

The Institute of Chartered Accountants of Bangladesh (ICAB)

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# Corporate Laws and Practices

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STUDY MANUAL

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CA Professional Level

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THE INSTITUTE OF  
**CHARTERED  
ACCOUNTANTS**  
OF BANGLADESH



THE INSTITUTE  
OF CHARTERED  
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IN ENGLAND AND WALES

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# **Corporate Laws and Practices**

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**Corporate Laws and Practices**

**Professional Level**

**The Institute of Chartered Accountants of Bangladesh (ICAB)**

The Study materials have been prepared by the Student Affairs Division of the Institute of Chartered Accountants of Bangladesh (ICAB)

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# 1 Introduction

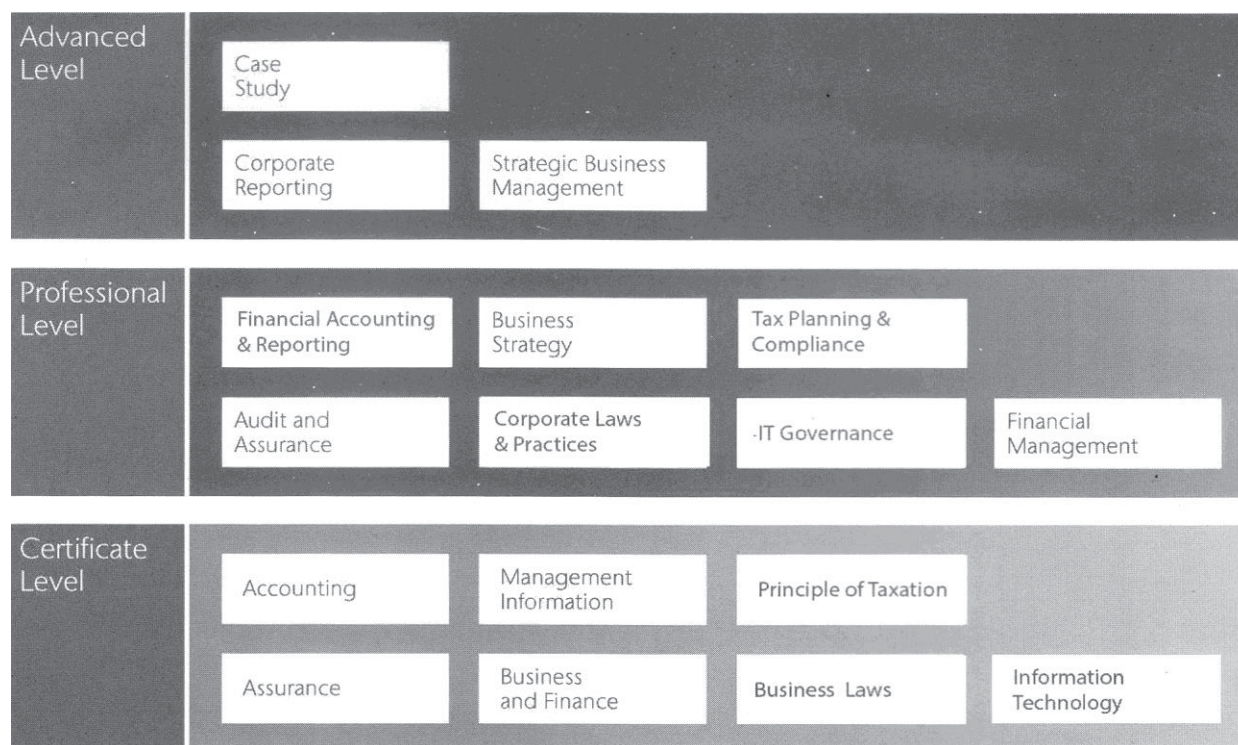
## 1.1 What is Corporate Law and how does it fit within the Professional Stage?

### Structure

The syllabus has been designed to develop core technical, commercial and ethical skills and knowledge in a structured and rigorous manner.

The diagram below shows the twelve modules at the Professional Stage, where the focus is on the acquisition and application of technical skills and knowledge which comprises of two technical integration modules..

### ADVANCED Level



### The knowledge bases

The module aims to familiarize the students with different aspects and provisions of company law, other relevant laws and rules & regulations of Bangladesh Securities and Exchange Commission which they are likely to come across in discharging their professional responsibilities. However, for more details the students must go through the authentic version of the relevant law.

Students will learn the principles legal considerations relating to Companies Act 1994 (including the Secretarial practices), laws relating to Bangladesh Securities and Exchange Commission, Financial Reporting Act 2015, The Bank Companies Act 1991, The Financial Institutions Act 1993, The Insurance Act 2010 and Foreign Exchange Regulations 1947.

## 2 Specification grid for Corporate Laws and Practices

### 2.1 Method of assessment

The Corporate Law and Practices module is assessed by a 3 hours exam.

### 2.2 Specification grid

This grid shows the relative weightings of subjects within this module and should guide the relative study time spent on each. Marks available in the assessment will equate to the weightings below, while variations may occur in individual assessments to enable suitable questions to be set.

#### Syllabus Contents

| Syllabus Contents  | Weighting<br>(indicative %) |
|--|-----------------------------|
| 1 The Companies Act 1994 and Secretarial Practices   | 60                          |
| 2 Laws relating to the Securities and Exchange   |                             |
| 3 Financial Reporting Act 2015   |                             |
| 4 The Bank Company Act 1991;<br>5 The Financial Institutions Act 1993  | 20                          |
| 6 The Insurance Act 2010;<br>7 The Bangladesh Labour Act, 2006 (Amended in 2013) and Bangladesh Labour Rules, 2015 | 20                          |





## Chapter I

### The Companies Act 1994 and secretarial practices

#### 1. About The Companies Act

The Companies Act 1994 is the law that governs incorporated domestic entities in Bangladesh. It is the main statute governing the creation, functioning and dissolution of companies, the relationship of shareholders to a company, periodic disclosures and audit requirements, the functions of the Registrar of Joint Stock Companies & Firms, the jurisdiction of the courts in relation to companies etc.

#### 2. Company and its Characteristics

The trace of origin of the term 'company' will reveal the Latin word cum – meaning with, and pains-meaning bread; which jointly means taking bread together, a characteristic of the early company where business matters were used to be discussed during festive gatherings. But today 'company' is widely and commonly used for: a) joint stock companies – designed for profit, and b) statutory companies – for undertaking works of public utility. A company in ordinary non-technical sense however, means an association for attaining some common objectives, which may be with or without profit.

#### 3. Characteristics of a company

The most distinguishing characteristics of a company are:

- I. Incorporated association: A company is created when it is registered under The Companies Act. It comes into being from the date mentioned in the certificate of incorporation. Section

4(1) of The Companies Act, 1994 states the followings:

No company, association or partnership consisting of more than ten persons shall be formed for the purpose of carrying on business of banking unless it is registered as a company under this Act or is formed by or under any other Act of Parliament.

- II. Artificial legal person: A company is an artificial person. Negatively speaking, it is not a natural person. It exists in the eyes of the law and cannot act at on its own. It has to act through a board of directors elected by the shareholders. It has the right to acquire and dispose of the property, to enter into contract with third parties in its own name, and can sue and be sued in its own name.

- III. **Separate legal entity:** A company has a legal entity distinct from and independent of its members. The creditors of the company can recover their money only from the company. They cannot sue individual members. Similarly, the company is not in any way liable for the individual debts of its members. The property of the company is to be used for the benefit of the company and not for the personal benefit of the shareholders. On the same ground, a member cannot claim any ownership rights in the assets of the company either individually or jointly during the existence of the company or in its winding up. At the same time the members of the company can enter into contracts with the company in the same manner as any other individual can. The principle of separate legal entity was explained and emphasized in the famous case of *Salomon v. Salomon & Co. Ltd.*
- IV. **Perpetual succession:** A company has perpetual succession and is independent of its members, its existence is not affected in any way by the death, insolvency or exit of any shareholder. "During the war all the members of one private company, while in general meeting, were killed by a bomb. But the company survived; not even a hydrogen bomb could have destroyed it." Perpetual succession thus means that in spite of a change in the membership of the company, its continuity is not affected. Since a company is created by law, it can be wound up by resorting to the legal provisions of the Companies Act.

**Limited liability:** One of the important advantages of company is that the liability of its members is limited. In the case of a company limited by shares, the liability of members is limited to the extent of the nominal value of shares held by them. In the case of a company limited by guarantee, the liability of each member is to contribute a specified amount to the assets of the company in the event of its winding up while s/he is a member or within one year of his/her ceasing to be a member. In effect, we find that a member is not directly liable to a company's creditors but s/he is a limited guarantor of the company's debt in both cases. However, the Act does not prevent the companies from making the liability of its members unlimited.

- VI. **Transferable shares:** In a public company, the shares are freely transferable. The right to transfer shares is a statutory right and it cannot be taken away by a provision in the articles. However, the articles shall prescribe the manner in which such transfer of shares will be made and it may contain bona fide and reasonable restrictions on the rights of members to transfer their shares. But absolute restrictions on the rights of members to transfer their shares shall be ultra vires. However, in case of a private company, the articles shall restrict the rights of members to transfer their shares in compliance with its statutory definition.
- VII. **Common seal:** A company is an artificial person. It cannot act on its own. It acts through natural persons who are known as directors. All contracts entered into by the directors must be under the common seal of the company. The common seal, with the name of the company engraved on it, is used as a substitute for its signature.
- VIII. **Separate property:** A company, being a legal person, is capable of owning, enjoying and disposing of property in its own name. The property of the company is to be used for the company's business and not for the personal benefit of its shareholders. A member does not have insurable interest in the property of the company. Members have no direct proprietary rights to the company's property, merely due to their shares. It is also important to note

that the claim of the company's creditors will merely be against the company's property and not that of shareholders.

- IX. Capacity to sue and being sued: The company is a legal person and it can enforce its legal rights. Similarly, it can be sued for breach of its legal duties.

#### Lifting the corporate veil

The principle of separate legal entity was established in the famous case of *Salomon v. Salomon & Co. Limited*. This precedent has been followed in a number of cases and it has come to be regarded as a fundamental principle of company law. When a company has been formed and registered under the Act, all dealings with the company will be in the name of the company, and the persons behind the company will be disregarded however important they may be. This shows that once a company is registered under the Act, there is a veil drawn between the company and its members. Following this principle, the courts in most cases have refused to go behind the curtain and see who are the real persons composing the company.

But sometimes the necessity of the situation may compel the authorities to disregard the corporate legal entity and look to individual members who are in fact the real beneficial owners of all corporate property, and this in fact is what is known as, "Lifting or piercing the corporate veil." Thus, the doctrine of lifting the corporate veil may be understood as the identification of a company with its members and when the corporate veil is lifted, the individual members may be held liable for its acts or entitled to its property.

The court will lift the corporate veil where it is essential to secure justice and/or where it is in the public interest to do so. But it must be kept in mind that a separate legal entity is still the general rule. The corporate entity will be disregarded only in exceptional cases. These cases may be divided in two:

Under express statutory provisions.

Under judicial interpretation.

#### 4. Corporation

Such a company when incorporated according to the law and is clothed to meet legalities, it becomes a corporation with legal and distinct entity. A corporation as such, is an artificial being, invisible, intangible but existing only in terms of law. It is then a corporate personality known by a name, seal, office and acting through its human agents. However, in Bangladesh we have sector corporations, city corporations, trading corporations and so on, which have different administrative frameworks. The state owned industrial units in Bangladesh function under the control and supervision of a few statutory bodies, which are known as sector corporations created by separate acts or ordinances. They are autonomous since those have their own rules and regulations. The municipalities in metropolitan city areas are styled as city corporations. The Trading Corporation of Bangladesh is also a different administrative body to handle state trading activities.

#### 5. Industrial Undertaking

Undertaking is to take up a venture to do something, some deal or some kind of task for performance. Industrial undertaking refers to any establishment, organization or manufacturing unit engaged in the production or processing of any goods, or in the development and extraction

of any mineral resources or products or in providing such services as may be specified in this behalf by the government.

6. Types of companies

Primarily there are two types of companies: Public and Private.

I. Private Company: According to section 2(q), “private company” means a company which by its articles-

restricts the right to transfer its shares, if any;

prohibits any invitation to the public to subscribe for its shares or debenture, if any;

limits the number of its members to fifty not including persons who are in its employment;

Where two or more persons hold one or more shares in a company jointly, they shall be treated as a single member. Private companies may be limited by shares or limited by guarantee. There cannot be a private company with unlimited liability.

II. Public Company: Section 2(r) states that “public company” means a company incorporated under this Act or under any law at any time in force before the commencement of this Act and which is not a private company.

Public companies may be classified into three types: (i) companies limited by shares, (ii) companies limited by guarantee, and (iii) unlimited companies.

- i. Company Limited by Shares: In these companies, there is a share-capital, and each share has a fixed nominal value, which the shareholder pays at a time or by installments. The member is not liable to pay anything more than the fixed value of the share, whatever may be the liabilities of the company.
- ii. Company Limited by Guarantee: In these companies, each member promises to pay a fixed sum of money in the event of liquidation of the company. This amount is called the Guarantee. Sometimes the members are required to buy a share of a fixed value and also give a guarantee for a further sum in the event of liquidation. There is no liability to pay anything more than the value of the share (where there is a share) and the guarantee.
- iii. Unlimited Company: In these companies, the liability of the shareholder is unlimited, as in Partnership firms. Past members who ceased to be members within the previous year may be liable in respect of debts incurred before they ceased to be members. However, there is no such liability of members until the company is wound up. An unlimited company may be with or without a share capital. They must register their articles of association.

7. Conversion of Private Company into-public Company

A private company having at least seven members can be converted into a public company by altering its articles in such manner that they no longer include the provisions which, under clause of sub-section (1) of section 2 of the Companies Act, are required to be included in the articles of a company in order to constitute a private company. From the date of such alteration the company ceases to be a private company and is required within a period of thirty days after the said date file with the Registrar either a prospectus or a statement in lieu of prospectus (Section – 231).

8. Conversion of a Public Company into Private Company

According to section 232-

1. A public company, having not more than fifty members at the time of conversion, may be converted into a private one by passing a special resolution altering its articles so as to exclude provisions if any, in the articles of association applicable to public company and include therein provisions applicable to a private company.
2. If the company has secured creditors, their written consent shall have to be obtained before passing a resolution as per provision of sub section 232(1) and the shares enlisted with the Stock Exchange shall have to be de-listed.

Model Questions and Answers

**Question:** Mr. X and his wife who are the only two shareholders of a private company. They died in an accident. Does the company come into an end?

**Answer:** No, the company will not come into an end. A company has perpetual succession and is independent of the life of its shareholders. Its existence is not affected in any way by the death, insolvency or exit of any shareholder.

