

**Lecture 11 & 12**  
**Financial Institution Act 1993**

**Topics to be covered:**

- Preliminary and definitions
- Licensing & cancel of license of financial Institutions
- Paid up capital and reserves
- Dividend payments
- Appointment & removal of Directors and Chief Executive Officer
- Reserve Fund
- Cash Reserve
- Restrictions on loans and advances
- Audit & Inspection
- Powers and functions of the Bangladesh Bank
- Moratorium, reconstruction and amalgamation
- Miscellaneous (Offences & Punishments)
- DFIM Circulars
- ICAB Past question solution

## **Sec 02 :Definitions.-**

Unless there is anything repugnant in the subject or context, in this Act-

- a) **"financing business"** means the business carried on by any financial institution;
- b) **"financial institution"** means such non-banking financial institutions, which-
  - make loans and advances for industries, commerce, agriculture or building construction; or
  - carry out the business of underwriting, receiving, investing and reinvesting shares, stocks, bonds, debentures issued by the Government or any statutory organization or stocks or securities or other marketable securities; or
  - carry out installment transactions including the lease of machinery and equipments; or
  - finance venture capital; and shall include merchant banks, investment companies, mutual associations, mutual companies, leasing companies or building societies;
- c) **"credit"** means any financial loan on the basis of interest or any loan repayable at a premium, but shall not include loans granted under the condition to issue a debenture or other security to a company or other statutory organization;
- d) **"creditor"** means any person entitled to have returned money deposited by him or any other person;
- e) **"credit facilities"** means-
  - i) the promise of a financial institution to grant advances and other facilities or to bear liabilities on behalf of a borrower;
  - ii) the bearing, on behalf of a borrower, of his other liabilities by a financial institution;
- f) **"company"** means any company registered under the Companies Act, 1913 (VII of 1913);
- g) **"Companies Act"** means the Companies Act, 1913 (VII of 1913);
- h) **"auditor"** means any person who, subject to the provisions of this Act, has been appointed to audit the accounts and transactions of financial institutions;
- i) **"director"** shall also include such persons as perform by order or direction any duty of a director of a financial institution and shall also include alternate and deputy directors;

- j) "regulation" means any regulation made under this Act;
- k) "Bangladesh Bank" means the Bangladesh Bank established under the Bangladesh Bank Order, 1972 (PO No.126 of 1972);
- l) "investment company" means a company primarily or wholly engaged in the buying and selling of securities of other companies, and shall include companies which have at any time invested eighty per cent of its paid-up capital in other companies, but shall not include any banking or insurance company or organization which is a member of the stock exchange;
- m) "building society" means a society which collects savings and grants loans for the construction of buildings and the buying of properties;
- n) "person" means any company, institution or organization;
- o) "banking company" means any banking company established under the Banking Companies Act, 1991 (Act No.14 of 1991);
- p) "merchant bank" means a bank which assumes the responsibility for the securities of other organizations or companies and gives advice on the amalgamation, or other commercial enterprises, of such customers;
- q) "mutual association" means a savings association which does not issue capital, stocks and the depositors and borrowers of which are its owners and controllers;
- r) "mutual company" means an organization which is devoid of capital and the net profit of which is distributed among the owners and borrowers in proportion to the business activities;
- s) "leasing company" means a company which leases machines and implements as its business or part of its business or finances such leasing.

#### **Sec 04 :Licensing of financial institutions**

- (1) No person shall carry on any financial business **without a license** to run a financial institution **issued by the Bangladesh Bank**.
- (2) Every financial institution in existence on the commencement of this Act shall, before the expiry of six months from such commencement, apply in writing to the

Bangladesh Bank **for a license** under this section:

Provided that nothing in sub-section (1) shall be **deemed to prohibit** a financial institution in existence on the commencement of this Act from carrying on business, if-

a) its application under this section is **under consideration**, or

b) it has not, by a notice, been informed by the Bangladesh Bank that a **license cannot be granted** to it.

