debts.

(5) The Bangladesh Bank shall send a copy of any application made under subsection (1) to the registrar of the Supreme Court.

66. Court liquidator.- (1) When, having regard to the number of proceedings for the winding up of banking companies and the extent of the work involved in such proceedings, the Government is of the opinion that it is necessary and expedient, for the purpose of conducting all proceedings for the winding up of banking companies and performing such other duties in reference thereto as the High Court Division may impose, to attach a court liquidator to the High Court Division, it may, after consultation with the Bangladesh Bank, appoint a court liquidator for such period as it may determine.

(2) Where there a court liquidator has been appointed under sub-section (1) and an order has been passed by the High Court Division for the winding up of any banking company, then, notwithstanding anything contained in section 171 or 175 of the Companies Act, 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 immediately before the commencement of this Ordinance or the date on which the liquidator is so attached, whichever is later, then, notwithstanding anything contained in section 176 of the Companies Act, the person appointed as official liquidator shall, on such commencement or, as the case may be, on the date of the attachment, be deemed to have vacated his office and the vacancy shall be deemed to be filled up 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 depositors of the banking company, it may direct the former official liquidator to continue to act as such.

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67. Appointment of the Bangladesh Bank etc. as liquidator.- Notwithstanding anything contained in section 50, or in section 175 of the Companies Act, where in any proceeding for the winding up of a banking company the Bangladesh Bank applies to the High Court Division to appoint the Bangladesh Bank or any individual as official liquidator, the application shall ordinarily be granted and the liquidator, if any, functioning in such proceeding shall vacate office upon such appointment.

68. Companies Act to apply to liquidators.- (1) All the provisions of the Companies Act relating to a liquidator, and so far as they are not inconsistent with this Ordinance, shall be applicable in the case of liquidators appointed under section 67 or 68.

(2) Any reference to the "official liquidator" in this chapter or in chapter 7 shall be construed as including a reference to any liquidator of a banking company.

69. Restriction on stay of proceedings.- Notwithstanding anything to the contrary contained in section 173 of the Companies Act, the High Court Division shall not make any order staying the proceedings in relation to the winding up of a banking company, unless it is satisfied that an arrangement has been made whereby the company can pay its depositors in full as their claims accrue.

70. Submission of a preliminary report by the official liquidator.- Notwithstanding anything to the contrary contained in section 177 B of the Companies Act, where a winding-up order has been made in respect of a banking company whether before or after the commencement of this Ordinance, the official liquidator shall submit a preliminary report to the High Court Division within two month from the date of the winding-up order or where the winding-up order has been made before such commencement, within two months from such commencement and that report shall contain the following items, namely:

a) the information required by the Companies Act so far as it is available to him;

b) the amount of assets in cash which are in his custody or under his control on the date of the report;

c) the amount which is likely to be collected in cash before the expiry of that period of two month:

Provided that the High Court Division may, if it thinks fit, in any particular case extend the period of two months 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 every claimant entitled to preferential payment under section 230 of the Companies Act and every secured and every unsecured creditor of the company to send to him within one month from the date of the service of the notice a statement of the amount claimed by him.

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(2) Every notice under subsection (1) sent to a claimant having a claim under section 230 of the Companies Act 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, and it shall be treated as an ordinary debt of the banking company.

(3) Every notice under subsection (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 he does not send a statement of the claim together with the valuation of the security before the expiry of the said period, the official liquidator shall himself value the security and such valuation shall be binding on the creditor.

(4) If a claimant or creditor fails to comply with the direction in the notice sent to him under subsection (1), then-

a) in the case of a claimant, his claims will not be entitled to be paid in priority to all other debts, but shall be treated as an ordinary debt of 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 section 178 A and 183 of the Companies Act, the High Court Division may, in the proceedings for winding-up a banking company dispense with any meeting of claimants or other creditors of the company or the appointment of a committee if, in order to avoid unjustified delay and expense, it thinks fit so to do.

73. Booked depositors' credits to be deemed proved.- In any proceeding for the winding-up of a banking company, every depositor 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, 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 payment 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 Ordinance, 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, in respect of which claims have been raised in view of, and within one month from the date of the service of the notice under 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 in accordance with the provision of subsection (1), the procedure shall be as follows, namely:-

a) in the first place, to every depositor in the savings bank account of the banking company a sum of 2500 Takas or the balance at his credit, whichever is less;

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b) in the second place, in order to pay what is due to the creditors of the banking company, to every other depositor of the company fifty per cent. of the balance at his credit or 2500 Takas whichever is less:

Provided that the sum total of the amounts paid under clause a) and b) to any one person who is a depositor in the savings bank account of the banking company and a depositor in any other account, shall not exceed the sum of 2500 Takas, but this provision shall not apply in the case of a person who is jointly with any other person depositor in an account.

(3) Where within the period of three months referred to in subsection (1) full payment in cash cannot be made of the accounts required to be paid under clause a) or b) , the official liquidator shall pay within that period to every depositor under clause a) or, as the case may be, clause b) on a pro rata basis so much of the amount due to the depositor with assets in cash as he is able to do, and the official liquidator shall pay the rest of the amount to every 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 subsection (1), (2) and (3), the

official liquidator shall pay on a pro rata basis the general creditors with the assets of the banking company, and he shall then, as and when the assets of the banking company are collected by him in cash, make payment on a pro rata basis with the collected assets, of the further sums which are due to the depositors referred to in clause a) and clause b) of subsection (2).