**Question:** In XYZ Private Company Limited, it was found that there are, in fact 54 members. On an enquiry, it was ascertained that 6 of such members are employees of the company and they have acquired the shares while they were employees of the company. Is it necessary to convert the company into a public limited company?

**Answer:** A private company is a company which, by its articles –  
restricts the right to transfer its shares, if any;  
prohibits any invitation to the public to subscribe for any shares in, or debenture, if any;  
limits the number its members to fifty not including members who are in its employment.

In XYZ Private Company Limited, six members are its employees and shall be excluded in determining the number of members of the company which will be 48 i.e. (54-6). Therefore, XYZ Private Company Limited has not made any default in complying with the restriction of maximum of 50 members and it is not necessary to convert into a public company.

## CONSTITUTION AND INCORPORATION

### 1. PRE- INCORPORATION CONTRACTS

A company cannot be bound by a contract which was made on its behalf by any person (including a promoter) before the company itself had been formed. At the time when the contract is made, the company is non-existent, it cannot after its formation ratify a contract to which it could not have been a party when the contract was made [Kenner v Baxter (1866)].

In Kenner's case, goods had been ordered for the company's business before the company was formed. But the company is not bound by a contract merely because it later performs it, e. g. by accepting the goods or services. The company will, of course be liable if it makes a fresh contract after the company is formed; but there must be clear evidence that it intended to do so.

In the circumstances, the simplest and safest course for a promoter is to bring the negotiations to the point of agreement but to postpone any binding contract until the company is formed and can enter into the contract for itself. However, if it is essential to some formula of assignment or notation (by which the company is to take over the obligations as a new contract) to be made after incorporation and when it does so, or if it does not do so within a specified time, he is then to be released.

### 2. THE CERTIFICATE OF INCORPORATION

The certificate issued by the registrar after a company is registered is called the Certificate of Incorporation. Section 25 of the Act states that the Certificate of Incorporation is conclusive evidence about the following matters:

All the requirements of the Act have been complied with respect of registration and matters precedent and incident thereto.

The association is a company authorized to be registered and duly registered under the Act.

The legal existence of the company begins from the date of issue of the certificate.

Once the certificate is issued, the incorporation cannot be challenged even though there were irregularities prior to registration.

### 3. MEMORANDUM OF ASSOCIATION

Section 5 of The Companies Act, 1994 states the followings:

**Mode of forming incorporated company:** Any seven or more persons or, where the company to be formed will be a private company, any two or more persons associated for any lawful purpose may, by subscribing their names to a memorandum of association and otherwise with the requirements of this Act in respect or registration form an incorporated company, with or without limited liability, that is to say, either:

- a. company limited by shares, that is to say, a company having the liability of its member limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them, or
- b. a company limited by guarantee, that is to say, a company having the liability of its members limited by the memorandum to such amount as the members may respectively thereby undertake to contribute to the assets of the company on the event of its being wound up; or

- c. an unlimited company, that is to say, a company having no limit on the liability of its members.

Section 12 of The Companies Act, 1994 deals with alteration of memorandum. The relevant provisions are as follows:

1. Subject to the provisions of this Act, a company may, by special resolution, alter the provisions of its memorandum with respect to the objects of the company, so far as may be required to enable it-
  - a. to carry on its business more economically or more efficiently; or
  - b. to attain its main purpose by new or improved means; or
  - c. to enlarge or change the local area of its operations; or
  - d. to carry on some business which, under the existing circumstances, may conveniently or advantageously be combined with the business of the company; or
  - e. to restrict or abandon any of the objects specified in the memorandum; or
  - f. to sell or dispose of the whole or any part or the undertaking of the company; or
  - g. to amalgamate with any other company or body of persons.
2. The alteration shall not take effect until and except in so far the Court on petition confirms it.
3. Before confirming the alteration, the Court must be satisfied-
  - a. that sufficient notice has been given to every holder of debentures of the company, and to any person or class of persons whose interest will, in the option of the Court, be affected by the alteration; and
  - b. that, with respect to every creditor who in the opinion of the Court is entitled to object, and who signifies his objection in manner directed by the Court, either his consent to the alteration has been obtained or his debt or claim has been discharged or has been determined, or has been secured to the satisfaction of the Court;

Provided that the Court may, in the case of any person or class, for special reasons, dispense with the notice required by this section.

As per section 13 of the Companies Act, 1994 the Court may make an order confirming the alteration either wholly or in part, and on such terms and conditions as it thinks fit, and may make such order as to costs as it thinks proper.

#### **4. Change of name of a Company and its consequences**

With regard to change of name of a company the following provisions of section 11 of The Companies Act, 1994 are applicable:

Section 11(6): Any company may, by special resolution and subject to the approval of the Registrar signified in writing, change its name.

Section 11(7): where a company changes its name, the Registrar shall enter the new name on the register in place of the former name, and shall issue a certificate of incorporation in its new name to meet the circumstances of the case and on the issue of such a certificate, the change of name shall be complete.

Section 11(8): The change of name shall not change any rights or obligations of the company, or render defect in any legal proceedings by or against the company; and any legal proceedings that might have been continued or commenced against it by its former name may be continued or commenced against it by its new name.

## **5. Prospectus**

A prospectus is an invitation to the public to purchase shares or debenture of a company. In other words, a prospectus may be defined as any document that includes any notice, circular, advertisement or other document inviting deposits from the public or inviting offers from the public for subscription or purchase of any share in, or debentures of a body corporate. Prospectus has the following characteristics:

It is a document described or issued as a prospectus.

It includes any notice, circular, advertisement inviting deposits from the public.

It is an invitation to the public.

The public is invited to subscribe the shares or debentures of a company.

## **6. Statement in lieu of Prospectus**

A public company having a share capital and not issuing prospectus must at least 3 days before the first allotment of shares or debentures, file with the Registrar for registration a statement in lieu of prospectus. The statement must be in the form prescribed in Schedule IV of the Companies Act, 1994.

## **7. Registration of Prospectus**

Before publication of prospectus inviting people to subscribe shares or debentures of a company, a copy of the prospectus must be delivered to the Registrar for registration on or before the date of publication. It should be signed by the directors or proposed directors of the company or by their agent. On the face of the prospectus delivered to the Registrar for registration, it should be stated that a copy has been delivered for registration; and must contain a list of statements included in the prospectus. The registrar shall not register a prospectus unless the prospectus contains all the elements mentioned earlier and the prospectus is accompanied by the consent in writing of the person if any, named therein as the auditor, legal adviser, attorney, solicitor, banker or broker of the company or intended company, to act in that capacity. No prospectus shall be issued more than ninety days after the date on which a copy thereof is delivered for registration, and if a prospectus is so issued, it shall be deemed to be a prospectus a copy of which has not been delivered under this section to the Registrar. If a prospectus is issued without delivering a copy thereof to the Registrar, the company and every person from those who have knowing been a party to the issue of the prospectus shall be punishable with the fine which may extend to five thousand taka (Section 138).



**8. Penalty for untrue statement in Prospectus**

Section 146 spells down that when a prospectus includes any untrue statement every person who authorized the issue of the prospectus shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to five thousand taka or with both, unless he proves either that the statement was immaterial or that he had reasonable ground, to believe that the statement was true.

**9. Documents used in incorporation of companies**

The papers and documents to be submitted to the Registrar along with the Memorandum of Association and the Articles of Association are as follows:

In case of Private Company –

- i. Declaration of Compliance (Form 1)
- ii. Notice of situation of Registered Office (Form VI)
- iii. Particulars of Directors, Manager and Managing Agents (Form XII)
- iv. Consent of Directors to act (Form IX)
- v. Lists of persons consenting to be Directors (Form X)

**10. Commencement of business**

A public company, having a share capital and issuing a prospectus, cannot commence business until the Registrar issues a certificate known as the “Certificate of Commencement of Business”. This certificate is issued after the following formalities have been complied with:

- i. The minimum subscription has been raised.
- ii. Every director has paid the money payable on application and an allotment for the shares taken up by him.
- iii. No money is repayable for failure to obtain stock exchange recognition for the shares, where such recognition was promised.
- iv. A duly verified declaration by a director or the secretary has been filed with the Registrar that the above requirements have been complied with.

However, a public company having share capital but not issuing a prospectus, will get the commencement certificate if the following conditions are fulfilled:

- i. A statement in lieu of prospectus has been filed with the Registrar.
- ii. The directors have paid the money due from them on account of shares.
- iii. A declaration by a director or the secretary has been filed with the registrar stating that condition  
  
(b) has been satisfied.

**Model Questions and Answers:**

**Question:** The articles of association of a company (formed to improve and encourage breeding of poultry) contained a provision that no remuneration shall be paid to the members of the Board of the company. But the company owing to increase in the business passed a special resolution providing for equitable remuneration to the Board members for the services to be rendered by them. Can this alteration of the memorandum be confirmed? If so, state how and by whom?

**Answer:** The company can make the required alteration in its articles of association on the ground that it will enable the company to carry on its business more economically and efficiently. The articles of association of a company can be changed by the shareholders passing special resolution in the General Meeting called for this purpose. Once the alteration in the articles of the company is confirmed by the Registrar of Joint Companies and Firms (complying with all regulatory requirements) there is no restriction in paying equitable remuneration to the members of the Board.

**Question:** A Company Limited intends to change its name. It has availed two separate loans from B Company Limited and C Company Limited. In such situation what is the procedure to be followed for changing the name of the company? Will the right of the lenders be anyway affected by the change of name of their borrowing company?

**Answer:** As per Section 11(6) of the Companies Act, 1994 a company by passing special resolution and subject to the approval of the Registrar in writing may change its name. Where a company changes its name, the Registrar shall enter the new name on the register in place of the former name and shall issue a certificate upon which the change of the name shall be complete.

Section 11(8) of the Companies Act lays down as follows:

*“The change of name does not change any rights or obligations of a company, or render defective any legal proceedings by or against the company; and legal proceedings that might have been continued or commenced against it by its former name may be continued or commenced against it by its new name.”*

In view of the above, it is clear that the liabilities of a company do not cease upon the change of name of the company and shall continue nevertheless. So, the right of the lenders shall not be anyway affected by the change of name of their borrowing company.

## SHARES AND CAPITAL

### 1. CAPITAL

The capital of a company means the amount of money that it is authorized by its Memorandum to raise, generally by the issue of shares. Hence, a company's capital is also called 'share capital'. Sometimes the phrase 'debenture capital' is used to denote the amount borrowed by the company and secured by debentures. In company law, the word 'capital' is used to mean the following:

- i. **Nominal or authorized share capital:** Nominal capital or authorized capital is the total face value of the shares which the company is authorized to issue by its memorandum of association. The total share capital of the company is also called its registered capital.
- ii. **Issued share capital:** Issued capital is that part of authorized capital which is actually offered to the public for sale.
- iii. **Subscribed share capital:** Subscribed capital is that part of the issued capital which is taken up and accepted by the public.
- iv. **Paid up capital:** Paid up capital is the amount of money actually paid by the subscribers or credited as so paid.
- v. **Reserve capital:** A company by a special resolution may declare that the 'uncalled capital' of the company shall not be capable of being called up except when the company is wound up. This 'uncalled capital' becomes the reserve capital of the company (sec. 74).

### 2. CLASSIFICATION OF SHARES

The share capital of a company is generally divided into the following classes of shares:

- i. **Preference shares:** Preference shares are those shares whose holders are entitled to a fixed rate of dividend, before any dividend is paid to the ordinary shares. Preference shares might be cumulative or non-cumulative. In the case of cumulative preference shares, if the profit made by a company in a particular year is not sufficient to pay dividend at the prescribed rate, the shortage must be made up of the profits of succeeding year. In non-cumulative preference shares, such shortages are not required to be made up. Dividends which are not paid, do not accumulate but lapse.
- ii. **Ordinary shares:** Ordinary shares are those whose holders are entitled to dividend out of the net profits of the company after the fixed dividend on preference shares has been paid up.
- iii. **Deferred shares or Founders' shares:** Deferred shares or Founder's shares are usually allotted to the promoters in consideration of the services rendered by them; and to the underwriters in consideration of the commission due to them. In either case, the particulars of contract must be filed with Registrar and the number of such shares must be stated in the prospectus or in the statement in lieu of prospectus (Sec. 135). The deferred shareholders are usually entitled to a certain proportion of the profits which remain after paying the dividend on the capital paid up on all the other shares for the time being issued at a particular rate.

### **3. REDEEMABLE PREFERENCE SHARES**

Redeemable shares are those which are purchased back by the company subject to the conditions laid down in the articles and in the act. Section 154 of the Act provides that a company limited by shares may, if so authorized by the articles, issue preference shares which are, or at the option of the company are to be liable, to be redeemed. This section specifies the following rules relating to redemption:

- a. Such shares shall not be redeemed except out of profits of the company which would otherwise be available for dividend or out of the proceeds of a fresh issue of shares made for the purposes of the redemption.
- b. Such shares shall be redeemed unless they are fully paid
- c. Where any such shares are redeemed otherwise than out of the proceeds of fresh issues, they shall be transferred to a reserve fund, to be called "the capital redemption reserve fund" a sum equal to the amount applied in redeeming the shares.
- d. Where any such shares are redeemed out of the proceeds of a fresh issue, the premium, if payable on redemption, must be provided for out of the profits of the company before the shares are redeemed.

Subject to the aforesaid rules, the redemption of preference shares may be effected on such terms and in such manner as may be provided by the articles of the company. If a company defaults in complying with any of the provisions of this section, the company and also every officer of the company who is in default shall be liable to a fine not exceeding two thousand Taka.

### **4. STOCK**

When all the shares of a company have been fully paid, they may be converted into stock in a general meeting if so authorized by the articles [sec.53 (1)]. "The use of the term stock merely denotes that the company have recognized the fact of the complete payment of the shares, and that the time has come when these shares may be assigned in fragments, which for obvious reasons could not be permitted before"- Per Lord Cairns in *Morris Vs. Aylmer*.

Conversion into stock is made because it is a convenient method of denoting the capital of the company and the interest of the members. It does not affect the rights of the members in any way. When shares are converted into stock, notice must be given to the Registrar. The register of members must thereafter show the amount of stock held by each member instead of the amount of shares (sec. 55).

### **5. MINIMUM SUBSCRIPTION**

Where shares are offered to the public for subscription, the prospectus must mention the minimum amount which must be raised by the issue of shares before the company can commence business. The minimum subscription is to be fixed by the directors or by the persons who have signed the memorandum. Section 148(2) states that no allotment shall be made of any capital of a company offered to the public for subscription, unless the amount stated in the prospectus as the minimum amount is raised by the issue of these shares and at least 5% of that amount have been paid in cash to the company. This amount is to be determined by taking into account the following expenses:

- i. The purchase price of any necessary property.

- ii. The preliminary expenses, including commissions payable for the sale of shares.
- iii. Repayment of any money borrowed by the company for the above two purposes.
- iv. Working capital.