(3) **Before granting a license** under this section, the Bangladesh Bank may require to be satisfied with regard to a proposed financial institution in respect of the following matters, namely:-

a) the financial situation;

b) the characteristics of the management;

c) the sufficiency of the capital structure and the earning capacity;

d) the purposes mentioned in the memorandum;

e) the public interest;

(4) The Bangladesh Bank may impose on any license to run a financial institution such conditions as it thinks fit;

(5) The Bangladesh Bank may at any time, after giving opportunity for a hearing, **alter** any condition of a license to run a financial institution and may **add** new conditions.

#### **Sec 05: Investigations on suspect persons employed in the financing business**

The Bangladesh Bank may, if it appears to it or if it has reason to believe that any person carries on the business of financing in **contravention of the provisions of section 4**,-

a) **order** any information, **document, file, book, account and record in possession**, in the **custody** or under the control of the said person **to be submitted** to it;

b) confer on any person the power to enter and search any premises of such person and to seize the documents, files, books and accounts and records concerned.

#### **Sec 6 : Minimum capital**

(1) The Bangladesh Bank shall prescribe the **minimum capital** of every financial institution.

(2) No financial institution shall be granted a license under this Act, if the amount of **its issued capital and paid-up capital is less than the minimum capital prescribed** under sub-section (1) and existing licenses, if any, shall be **cancelled**.

As per the Section 4(GHA) of the Financial Institutions Rule, 1994 and subsequently updated vide DFIM Circular No. 5, dated 24 July 2011, the minimum paid-up capital of the Financial Institution (FI) shall be BDT 100 crore; provided that the sum of paid-up capital and reserves shall not be less than the minimum capital required under the Risk-Based Assets of the company, criteria determined by the Bangladesh Bank.

### **Sec 7 : Restrictions on the opening of branches**

(1) No financial institution may, without the **prior consent** in writing of the Bangladesh Bank, **open** at any place in or outside of Bangladesh a branch or office, nor change the location of an existing branch or office.

(2) The Bangladesh Bank shall **approve of or reject** an application of a financial institution for the opening of a branch or office under sub-section (1) on **consideration** of the matters mentioned in *section 4* (3) and the decision of the Bangladesh Bank in this matter shall be final.

### **Sec 8 : Cancellation of a license**

(1) The Bangladesh Bank may cancel the license of a financial institution granted under this Act on account of the **following reasons**, namely:-

- c) if it does not carry on the business **for which** it had been established;
- d) if the financial institution goes into **liquidation** or if its **business is closed**;
- e) if it furnishes **false** or misleading **information or documents** in order to receive a **license**;
- f) if it carries on its business in a manner **detrimental to the interests of the depositors**;
- g) if its **assets are not sufficient to pay the claims** of its depositors;
- h) if it carries on business **maintaining an amount** of paid-up capital which is **less** than the amount of the **minimum capital**;
- i) if the conditions of the **license are contravened**;
- j) if the financial institution or any of its directors is convicted for an offence under this Act.

(2) Notwithstanding anything contained in sub-section (1), no license of a financial institution shall be cancelled without granting, through **no more than fifteen days'** notice in writing before the cancellation of the license of the financial institution, an opportunity to show the reasons for which its license should not be cancelled.

(3) Where the license of a financial institution has been cancelled, the financial institution concerned shall be immediately informed and a notice of the cancellation shall be **published in the Gazette**.

(4) Beginning from the date on which a notice under sub-section (3) has been published, the financial institution concerned shall **cease to carry out any**

**financial transaction** except, subject to the consent of the Bangladesh Bank, such measures as may be required to conveniently suspend its business.

(5) The provision of sub-section (4) **shall not be prejudicial** to the **rights or claims** of any person on any financial institution or the rights or claims of any financial institution or any person.

### **Sec 9 : Reserve fund**

Every financial institution shall maintain a reserve fund in such manner as may be prescribed by regulations.

As per clause no 6 of Financial Institutions Regulations, 1994, Financial Institution is required to transfer at least 20% of its profit after tax and before appropriation of dividend in a particular year, if the financial institution's sum of Share Premium Account (if any) and Statutory Reserves is less than the paid up capital of that financial institution.