(5) In order to enable the official liquidator to have under his control in cash as much of the assets of the banking company as possible, the securities given to secured creditors 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 where 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 a payment is to be made in accordance with the provisions of subsection (1), (2), (3), (4) or (5), cannot be found or is not readily traceable, adequate provision 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;

b) payments under clause a) of subsection (2) to the depositors in the savings bank account;

c) payments under clause b) of subsection (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

file:///J:/CGAP%20Virtual%20Library%20415_000.0/La...s/Laws/Bangladesh/Bank%20Company%20Act,%201991.htm (44 of 6 subsection (2)).

(8) The creditors of each different class referred to in subsection (7) shall rank equally among themselves and they shall be paid in full where the assets are sufficient so to do; and where the assets are insufficient, the payments shall abate in equal proportion.

75. Restriction on voluntary winding up.- Notwithstanding anything to the contrary contained in section 203 of the Companies Act, 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 its debts to its creditors; and without prejudice to the provisions contained in section 218 and 220 of the Companies 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 state during the voluntary winding up proceedings the company is not able to pay any of its debts.

76. Restriction on compromise or arrangement between banking companies and creditors.- (1)

Notwithstanding anything contained in any other Act for the time being in force, the High Court Division shall not sanction any 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 any amendment in such compromise or arrangement, unless the Bangladesh Bank is of the opinion that the compromise, arrangement or the amendments therein are capable of being worked out and are not detrimental to the interests of the depositors of the banking company concerned.

(2) Where an application under section 230 of the Companies Act is made in respect of any banking company or in respect of the conduct of any of its directors, 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 inquiry and submit its report to the High Court Division.

77. Moratorium in respect of a banking company and reconstruction or amalgamation of banking companies.- (1) Notwithstanding anything contained in the forgoing provisions of this chapter or in any other Act or any agreement or any other instrument, for the time being in force, where it appears to the Bangladesh Bank that there are reasons to make an order of moratorium in respect of a banking company, it may apply to the Government for the making of such order.

(2) The Government, after considering and approving an application made under subsection (1), may make an order of moratorium staying the commencement or continuance of all actions and legal proceedings against the company, including the suspension of its business, for a fixed period of time and on such conditions as it thinks fit:

Provided that the Government may extend the period so however that the total period does not exceed six month.

(3) Except as otherwise provided in the order made under subsection (2) or in any direction made by the Government thereafter, the banking company shall not, that order being in force, make any payment to any depositor or discharge any liabilities or obligations to any of its creditors.

(4) If during the period the order given under subsection (1) is in force 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 banking company or in the interest of the banking system of the country as a whole it is necessary so to do, it may prepare a scheme for the reconstruction of the banking company, or for the amalgamation of the banking company with any other banking institution, henceforth in this chapter referred to as the transferee bank.

(5) The aforesaid scheme may contain all or any of the following items, namely:-

a) the constitution, name, registration, procedure, capital, assets, power, rights, interests, authorities, liabilities, duties and obligations of the banking company on its reconstruction 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 conditions as are 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 reconstruction or, as the case may be, of the transferee bank and the authority by whom, the manner in which, and the conditions on which, such change 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 the articles of association of the banking company on its reconstruction 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 reconstruction or amalgamation;

e) the continuation by or against the banking company on its reconstruction or, as the case may be, the transferee bank, of all actions and proceedings filed by or against the banking company concerned and pending immediately before the date of the order under subsection (2);

f) the reduction of the interest or rights which the members, depositors and other depositors of the banking company have in or against the banking company before its reconstruction or amalgamation to such extent as the Bangladesh Bank considers necessary in the public interest or in the interests of the members, depositors and other creditors of the banking company or for the maintenance of the business of the banking company;

g) payment in cash to depositors and other creditors in full satisfaction of their claims-

i) in respect of their interest or right in or against the banking company before its reconstruction or amalgamation; or

ii) where their interest or rights in or against the banking company has or have been reduced under clause f), in respect of such interest or right as so reduced;

h) the allotment of shares in the banking company on its reconstruction or, as the case may be, in the transferee bank to the members of the banking company for all the shares of the banking company held by them before its reconstruction or amalgamation or where has been made a reduction in accordance with clause f), for those reduced shares; and where it is not possible to allot shares to any member, the payment in cash to those members in full satisfaction of their claims-

i) in respect of their present interest in shares in the banking company before its reconstruction or amalgamation; or

ii) where such interest has been reduced under clause f), in respect of their interest in those reduced shares;

i) the continuance of the services of all the employees of the banking company in the banking company itself or, as the case may be, in the transferee bank at the same remuneration and on the same conditions, which they were getting or under which they

were employed immediately before an order under subsection (2) has been given:
Provided that before the expiry of the period of three years from the date on which a scheme under this section is sanctioned by the Government-