The amount of minimum subscription stated in the prospectus shall be reckoned exclusively of any amount payable otherwise than in cash. All moneys received from applicants for shares shall be deposited and kept in a scheduled bank until the certificate to commence business is obtained.

## **6. ALTERATION OF CAPITAL**

A company can alter its share capital in a manner mentioned in its articles. However, if no such power is provided in the article, the may alter the article by a special resolution so as to provide for such power. The capital may be altered, so as to increase, consolidate, cancel or convert the shares (sec. 53).

- i. Increase of capital:** The share capital of a company whether converted into stock or not, may be increased in a general meeting by issuing new shares (sec. 53). Where the capital is increased beyond the registered capital, the notice of increase, including the particulars of the classes of shares affected, must be filled with the Registrar within 15 days of the passing of the resolution.

**Increasing share by issuing new shares:** According to section 155, where the directors decide to increase the subscribed capital of the company by issue of further shares within the limit of the authorized capital, the following procedure are to followed:

- a. Such further shares shall be offered to the existing equity shareholders in proportion as nearly as circumstances admit.
  - b. such offer shall be made by notice specifying the number of shares offered and specifying the time limit, not being less than fifteen days from the date of the offer, within which the offer if not accepted, will be deemed to have been declined;
  - c. after the expiry of the time specified in the notice aforesaid, or on receipt of earlier intimation from the members to whom such notice is given that he declines to accept the shares offered, the directors may dispose of the same in such manner as they may think most beneficial to the company.
- ii. Consolidation:** If the articles provide, the company may in a general meeting, consolidate and divide all or any of its share capital into shares of a larger amount than the existing shares or convert all or any of the paid up shares into stock and reconvert into paid up shares of any denomination [sec.53 (1) (b) (c)]. Notice of consolidation, conversion or reconversion is to be filed within 15 days thereof with the Registrar (Sec. 54(1)). In default, the company and its officers are liable to a fine extending to Tk. 200 per day (Sec. 54(2)).
  - iii. Subdivision:** A company, if authorized by its articles, may sub-divide in general meeting the capital into shares of a smaller amount than is specified in the memorandum. The effect of such sub-division will be that the remaining unpaid amount on each new share shall be proportionate to that unpaid on the shares from which the division made [(sec. 53(1)(d))]
  - iv. Cancellation:** A company may cancel any share which at the date of exercising the power in that behalf have not been subscribed for or agreed to be subscribed for by any person, and diminish the amount of its share capital by the amount of the shares so cancelled [(sec. 53(1)(e)].

**Restriction on purchase by company or loans by Company for purchase of its own shares: -**

**Section 58(1) of The Companies Act, 1994:** No company limited by shares shall have power to buy its own shares or the shares of a public company of which it is a subsidiary company, unless the consequent reduction of capital is effected and sanctioned in the manner provided by sections 59 to 70.

**Section 58(2) of The Companies Act, 1994:** No company limited by shares other than private company or a subsidiary company of a public company, shall give whether directly or indirectly, and whether by means of a loan, guarantee, the provision of security or otherwise any financial assistance for the purpose of or in connection with a purchase made or to be made by any person of any shares in the company:

Provided that nothing in this section shall, where the lending of money is part of the ordinary business of a company, be taken to prohibit the lending of money by the company in the ordinary course of its business.

**Section 58(3) of The Companies Act, 1994:** If a company acts in contravention of this section, the company, and every officer of the company who is knowingly and willfully in default shall be liable to a fine not exceeding five thousand Taka.

**Section 58(4) of The Companies Act, 1994:** Nothing in this section shall affect the right of a company to redeem any shares issued under section 154.

**Reduction of share capital**

**Section 59(1) of The Companies Act, 1994:** Subject to confirmation by the Court, a company limited by shares, if so authorized by its articles, may by special resolution reduce its share capital in any way, and in particular the company may, as part of this general power-

- a. extinguish or reduce the liability on any of its shares in respect of share capital not paid-up;
- b. either with or without extinguishing or reducing liability on any of its shares, cancel any paid-up share capital which is lost or represented by available assets;
- c. either with or without extinguishing or reducing liability on any of its shares, pay off any paid-up share capital which is in excess of the wants of the company;
- d. so far as is necessary, alter its memorandum by reducing the amount of its share capital and of its shares accordingly.

**Section 59(2) of The Companies Act, 1994:** A special resolution under this section is in this Act called a resolution or reducing share capital.

**Section 60 of The Companies Act, 1994:** Where a company has passed a resolution for reducing share capital it shall apply by petition to the Court for an order confirming the reduction.

**Section 60 of The Companies Act, 1994:** On and from the passing by a company of a resolution for reducing share capital, or where the reduction does not involve either the diminution of any liability in respect of un-paid share capital or the payment to any shareholder of any paid-up share capital, then on and from the making of the order by the Court confirming by the reduction the company shall add to its

name, until such date as the Court may fix, the words "and reduced" as the last words in its name and those words shall until that date be deemed to be part of the name of the company:

Provided that where the reduction does not involve either the diminution of any liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, the Court may, if it thinks expedient dispense altogether with the addition or words "and reduced".

#### **7. PROCEDURE FOR REDUCTION OF SHARE CAPITAL**

Reduction of capital is possible only by passing a special resolution and confirmation by the court. The court would inquire into the objections, if any, raised by the creditors. In this respect, the court settles the list of creditors entitled to object and issues public notices under section 62. On hearing the objections, the court may confirm the reduction on such terms and conditions as it may deem fit (sec. 64).

#### **8. RESERVE SHARE CAPITAL OF LIMITED COMPANY**

A limited company may by special resolution, determine that any portion of its share capital which has not been already called up shall not be called up, except in the event and for the purposes of the company being wound up, and thereupon that portion of its share capital shall not be capable of being called up except in the event and for the purposes aforesaid; and such- portion shall be called reserved share capital (section-74).

#### **9. UNLIMITED COMPANY TO PROVIDE FOR RESERVE SHARE CAPITAL ON RE-REGISTRATION**

When an unlimited company having a share capital adopts a resolution for registration as a limited company, can increase the nominal amount of its share capital by increasing the nominal amount of each of its shares, but subject to the condition that no part of the amount by which its capital is so increased shall be called up except in the event of the company being wound, up. The portion of the share capital increased shall be called the reserved share capital (section 73).

#### **10. Transfer of shares:**

**As per section 30(1) of The Companies Act, 1994:** the shares and other interest of any member in a company shall be deemed to be movable property and shall be transferable in the manner provided by the articles of the company.

As per regulation 18 of schedule I of The Companies Act, 1994, the instrument of transfer of any share in the company shall be executed both by the transferor and transferee, and the transferor shall be deemed to remain holder of the share until the name of the transferee is entered in the register of members in respect thereof.

Shares in the company shall be transferred following form prescribed in regulation 19 of schedule I of The Companies Act, 1994.

**Regulation 20 of schedule I of The Companies Act, 1994 states the followings:**

- i. The directors may decline to register any transfer of shares, not being fully-paid shares, to a person of whom they do not approve, and may also decline to register any transfer of shares on which the company has lien.
- ii. The directors may also suspend the registration of transfers during the fourteen days immediately preceding the ordinary general meeting in each year.

- iii. The directors may decline to recognize any instrument of transfer or refuse to register such transfer, unless-
  - a. A fee not exceeding taka ten as may be fixed by the company is paid to the company in respect thereof;
  - b. The instrument of transfer is accompanied by the certificate of the shares to which it relates; and
  - c. such evidence as the directors may reasonably require to show the right of the transferor to make the transfer.
- iv) If the directors refuse to register or decline to recognize the transfer of any shares, they shall, within two months after the date on which the transfer was lodged with the company, send to the transferee and the transferor notice of the refusal or decline.

**Regulation 21 of schedule I of The Companies Act, 1994 states the followings:**

The executors or administrators of a deceased sole holder of a share shall be the only person recognized by the company as having any title to the share. In the case of a share registered in the names of two or more holders, the survivors or survivor or the executors or administrators or the deceased survivor, shall be the only person recognized by the company as having any title to the share.

**Regulation 22 of schedule I of The Companies Act, 1994 states the followings:**

- i. Any person becoming entitled to a share in consequence of the death or insolvency of a member shall, upon such evidence being produced as may from time to time be required by the directors, have the right, either to be registered as a member in respect of the share or to make such transfer of the share as the deceased or insolvent person could have made.
- ii. Notwithstanding the provisions of sub-regulation 1 the directors shall have the same right to decline or recognize the transfer or to refuse or suspend the registration of the transfer as they could have done under regulation 20, had the transfer been made by the deceased or insolvent shareholder before his death or insolvency.

A person becoming entitled to a share by reason of the death or insolvency of the holder shall be entitled to the same dividends and other advantages to which he would be entitled if he were the registered holder of the share, except that he shall not, before being registered as a member in respect of the share, be entitled in respect of it exercise any right conferred by membership in relation to meetings of the company.

**Section 38(1) of The Companies Act, 1994:** An application for the registration of the transfer of shares in a company may be made either by the transferor or the transferee, provided where such application is made by the transferor no registration shall in case of partly paid shares be effected unless the company gives notice of the application to the transferee and subject to the provisions of sub-section (7) the company shall, unless objection is made by the transferee two weeks from the date of receipt of the notice, enter in its register of members the name of the transferee in the same manner and subject to the same conditions as if the application for registration was made by the transferee.

**Section 38(2) of The Companies Act, 1994:** For the purpose of sub-section (1), notice to the transferee shall be deemed to have been duly given if dispatched by prepaid post to the transferee at the address



given in the instrument of transfer and shall be deemed to have been delivered in the ordinary course of post.

**Section 38(3) of The Companies Act, 1994:** It shall not be lawful for the company to register a transfer of share in or debentures of the company unless the proper instrument of transfer duly stamped and executed by the transferor and the transferee has been delivered to the company along with script:

Provided that, where it is proved to the satisfaction of the directors of the company that an instrument of transfer signed by the transferor and transferee has been lost, the company may, if the directors think fit, on an application in writing made by the transferee and bearing the stamp required by an instrument of transferor register the transfer on such terms as to indemnity as the directors may think fit.

**Section 38(4) of The Companies Act, 1994:** If a company refuses to register the transfer of any shares or debentures, the company, shall, within one month from the date on which the instrument of transfer was lodged with the company, send to the transferee and the transferor notice of the refusal.

**Section 38(5) of The Companies Act, 1994:** If default is made in complying with sub-section (4) of this section, the company shall be liable to a fine not exceeding one hundred taka for everyday during which the default continues and every director, manager secretary other officer who is knowing by a party to the default shall, be liable to a like penalty.

**Section 38(6) of The Companies Act, 1994:** Nothing in sub-section (3) shall prejudice any power of the company to register as shareholder or debenture holder any person to whom the right to any shares in or debentures of the company has been transmitted by operation of law.

**Section 38(7) of The Companies Act, 1994:** Nothing in this section shall prejudice any power of the company under its articles to refuse to register the transfer of any shares.

#### **Certification of transfer**

**Section 39(1) of The Companies Act, 1994:** The certification by a company of any instrument of transfer of shares in, or debentures of, the company, shall be taken as a representation by the company to any person acting on the faith of the certification that there have been produced to the company such documents as on the face of them show a prime facie title to the shares or debentures in the transfer named in the instrument of transfer, but not as a representation that transferor has complete title to the shares or debentures.

**Section 39(2) of The Companies Act, 1994:** Where any person acts on the faith of an erroneous certification made by a company negligently, the company shall be under the same liability to him as if the certification has been made fraudulently.

**Section 39(3) of The Companies Act, 1994:** For the purposes of this section-

- (a) an instrument of transfer shall be deemed to be certificated if it bears the words "certificate lodged" or words to the like effect;
- (b) the certification of an instrument of transfer shall be deemed to be made by a company, if-

the person issuing the certificated instruments is a person authorize to issue such instruments of transfer on the company's behalf; and

the certification is signed by any officer or servant of the company or any other person authorized to certificate transfers on the company's behalf, or if a body corporate has been so authorized by any officer or servant of that body corporate.

- (c) a certification shall be deemed to be signed by any person if it purports to be authenticated by his signature, unless it is shown that the signature was placed there neither by himself nor by any person authorized to use the signature for the purpose of certificating transfers on the company's behalf.

Regulation 7 of the first schedule I of The Companies Act, 1994 states the following:

If a share certificate is defaced, lost or destroyed it may be renewed on payment of such fees, if any, not exceeding five Taka, and on such terms, if any, as to evidence and indemnity as the directors think fit.

#### **Transfer of shares by legal representative**

**Section 40 of The Companies Act, 1994:** A transfer of the share or other interest of a deceased member of a company made by his legal representative shall, although the legal representative is not himself a member, be as valid, as if he had been a member at the time of the execution of the instrument of transfer.

#### **Application of premiums received on issue of shares**

As per section 57 of The Companies Act, 1994 application of premiums received on issues of shares will be as follows:

Where a company issues shares at a premium, whether for cash or otherwise, a sum equal to the aggregate amount or value of the premiums on those shares, shall be transferred to an account, to be called "the share premium account" and the provisions of this Act relating to the reduction of the share capital of a company shall, except as provided in this section, apply as if the share premium account were paid up share capital of the company.

The share premium account may be applied by the company-

- a. in paying up unissued shares of the company to be issued to member of the company as fully paid bonus shares;
- b. in writing of the preliminary expenses of the company;
- c. in writing off the expenses of, or the commission paid or discount allowed, on, any issue of shares or debentures of the company; or
- d. in providing for the premium payable on the redemption of any redeemable preference shares or of any debentures of the company.

Where a company has, before the commencement of this Act issued any shares at a premium, this section shall apply as if the shares had been issued after the commencement of this Act:

Provided that any part of the premium which has been so applied that it does not at the commencement of this Act form an identifiable part of the company's reserves within the meaning of Schedule XI shall be disregarded in determining the sum to be included in the share premium account.

### **Questions for discussion**

**Question:** A shareholder of XYZ Company Limited, a private limited company, has applied to the Board of Directors of the Company for approval of transfer of 10,000 shares which are fully paid. However, the transferee did not enclose the share certificates and transfer instruments (Form No. 117) stating that those were lost.

Can the company approve the transfer without share certificates and transfer instruments?

What formalities to be completed to approve the transfer as mentioned above, if at all?

**Answer:** The provision of sub-section 3 of section 38 of Companies Act makes a provision about transfer where the instrument is lost. The board may approve the transfer without instrument on application of transferee where the transferee provides indemnity to the satisfaction of the board but the application must bear stamp duty as required by the instrument.

Section 38 does not deal with the contingency for loss of share certificate or allotment letter. The board may refuse transfer where certificate is not lodged along with the Transfer Form. Regulation 7 of schedule 1 empowers the board to take decision in case certificate is lost, defaced or destroyed. Without issuing a duplicate certificate, transfer cannot be approved by the board. Before issuing duplicate certificate, the following formalities are usually observed:

An application from the member signed in the same way as his specimen signature provided in respect of the shares lost is to be obtained along with an affidavit.