### **Sec 10 : Restriction on the payment of dividends**

No financial institution shall pay **any dividend on its shares**, unless all its **capitalized expenses** including preliminary expenses, organization expenses, commission for share selling and brokerage, losses and other items have been **completely written off**.

### **Sec 11 : Display of balance-sheet**

Every financial institution shall display a copy of its last audited balance-sheet together with the names of its directors all year through in a conspicuous place in each of its offices and branches and shall, **within six months** before the end of the year concerned, **publish** the said balance-sheet in at least one daily newspaper.

### **Sec 12 : Supply of information**

The Bangladesh Bank may direct any financial institution to supply any information and every financial institution shall be bound to supply the information so directed within such period and in such manner as the Bangladesh Bank may determine.

### **Sec 13 : Acknowledgement of receipt of deposits**

Where a financial institution receives from any person a deposit, it shall, as a proof of having received the money, immediately make out a receipt to such person.

### **Sec 14 : Restrictions regarding credit facilities, etc.**

No financial institution shall-

a) accept any such deposit as is **repayable on demand** through cheque, draft or order of the depositor;

b) deal in gold or any foreign coins;

c) grant credit facilities in excess of **thirty per cent** or, subject to the consent of the Bangladesh Bank, of hundred per cent of its **capital** to **any particular** person, firm, corporation or company or any such company, person or group as controls or exerts influence on such person, firm, corporation or company;

d) grant credits **in excess of 50 per cent of its credit facilities** or in excess of such percentage of its credit facilities as the Bangladesh Bank may determine from time to time.

e) grant **any unsecured advance**, credit or credit facilities to any firm **in which any of its directors**, individually or jointly, is interested directors unless the total amount of such facilities **does not exceed 10 per cent** of its paid-up share capital and reserves;

f) grant, in the manner mentioned in clause e), advances, credits or credit facilities in excess of Taka 500,000 to any person or group of persons other than those stated in the said clause.

**Explanation.-** In this sub-section, "director" includes also the wife, husband, father, mother, son, daughter, son-in-law, daughter-in-law, father-in-law and mother-in-law of a director.

(2) "Unsecured advance", "unsecured credit" or "unsecured credit facilities" as mentioned in sub-section (1) (e) mean any advance, credit or credit facilities granted without security or surety, and shall include, in the case of advances, credits or credit facilities granted against securities or sureties, that part of the credit which exceeds the market value of the securities or sureties and, in the case that, in the opinion of the Bangladesh Bank, securities or sureties have no market value, the amount settled by the said Bank.

(3) No financial institution shall grant any advance or credit **allowing its own shares** as securities or grant credits or advances to any other institution for the purpose of buying and selling its own shares.

(4) Where there **arises any loss** as a result of the granting of **any unsecured advance**, credit or credit facilities in contravention of the provisions of sub-section (1), all the directors of the financial institution **shall, jointly and individually, be responsible** for the compensation.

### **Sec 15 : Restrictions regarding the business of financial institutions**

(1) No financial institution shall, alone or in a body, be engaged in any wholesale or retail business including export and import trade otherwise than for the **purpose** of carrying on its **financing business**.

(2) No financial institution shall carry on any business other than the business of financing and such business as has been mentioned in this Act.

### **Sec 16 : Restrictions on investments**

No financial institution shall expend or use more than 25 per cent of its paid-up capital and reserves for the acquisition or holding of any kind of shares of financial, commercial, agricultural or industrial institutions or of any similar institution and shall, as fast as possible, sell to the institutions concerned the shares acquired in the interest of realizing the credits granted by it:

Provided that any financial institution may, subject to its application and on consent of the Bank, expend or use up to 50 per cent of its paid-up capital and reserves for the acquisition and holding of the abovementioned kind of shares.

### **Sec 17 : Restriction on the possession of immovable property**

No financial institution may acquire or possess immovable properties exceeding in value *25 per cent of its paid-up capital and reserves*:

Provided that nothing contained in this section shall be applicable in the case of immovable property required for the *granting of facilities to employees* of the financial institution and in the case of property acquired in the interest of realizing unrealized credits granted by it.