- i) the banking company on its reconstruction shall pay or grant to its employees the same remuneration and the same benefits as are, at the time of such payments or grants, applicable to employees of corresponding rank of a comparable banking company, and in respect of determining whether banking companies are comparable or whether employees are holding corresponding ranks the decision of the Bangladesh Bank shall be final;
- ii) the transferee bank shall pay or grant to the employees of the former banking company the same remuneration and the same benefits as are applicable to its own employees of corresponding rank subject to the qualifications and experience of the said employees being comparable to those of its own employees, and if any doubt or difference arises as to qualification, experience or rank, that doubt or difference shall, before the expiry of three months from the date of determining the remuneration and other benefits, be referred to the Bangladesh Bank whose decision thereon shall be final;
- j) notwithstanding anything contained in clause i), where any of the employees are specifically mentioned in the scheme, or where any of the employees have, at any time before the expiry of one month following the date on which the scheme is sanctioned by the Government, expressed their intention of not becoming employees of the banking company on its reconstruction or the transferee bank, the payment to such employees of compensation, pension, gratuity and other retirement benefits admissible to them in accordance with the decisions of the banking company or the present rules connected therewith immediately before the date on which an order under sub-section (2) has been given;
- k) any other conditions for the reconstruction or amalgamation of the banking company;
- l) incidental, consequential and supplemental matters required to carry out the reconstruction or amalgamation.

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(6) A copy of the scheme prepared by the Bangladesh Bank under this section for the purpose of an amalgamation shall be sent in draft to the banking company, the transferee bank and any other banking company concerned, for suggestions and objections within such period as the Bangladesh Bank may specify for this purpose.

(7) The Bangladesh Bank may make such modifications in the draft scheme as it may consider necessary after considering the suggestions and objections received in the light of the invitation under sub-section (6).

(8) The Bangladesh Bank shall, after proceeding in accordance with sub-section (6) and (7), place the scheme before the Government for its sanction, and the Government shall sanction the scheme without any modifications 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 on this behalf:

Provided that different dates may be specified for the commencement of different provisions.

(9) Upon the coming into force of the scheme or any provision thereof, the scheme or such provision shall be binding on any of the following persons and institutions, namely:-

- a) the banking company, the transferee bank and any other banking company concerned with the amalgamation;
- b) the members, depositors and other creditors of the company or bank;
- c) the said company and the employees of the bank;
- d) any trustee involved in the management of any retirement fund or any other fund, kept by the said company or bank or any person having any right or liability in relation to that company or bank.

(10) The properties, assets and liabilities of the banking company shall, from the date on which the scheme comes into force, be transferred to and, to such extent as may be stated in the scheme, be vested in the transferee bank and those properties, assets and liabilities shall be 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 for the purpose of removing that difficulty.

(12) Copies of any scheme approved by the Government or any order made under subsection (11) shall be laid before the Parliament, as soon as may be, after having been approved or made.

(13) Where a scheme for amalgamation of a banking company under this section has been approved, any business acquired by the transferee bank under the scheme or under any provision thereof shall, after coming into operation of the scheme or such provision, be carried on in accordance with the law governing the activities of the transferee bank:

Provided that, in order to give full force to the scheme, the Government may, on the recommendation of the Bangladesh Bank, by notification in the official Gazette, exempt for a period of no more than seven years that business from the application of any provision of that law.

(14) Nothing in this section shall prevent the amalgamation by a single scheme of several banking companies in respect of each of which an order of moratorium has been made.

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(15) The provisions of this section and of any scheme made under it shall have effect notwithstanding anything contained in any other provision of this Act or any other Act or any agreement or any other kind of instrument for the time being in force.

Chapter seven

Speedy disposal of winding up proceedings

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78. Chapter seven to override other Acts.- The provisions of this chapter and the rules made thereunder shall have effect notwithstanding anything contained in the Companies Act or any other Act for the time being in force or in any instrument made in accordance with, or having effect under the powers given by any other Act. But the provisions of that Act or of any other Act or instrument shall apply to all proceedings under this chapter or any rule made thereunder in so far that they are not varied by, or inconsistent with, this chapter or the rules made thereunder.

79. Power of the 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, consider and decide any of the following subjects, whether they arise before or after the date of the order for the winding up of a banking company or before or after the commencement of this Act, namely-

a) claims made by or against a banking company which is being wound up including its branches in Bangladesh;

b) any application submitted under section 153 of the Companies Act by or against a banking company which is being wound up;

c) any question of priorities or any other question, of law or of fact, which may relate to a banking company which is being wound up or arise in the course of a proceeding for the winding up of a banking company.

80. Transfer of pending suits.- (1) Where a winding up order has been made in respect of a banking company, no proceeding or suit filed by or against the banking company immediately before the commencement of this Act or before the date of the winding up order where the order has been made after such commencement shall, if in respect of that suit or proceeding the High Court Division has exclusive jurisdiction under this Act, 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 regarding the pending suits or proceedings referred to in subsection (1) together with a detailed description thereof.

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(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 pending suits or proceedings should not be transferred to itself and after making an inquiry in such manner as may be provided by the rules made under section 97, it may give order to transfer those suits or proceedings to itself, and where such order has been given, the transferred suits or proceedings shall be disposed by the High Court Division.