The Stock Exchange should be notified, if the company is a listed company.

An advertisement is to be inserted in a local newspaper having reasonably wide circulation, at the cost of the member specifying the time within which any objection may be sent to the company against issue of duplicate share certificate.

An indemnity bond on requisite stamp paper is to be obtained on the expiry of the limit of time mentioned in the advertisement.

The matter should then be placed before the board of directors for investigation & their satisfaction and orders.

A duplicate share certificate may then be issued after taking necessary charges as per provision of the articles, prominently marking on the share certificate and counter foil that it is a duplicate certificate issued in lieu of certificate number, replaced & an entry in the register of duplicate share certificate and also in the original register of members have to be made.

## *Corporate Laws and Practices*

**Question:** 'A' purchased 3,000 nos. of shares XYZ Company Limited. Later on the certificate was lodged to the Company for registration of transfer of 1,000 shares (out of 3,000) in the name of 'B'. The company certified the transfer but instead of destroying the original certificate, returned it to the transferor who borrowed money giving it as collateral. Is the Company liable to the lender?

**Answer:** The company is not liable to the lender. Even if he had deceived persons to accept the transfer of those 1,000 shares, the company would not have been liable to the transferee(s). The reason is that share certificate is neither a negotiable nor a warranty of title on part of the company issuing it. If the Company after certifying returns the certificate to the transferor through a mistake and the transferor pledges it in fraud this will not give the pledge a cause of action against the company.

**Question:** A deceitful prospectus containing an untrue statement was issued by the defendant on behalf of ABC Company Limited. The plaintiff, Mr. X, received a copy of it but did not take any share initially in the Company. The allotment was completed and one year afterwards Mr. X bought 2,000 nos. of shares of ABC Company Limited from the secondary market. The plaintiff sued the defendant for recession on the ground of untrue statement in the prospectus. Give your opinion on the legal status of the situation.

**Answer:** In the stated situation no remedy is available for Mr. X. Remedy is available only for those who have taken shares directly from the Company. A purchaser of shares from the secondary market buys shares on the basis of market information not on the basis of the prospectus.

## **REGULATIONS FOR MANAGEMENT OF A COMPANY LIMITED BY SHARES**

### **SCHEDULE-I (SECTIONS 2, 17, 18, 86, 367):**

#### **Preliminary**

In these regulations, unless the context otherwise requires, (a) expressions defined in the Companies Act, 1994, shall have the meanings so defined; and (b) words importing the singular shall include the plural, and vice versa; and (c) words importing the masculine gender shall include females, and words importing persons shall include bodies corporate.

#### **Business**

The directors shall comply with the restrictions on the commencement of business imposed by Section 150 of the Companies Act 1994, if, and as far as, those restrictions are binding upon the company.

#### **Shares**

Subject to the provisions, if any, in that behalf of the memorandum of association of the company, and without prejudice to any special rights previously conferred on the holders of existing shares in the company, any share in the company may be issued with such preferred, deferred or other special rights, or such restrictions, whether in regard dividend, voting, return of share capital, or otherwise, as the company may from time to time by special resolution determine (and any preference share may with the sanction of a special resolution be issued on the terms that it is or at the option of the company is liable to be redeemed)

If at any time the share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may [subject to the provisions of Section 71 of the Companies Act 1994], be varied with the consent in writing of the holders of three-fourths of the issued shares of that class, or with the sanction of an extraordinary resolution passed at a separate general meeting of the holders of the shares of the class.

To every such separate general meeting the provisions of these regulations relating to general meetings shall mutatis mutandis apply, but so that the necessary quorum shall be two persons at least holding or representing by proxy one-third of the issued shares of the class.

No share shall be offered to the public for subscription except upon the terms that the amount payable on application shall be at least five per cent of the nominal amount of the share; and the directors shall, as regards allotment of shares, duly comply with such of the provisions of Sections 148 and 151 of the Companies Act, 1994, as may be applicable thereto.

Every person whose name is entered as a member in the register of members shall, without payment, be entitled to a certificate under the common seal of the company specifying the share or shares held by him and the amount paid up thereon:

Provided that, in respect of a share or shares held jointly by several persons, the company shall not be bound to issue more than one certificate, and delivery of a certificate for a share to one of several joint-holders shall be sufficient delivery to all.

If a share certificate is defaced, lost or destroyed, it may be renewed on payment of such fee, if any, not exceeding five taka, and on such terms, if any as to evidence and indemnity as the directors think fit.

Except to the extent allowed by section 58 of the Companies Act 1994, no part of the funds of the company shall be employed in the purchase of, or in loans upon the security of, the company's shares.

### **Lien**

The company shall have a lien on every share (not being a fully-paid share) for all moneys (whether presently payable or not) called or payable at a fixed time in respect of that share, and the company shall also have a lien on all shares (other than fully-paid shares) standing registered in the name of a single person, for all moneys presently payable by him or his estate to the company; but the directors may at any time declare any share to be wholly or in part exempt from the provisions of this clause. The company's lien, if any, on a share shall extend to all dividends payable thereon.

The company may sell, in such manner as the director thinks fit, any shares on which the company has a lien, but no sale shall be made unless some sum in respect of which the lien exists is presently payable, nor until the expiration of fourteen days after a notice in writing stating and demanding payment of such part of amount in respect of which the lien exists as is presently payable, has been given to the registered holder for the time being of the share, or the person entitled by reason of his death or insolvency to the share.

The proceeds of the sale shall be applied in payment of such part of the amount in respect of which the lien exists as is presently payable, and the residue shall (subject to a like lien for sums not presently payable as existed upon the shares prior to the sale) be paid to the person entitled to the shares at the date of the sale. The purchaser shall be registered as the holder of the shares, and he shall not be bound to see to the application of the purchase-money, nor shall his title to the shares be affected by any irregularity or invalidity in the proceedings in reference to the sale.

### **Calls on Shares**

The directors may from time to time make calls upon the members in respect of any moneys unpaid on their shares, provided that no call shall exceed one-fourth of the nominal amount of the share, or be payable at less than one month from the last call; and each member shall (subject to receiving at least fourteen days' notice specifying the time or times of payments) pay to the company at the time or times so specified the amount called on his shares.

The joint-holders of a share shall be jointly and severally liable to pay all calls in respect thereof.

If a sum called in respect of a share is not paid before or on the day appointed for payment thereof, the person from whom the sum is due shall pay interest upon the sum at the rate of five per cent, per annum from the day appointed for the payment thereof to the time of the actual payment, but the directors shall be at liberty to waive payment of that interest wholly or in part.

The provisions of these regulations as to payment of interest shall apply in the case of non-payment of any sum which, by the terms of issue of a share, becomes payable, at a fixed time, whether on account of the amount of the share, or by way of premium.

The directors may make arrangements on the issue of shares for a difference between the holders in the amount of calls to be paid and in the times of payment.

The directors may, if they think fit, receive from any member willing to advance the same all or any part of the moneys uncalled and unpaid upon any shares held by him; and upon all or any of the moneys so advanced may (until the same would, but for such advance, become presently payable) pay interest at

such rate (not exceeding, without the sanction of the company in general meeting, six per cent) as may be agreed upon between the member paying the sum in advance and the directors.

### **Forfeiture of Shares**

If a member fails to pay any call or installment of a call on the day appointed for payment thereof, the directors may, at any time thereafter during such time as any part of such call or installment remain unpaid, serve a notice on him requiring payment of so much of the call or installment as is unpaid, together with any interest which may have accrued.

The notice shall name a further day (not earlier than the expiration of fourteen days, from the date of the notice) on or before which the payment required by the notice is to be made, and shall state that, in the event of non-payment at or before the time appointed, the shares in respect of which the call was made will be liable to be forfeited.

If the requirements of any such notice as aforesaid are not complied with, any share in respect of which the notice has been given may at any time thereafter, before the payment required by the notice has been made, be forfeited by a resolution of the directors to that effect.

A forfeited share may be sold or otherwise disposed of on such terms and in such manner as the directors think fit, and at any time before a sale or disposition, the forfeiture may be cancelled on such terms as the directors think fit.

A person whose share have been forfeited shall cease to be a member in respect of the forfeited shares, but shall, notwithstanding, remain liable to pay to the company all moneys which, at the date of forfeiture, were presently payable by him to the company in respect of the shares, but his liability shall cease if and when the company received payment in full of the nominal amount of the shares.

A duly verified declaration in writing that the declarant is a director of the company has been duly forfeited on a date stated in the declaration, shall be conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the share, and that declaration, and the receipt of the company for the consideration, if any, given for the share on the sale or disposition thereof, shall constitute a good title to the share, and the person to whom the share is sold or disposed of shall be registered as the holder of the share and shall not be bound to see to the application of the purchase money (if any), nor shall his title to the share be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale or disposal of the share.

The provisions of these regulations as to forfeiture shall apply in the case of non-payment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the amount of the share, or by way of premium, as if the same had been payable by virtue of a call duly made and notified.

### **Conversion of Shares into Stock**

The directors may, with the sanction of the company previously given in general meeting, convert any paid-up shares into stock, and may with the like sanction re-convert any stock into paid-up shares of any denomination.

The holders of stock may transfer the same, or part thereof, in the same manner, and subject to the same regulations, as and subject to which, the shares from which the stock arose might previously to conversion have been transferred, or as near thereto as circumstances admit, but the directors may from time to time fix the minimum amount of stock transferable, and restrict or forbid the transfer of

fractions of that minimum, but the minimum shall not exceed the nominal amount of the shares from which the stock arose, and may also prohibit or restrict the transfer of such stock.

The holders of stock shall, according to the amount of the stock held by them, have the same rights, privileges and advantages as regards dividends, voting at meetings of the company, and other matter, as if they held the shares from which the stock arose, but no such privilege or advantage (except participation in the dividends and profits of the company) shall be conferred by any such aliquot part of stock as would not, if existing in shares, have conferred that privilege or advantage.

Such of the regulations of the company (other than those relating to share-warrants), as are applicable to paid-up shares shall apply to stock, and the words, 'share' and "share-holder" therein shall include "stock" and "stock-holder".

### **Share-warrants**

The company may issue share-warrants, and accordingly the directors may in their discretion, with respect to any share which is fully paid up, on application in writing signed by the person registered as holder of the share, and authenticated by such evidence (if any) as the directors may from time to time require as to the identity of the person signing the request, and on receiving the certificate (if any) of the share, and the amount of the stamp-duty on the warrant and such fee as the directors may from time to time require, issue under the company's seal a warrant, duly stamped, stating that the bearer of the warrant is entitled to the shares therein specified and may provide by coupons or otherwise for the payment of dividends, or other moneys, on the shares included in the warrant.

A share-warrant shall entitle the bearer to the shares included in it, and the share shall be transferred by the delivery of the share-warrant, and the provisions of the regulations of the company with respect of transfer and transmission of shares shall not apply thereto.

The bearer of a share-warrant shall, on surrender of the warrant to the company for cancellation, and on payment of such sum as the directors may from time to time prescribe, be entitled to have

his name entered as a member in the register of members in respect of the shares included in the warrant.

The bearer of a share-warrant may at any time deposit the warrant at the office of the company, and so long as the warrant remains so deposited, the depositor shall have the same right of signing a requisition for calling a meeting of the company, and of attending and voting and exercising the other privileges of a member at any meeting held after the expiration of two clear days from the time of deposit, as if his name were inserted in the register of members as the holder of the shares included in the deposited warrant. Not more than one person shall be recognized as depositor of the share-warrant. The company shall, on two days' written notice, return the deposited share-warrant to the depositor.

Subject as herein otherwise expressly provided, no person shall, as bearer of a share-warrant, sign a requisition for calling a meeting of the company, or attend, or vote or exercise any other privilege of a member at a meeting of the company, or be entitled to receive any notices from the company; but the bearer of a share-warrant shall be entitled in all other respects to the same privileges and advantages as if he were named in the register of members as the holder of the shares included in the warrant, and he shall be a member of the company.

The directors may, from time to time, make rules as to the terms on which (if they shall think fit) a new share-warrant or coupon may be issued by way of renewal in case of defacement, loss or destruction.



### **Alteration of Capital**

The directors may, with the sanction of the company in general meeting, increase the share capital by such sum, to be divided into shares of such amount, as the resolution shall prescribe.

Subject to any direction to the contrary that may be given by the resolution sanctioning the increase of share capital, all new shares shall, before issue, be offered to such persons as at the date of the offer are entitled to receive notices from the company of general meetings in proportion, as nearly as the circumstances admit, to the amount of the existing shares to which they are entitled. The offer shall be made by notice specifying the number or shares, offered, and limiting a time within which the offer, if not accepted, will be deemed to be declined, and after the expiration of that time, or on the receipt of an intimation from the person to whom the offer is made that he declines to accept the shares offered, the directors may dispose of the same in such manner as they think most beneficial to the company. The directors may likewise so dispose of any new shares which (by reason of the ratio which the new shares bear to shares held by persons entitled to an offer of new shares) cannot, in the opinion of the directors, be conveniently offered under this article.

The new shares shall be subject to the same provisions with reference to the payment of calls, lien, transfer, transmission, and forfeiture and otherwise as the shares in the original share capital.

The company may, by ordinary resolution, -

- a. consolidate and divide its share capital into shares of larger amount than its existing shares;  
by sub-division of its existing shares or any of them, divide the whole or any part of its share capital into shares of smaller amount than is fixed by the memorandum of association, subject, nevertheless, to the provisions of paragraph (d) of sub-section (1) of Section 53 of the Companies Act 1994;  
cancel any shares which, at the date of the passing of the resolution, have not been taken or agreed to be taken by any person.
- b. The company may, by special resolution, reduce its share capital in any manner and with, and subject to any incident authorized and consent required, by law].

**Questions for discussions:**

**Question:** ABC Company Limited, a public listed company owns 80% shares of XYZ Company. ABC is about to raise its paid up capital and shall issue 200,000 new shares. Can XYZ Company apply to purchase those shares?

**Answer:** As per Section 58 of the Companies Act, no company limited by share shall have any power to buy its own shares or the shares of a public company of which it is a subsidiary company. So, in terms of the said section, XYZ Company cannot purchase the shares of ABC Company Limited.

**Question:** ABC Company Limited, a public listed company owns 99% shares of XYZ Investments Limited. ABC Company Limited has applied to BSE for Issuance Rights Share and appointed XYZ Investments Limited as an Underwriter to the Issue to subscribe 65% of the shares which may not be subscribed by the shareholders. What will be the consequence regarding the appoint of XYZ Investments Limited as an Underwriter to the Issue?