### **Sec 18 : Power of the Bangladesh Bank to regulate certain matters**

The Bangladesh Bank may by order regulate the following matters, namely:-

- a) the highest rate of interest to be paid by financial institutions on various kinds of deposits,
- b) the highest amount of credit to be taken by financial institutions from any person,
- c) the last date for repayment of credits granted by financial institutions,
- d) the highest rate of interest to be paid on various kinds of credit granted by financial institutions and the manner in which to calculate such rate,
- e) the upper limit of credits granted by financial institutions in favor of any person,
- f) the reserves to be maintained by financial institutions at the Bangladesh Bank,
- g) other matters to be regulated in the public interest or for the development of monetary policy.




## **Sec 19: Maintenance of liquid assets**

(1) Every financial institution shall maintain such liquid assets as the Bangladesh Bank may determine from time to time.


Present rate of CRR is 1.5% and SLR is 5% (*DFIM circular 03 dated 21 June 2020*)

(2) For the purposes of this section, "liquid assets" means-

- ✓ notes and coins current in Bangladesh,
- ✓ net balances of the banks of Bangladesh, 
- ✓ the amount of call money in Bangladesh,
- ✓ Bangladesh Treasury Bills,
- ✓ and shall include such other assets as the Bangladesh Bank may determine.

## **Sec 20 : Inspection**

(1) Notwithstanding anything to the contrary contained in the Companies Act, the Bangladesh Bank may at any time, by one or more of its officers, carry out an inspection of any financial institution and its ledgers and accounts.

(2) The Bangladesh Bank may at any time, if it has reason to believe that any financial institution is engaged in such business as is **detrimental to the interests** of its depositors and debtors, or that its **assets are not sufficient to pay the claims** of the public, or that it is **involved in any activities** incompatible with the provisions of this Act, carry out, by one or more of its officers, an examination, not being prejudicial to the provision of sub-section (1), of the ledgers, account-books and other documents of such financial institution. 

(3) For the purpose of **applying the powers** under the sub-sections (1) and (2), the Bangladesh Bank **may appoint any auditor** besides the auditor or auditors appointed by the financial institution under section 144 of the Companies Act.

(4) Every financial institution affected by an inspection or examination under this section shall **co-operate with the officers of the Bangladesh Bank** entitled to have access to its ledgers, account-books and other documents and shall be bound to furnish, in the interest of carrying out the examination, any information and opportunity:

Provided that such ledgers, account-books and other documents shall not be submitted at such time or in such place as may obstruct the normal daily activities of the financial institution concerned.

## **Sec 21 : Information on inability to meet demands**

If any financial institution has reason to be doubtful about its ability to **meet the demands of its customers** or if any financial institution is **forced to suspend the demands** of any of its customers, **it shall inform the Bangladesh Bank** about the matter.

## **Sec 22 : Measures to be taken by the Bangladesh Bank in the case of failures of a financial institution**

(1) If any financial institution **informs the Bangladesh Bank** about its **inability to meet its demands** in accordance with the provisions of section 21 or if the Bangladesh Bank has, on an inspection under section 20, reason to believe that a financial institution carries on its business in a manner which is **detrimental to the interests of its depositors**, or that it has become **financially insolvent** or that a financial institution is in a situation to be almost **unable to pay its dues**, or that a financial institution has contravened, or **failed to comply** with, the **conditions** of a **license granted to it**, the Bangladesh Bank may, after giving reasonable opportunity to the financial institution concerned to submit a statement, take, by order, all or any of the following measures, which such institution shall be bound to observe, namely:-

- it may direct the actions to be done or not to be done in connection with its financing business;
- it may direct the appointment, at its expense, of any person for the proper management of its business;
- it may assume the responsibility for the control and management of its business or direct any other person therefore.

(2) The Bangladesh Bank may, by itself or in view of an application, **alter or withdraw** any measure taken under sub-section (1) and may **impose such conditions** on such alteration or withdrawal as may be required.