(4) If any pending suit or proceeding is not transferred under sub-section (3), such suit or proceeding shall be disposed of in the court in which it was pending.

81. List of the debtors.- (1) Notwithstanding anything contained in any other Act for the time being in force, the High Court Division may settle in the manner hereinafter provided a list of the debtors of a banking company which is being wound up.

(2) Subject to the rules made under section 120, the official liquidator shall, within six month from the

date of the winding up order or the commencement of this Act, whichever is later, or within such further time as the High Court Division may allow, from time to time, submit to the High Court Division lists of the said debtors containing such particulars as are specified in the second schedule.

(3) On receipt of a list submitted under sub-section (2), the High Court Division shall, wherever necessary, pass notices on every person affected by the list, and after making an inquiry in accordance with the rules made under section 97, it shall settle the list of the debtors completely or partially.

(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 to each debtor and shall provide any other relief including reliefs claimed against guarantors and shall pass other orders required to realise securities.

(5) Every order passed under sub-section (4) shall, subject to the provisions for appeal against that order, be final with regard to the banking company and the person against whom the order is passed and all persons claiming through or under that person, and shall be deemed to be a decree in a suit.

(6) In respect of every order passed under sub-section (4), the High Court Division shall issue a certificate, which shall be deemed to be a certified copy for all purposes including execution; and therein the following subjects shall be referred to, namely:-

a) the reliefs granted;

b) names and other descriptions of the parties against whom such reliefs have been granted;

c) the amount of the costs awarded;

d) by whom, and out of what funds and in what proportion 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 and sale of any property given as security to the banking company;

b) to give to the official liquidator all the powers required to give effect to the order referred to in clause a).

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(8) The High Court Division may sanction any compromise in respect of any debt and it may order the payment of any debt by instalments.

(9) In case that a list of debtors is settled ex parte in the absence of any person, such person may, within thirty days from the date of the order settling the list, appeal to the High Court Division for modification of those parts of the list as are concerning him; and if the High Court Division is satisfied that he was prevented by any sufficient cause from appearing on the date fixed for the settlement of the list and that he has adequate reasons to defend himself against the claim of the banking company, it may modify the said 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 any 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 and in which a third party is interested; or

b) prejudice the rights of the official liquidator to recover any debt due to a banking company under any other Act for the time being in force.

82. Special provisions to make calls on contributaries.- Notwithstanding that the list of the contributaries has not been settled under section 184 of the Companies Act, the High Court Division may, if it appears necessary or expedient to it so to do, at any time after making a winding up order, make a call on and order payment of the amount due by any contributor who has been placed on the list of contributories by the official liquidator and who has not appeared to present a statement against his being included in the list.

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) All entries contained in the account books or other documents of a banking company may be proved by production of those account books and documents or copies thereof:

Provided that, in the case of proving such copies, the official liquidator shall confirm that the copies are true copies of the original entries and that the entries are contained in the account books 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 account books 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 in all matters connected therewith.

84. Examination of directors and audit of accounts.- (1) Where an order has been made for the winding up of a banking company, the official liquidator shall submit to the High Court Division 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 involved in its formation or of any of its directors or auditors.

(2) If, on consideration of the report submitted under subsection (1), the High Court Division is of 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 it shall determine for that purpose; and it shall direct that such person, director or auditor shall attend that sitting and shall be examined as to the formation, promotion and management of the banking company and as to his activities in connection therewith:

Provided that no such person shall be examined unless he has been given an opportunity to show cause why he should not be so examined.

(3) The official liquidator may take part in such examination and he may, if authorized in this behalf by the High Court Division, employ any legal expert approved by the said Division.

(4) Any creditor or contributor may take part in the said examination either personally or by any person entitled to appear before the High Court Division.

(5) The examination of any person under this section shall be an examination on oath and the person examined 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; and the employed person may put to the person exposed to the examination such questions as the High Court Division may deem just for the purpose of explaining any answer given by the person examined:

Provided that if the person to be examined is, on 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 as it thinks fit.

(7) Notes of the examination shall be taken down in writing, and shall be read over to or by, and signed by, the person examined, and such notes-

a) may be used in evidence against him in any proceeding, civil or criminal;

b) shall be open to the inspection or copying of any creditor or contributory at all reasonable times.

(8) Where the High Court Division, on examination of the notes obtained by such examination, whether a fraud has been committed or not, is of opinion that-

a) a person who has been a director of the banking company is not fit to be a director of a company;

b) a person who has been an auditor of a banking company or a partner of firm acting as such auditor is not fit to act as an auditor of a company or to be 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, for such period as may be determined in the order which shall, however, not exceed five years,-

i) be a director of any company; or

ii) in any way, directly or indirectly, be concerned or take part in the

management of any company; or

iii) act as an auditor of any company, or be partner of a firm acting as such auditor.

85. Special provisions for delinquent directors etc. .- (1) Where an application is made by a banking company to the High Court Division under section 235 of the Companies Act against any of its promoters, directors, managers, liquidators or officers for restoration of any money or property and the applicant makes out a prima facie case against such person, the said Division shall make an order against that person to restore the claimed money or property unless he proves that he is not liable to make the restoration:

Provided that where such an order is made jointly against two or more persons, they shall be jointly and severally liable to make the restoration of the property or money.