**Answer:** As per Section 58 of the Companies Act, 1994 no company limited by share shall have any power to buy its own shares or the shares of a public company of which it is a subsidiary company. So, in terms of the said section, XYZ Investments Limited cannot purchase the shares of ABC Company Limited except in the scenario as approved under Section 58 of the Companies Act. Therefore, appoint of XYZ Investments Limited as an Underwriter to the Rights Share issue of ABC Company Limited shall not be valid.

## **BOARD OF DIRECTORS**

### **Formation of the Board:**

We know that a company is an artificial person created by law and it does not have any physical existence. As such, it cannot act itself. The persons through whom it acts are known as directors. The directors of a company are collectively known as the “Board of Directors”. The Board must be properly constituted to transact the business of the company validly. Invalidly constituted board cannot bind the company by its acts. However, under certain circumstances, the acts of the directors who have been invalidly appointed would be valid, if the irregularity in appointment is discovered subsequently. Regarding validity of the act of director section 98 of The Companies Act, 1994 states the following:

The acts of a director shall be valid notwithstanding any defect that may afterwards be discovered in this appointment or qualification:

Provided that nothing in this section shall be deemed to give validity to act done by a director after the appointment of such director has been shown to be invalid.

Regulation 95 of Schedule-I of The Companies Act, 1994 which is compulsory states as follows:

All acts done by any meeting of the directors or of a committee of directors or of a committee of directors or by any person acting as a director, shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such directors or persons acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

These provisions of the law do not apply to the case of a director:

whose term of office has expired but continues to act as a director.

who from the beginning knew that his appointment was defective.

However, the defect in the information of the board cannot adversely affect the right of the outsiders who have no knowledge of defects. A person ignorant of irregularity in the information of the board, can claim protection.

### **Number of directors:**

Section 90(1) of The Companies Act, 1994: Every public company and every private company which is subsidiary of a public company, shall have at least three directors.

Section 90(2) of The Companies Act, 1994: Every private company other than a private company mentioned in section 90(1), shall have at least two directors.

Section 90(3) of The Companies Act, 1994: Only natural person can be appointed as directors.

The remuneration of the directors shall from time to time be determined by the company in general meeting. The qualification of a director shall be the holding of at least one share in the company, and it shall be his duty to comply with the provisions of Section 97 of the Companies Act, 1994.

**Appointment of directors:**

First directors are usually named in the articles of association. Section 91 of The Companies Act, 1994 states the followings:

1. Notwithstanding anything contained in the articles of a company –

the subscribers of the memorandum shall be deemed to be the directors of the company until the first directors are appointed;

the directors of the company shall be elected by the members from among their number in general meeting; and

any casual vacancy occurring among the directors may be filled in by the other directors but the person appointed shall be a person qualified to be elected as a director under clause (b) and shall be subject to retirement at the same time as is he had become a director on the day on which whose place he is appointed was last appointed as a director.

Notwithstanding anything contained in the articles of a company other than a private company not less than one third of the whole number of directors shall be the persons whose period of office is liable to determination at any time by retirement of directors' rotation.

If the articles of association do not name the directors but specify qualification shares of directors, subscribers shall be first directors. According to section 97(1), directors must take up qualification shares within 60 days of appointment or within such shorter time as may be fixed by the articles.

Regulation 79 of The Companies Act, 1994 states that at the first ordinary meeting of the shareholders, the whole of the directors shall retire from office, and at ordinary meeting in every subsequent year, one-third of the directors for the time being, or if their number is not three or a multiple of three, then the number nearest to one-third shall retire from office.

Regulation 80 states that the directors to retire in every year shall be those who have been longest in the office since their last election, but as between the persons who became directors on the same day; those to retire shall, unless they otherwise agree among themselves, be determined by lot. A retiring director shall however be eligible for re-election.

The company at the general meeting, at which a director retires in a manner as aforesaid may fill the vacated office by electing a person thereto.

As per section 17(2) of Companies Act, 1994 regulations 79, 80, 81 & 82 are compulsory for public company but not for private company, unless it is not a subsidiary of a public company.

**Consent of directors:**

Every director has to sign a consent form (Form IX) and file the same with Registrar of Joint Stock Companies and Firms. Section 93 of the Act states as follows:

every person, proposed to as a candidate for the office of a director shall sign, and file with the company, his consent in writing to act as a director, if appointed.

A person shall not act as a director of the company unless he has, within thirty days of his appointment, signed and filed with the Registrar his consent in writing to act as such director.

**Powers and duties of the Directors:**

The business of the company shall be managed by the directors, who may pay all expenses incurred in getting up and registering the company, and may exercise all such powers of the company as are not, by the Companies Act, 1994, or any statutory modification thereof for the time being in force, or by these articles, required to be exercised by the company in general meeting subject nevertheless to any regulation of these articles, to the provisions of the said Act, and to such regulations being not inconsistent with the aforesaid regulations or provisions, as may be prescribed by the company in general meeting; but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if that regulation had not been made.

The directors may from time to time appoint one or more of their body to the office of managing director or manager for such term, and at such remuneration (whether by way of salary, or commission, or participation in profits, or partly in one way and partly in another) as they may think fit, and a director so appointed shall not, while holding that office, be subject to retirement by rotation, or taken into account in determining the rotation of retirement of directors, but his appointment shall be subject to determination 'ipso facto' if he ceases from any cause to be a director, or if the company in general meeting resolve that his tenure of the office of managing director or manager be determined.

The amount for the time being remaining undischarged of moneys borrowed or raised by the directors for the purposes of the company (otherwise than by the issue of share capital) shall not at any time exceed the issued share capital of the company without the sanction of the company in general meeting.

The directors shall duly comply with the provisions of the Companies Act, 1994, or any statutory modification thereof for the time being in force, and in particular with the provisions in regard to the registration of the particulars of mortgages and charges affecting the property of the company or created by it, and to keeping a register of the director and to sending to the Registrar an annual list of members, and a summary of particulars relating thereto and notice of any consolidation or increase of share capital, or conversion of shares into stock, and copies of special resolutions and a copy of the register of directors and notifications of any changes therein.

The directors shall cause minutes to be made in books provided for the purpose:

of all appointments of officers made by the directors,

of the names of the directors present at each meeting of directors and of any committee of the directors,

of all resolutions and proceedings at all meeting of the company, and, of the directors, and of committees of directors.

and every director present at any meeting of directors or committee of directors shall sign his name in a book to be kept for that purpose.

**Board Meeting:**

A company is an artificial person. It exists in the eyes of the law and cannot act on its own. It has to act through a board of directors elected by the shareholders. A company incorporated under the Companies Act has a distinct legal existence quite independent the shareholders. The directors are the representatives of the shareholders and the companies are managed through directors. The board meetings are important because the matters relating to the company and its policy are discussed and decided the board meetings. The Companies Act, 1994 has given discretion to the directors to frame rules and regulations concerning meetings, where they should meet and how their meetings should be

regulated. However, if the directors are unable to exercise the powers vested on them, the company may exercise such powers in general meeting of the shareholders. The procedures of dealing with the issues by the directors in one company may differ within the legal frame with that of other company. The scope of business to be done by the board depends upon the provisions in the articles of the respective company and The Companies Act, 1994.

**Matters within the power:**

The Articles delegate powers to the board of the directors and not to any individual or to a number of individuals by name. Therefore, the directors must meet together as a board in order to discharge their duties. Directors must act together at a properly convened meeting presided over by a Chairman.

**Illustration:**

Where six directors out of nine met in a different capacity and for different purpose, such meeting is not a board meeting. Directors can meet under informal circumstances. If all the directors meet casually in a club it cannot be treated as board meeting at the option of one against the will of the other.

Usually articles of a company contain provisions as described below:

"A resolution in writing signed by the directors required to form a quorum for the time being in Bangladesh shall be effectual as a resolution passed at a meeting of directors duly convened and held."

Section 108(1)(f) of The Companies Act, 1994 states the followings:

The office of director shall be vacated, if he absents himself from three consecutive meetings of the directors or from all meetings of the directors for continuous period of three months whichever is longer, without leave of absence from the board of directors.

Therefore, it is not necessary for a director to attend in every board meeting. He may attend as often as possible. A director who attends the meeting must act honestly, use fair and reasonable diligence in the management of the company. A director cannot be held responsible for any misfeasance committed by other directors for an act at meeting in which he was absent or he had no knowledge of it.

In the absence of clear provision in the Act or memorandum or articles or resolution, powers of directors depend on surrounding circumstances.

**Restrictions on power of directors:**

According to section 107 of The Companies Act, 1994 the directors of a public company or of a subsidiary of public company shall not, except with the consent of the company in a general meeting:

Sell or dispose of the undertaking of the company; and

Remit any debt due by a director.

**Circumstances when telephonic conversation and informal discussion become board's discussion:**

Sometimes decisions are taken by the board on the basis of conversation over telephone or informal discussion among themselves. Such telephonic conversation or discussion is not considered as a meeting within the meaning of the Act. However, telephonic conversation and informal discussion may be treated as a resolution subject to provision in the articles and when all the directors sign a resolution based on such conversation or discussion.

**Resolution through circular solution:**

If it is provided in the articles, the director may pass a resolution by circulation, signed by all the directors without convening a Board Meeting. Such a circular resolution must be recorded in the immediate following Board Meeting and will be incorporated as a part of the minutes of the said Board Meeting. The articles may allow directors to act otherwise than in a meeting. If the articles so provide, a resolution in writing signed by all the directors for the time being in Bangladesh shall be as valid as if it had been passed at a meeting duly convened and held. The fact that directors should act as "combined wisdom" is satisfied where they give consent with full knowledge though they do not meet at any one place. Such signed resolution is inserted in the directors' minute book. The resolutions of the board, even if passed by minority at a meeting are binding on all the directors and all of them are bound by decisions in the meeting.

A circular resolution is usually drafted in loose leaf form and one copy is distributed to each director who signs and returns the same to the secretary or chairman. The date of adoption resolution is usually taken at the date on which last copy of the draft resolution signed by the director is received by the secretary / chairman.

Directors usually act at board meeting, unless special powers are delegated to directors or committee of the board. The articles usually contain some provisions relating to the meeting of board of directors. Regulation 88 of schedule-1 of Companies Act provides as follows:

The directors may meet together for the disposal of business and adjourn or otherwise regulate their meetings, as they think fit. Questions arising at any meeting shall be decided by majority of votes. In

case of an equality of votes, the Chairman shall have a second or casting vote. A director may, and the secretary on the requisition of a director shall, at any time, summon a meeting of directors. However, this regulation is not compulsory.

The Articles usually empower the directors for management of the company, they are the persons who can deal with the matters assigned to them. Their decisions cannot be over ruled by general meeting of the members, if the directors act in the interest of the company. A draft circular resolution is given in appendix.

**Types of business not to be transacted by Circular Resolution:**

Not all kinds of business can be transacted by circular resolution. When a director is interested in a contract within the meaning of section 131, and the articles provide that a resolution in writing signed by all the directors for the time being in Bangladesh should be as valid and effective as if it has been passed at a meeting. A circular resolution approved by all directors including the interested director shall not invalidate due to signature of interested director.

All business cannot be transacted by Circular Resolution, where the Companies Act provides a particular business has to be transacted in a meeting of the board. Such as declaration of solvency shall have to be made at a meeting of directors as per sec. 290, disclosure of interest in respect of contract as per sec 130.

**Formal board meeting, frequency & interval as per Companies Act:**

According to section 96, the board of directors shall hold board meeting at least once in every three months and at least four meetings in every year.

**Prerequisite of formal board meeting:**

**Necessity of notice**

The first requirement to hold a valid and formal board meeting is serving of notice of the meeting. The directors are required to receive notice of the meeting to meet together. The notice must be given to convene a meeting otherwise; the meeting becomes irregular & invalid. If one or more of the directors remain absent, the proceeding would be invalid, if the validity of a meeting of directors is questioned due to non-service of the notice to all the directors. The burden to prove is upon him who alleges non-service of notice.

Companies Act, 1994 does not prescribe the form of notice and mode of service of notice. The notice is usually served in the company's letterhead, stating the date, times & place of the meeting.

According to section 95, notice of board meeting shall have to be given in writing to every director for the time being in Bangladesh and at his address in Bangladesh.

As per compulsory regulations 112, 113, 114, 115 and 116 of First Schedule of The Companies Act, 1994 the followings are applicable with regard to notice of the meeting:

Regulation 113: A notice may be given by the company to any member either personally or by sending it by registered post to him to his registered address or, if he has no registered address in Bangladesh, to the address, if any, within Bangladesh supplied by him to the company for giving of notice to him.

Regulation 114: If a member has no registered address in Bangladesh, and has not supplied to the company an address within Bangladesh for the giving of notice to him, a notice addressed to him and advertised in a newspaper circulating in the neighborhood of the registered office of the company shall be deemed to be duly given to him on the day on which the advertisement appears.

Regulation 115: A notice may be given by the company to the joint holders of a share by giving the notice to the joint-holder named first in the register in respect of the share.

Regulation 116: A notice may be given by the company to the persons entitled to a share in consequence of the death or insolvency of a member by sending it through the post in a prepaid letter addressed to them by name, or by the title of representatives of the deceased, or assignee of the insolvent or by any like description, at the address, if any, in Bangladesh supplied for the purpose by giving the notice in any manner in which the same might have been given if the death or insolvency had not occurred.

Optional regulation 117 of schedule I of The Companies Act, 1994 relates to members only which states that:

Notice of every general meeting shall be given in some manner herein before authorized to-

every member of the company including bearers of share-warrants except those members who have no registered address within Bangladesh and have not supplied to the company an address within Bangladesh for the giving of notice to them and.

every person entitled to a share in consequence of the death or insolvency of a member, who but for his death or insolvency, would be entitled to receive notice of the meeting.



Notice need not to be in a specific form. When all the directors are present, service of notice becomes obsolete. An informal notice calling a board meeting becomes valid provided none of the directors raise any objection about non service of notice.

If any director thinks that proper notice has not been given & he; does not complain of the same, the resolution would be valid specially when he takes part in the proceedings.

The notice of company meetings is governed, in general, by following rules:

Notice is to be issued with due authority granted by the directors. For all purposes, only directors are authorized to convene a meeting. The Company Secretary may issue notice for a meeting, but his signature must be qualified by the words “by order of the Board.”

Minimum length of notice required for:

| Sl. No. | Type of Meeting               | Notice period  |
|---------|-------------------------------|--|
| A)      | Statutory meeting             | 21 days  |
| B)      | Annual General Meeting        | 14 days  |
| C)      | Extraordinary General Meeting | 21 days  |
| D)      | Board meeting                 | No specific time limit. However, this may be specified in the Memorandum of Association of the respective company. |

Though the Act is silent about the length of notice for board meeting, yet it should reasonably be long and there should have reasonable interval of time between the date of notice and the date of meeting. Every director has right to have a reasonable notice of meeting. If a director is willing to complain about the shortness of time of the notice s/he may do so. However, in absence of any written guideline best practice is to follow the notice period of 14 days.