(3) Notwithstanding anything contained in this section, the **Bangladesh Bank** may **apply to the High Court Division** for the **winding-up** of any financial institution for the reasons mentioned in this section.

(4) Where the Bangladesh Bank assumes the **responsibility for the control** of a financial institution, **it shall control it so long as it is not satisfied** that it is no longer necessary to control its business in order to protect the interests of its depositors, and such institution shall be bound to grant the Bangladesh Bank every facility required in order to facilitate such control or general management of the financial institution.

(5) The Bangladesh Bank shall **determine the remuneration** to be paid to any person appointed to control or manage a financial institution under this section or the other conditions etc. of his work, and the financial institution shall bear the expenses thereof and such other expenses as may arise through its control.

### **Sec 23 : Submission of statement of accounts to the Bank**

The directors of every financial institution shall submit to the Bangladesh Bank a copy of the profit and loss account and balance sheet prepared in accordance with the Companies Act.

### **Sec 24 : Appointment of an auditor and duties of the auditor**

(1) Notwithstanding anything contained in the Companies Act, **every** financial institution shall **annually**, subject to the **consent** of the Bangladesh Bank, appoint one auditor.

(2) If a financial institution **fails** to appoint an auditor, or if it is, in the opinion of the Bangladesh Bank, necessary to appoint an **additional auditor** together with the auditor appointed under sub-section (1), the Bangladesh Bank may appoint an auditor for such institution and shall fix the remuneration due to him.

(3) An auditor appointed under this section shall have the duty to audit the accounts of the year for which he has been appointed and to prepare a report on the basis thereof.

(4) The Bangladesh Bank may, in addition to those stated in sub-section (3), **impose such other duties on the auditor** as it may determine, and the auditor shall receive an additional remuneration for the discharge of such additional duties.

(5) The report of the auditor prepared under this section shall be attached to the balance sheet and profit and loss account and a copy thereof shall be send to the Bangladesh Bank.

(6) Where an auditor discharging his duty as an auditor of a financial institution is satisfied to the effect that-

- the provisions of this Act have been **seriously contravened** or have not been complied with or that a financial institution has committed a **criminal offense** of fraud or dishonesty;
- on account of **losses** the capital of a financial institution has fallen under **fifty per cent**;
- there has occurred any **serious irregularity** including that the payment of the **creditors' demands** is no longer guaranteed; or
- that there exists any **doubt** as to the **sufficiency of the assets** to meet the demands of the creditors;
- he shall without any delay inform the Bangladesh Bank on the said matters.

## **Sec 25 : Managing directors etc. not being qualified**

- (1) No person who is, or at any time has been, **adjudicated insolvent**, or has **suspended payment** of his creditors, or has compounded with his creditors, or who has been convicted by a criminal court of an offence involving moral turpitude may be or continue to be director of a financial institution or be appointed for the management of a financial institution.
- (2) No director of a financial institution **declared suspended** under this Act or person directly involved in the management of such financial institution may, without the **prior approval** of the **Bangladesh Bank**, be appointed to the office of a director of another financial institution or to any office which may be connected with the management of another financial institution.
- (3) Notwithstanding anything contained in any other law for the time being in force, no person who is director of any other financial institution, of a banking company or of an insurance company shall be qualified to be director of a financial institution.

## **Sec 26 : Removal of a chairman, principal executive officer, board of directors or of any director**

- (1) Where the Bangladesh Bank is satisfied that it is necessary to remove a chairman or director or principal executive officer of a financial institution in order to prevent its affairs being conducted in a manner prejudicial to the interests of the financial institution or its depositors or to secure in the public interest the proper management of the financial institution, it may, after committing its reasons to writing, issue a direction that such chairman, director or principal officer be removed from his office.
- (2) Before issuing a direction under sub-section (1), the person affected shall be given reasonable opportunity to make a representation.

## **Sec 27 : Moratorium, reconstruction and amalgamation**

- (1) Where it appears to the Bangladesh Bank that there are reasons to make, in the **interest of the depositors**, an order of moratorium in respect of a financial institution, it may make an order of moratorium suspending the business of such financial institution for a period of *no more than six months*:

Provided that the Bangladesh Bank may **extend** such period for a further period of no more than **six months**.