(2) Where an application is made to the High Court Division under section 235 of the Companies Act and the said Division has reason 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 said Division may at any time, whether before or after making an order under sub-section (1), direct the attachment of such property or of such portion thereof as the said Division may think fit; and when the property so attached stands in the name of an ostensible owner, it shall remain attached unless the ostensible owner can prove to the satisfaction of the said 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 required, apply in the case of such attachment.

86. Duty of directors and officers of banking companies to assist in the realisation of property etc. .- Every director or officer of a banking company which is being wound up shall give such assistance to the official liquidator as he may require in connection with the realisation and distribution of the property of the banking company.

87. Special provisions for punishing offences in relation to banking companies being wound up.-

(1) Where a charge for an offence punishable under the Companies Act or under this Act is brought against any person who has taken part in the promotion or formation of the banking company which is being wound up or against any director, manager or officer thereof, the High Court Division may, if it thinks fit, take cognizance of and try in a summary way that charge.

(2) When trying any offence under subsection (1), the High Court Division may also try any other offence not referred to in that subsection 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 subsection (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;

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ii) shall not be bound to adjourn a trial unless such adjournment is, in the opinion of the High Court Division, necessary in the interests of justice;

iii) shall, before passing any sentence, record in its judgement the substance of the evidence and the particulars referred to in section 263 of the Code of Criminal Procedure, 1898 (Act V of 1898) in so far as they are applicable.

b) the provision of sub-section (2) of section 262 of the Code of Criminal Procedure, 1898 (Act V of 1898) shall not apply to any such trial.

(4) All offences under this Act or the Companies Act in relation to winding up alleged to have been committed by any person specified in sub-section (1) and which are not tried in a summary way under sub-section (1) shall, notwithstanding anything contained in that Act or the Code of Criminal Procedure, 1898 (Act V of 1898) or in any other Act for the time being in force, be taken cognizance of and tried by a Judge of the High Court Division other than the Judge dealing with the proceeding for the winding up of the banking company.

(5) Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1898), the High Court Division may take cognizance of any offence under this Act without the accused being committed to it for trial.

88. Public examination of directors etc. of banking companies in certain cases.- (1) Where an application for sanctioning a compromise or any other arrangement in respect of a banking company is made under section 153 of the Companies Act or where such sanction has been given and the High Court Division is of 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 is or has been a director or auditor thereof should be publicly examined, that Division may direct such examination of that 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 in respect of a banking company, the provisions of section 135 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 reconstruction or amalgamation of a banking company has been sanctioned by the Government under section 77 and the Government is of opinion that any person who has taken part

in the promotion or formation of a banking company or is 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 comes to the conclusion, whether that person has committed a fraud or not, that that 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 an auditor, the Government shall make an order that that 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 a company or act as an auditor of, or be a partner of a firm acting as auditor, of any company for such period not exceeding five years as may be specified in the order.

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(4) Where a reconstruction or amalgamation of a banking company has been sanctioned by the Government under section 77, the provisions of section 235 of the Companies Act and of section 85 of this Act shall, as far as may be, apply to that banking company as they apply to a banking company which is being wound up as if the order sanctioning the reconstruction or amalgamation were an order for the winding up of the banking company; and any application of the official liquidator referred to in the said section 235 shall be construed as an application of the Government.

89. Special provisions for banking companies working under schemes or arrangements at the commencement of the Act.- Where any compromise or arrangement in respect of a banking company under section 153 of the Companies Act is being worked at the commencement of this Act, the High Court Division may, on the application of such banking company,-

a) excuse any delay in carrying out any of the provisions of the compromise or arrangement; 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 for the compromise or arrangement were an order for the winding up of the banking company.

90. Appeals.- (1) An appeal shall lie from any order or decision of the High Court Division with the Appeal Division when the value of the subject-matter of the claim in a civil proceeding under this Act exceeds fifty thousand Takas.

(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) Notwithstanding anything contained in any other Act for the time being in force and subject to the provisions of sub-section (1) and (2), every order or decision of the High Court Division shall be final and binding for the banking company and all other parties concerned and all persons claiming through or under them.

91. Special period of limitation.- (1) Notwithstanding anything contained in the Limitation Act, 1908 (IX of 1908) or in any other Act for the time being in force, in computing the period of limitation 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 application for the winding up of the banking company shall be excluded.

(2) Notwithstanding anything contained in the Limitation Act, 1908 (IX of 1908) or in the Companies Act or in any other Act for the time being in force, there shall be no period of limitation for the recovery of arrears of shares 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 of any company against its directors, the period of limitation shall be twelve years from the date of the 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

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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 in that proceeding, the Bangladesh Bank may examine the record of that proceeding and tender advice on the matter.

93. Power to inspect.- (1) The Bangladesh Bank may, on being directed so to do by the Government or the High Court Division, cause the inspection by its officers of a banking company which is being

wound up in total or of the balances of any of its books and accounts.

(2) After an inspection under sub-section (1), the Bangladesh Bank shall submit a report of that inspection to the Government or, as the case may be, to the High Court Division.

(3) If the Government, on consideration of the report of the Bangladesh Bank, is of 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 under sub-section (3) the High Court Division may, if it deems fit, after giving notice to and hearing the Government in regard to that report, give directions.