In case of urgency, board may convene emergency meeting giving a shorter period of notice provided that no objection is raised by any member of the Board.

The notice shall be in writing.

As per section 85(1)(a) a meeting may be called by a shorter notice if it is agreed in writing:

in case of an annual general meeting, if all members entitled to attend and vote thereat agree to it; and

in case of any other meetings if the members holding not less than 95% of the paid up capital of the company and having right to vote at that meeting. If the company has no share capital if the members holding not less than 95% of the voting right exercisable at that meeting.

The period of notice should be in clear days. This means that while determining the notice period the day of serving the notice and the day of the relevant meeting should be excluded.

Apart from the agenda, the notice should clearly state the followings:

The chronological number of the meeting

Date of the meeting

Day of the meeting

Time of the meeting, and

Place of the meeting

Notice of the meeting of a company along with the statement of the business to be transacted at the meeting shall be served on every member. It is to be served on the followings:

Every shareholder (who resides in the country)

Legal representative of the deceased shareholder

Auditors of the company

Copy of the notice to be given to all directors.

Accidental omission to give notice to, or non-receipt of the notice by, any member of the company shall not invalidate the proceedings at any meeting (Section 85(1)(b)).

As per schedule I of The Companies Act, 1994 the followings are applicable with regard to notice of the meeting:

**Regulation 113:** A notice may be given by the company to any member either personally or by sending it by registered post to him to his registered address or if he has no registered address in Bangladesh, to the address, if any, within Bangladesh supplied by him to the company for the giving of notice to him.

**Regulation 114:** If a member has no registered address & he has not supplied to the company an address within Bangladesh for the giving of notice to him, a notice addressed to him and advertised in a newspaper circulating in the neighborhood of the registered office of the company shall be deemed to be duly given to him on the day on which the advertisement appears.

**Regulation 115:** A notice may be given by the company to the joint holders of a share by giving the notice to the joint-holder name first in the register in respect of the share.

**Regulation 116:** A notice may be given by the company to the persons entitled to a share in consequence of the death or insolvency of a member by sending it through the post in a prepaid letter addressed to them by name or by the title of representatives of the deceased, or assignee of insolvent or by any like description, at the address, if any, in Bangladesh supplied for the purpose by giving the notice in any manner in which the same might have been given if the death or insolvency had not occurred.

**Regulation 117:** Notice of every general meeting shall be given in same manner here in before authorized to –

every member of the company including bearers of share-warrants except those members who have no registered address within Bangladesh and have not supplied to the company an address within Bangladesh for giving of notices to them, and

every person entitled to a share in consequence of the death or insolvency of member who but for his death or insolvency would be entitled to receive notice of the meeting;

**Signatory of notice**

Regulation 88 of schedule 1 of The Companies Act, 1994 provides as follows:

A director may, and the secretary on the requisition of a director shall at any time, summon a meeting of directors.

Therefore, any director may sign the notice. However, usually notice of the meeting of directors is signed by a director or by secretary with the phrase “By order of the board”.

**Notice of meeting on fixed dates**

It is not legally necessary to send notice of meeting on a fixed date. If the articles provide that the meeting would be held at regular intervals or on a fixed day of the month (for example 2<sup>nd</sup> Sunday of every month at 10:00 a.m. at the Registered Office of the Company and all the directors are aware of such decision). But even in such cases, it is better for the secretary to remind the directors of the meeting by sending a formal notice.

**Place of meeting:**

Meeting of the board may be held at any place since the Act is silent regarding the place of meeting which is decided by the board. But the place must not be chosen to prevent attendance of any member of the Board.

**Exception to notice**

Notice need not be given under the following circumstances:

If a director is out of the country, notice need not be given in the absence of express provisions to the contrary in the articles

if the articles provide for meetings to be held at regular intervals, e.g. monthly or bi-monthly and the time and place is fixed. Though in such case, notice is often sent to remind the director.

if all the directors agree to meet to settle emergency issues and hold the meeting, the meeting can be held notwithstanding the absence of notice.

**Effect of not giving notice**

If a meeting is convened without giving notice to all directors, the resolution passed at such meeting may be invalid on an action by an aggrieved person. The transactions can however be ratified at a subsequent meeting of a validly convened meeting.

A director is entitled to have notice of the meeting even if he is outside Bangladesh, if an arrangement has been made with the company for sending such notice to him. The right to receive the notice cannot be waived.

**Agenda of board meeting**

As a matter of practice the businesses to be transacted in board meeting is stated in the notice. A director is bound to attend a meeting of directors if he had notice when a meeting is going to be held whether he knows the type of business is to be transacted or not. The board may deal with special business, although notice need not contain such agenda. It is however, suggested to obtain the consent of the Chairman on agenda and to forward it together with the notice.

**Illustrative agenda of first board meeting**

- Section 210(6): Appointment of first auditors;
- Sec. 183 (2)(a) & (b): Fixation of first and subsequent financial year;
- Regulation 54: Appointment of the Chairman, if not named in the articles of association);
- Regulation 73: Appointment of the Managing Director, if not named in articles association fix his remuneration;
- Regulation 77: Approval of design of common seal;
- Opening of Bank Accounts and its operation;
- Approval of draft of share certificate;
- Decision on pre-incorporation expenses.

**Usual agenda for subsequent meeting**

- Regulation 76: Appointment of officers, legal advisors;
- Section 38: Approval of share transfer;
- Section 83: Approval of statutory report;
- Section 84 and Regulation 49: Calling of EGM;
- Section 91(c): Co-option of director;
- Section 101: Appointment of alternate director;
- Section 103: Sanction of loan;
- Section 105: Approval of contracts;
- Section 120: Sanctioning of limit of credit to managing agent;
- Section 122: Purchase of share of company under same managing agent;
- Section 155 and Regulation 41: Issue of fresh shares & allotment;
- Section 181(3): Determining place of keeping books of accounts other than registered office
- Section 184 and Regulation 97: Recommendation of dividend;
- Regulation 77: Use of common seal;
- Regulation 24: Forfeiture of shares;

Regulation 12: Making of calls;

Section 184: Approval of Director's Report and signing authority;

Section 187: Decision regarding financial year of holding company and subsidiary company;

Section 189: Authentication of balance sheet, profit & loss accounts etc.

Section 210(7): Filling the casual vacancy of the auditors;

Section 290: Declaration of solvency;

Regulation 31: Conversion of shares into stock subject to previous approval in the general meeting;

Creating charges on the assets

Opening of branches.

Approval of resignation of director / officer.

Approval of Capital expenditures

Change of address of registered office (if the full address has not been given in the address clause of memorandum).

#### **Attendance & quorum for board meeting**

**Attendance:** directors attending the meeting must sign the attendance register from which quorum will be ascertained before starting of the business. In practice, some companies take attendance by obtaining signature on the resolution where names of the directors' present are recorded.

**Quorum:** is the minimum member of members required to enable a meeting to go into session validly i.e. to conduct and vote on the business to be transacted in the meeting and must be present to make the proceedings of the meeting valid.

#### **Quorum not fixed by articles**

If quorum is not prescribed by the articles, the majority of the directors will constitute a quorum. If the articles authorize the board of directors to fix quorum of directors and regulate its business, it also laid down the rule of majority decision.

#### **Illustration:**

Without fixing a quorum at a meeting, where all directors except one were present, the board passed a resolution sanctioning the grant of a power of attorney to the general manager on behalf of the company, the defendant contended that as no quorum for the directors meeting had been fixed, so smaller body than all of the directors should act and therefore the power of attorney was invalid as the resolution authorizing it was invalid. It was held that ordinarily where no quorum has in fact been fixed, the acts of a major part of the directors for the time being are valid; because there was no such contrary provision in the articles.

### **Quorum as per articles & regulation of schedule 1**

The articles usually contain provision about the number of directors required to constitute a quorum.

#### **Illustration:**

The articles of a company provide that minimum number of directors shall be four and A, B

C shall be first directors. The first directors shall have the power to appoint the other director. There can be no valid board meeting until A, B and C appoint the fourth director.

Regulation 89 of schedule 1 (it is not compulsory) provides as follows:

The quorum necessary for the transaction of business of the directors may fixed by the directors; unless so fixed shall be three if the number of directors is more than three.

#### **Validity of transaction by less than quorum:**

A board meeting conducted with of a number of directors less than quorum prescribed by the articles is invalid. The articles of a company made provision that the business of the company shall be conducted by not less than six directors; therefore any resolution by less than five directors will become invalid.

#### **Director leaving the meeting after giving attendance:**

When number of directors' falls below the minimum number fixed for quorum due to departure of any director giving his attendance in the meeting, the business carried, thereafter, will be invalid if the articles do not clearly mention that quorum is not required throughout the meeting.

#### **Director leaving the meeting in the middle of meeting:**

The directors cannot transact business in meeting if at any time the number of directors present falls below a quorum, although a quorum was present at the beginning of the meeting. Business at a meeting may be started if quorum is present. There is no express indication in the Act. or regulation that quorum is not necessary throughout the meeting. The quorum of the board is required at every stage of the meeting. Unless a quorum is present the business transacted is void.

#### **Illustration:**

Assuming that three directors forming quorum were present at the beginning, one of whom left the meeting after giving attendance and before the proceedings started. The proceedings of this meeting shall be invalid on the ground of quorum not being present throughout unless the articles expressly provide otherwise to mean that quorum is not necessary throughout the meeting.

#### **Conducting Board Meeting without quorum:**

Regulation 90 of Schedule I of The Companies Act, 1994 states the followings:

The continuing directors may act notwithstanding any vacancy in their body, but, if and so long as their number is reduced below the number fixed by or pursuant to the regulations of the company as the necessary quorum of directors, after may act for the purpose of increasing the number of directors to that number or of summoning a general meeting of the company, but for no other purpose.

From the above it is clear that the existing directors can convene a valid meeting of directors only to co-opt directors to increase their number of quorum, if their number has already fallen below quorum.

#### **Restriction on interested director to form quorum:**

A director of a public company or a private company which is a subsidiary of public company cannot vote for resolution in which he is interested. Such director cannot be counted towards a quorum for meeting transacting such business.

**Assumption of third party regarding proper quorum:**

Third party will not be affected by the invalidity of a meeting. Objection regarding validity of the proceeding of a company does not affect third parties. Third party may assume that everything was done properly.

**Chairman of Board Meeting**

There must be a chairman of every meeting appointed strictly in accordance with the provisions of the articles:

According to regulation 54 (not compulsory) of schedule 1, the board of directors shall select one of their members as the Chairman who shall preside at every general meeting of the company provided that the Chairman and the Managing Director shall not be the same person.

Regulation 91: The directors shall determine the period for which the chairman shall hold office.

According to regulation 93, if the chairman is not present within 30 minutes, the member may elect Chairman for that meeting.

However, these two regulations are also not compulsory as per sec 17(2).

The appointment of the Chairman in contravention of the articles is void. Where there is no provision for a casting vote of a chairman in the articles, the chairman cannot give a casting vote. A Chairman does not necessarily remain the Chairman simply because he is a director, he may be substituted by another director.

Where an agenda includes replacement of the Chairman, the Chairman whom to be replaced can preside over the meeting. The other directors will vote for appointment of the new chairman in place of the old chairman. Therefore, there is no conflicting situation.

**Consequences when chairman leaves the meeting without adjournment.**

If the Chairman leaves the meeting without adjournment the remaining directors, if quorum is present, may appoint a new chairman for that meeting to transact the rest of the business provided that it must be proved that Chairman who left the meeting without adjournment violated his duty & acted dishonestly.

**Minutes of Board Meeting**

It is very much essential record the actual terms of the resolutions as well as the language of the minutes. Minutes are kept to record the proceedings of the meetings. According to section 89(1), every company shall cause minutes of all proceedings of general meeting and meetings of its directors to be entered in the books kept for that purpose.

Section 89(2): Any such minute, if purporting to be signed by the Chairman of the meeting at which the proceedings were held, or by the Chairman of the next succeeding meeting shall be evidence of the proceedings.

According to Regulation 76:

The directors shall cause minutes to be made in books provided for the purpose:

of all appointment of officers made by the directors;

of the names of directors present at each meeting of the directors and of any committee of the directors;

of all resolutions and proceedings at all meetings of the company, and of the directors, and of the committee of directors.

Every director present at any meeting of directors or committee of directors shall sign his name in a book to be kept for that purpose.

### **Use of the Common Seal**

The Common Seal of the company shall not be affixed to any instrument except by the authority of a resolution of the board of directors, and in the presence of at least two directors and of the secretary or such other person as the directors may appoint for the purpose, and those two directors and secretary or other person as aforesaid shall sign every instrument to which the seal of the company is so affixed in their presence.

### **Disqualifications of Directors**

The office of director shall be vacated if the director-

fails to obtain within the time specified in sub-section (1) of Section 97 of the Companies Act, 1994, or at any time thereafter ceases to hold, the share qualification, if any, necessary for his appointment, or

is found to be of unsound mind by a Court of competent jurisdiction, or

is adjudged insolvent, or

fails to pay calls made on him in respect of shares held by him within six months from the date of such calls being made, or

without the sanction of company in general meeting accepts or holds any office of profit of under the company other than that of a managing director or manager or a legal or technical adviser or a banker, or

absents himself from three consecutive meetings of the directors or from all meetings of the directors for a continuous period of three months, whichever is longer, without leave of absence from the board of directors; or

accepts a loan from the company; or

is concerned or participates in the profits of any contract with the company; or

is punished with imprisonment for a term exceeding six months:

Provided however, that no directors shall vacate his office by reason of his being member of any company which has entered into contracts with or done any work for the company of which he is director, but a director shall not vote in respect of any such contract or work, and if he does so vote his vote shall not be counted.



**Rotation of Directors:**

Regulations 79 to 87 of schedule I of The Companies Act, 1994 states the followings:

**Regulation 79:** At the first ordinary meeting of the company, the whole of the directors shall retire from office, and at the ordinary meeting in every subsequent year one-third of the directors for the time being or, if their number is not three or a multiple of three then the number nearest to one-third shall retire from office.

**Regulation 80:** The directors to retire in every year shall be those who have been longest in office since their last election, but as between persons who became directors on the same day those to retire shall (unless they otherwise agree among themselves) be determined by lot.

**Regulation 81:** A retiring director shall be eligible for re-election.

**Regulation 82:** The company at the general meeting at which a director retires in manner aforesaid may fill up the vacated office by electing a person thereto.

**Regulation 83:** If at any meeting at which an election of directors ought to take place, the places of the vacating directors are not filled up, the meeting shall stand adjourned till the same day in the next week at the same time and place, and, if at the adjourned meeting the places of the vacating directors are not filled up, the vacating directors or such of them as have not had their places filled up shall be deemed to have been re-elected at the adjourned meeting.