- (2) If during the period the order given under sub-section (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 financial institution or in the interest of **the finance system of the country as a whole** it is necessary so to do, it may **prepare a scheme** for the reconstruction of the financial institution, or for the amalgamation of the financial institution with another financial institution, henceforth in this chapter referred to as the transferee institution.

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

- the name, registration, capital, assets, power, rights, interests, authorities, facilities, liabilities and duties of the financial **institution on its reconstruction** or, as the case may be, of the transferee institution;
- in the case of amalgamation of the financial institution, **the transfer to the transferee institution** of the business, properties, assets and liabilities of the financial institution **on such conditions** as are **specified in the scheme**;
- any **change** in the **Board of Directors**, or the **appointment** of a new Board of Directors, of the financial institution on its reconstruction or, as the case may be, of the transferee institution 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 the appointment shall be made;
- the alteration of the **memorandum and the articles of association** of the financial institution on its reconstruction or, as the case may be, of the transferee institution 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;
- the continuation by or against the financial institution on its reconstruction or, as the case may be, the transferee institution, of all actions and proceedings filed by or against the financial institution concerned and pending immediately **before the date of the order of moratorium under sub-section (1)**;
- the reduction of the interests or rights which the members, depositors and other creditors of the financial institution have before its reconstruction or amalgamation to such extent as the Bangladesh Bank considers necessary in the public interest, or in the interest of the members, depositors and other creditors of the financial institution, or for the maintenance of the business of the financial institution;
- **payment in cash** to the depositors and other creditors in full satisfaction of their claims-

- i. in respect of their interests or rights in or against the financial institution **before** its reconstruction or amalgamation; or
  - ii. where their interests or rights in or against the financial institution have been reduced under clause f), in respect of such **interests or rights as so reduced**;
- the **allotment of shares** in the financial institution on its reconstruction or, as the case may be, in the transferee institution to the members of the financial institution for all the shares of the financial institution held by them before its reconstruction or amalgamation or where has been made a reconstruction in accordance with clause f), for those reduced shares and where cash is claimed instead of shares or 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 interest in shares in the financial institution 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;
- the continuance of the services of all the employees of the financial institution on its reconstruction or, as the case may be, in the transferee institution at the same remuneration and on the same conditions, which they were getting or under which they were employed before an order of moratorium under sub-section (1) 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-

  - a) the financial institution on its reconstruction shall determine for its employees the same remuneration and the same benefits as are, at the time of such determination, enjoyed by employees of corresponding rank of a comparable financial institution, and in respect of settling whether financial institutions are comparable or whether employees are holding corresponding ranks the decision of the Bangladesh Bank shall be final;
  - b) the transferee institution shall determine for the employees of the former financial institution the same remuneration and the same benefits as are applicable to its own employees 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 or experience, that doubt or difference shall, before the expiry of a period of three years from the date on which the remuneration and other benefits have been determined, be referred to the Bangladesh Bank whose decision thereon shall be final;

- notwithstanding anything contained in clause h), 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 financial institution on its reconstruction or of the transferee institution, the payment to such employees of compensation, pension, gratuity, provident fund and other retirement benefits;
- any other rule or condition for the reconstruction or amalgamation of the financial institution;
- Incidental, consequential and supplemental matters required to carry out the reconstruction or amalgamation.

(5) The Bangladesh Bank shall send a copy of the scheme prepared under this section in draft to the financial institution, the transferee institution and any other financial institution concerned, for suggestions and objections within such period as it may specify.

(6) 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 (5).

(7) The Bangladesh Bank shall, after proceeding in accordance with sub-section (5) and (6), 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 of the scheme.

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

(9) The properties, assets and liabilities of the financial institution shall, from the date on which the scheme comes into force and to such extent as may be stated in the scheme, be properties, assets and liabilities of the transferee institution.

(10) 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.