94. Power to call for returns and informations.- 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 the winding up of the banking company and it shall be duty of the liquidator to comply with such requirements.

Explanation.- For the purposes of this section and section 93, a banking company working under a compromise or an arrangement but prohibited from receiving fresh deposits, shall, as far as may be, be deemed to be a banking company which is being wound up.

95. District Magistrate to assist liquidator in taking charge of property of banking companies being wound up.- (1) If the official liquidator or a special officer appointed under this Act deems it necessary, in the interest of speedy liquidation of a banking company to be wound up, to take into his custody or under his control all property, effect and actionable claims to which that banking company is or appears to be entitled, he may request in writing the District Magistrate, within whose jurisdiction such property, effects, claims or account books or other documents of that 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, effects, claims, account books and other documents and forward them to those who made the request.

(2) For the purpose of securing compliance with 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 or decisions made in file:///J:/CGAP%20Virtual%20Library%20415_000.0/La...s/Laws/Bangladesh/Bank%20Company%20Act,%201991.htm (56 of 6 any civil proceeding under this Act by the High Court Division shall be enforced in the same manner in which decrees and orders made by the High Court Division in civil proceedings are enforced.

(2) Notwithstanding anything contained in the Code of Civil Procedure, 1908 (Act 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 of granted under sub-section (6) of section 81 and on his certifying in writing the amount remaining due in accordance with that decree or the relief being approved but remaining unenforced under that decree.

(3) Without prejudice to the provisions of sub-section (1) or (2), any amount due 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 the High Court Division to make rules.- The High Court Division may make rules consistent with the other provisions of this Act and with the rules made under section 121 for the purpose of settling the following subjects, namely:-

- a) the manner in which inquiries and proceedings under Chapter 6 and 7 are held;
- b) the offences which may be tried summarily;
- c) the conditions subject to which appeals may be preferred and the manner in which appeals may be filed and heard;
- d) any other matter for which provision has to be made for enabling the High Court Division to effectively exercise its functions under this Act.

98. References to directors etc. shall be construed as containing references to past directors etc. .- For the removal of doubts it is hereby declared that any reference in this Chapter 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. Chapter 2 not to apply to banking companies being wound up.- Nothing contained in Chapter 2 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 Chapter, no proceeding held at, and no decree or order made before the commencement of this Act, by any Court other than the High Court Division in respect of any matter over which that

Division has jurisdiction under this Act shall be invalid or deemed to be invalid merely by reason of the fact that such proceeding has been held at, or such decree or order has been made by a Court other than the High Court Division.

101. Power of the Government to make rules on the preservation of records.- The Government may, after consultation with the Bangladesh Bank and by notification in the official Gazette, make rules specifying the period for which the account books, documents regarding paid claims and other documents of a banking company are to be preserved.

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102. Documents regarding paid claims to be given back to customers.- (1) Where a banking company is requested, before the expiry of the period determined by rule under section 101, by one of its customers to give back his documents regarding paid claims, it shall keep with it exact and complete copies of those documents, made in such a way, mechanically or otherwise, as to ensure the exactness of the copies.

(2) The banking company may realize the costs for making the copies referred to under sub-section (1), from the customers.

Explanation.- For the purpose of this section, "customer" shall include any official office or body corporate.

103. Choice for the payment of deposited money.- (1) Where an individual has, or several persons have jointly deposited money with a banking company in his or in their name, that individual depositor may separately or, as the case may be, the group of depositors may jointly, in the way prescribed, choose a person to which, in the case of the death of the individual depositor or of all of the joint depositors, the deposited money shall be given:

Provided that the said individual depositor or the said group of depositors may at any time cancel their choice and choose, in the way prescribed, another person.

(2) The person chosen under sub-section (1) being a minor, the individual depositor or the joint depositors may, in the prescribed way, direct who shall, in the case of the death of the individual depositors or of the joint depositors, receive the money during the period of minority of the chosen person.

(3) Notwithstanding anything contained in any Act for the time being in force or in any will or any kind of document regarding the allotment of properties, the person chosen under sub-section (1) or directed under sub-section (2) shall, after the death of the individual depositor or as the case may be, of all of the joint depositors, attain all the rights the individual depositor or the joint depositors had on that deposit, and every other person shall be deprived of those rights.

(4) Where a banking company has made payments in accordance with this section, all its obligations in respect of the deposit concerned shall be deemed fulfilled:

Provided that no right or claim that any person may have or make against the person to whom the deposited money has been paid under this section shall be prejudicial to the provision of this subsection.

104. Unacceptability of claims of other persons on deposits.- Notices of claims on deposits by persons other than those in the name of which the deposits are kept with the banking company shall not be acceptable for that company, nor shall that company be bound to take measures in accordance with any such notice:

Provided that nothing contained in this subsection shall be prejudicial to the authority of any court having jurisdiction on the said deposits; and the company shall give adequate importance to any decree, order, certificate or any other such document the court may submit.