**Regulation 84:** Subject to the provisions of Sections 90 and 91 of the Companies Act, 1994] the company may from time to time in general meeting increase or reduce the number of directors, and may also determine in what rotation the increased or reduced number is to go out of office.

**Regulation 85:** Any casual vacancy occurring on the board of directors may be filled up by the directors, but the person so chosen shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director. A director so chosen shall be known as an alternative director.

**Regulation 86:** The directors shall have power at any time, and from time to time, to appoint a person as an additional director who shall retire from office at the next following ordinary general meeting but shall be eligible for election by the company at that meeting as an additional director.

**Regulation 87:** The Company may by extraordinary resolution remove any director before the expiration of his period of office and may by an ordinary resolution appoint another person in his stead; the person so appointed shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director.

**Proceedings of Directors**

Regulations 88 to 95 of schedule I of The Companies Act, 1994 states the followings:

**Regulation 88:** The directors may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes, the chairman shall have a second or casting vote. A director may, and Secretary on the requisition of a Director shall, at any time, summon a meeting of directors.

**Regulation 89:** The Quorum necessary for the transaction of the business of the directors may be fixed by the directors, and unless so fixed shall (when the number of directors exceeds three) be three, when the number of directors exceed three.

**Regulation 90:** The continuing directors may act notwithstanding any vacancy in their body, but, if and so long as their number is reduced below the number fixed by or pursuant to the regulations of the company as the necessary quorum of directors the continuing directors may act for the purpose of increasing the number of directors to that number, or of summoning a general meeting of the company but for no other purpose.

**Regulation 91:** The directors may elect a chairman of their meetings and determine the period for which he is to hold office.

**Regulation 92:** The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit; any committee so formed shall, in the exercise of powers so delegated, conform to any regulations that may be imposed on them by the directors.

**Regulation 93:** A committee may elect a chairman of their meetings; if no such chairman is elected, or if at any meeting the chairman is not present within thirty minutes after the time appointed for holding the same, the members present may choose one of their number to be chairman of the meeting.

**Regulation 94:** A committee may meet and adjourn as they think proper. Questions arising at any meeting shall be determined by a majority votes of the members present, and in case of an equality of votes, the chairman shall have a second or casting vote.

**Regulation 95:** All acts done by any meeting of the directors or of a committee of directors, or by any person acting as a director, shall, notwithstanding that it be afterwards, discovered that there was some defect in the appointment of any such directors or persons acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

**Questions for discussions:**

**Question** A private company has four directors, namely 'A' (Managing Director), his wife 'B' (Chairperson), his brother 'C' (overseas director) & his (A's) daughter 'D' (director who is studying abroad). Overseas director resides in Canada & the company has given him the assignment to promote overseas business. The articles provide that three directors will form a quorum for the board meeting.

What should be done to validly convene the board meeting with quorum?

**Answer** For board meeting of a private company or public company the quorum is three members where number of directors exceeds three (Regulation 89 of schedule 1). However, regulation 89 is not compulsory for either private or public company. Given the above provisions, the company may either alter the articles of association by special resolution to reduce quorum for directors' meeting to two directors so that A & his wife, B can convene board meeting with quorum; Or The board may appoint alternate directors in place of 'N' & 'O' under section 101 provided that the articles contain such provision. If there is no such provision, an EGM should be convene by appointing proxy by 'N' & 'O'. The proxy needs not be member if the articles provides such provision.

**Question** Presently, Alfa Company Limited (“the Company”) has three directors namely A, B and C. Previously, the Company had five directors out of whom two directors namely D & E (close friends of C) died in an accident. No other directors were appointed. According to Articles of Association of the Company quorum for directors’ meeting is three. C resigned from the board due to the fact that his views and recommendations are not considered by A & B. A & B intends to appoint M who is a shareholder of the Company in the place of C. But C does not want to appoint M as a director of the Company. You are required to answer:

- i. When the resignation of C will be complete?
- ii. What procedures should A & B follow to appoint M as a director of the Company?

**Answer**

- i. Assuming that C attends the board meeting (in which resignation of C is placed) with A & B the meeting may pass resolution for acceptance of resignation of C unanimously.
- ii. Since A & B intends to appoint M who is a shareholder of the Company in the place of C the meeting should be closed after passing one resolution i.e. acceptance of resignation of C. As per regulation 90 of the Companies Act, 1994 A & B can co-opt M in place of C to increase the number of directors to form quorum. Accordingly, a separate board meeting will be convened in which meeting M will be appointed as a director.

**Question** XYZ Company Limited was incorporated on September 15, 2015. No auditor(s) was appointed by the Company till November 15, 2016. Please advise the Company regarding appointment of the auditor(s).

**Answer** As per section 210(6) of The Companies Act, 1994:  
The first auditor or auditors of a company shall be appointed by the Board of Directors within one month from the date of registration of the company and the auditor or auditors so appointed shall hold office until conclusion of the first annual general meeting.

As per section 210(6)(b):  
If the directors fail to exercise its powers under section 210(6), the company in general meeting, may appoint the first auditor or auditors.

Hence, as required by law XYZ Company Limited has failed to appoint the first auditor(s) within one month. In this situation an Extra-Ordinary General Meeting be called before the Annual General Meeting to appoint the first auditor(s). If this is not done it will not be possible to place the audited accounts in the AGM. Therefore, the provision of subsection 210(6) used the phrase “General Meeting” instead of “Annual General Meeting”.

**Question** Milestone Partners entered into an agreement relating to some significant issues with Livingstone Company Limited (LCL) on January 1, 2016. Entering into the agreement was duly approved in a duly convened board meeting of LCL held on December 30, 2015. Quorum for the purpose of the Board meeting of LCL is presence of five board members and five board members were present in the relevant board meeting. Subsequently, it was found that out of five of the directors forming quorum of the board meeting in which entering into the agreement was approved, one director failed to obtain the qualification shares within the regulatory time limit fixed on December 25, 2015 and as such his appointment as director at the time of board meeting was not valid. Subsequently, the board of LCL declined to perform the obligations under the contract entered with Milestone Partners on the plea that signing of the agreement was not approved in a duly held board meeting of LCL because of lack of quorum and as such is not valid. Give your advice on the defence available to Milestone Partners as per provisions of the Companies Act, 1994.

**Answer** Section 98 of the Companies Act, 1994 states that:

“The acts of a director shall be valid notwithstanding any defect that may afterwards be discovered in his appointment of qualification”.

Provided that nothing in this section shall be deemed to give validity to act done by a director after the appointments of such director has been shown to be invalid.

Moreover, regulation 95 of the Companies Act, 1994 states that all acts done by any meeting of the directors or of a committee of directors or by any person acting as a director, shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such directors or persons acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be the director.

In light of the above provisions of the Companies Act, 1994 Milestone Partners will have the right to claim that they did not have the scope to know the defects in the formation of the board of LCL and as such may claim protection under the provisions of the Companies Act, 1994.

**Question** The directors of a listed company convened board meeting before its AGM and recommended 50% cash dividend for the year 2015 and carried other business as usually done in such board meeting before AGM. The recommendation of proposed dividend was notified to the Stock Exchanges accordingly. The AGM was called and adjourned for indefinite period. You are required to answer:

Is the recommended dividend payable? Give proper argument in favor of your answer.

Is there any default in the above mentioned case by the Company within the provisions of the Companies Act, 1994? Mention the relevant provisions of the law in this regard.

What procedures to be followed to make the dividend payable?

- Answer**
- a. According to section 184(1)(c) the board of directors of the respective company may recommend final dividend. The dividend becomes payable after the approval of the shareholders in the AGM. As per Dhaka Stock Exchange (Listing) Regulations, 2015 the dividend shall be paid within 30 days from the date of approval by the shareholders in the AGM. However, in the mentioned case the dividend has not become payable since it has not been approved by the shareholders in the AGM.
  - b. The Chairman of the Board may with the consent of the meeting adjourn the meeting. A valid adjournment cannot go beyond the date whichever date falls
    - Last day of the calendar year;
    - Last day of 15 months from the date of previous AGM; or
    - Last day of nine months (12 months in case of company having interest outside Bangladesh) from the date of closure of the accounts.

However, in above case for the purpose of holding the AGM the applicable time for notice period and record date shall be taken into account.

If there is no objection about the adjournment, the shareholders have to wait till the date which falls earlier as determined in the above way. If the adjourned meeting is not convened within that date, the shareholders may give requisition for EGM.

In order to make the dividend payable by the company, two or more shareholders holding not less than one tenth of the paid up capital may submit a requisition under section 84 of the Companies Act, 1994 to hold EGM to approve the dividend or they may apply to the Court under section 85(3) to hold the Annual General Meeting if they think that the adjournment was not valid.

**Question** ABC Limited had five members in its Board of Directors. Three Board members present in person fulfills quorum for a valid Board Meeting of the Company. In a recent accident three directors of the Company died. What procedures the Company should follow to hold valid Board meetings?

**Answer** According to regulation 90 of schedule I, directors can convene a valid meeting of the directors only to co-opt directors to increase the number of Board members to fulfill quorum if their number has already fallen below the quorum or to summon a general meeting of the company. Therefore, the existing directors can hold board meeting to co-opt directors to increase their number to quorum and call general meeting for appointment of the new directors.

**Question** ABC Company Limited was incorporated with authorized share capital of Tk. 10,000,000 comprising of 1,000,000 ordinary shares of Tk. 10.00 each. There were four subscribers to the memorandum. 250,000 shares were shown against each subscriber in the last page of M/A & A/A to maintain equal rights. Each subscriber consented to take 250,000 shares in the company. The articles stated that qualification of a director shall be holding shares of Tk. 25,000. The Company prepared its first accounts showing paid up capital Tk. 100,000 (Tk. 25,000 X4). This was done since the subscribers did not

have sufficient capital in their wealth statement to show investment of Tk. 2,500,000 by each subscriber.

You are required to answer with proper argument in favor of your answer:

- i. Whether the subscribers, who are directors, complied with the requirement of sec 92(1) (b) (ii) i.e. taken from the company & paid or agreed to pay for qualification shares?
- ii. What action to be taken by the directors to fulfill the requirement of section 97(1) of the Companies Act, 1994 regarding the qualification share?
- iii. What will be the consequence for not complying with the requirement of section 97(1) of the Companies Act, 1994?

**Answer**

- i. The articles provided for qualification in terms of amount, not in terms of number of shares. Therefore, provision of sec 92(1)(b)(ii) of Company Act has been complied with.
- ii. Since each subscriber agreed to subscribe for 250,000 shares of Tk. 10 each i.e. Tk. 2,500,000, therefore, they shall have to subscribe the full amount within 60 days from the date of their appointment or such shorter period as may be fixed by the articles of the company.
- iii. If the requirement of section 97(1) of the Companies Act, 1994 is not fulfilled the directors will be listed as contributors on winding up. In the annual return (Schedule X), shares may be shown as partly paid i.e. Tk. 1.00 per share for the time being. In such case the Registrar may refuse to approve issue of such partly paid shares shown in the list of subscribers to the memorandum and articles of association.

**Question**

Board of Directors of ABC Company Limited proposed cash dividend @ Tk. 5.00 per ordinary share of Tk. 10.00 each. In the Annual General Meeting some shareholders suggested to declare cash dividend @ Tk. 8.00 per ordinary share while some other shareholders suggested that the cash dividend recommended by the Board @ Tk. 5.00 per share be converted into stock dividend. Explain how the Chairman of the meeting should deal with the suggestions of the shareholders.

**Answer**

As per provisions of Companies Act, 1994 the shareholders cannot increase the rate of dividend beyond the rate which was recommended by the Board of Directors of the company. However, the shareholders can approve lower rate of dividend. Even the form of dividend can be changed i.e. cash dividend can be converted into stock association of the company; the AGM can declare stock dividend @ Tk. 5.00 per share.

**Question** C. Previously, the Company had five directors out of whom two directors namely D & E (close friends of C) died in an accident. No other directors were appointed. According to Articles of Association of the Company quorum for directors' meeting is three. C resigned from the board due to the fact that his views and recommendations are not considered by A & B. A & B intends to appoint M who is a shareholder of the Company in the place of C. But C does not want to appoint M as a director of the Company. You are required to answer:  
When the resignation of C will be complete?  
What procedures should A & B follow to appoint M as a director of the Company?

**Answer**

- i. Assuming that C attends the board meeting (in which resignation of C is placed) with A & B the meeting may pass resolution for acceptance of resignation of C unanimously.
- ii. Since A & B intends to appoint M who is a shareholder of the Company in the place of C the meeting should be closed after passing one resolution i.e. acceptance of resignation of C. As per regulation 90 of the Companies Act, 1994 A & B can co-opt M in place of C to increase the number of directors to form quorum. Accordingly, a separate board meeting will be convened in which meeting M will be appointed as a director.

**Question** Marine Dock Yard Limited is a private limited company having nine shareholders out of whom five are members of the Board of Directors. In the company's 7<sup>th</sup> board meeting, three directors were present while the meeting was started. After giving attendance and before starting the proceedings one director left. The articles of association of the company remains silent as to how many directors will form quorum. Legally, are the resolutions passed in the board meeting valid? Give arguments in favor of your answer.

**Answer** Quorum is the minimum number of directors required to be present personally for conducting a valid board meeting.

In terms of regulation 89 of Schedule-I of The Companies Act, 1994 the directors may fix a quorum necessary for the transactions of the business of the directors and unless so fixed shall be three if the number of directors is more than three.

Although quorum was present at the beginning of the meeting as per Companies Act 1994, however, the proceeding of this meeting shall be invalid on the ground of non-existence of quorum at the time of taking the resolutions.

## **Members' Meetings or Meetings of the Shareholders**

### **Kinds of meeting:**

Different kinds of meeting of the shareholders or members are:

**Statutory meeting:** The first meeting of the members of public company is known as statutory meeting. Section 83(1) of The Companies Act, 1994 states as follows:

Every company limited by shares and every company limited by guarantee and having shares capital shall, within a period of not less than one month and not more than six months from the date at which the company is entitled to commence business, hold a general meeting of the members of the company; in this Act such meeting is referred to as "the statutory meeting".

As per section 83(12) nothing of section 83 of The Companies Act shall apply to a private company. This means that the only the public limited company is required to hold the statutory meeting only once during its life time.

Section 83(2) of The Companies Act, 1994 states as follows:

The Board of directors shall, in accordance with other provisions of this Act, prepare a report, in this Act referred to as "statutory report" and shall at least 21 days before the day on which the statutory meeting is to be held, forward the report to every member of the company.

Provided that if the report is forwarded latter than the time as is required above, it shall notwithstanding that fact, be deemed to have been duly forwarded if any member entitled to attend and vote at the meeting does not object to such forwarding.

### **Certification of statutory report:**

Section 83(4) of The Companies Act, 1994 states as follows:

The statutory report shall be certified as correct by not less than two directors of the company, one of whom shall be the managing director where there is one.