(11) Where a scheme for amalgamation of a financial institution under this section has been approved, any business acquired by the transferee institution 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 institution:

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.

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

(13) 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.

## **Sec 28 : Amalgamation of financial institutions**

(1) No financial institution may, **without the prior approval** of the Bangladesh Bank, be amalgamated with any other financial institution or acquire the majority of shares in any other financial institution.

(2) The Bangladesh Bank may, in the interest of considering an application for prior approval under sub-section (1), call for any information from the applicant, and it shall not cancel an application without giving reasonable opportunity for a hearing to the applicant.

## **Sec 29 : Winding up of financial institutions by the High Court Division**

Notwithstanding anything contained in the Companies Act, the High Court Division may, on the basis of an **application of the Bangladesh Bank**, order the winding up of a financial institution, if-

- a) the license of the financial institution has been cancelled;
- b) the financial institution is unable to pay its debts;
- c) the financial institution has been punished for the contravention of any provision of this Act.



## *Offences and punishments*

### **Sec 30 : Punishment for carrying on the business of financing without holding a license**

Whoever carries on the business of financing without holding a license under this Act or continues to carry on the business of financing after the annulment of his license shall be punishable with **imprisonment** for a term which may extend to **two years**, or with a fine which may extend to **five hundred thousand Takas**, or both.

### **Sec 31 : Punishment for not cooperating in an investigation under section 5.**

(1) If any suspect engaged in the business of financing at the time of an investigation under section 5 intentionally refuses to produce any information, documents, files, books, accounts or records required for the investigation to the officer conducting the investigation or **refuses to cooperate in the investigation**, he shall be punishable with imprisonment for a term which may extend to **one year**, or with a fine which may extend to **two hundred thousand Takas**, or both.

(2) If any person accused under sub-section (1) disregards an order to deposit at a court any information or records mentioned in the said sub-section, he shall be punishable with the punishments mentioned in the said sub-section.

### **Sec 32 : Punishment for giving false information in order to receive a license**

Whoever intentionally gives false or erroneous information in an application for a license under this Act shall be punishable with imprisonment for a term which may extend to **three years**, or with a fine which may extend to **one million Takas**, or both.

### **Sec 33 : Punishment for not complying with the conditions of a license.**

If any person fails to comply with any condition of a license granted under this Act, he shall be punishable with a fine which may **extend to one million Takas**, and if he fails to comply with the conditions concerned after having been adjudicated culpable, with a fine amounting to **one hundred thousand Takas for every day** during which the offence continues.

### **Sec 34 : Punishment for contravention of the provisions of section 7.**

If any financial institution carries on the business of financing in its branches in contravention of the provisions of section 7, it shall be punishable with a fine amounting to **one hundred thousand Takas for every day** during which the offence continues.

### **Sec 35 : Punishment for contravention of the provisions of section 14.**

If any financial institution grants credit facilities in contravention of the provisions of section 14, it shall be punishable with a fine which may extend to **two million Takas**.

### **Sec 36 : Punishment for failure to maintain liquid assets.**

If any financial institution fails to maintain liquid assets in accordance with the provisions of section 19, it shall be punishable with a fine **at the rate of one per cent for every day** during which the offence continues.

### **Sec 37 : Punishment for failure to produce account books etc. during an investigation under section 20.**

If any financial institution fails to produce any account books, accounts, information or any other necessary documents during an inspection under section 20, it shall be punishable with a fine which may extend to **five hundred thousand Takas**.

### **Sec 38 : Punishment for disregarding the regulations of the Bangladesh Bank**

If any financial institution disregards the measures taken by the Bangladesh Bank under section 22, it shall be punishable with a fine amounting to **two million Takas**.

### **Sec 39 : Punishment for persons who, being disqualified in accordance with section 25, are connected with financial institutions**

If any person who is **disqualified** in accordance with the provisions of sub-section (1) and (2) of section 25 is **connected with any financial institution** in contravention of the said provisions, he shall be punishable with a fine which may extend to **one million Takas**, or with imprisonment for a term which may extend to **three years**, or both, and if any person becomes director of any financial institution in contravention of sub-section (3) of the said section, he shall be punishable with a fine amounting to one hundred thousand Takas.