105. Choice for giving back safekept articles.- (1) Any person having deposited for safekeeping articles with a banking company may, in the way prescribed, choose a person to which, after his death, the said articles, as long as they are deposited, shall be given:

Provided that the depositor may at any time cancel his choice and choose, in the way prescribed, another

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(2) The person chosen under sub-section (1) being a minor, the depositor may, in the way prescribed, direct who shall, in the case of his death, receive the said articles during the period of minority of the chosen person.

(3) Before giving back the deposited articles to any person chosen or directed under sub-section (1) or (2), the banking company which has taken the deposit shall, in the way prescribed from time to time by the Bangladesh Bank, prepare a list containing descriptions of those articles, take the signature of the said person and send a copy thereof to him.

(4) Notwithstanding anything contained in any Act for the time being in force or in any will or any other

kind of document regarding the allotment of properties, the person chosen under sub-section (1) or directed under sub-section (2) shall, after the death of the depositor, attain all the rights the depositor had on that deposit, and every other person shall be deprived of those rights.

(5) Where a banking company has in accordance with the provisions of this section given back the articles deposited with it for safekeeping, all its obligations in respect of that deposit shall be deemed fulfilled:

Provided that no right or claim that any person may have or make against the person to whom the articles have been given back under this section shall be prejudicial to the provision of this subsection.

106. Unacceptability of claims of other persons on articles deposited for safekeeping.- Notices of claims by persons other than those in the name of which articles have been deposited for safekeeping with the banking company shall not be acceptable for that company, nor shall that company be bound to take measures in accordance with any such notice:

Provided that nothing contained in this subsection shall be prejudicial to the authority of any court having jurisdiction on the said articles; and the company shall give due weight to any decree, order, certificate or any other such document the court may submit.

107. Giving back of articles deposited in lockers.- (1) Where a person has separately rented a locker in the safety vaults or in any other place of a banking company, the said company shall, in the case of his death, permit the person chosen by him in advance to open, after his death, as long as the locker is rented, the locker and to take the bonds back from it.

(2) Where two or more persons have rented a locker of a banking company jointly and where the rent agreement contains a provision to the effect that the locker is to be used by the joint signature of two or more renters, those renters by the signature of whom the locker is to be used may, in the case of the death of one or more renters, choose one or more persons so that the company may give another person, in place of the deceased ones, the opportunity to open, together with the living renters, the locker and to take back the articles deposited therein.

(3) The choices under sub-section (1) or (2) are to be made in the ways prescribed.

(4) Before giving back the articles deposited in a locker to any chosen person or, as the case may be, to any jointly chosen person and the living renters, the banking company shall, in the way prescribed from time to time by the Bangladesh Bank, prepare a list containing descriptions of the articles deposited in the locker, take the signature of the said persons and send them a copy thereof.

(5) Where a banking company has in accordance with the provisions of this section given back articles deposited in its lockers, all its obligations in respect of the deposited articles concerned shall be deemed fulfilled: file:///J:/CGAP%20Virtual%20Library%20415_000.0/La...s/Laws/Bangladesh/Bank%20Company%20Act,%201991.htm (59 of 6

fulfilled: Provided that no right or claim that any person may have or make against the person to whom any article has been given back under this section shall be prejudicial to the provision of this subsection.

(6) No suit, complaint nor any other kind of legal proceeding shall be filed or commenced against a banking company, if any article has been damaged, or appears to have been damaged by reason of the banking company having consented in accordance with the provisions of sub-section (1) or sub-section (2) the locker to be opened and the articles deposited therein to be taken out of it.

108. Unacceptability of claims of other persons on articles deposited in lockers.- Notices of claims on articles deposited in lockers by persons other than those in the name of which the articles have been deposited in the lockers of the banking company shall not be acceptable for that company, nor shall that company be bound to take measure in accordance with any such notice:

Provided that nothing contained in this section shall be prejudicial to the authority of any court having jurisdiction on the said articles and the company shall give adequate importance to any decree, order, certificate or any other such document the court may submit.

Chapter eight Miscellaneous

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109. Punishments.- (1) Whoever carries on the business of banking without holding a licence under this Act or continues to carry on the business of banking after the annulment of his licence shall be punishable with imprisonment for a term which may extend to seven years and shall also be liable to a fine.

(2) If any person makes, intentionally and knowingly, any false statement or information with regard to any matter of importance in any account, return, balance sheet or in any other document or information

called for or submitted in accordance with the requirements of, or under, or for the purpose of, any provision of this Act or holds back, intentionally and knowingly, any statement or information with regard to such matter, he shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to a fine.

(3) If advances are made by a banking company in contravention of the provisions of sub-section (1) and (2) of section 27, every director or officer of the banking company who is responsible for the payment of such advances shall be deemed culpable and shall be punishable with imprisonment for a term which may extend to three years and with a fine not exceeding twenty thousand Takas.

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(4) If any person fails to produce any book, account or other document or to furnish any statement or information under sub-section (2) of section 44 or to answer any question to any officer responsible for the carrying out of researches or investigations in matters relating to the business of banking companies, he shall be punishable with a fine which may extend to two thousand Takas, and if he persists in such refusal, to a further fine which may extend to one hundred Takas for every day during which the offence continues, beginning with the first day of the refusal.