### **Sec 40 : Punishment for falsely introducing oneself as a financial institution**

If any institution, not holding a license under this Act, introduces itself, and carries on business, as a financial institution holding a license, each owner, shareholder, director, manager, secretary or other officer or agent of the said institution shall be punishable with a fine which may extend to **one million Takas**, or with imprisonment for a term which may extend to **three years**, or both, unless he can prove that the said contravention did occur without his knowledge, or that he tried to the best of his abilities to prevent the said contravention, or that he was in no way involved in the said contravention.

#### **Sec 41 : Punishment for adding anything untrue in account books etc. of financial institutions**

(1) If any director, manager, auditor, responsible person, officer or employee of a financial institution intentionally adds, or abets to add, anything untrue in the account books, accounts, reports, business papers or other documents, hereafter referred to as the said documents, of the said institution, or conceals or destroys anything in the said documents, he shall be punishable with a fine which may extend to **one million Takas**, or with imprisonment for a term which may extend to **three years**, or both.

(2) If any person intentionally gives any false information in any statement, report or other document called for or submitted in accordance with the requirements of, or under, or for the purpose of, any provision of this Act or intentionally holds back any necessary information in any such statement, report or document, he shall be punishable with the punishments mentioned in sub-section (1).

#### **Sec 42 : Punishment for offences for which no punishment has been provided for.**

Whoever does, or desists from doing, anything which comprises non-compliance with any provision of this Act or with any order or direction passed thereunder and for which no punishment has been expressly provided in this Act shall be punishable with a fine which may extend to **one hundred thousand Takas**.

#### **Sec 43 : Power of the Bangladesh Bank to impose fines**

(1) If any person has committed a punishable offence under the sections 31, 33, 34, 35, 36, 37, 38, 39 and 42, the Bangladesh Bank may, not filing a suit against him, **give him opportunity to show the reason** for which he should not be punished with a fine and may, if it is not satisfied with his explanation or if he has not given any explanation, punish him with a fine which may extend to the highest amount fixed by the said Bank.

(2) If the person concerned pays the fine **within fourteen days** from the date on which it had been imposed under sub-section (1), no legal proceeding shall be taken against him for the offence committed by him: but if he fails to pay the fine within the said period, the Bangladesh Bank shall file a suit at a court against the person concerned for the offence committed by him.

#### **Sec 44 : Cognizance of offence**

(1) No court other than a **sessions court** shall try any offence under this Act.

(2) No court shall take cognizance of any offence under this Act **without a complaint in writing by the Bangladesh Bank or by an officer** authorized in this behalf by the Bangladesh Bank.

#### **Sec 45 : Publication of list of financial institutions**

(1) The Bangladesh Bank shall, immediately after the granting of a license to a financial institution, publish by notification the name and address of the said institution.

(2) The Bangladesh Bank shall **annually before the month of July** supply to the Government a list of the financial institutions which have received a license under this Act.

#### **Sec 46 : Alteration of memorandum of a financial institution**

(1) Notwithstanding anything contained in the Companies Act, no application for the confirmation of the alteration of the memorandum of a financial institution shall be maintainable unless the **Bangladesh Bank certifies that there is no objection** to such alteration.

(2) If any financial institution contravenes the provision of sub-section (1), it shall be punishable with a fine amounting to **fifty thousand Takas for every day**, beginning with the date on which the contravention occurred.

#### **Sec 47 : Actions 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.

#### **Sec 48 : Power to exempt in certain cases**

The Bangladesh Bank may, after consultation with the Government, declare, by notification in the official Gazette, that any or all of the provisions of this Act shall not apply to any financial institution or to any particular financial institution either generally or for such period as may be specified in the notification.

#### **Sec 49 : Power to make rules**

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

(2) In particular, and without prejudice to the generality of the foregoing power, by such rules-

- may be determined the fees which are to be determined under this Act;
  - may be controlled the advertisement of financial institutions.
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