(5) If any deposits are received by a banking company in contravention of an order under clause a) of sub-section (5) of section 44, every director or officer of the banking company responsible for the receiving of such deposits shall be deemed culpable of the contravention and shall be punishable with a fine which may extend to twice the amount of the deposits so received.

(6) If any person fails to comply with the conditions of or to fulfil the duties arising from, any scheme approved under sub-section (7) of section 77, he shall be punishable with a fine which may extend to two thousand Takas, and if he persists in such failure, to a further fine which may extend to one hundred Takas for every day during which the offence continues, beginning from the first day of the failure.

(7) If any person contravenes any other provision of this Act, or any order or direction given, or any condition imposed, or any rule made thereunder, he shall be punishable for that contravention with a fine which may extend to two thousand Takas, and if he persists in such contravention, to a further fine which may extend to one hundred Takas for every day during which the offence continues, beginning with the first day of the contravention.

(8) Where a company contravened any provision of this Act, or any order or direction given, or any condition imposed, or any rule made thereunder, or failed to comply with any condition of, or to fulfil any duty arising from, any scheme approved thereunder, every person who was acting as a director, manager, secretary or other officer of that company when such contravention or failure occurred, or was responsible for the management of that company's affairs and therefor bound to give accounts to it, shall also be deemed culpable for that contravention or failure:

Provided that such person shall not be deemed culpable if he can prove that the said contravention or failure took place without his knowledge, or that he exercised all due diligence to prevent such contravention or failure.

110. Chairmen, directors etc. of a banking company to be public servants.- The chairmen, directors, auditors, liquidators, managers and other officers and employees of a banking company shall be deemed public servants in the sense this term is used in section 21 of the Penal Code, 1860 (Act XLV of 1860).

111. Cognizance of offences.- No court shall take cognizance of any offence under this Act without a complaint in writing by an officer authorized in this behalf by the Bangladesh Bank in respect of either all the offences generally or any special offence in particular under section 109.

112. Bangladesh Bank to take punitive measures.- If the Bangladesh Bank intends, in the case of offences not cognizable by a court, to take punitive measures against a banking company for contravention of any section under this Ordinance, it may, after carrying out, in the way prescribed by law, an investigation and giving reasonable opportunity for a hearing to the banking company concerned, impose a legal penalty.

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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 toward payment of the costs of the proceedings concerned, 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 sections 17, 77, 83B, 86H, 91B, 91D and sub-section (5) of section 144 of the Companies Act shall not operate in favour of private banking companies.

115. Restriction on acceptance of deposits withdrawable by cheque.- No person other than a banking company or the Bangladesh Bank or any banking institution, firm or other person notified, after consultation with the Bangladesh Bank, by the Government in this behalf shall accept deposits

withdrawable by cheque:

Provided that nothing contained in this section shall apply to any savings bank scheme run by the Government.

116. Restriction on the change of name by a banking company.- Notwithstanding anything contained in section 11 of the Companies Act, 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, 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 claims 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 of this Act or by reason of the compliance of a banking company with any order or direction given to it under this Act.

119. Exchange of information.- Banking companies may, directly or indirectly, exchange information on their customers, subject to the observation of strict secrecy.

120. Power to make rules. - (1) For the purpose of this Act, the Government may, after consultation with the Bangladesh Bank and by notification in the official Gazette, make rules.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules shall provide for all or any of the following subjects, namely:-

- a) statement of all the details which shall be included in returns required under this Act;
- b) the way in which such returns are to be submitted;
- c) the form of the list of debtors which the official liquidator shall submit to a court under the provisions of chapter VI and VII;

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- d) statement of the subjects to be included in that list;

any subject which shall or can be regulated by law under 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 sub-section (3) of section 23 of the General Clauses Act, 1897 (X of 1897) shall not be less than six month 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, after 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 particular banking company 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 against any of its officers or employees for anything which is in good faith done or intended to be done under this Act, or for any damage caused or likely to be caused by anything intended to be done in good faith.

123. Repeals and savings.- (1) The Banking Company Ordinance, 1991 (Ordinance No. 13, 1991) is herewith repealed.

(2) Notwithstanding the repeal under sub-section (1), anything done under the said ordinance or any action taken in the exercise of any power conferred thereunder shall be deemed to have been done or taken under this Act as if this Act had been in force on the day such thing was done or such action was taken.

First Schedule

(see section 38)

Form A

Form of Balance Sheet

Not translated

Second Schedule

(see section 81 (2))

List of debtors

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1. The official liquidator shall, from time to time, submit lists of debtors to the High Court Department, each list being verified by an affidavit.
2. Each such list shall contain the following particulars, namely:-
 - 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) descriptions of papers, writings and documents, if any, relating to each debt;
 - 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 debts for which it holds a security ?);
Annotation of the translator- The bracketed passage runs in the corresponding Act in the Pakistan Code as follows:-
"the debts for which no security or only a personal security is given".
b) In the said list shall, in the case of secured debts, be included 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 address of the guarantor or guarantors with particulars as to the extent to which the debt is guaranteed and documents etc. relating thereto.
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, the name and address of the assignee or the receiver of his estate, as the case may be, should be stated in, or added to, the list, as the case may be.
5. If the debtor dies 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 of his legal representatives as far as the official liquidator is able to ascertain.