As per section 83(5) of The Companies Act, 1994 so far as the report relates to the shares allotted by the company, the cash received in respect of such shares and the receipts and payments of the company, be certified by the auditors of the company regarding its correctness.

### **Duties of the secretary relating to statutory meeting:**

The Company Secretary has to perform the following duties relating to statutory meeting:

1. Collect all information required to fill up the statutory report as per prescribed form (Form VII);
2. Comply with the requirements of section 83 of The Companies Act, 1994;
3. Prepare the statutory report in consultation with the Chairman & the Managing Director, if there is any;

Organize a board meeting for approval of the draft statutory report & fixation of date, time & venue of statutory meeting;

Obtain certification of auditors & two directors including the Managing Director (if any)

Forward copy of the report to every member of the company at least 21 days before the day of statutory meeting;



File a copy of the statutory report with the Registrar of Joint Stock Companies immediately after the statutory meeting;

Prepare & produce a complete list of names & addresses of members of the company & number of shares held by each member;

Record the minutes of the proceedings of statutory meeting in the Members Minute Book.

Keep copies of all contracts for inspection.

**Annual general meeting:** As per section 81 of The Companies Act, 1994 the followings are applicable with regard to annual general meeting:

every company shall hold a general meeting as its annual general meeting in each year of the Gregorian calendar;

Not more than fifteen months shall elapse between the date of one annual general meeting of a company and that of the next;

The first annual general meeting of a company may be held within a period of 18 months from the date of its incorporation and if such general meeting is held within that period, it shall not be necessary for the company to hold any annual general meeting in the year of its incorporation or in the following year;

- The Registrar may, on an application made by a company within thirty days from the date of expiry of the period specified for holding the annual general meeting (not being the first annual general meeting), extend the time by a period not exceeding 90 days or not exceeding 31<sup>st</sup> December of the calendar year in relation to which the annual general meeting is required to be held, whichever is earlier.
- If a company defaults in complying with the provisions as mentioned above, the Court may, on the application of any member of the company, call or direct the calling of a general meeting of the company and give such ancillary or consequential direction as the Court thinks expedient in relation to the calling, holding and conducting the meeting.

**Section 183(1) of The Companies Act, 1994 states the followings:**

The Board of Directors of every company shall, at every annual general meeting held in pursuance of section 81, lay before the company a balance sheet together with the profit and loss account or in the case of a company not trading for profit, an income and expenditure account for the period specified in sub-section (2) of this section.

**Section 183(2) of The Companies Act, 1994 states the followings:**

The said profit and loss account or the income and expenditure account shall be prepared for the following period, namely:

in the case of the first general meeting for the period beginning with the date of incorporation of the company and ending on a date which is within nine months preceding the date of the meeting; and

in the case of subsequent annual general meeting, for the period beginning with the date immediately after last account and ending on a date which is-

- a date within nine months preceding such meeting; or

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- in the case of a company carrying on business or having interest outside Bangladesh, a date within twelve months preceding the date of such meeting; or
- in case where and extension of time has been granted for holding the meeting under section 81, a date within the said nine or twelve months, as the case may be, preceding the date of holding such meeting under that section.

Provided that the Register may, on an application being made to before the expiry of the said nine or twelve months, extend the period by a period not exceeding three months.

According to section 183(4) the accounts shall have to be prepared for one financial year which may be more or less than a calendar year but shall not exceed 15 months except when the Registrar grants extension up to 18 months. Again according to section 183(2) the accounts which will be presented to AGM will relate to a period not beyond nine months preceding to the date of AGM or twelve months for companies having business or interest outside Bangladesh.

### **Factors affecting the counting of interval between two consecutive AGMs**

**When the Court condones delay:** When the Court condones delay in holding the AGM according to sec. 81(1), the time frame described in that sub-section for holding AGM becomes ineffective. The new schedule starts from the date of holding the AGM as per order of the Court and the 15 months' interval should be counted from that date.

When the Registrar extends the time for presentation of accounts in the AGM as well as the time for preparation of accounts, therefore, in special cases, the Registrar can extend the time under sec. 183(4) up to 18 months.

According to sec. 183, accounts shall have to submit before the AGM. The accounts shall relate to a period not before nine months of the AGM i.e. within a period prescribed in section 81, whenever the AGM is held (within 18 months of incorporation or within 15 months of proceeding AGM).

The object of convening AGM is to consider the balance Sheet & profit and loss account. Accounts have not been prepared or audit of accounts has not been completed cannot be valid reason for not convening the ordinary general meeting.

### **Notice of AGM:**

According to sec.85(1)(a) fourteen days' notice in writing shall have to be given for AGM notwithstanding any provision in the articles of association. However, an AGM may be convened with the consent of all the members entitled to receive the notice of the meeting by a shorter notice as they think fit [Sec 85 (1)(a)(i)].

Notice of the meeting of a company with a statement of the business to be transacted at the meeting shall be served on every member in a manner in which notices are required to be served by schedule I, but accidental omission to give notice to, or the non-receipt of notice by any members shall not invalidate the proceedings at any meeting. If the articles make clear provision regarding business to be transacted at AGM, notice need not describe the business to be transacted at AGM.

Where a director does not hold any share he is not entitled to notice of general meeting.

**C. Extraordinary General Meeting**

According to section 84(1), notwithstanding anything contained in the articles,

- a. the directors of a company, having share capital shall on the requisition of the holders of not less than one tenth on the issued share capital of the company upon which all calls or other sums then due have been paid, forthwith proceed to call an extraordinary general meeting of the company, and

in the case of a company not having a share capital the directors thereof shall call such meeting on the requisition of such members as have on the date of submitting the requisition, not less than one tenth of the total voting power in relation to the issues on which the meeting is called.

According to section 84(3)

The directors shall call the meeting within 21 days from the date of deposit of the requisition which is to be held within 45 days from the date of deposit of the requisition. Otherwise, the requisitionists themselves or majority of them may convene the meeting within 3 months from the date of the deposit of the requisition.

The directors may, whenever they think fit, call an extraordinary general meeting, and extraordinary general meetings shall also be called on such requisition, or in default, may be called by such requisitionists, as provided by Section 84 of The Companies Act, 1994. If at any time there are not within (Bangladesh) sufficient directors capable of acting to form a quorum, any director or any two members of the company may call an extraordinary general meeting in the same manner as nearly as possible as that in which meeting may be called by the directors.

**Proceedings at General Meeting**

All business shall be deemed special that is transacted at an extraordinary meeting, and all that is transacted at an ordinary meeting are sanctioning a dividend, the consideration of the accounts, balance sheets and the ordinary report of the directors, and auditors, the election of directors and other officers in the place of those retiring by rotation, and the fixing of the remuneration of the auditors.

No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business; save as therein otherwise provided, (two members in the case of a private company and five members in the case of any other company) personally present shall form a quorum.

If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if called upon the requisition of members, shall be dissolved; in any other case, it shall stand adjourned to the same day in the next week at the same time and place, and, if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the members present shall be a quorum.

The Chairman selected among them by the Board of Directors shall preside as chairman at every general meeting of the company. Provided that the Chairman and the Managing Director shall not be the same person.

If there is no such chairman, or if at any meeting he is not present within thirty minutes after the time appointed for holding the meeting, or is unwilling to act as chairman, the members present shall choose some one of their number to be chairman.

The chairman may with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for ten days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid, it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded (in accordance with the provisions of clause (c) of sub-section (1) of Section 85 of The Companies Act 1994) and unless a poll is so demanded, a declaration by the chairman that a resolution has, on a show of hands, been carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book of proceedings of the company shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favor of, or against, that resolution.

If a poll is duly demanded, it shall be taken in such manner as the chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place, or at which the poll is demanded, shall be entitled to a second or casting vote.

A poll demanded on the election of a chairman or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairman of the meeting directs.

### **Votes of Members**

On a show of hands every member present in person shall have one vote. (On a poll every member shall have one vote in respect of each share or each hundred (Taka) of stock held by him.

In the case of joint holders, the vote of the senior who tenders a vote whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint-holders; and for this purpose seniority shall be determined by the order in which the names stand in the register of members.

A member of unsound mind, or in respect of whom an order has been made by any Court having jurisdiction in lunacy, may vote, whether on a show of hands or on a poll, by his committee or other legal guardian, and any such committee or guardian may, on a poll vote by proxy.

No member shall be entitled to vote at any general meeting unless all calls or other sums presently payable by him in respect of shares in the company have been paid.

On a poll votes may be given either personally or by proxy: Provided that no company shall vote by proxy as long as a resolution of its directors in accordance with the provisions of Section 86 of the Companies Act, 1994, is in force.

The instrument appointing a proxy shall be in writing under the hand or the appointer or of his attorney duly authorized in writing, or, if the appointer is a corporation either under the common seal, or under the hand of an officer or attorney so authorized.

**General Rules of Members' Meeting:**

- Notice to be issued on the authority specified in the articles and served in the prescribe manner.
- Notice to be given to every person entitled to receive notice.
- Though notice need not be given if all entitled to attend are present, yet such notice is issued to comply with formalities. Absence from the recorded address of a person entitled to attend a meeting is not good reason for not serving the notice.
- Though one member may have informed the company that he is unable to remain present, yet notice shall have to be given.
- The proper period of meeting, (date, hour, day and place of meeting) must be stated in notice. As per sections 78 and 79, notice must contain the name of the company.
- The nature of the business to be transacted must be disclosed in notice.
- The validity of resolution passed in a meeting may be questioned if the notice were faulty.
- It is essential that notice must be frank, open, clear, satisfactory and free from trickiness.
- Notice must not be contingent or conditional. It must be absolute.
- Notice of adjourned meeting need not be given if the meeting adjourned for less than ten days (Regulation 56, schedule-1). In spite of the noncompliance of requirements of articles & Act, if every member is present at the meeting & any resolution passed unanimously which is not ultra vires the company, is valid and binding on the company, irrespective of what notice, if any, of the meeting was given.

**Quorum at members' meeting:**

Quorum is the minimum number of members required to be present personally for conducting a valid meeting provided proxy towards quorum may be counted if permitted by the articles of association.

**Quorum as per articles:**

The articles usually contain a provision regarding quorum that must be present to start the business at a meeting. If the articles do not provide anything for the quorum, provisions of the Act shall apply. The articles may provide expressly or by implication that quorum need not be present throughout the meeting. The articles may also provide special majority being less than quorum for an adjourned meeting. Section 85(2) of The Companies Act, 1994 authorizes the articles to make provision for quorum. In absence of specific provisions in the articles of a company the provisions as mentioned in section 85(2) of The Companies Act, 1994 shall be applicable:

- two or more members holding not less than one-tenth or the total share capital paid-up or, if the company has not a share, capital, not less than five percent in number of the members of the company may call a meeting.

- in the case of a private company whose number of members does not exceed six, two members and if such number exceeds six, three members, and in the case of any other company, five members personally present shall be a quorum.
- any member elected by the members present at a meeting may be chairman thereof;
- in the case of company originally having a share, capital, every member shall have one vote in respect of each, share or each hundred taka of stock held by him, and in any other case, every member shall have one vote.
- on a poll, votes may be given either personally or by proxy.
- the instrument appointing a proxy shall be in writing under the hand or the appointer or of his attorney duly authorized in writing or if the appointer is a corporation or a company, either under seal or under the hands of an officer or an attorney duly authorized.

Provided that the appointment of proxy shall not be allowed in case of companies formed under section 28 and a proxy may or may not be a member of the company.

Regulation 52 [not compulsory as per sec 17(2)] of schedule 1 of The Companies Act, 1994 provides the followings with regard to quorum:

**Public company:** Five members present in person are required to form quorum for general meeting to pass ordinary resolution or special resolution or extra ordinary resolution.

**Private company:** Two members present in person are required to form quorum for general meeting to pass ordinary, special, extra ordinary resolution.

**Waiting time of quorum:**

The articles of the company usually provide as to how long from the appointed time the members are required to wait for the quorum and if no quorum is present within that time, what will happen to the meeting. In absence of any such provision in the articles the following will be applicable:

Regulation 53 of schedule 1: If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if called upon the requisition of members, shall be dissolved; in any other case, it shall stand adjourned to the same day in the next week at the same time and place, and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the members present shall be quorum.

Regulation 54 of schedule 1: The Board of Directors shall select one of their members as its Chairman who shall preside at every general meeting of the Company:

Provided that the Chairman and the managing director shall not be the same person.

Regulation 55 of schedule 1: If at any meeting the Chairman is not present within thirty minutes after the time appointed for holding the meeting, the members present shall choose someone of their number to the chairman.

**Effect of absence of quorum within waiting time:**

If within 30 minutes of the time appointed for meeting or such other time as may be mentioned in the articles, the quorum is not present, the meeting shall stand adjourned to the same time, day & place till

next week or as per provisions of the articles. A meeting called upon the requisition of members shall stand dissolved if quorum is not present within the waiting time.

**Quorum of Extraordinary General Meeting:**

The quorums required by the provisions of articles of association usually regulate convening an extraordinary general meeting. As per section 87(1) three fourths majority of the members entitled to vote present in person or by proxies are required to pass an extra ordinary resolution. Unless the articles provide otherwise, quorum as per schedule 1 shall be required to conduct extraordinary general meeting.

**Counting of representative towards quorum:**

Section 86 of The Companies Act, 1994: A company which is a member of another company may by resolution of the directors, authorize any of its official or any other person to act as its representative at any meeting of that other company, and the person so authorized be entitled to exercise the same powers on behalf of the company which he represents as if he were an individual shareholder of that other company.

**Quorum must be effective:**

Mere personal presence is not enough to form quorum. The quorum must be effective members qualified to vote. Therefore, a member not qualified to vote shall not be counted for quorum.

**Authentication of accounts:**

According to Companies Act, the balance sheet, profit and loss account or income & expenditure account shall be signed on behalf of the board of directors-

In case of a banking company, by the manager or managing agent, if any and three directors where the number of directors is more than three or by all the directors, if their number is not more than three; [Sec 189 (1)]

In case of any other company, by its managing agent, manager or secretary, if any and by not less than two directors of the company and one of whom shall be the managing director where there is one; (Sec. 189 (1)).

When the total number of directors of the company for the time being in Bangladesh is less than the number of directors whose signatures are required by clause (i) & (ii) above, then by all the directors in Bangladesh, or if there is only one director in Bangladesh, by such director but in such a case, a statement by such director or directors explaining the reasons for non-compliance of provision of section 189 (1) shall have to be attached.

The balance sheet, profit & loss account or income an expenditure account shall be audited. The auditors' report shall be attached thereto; (Sec. 183(3)).

**Authentication of accounts of banking company as per Banking Companies Act:**

According to section 38(2) of Banking Companies Act. 1991, the balance sheet, profit & loss account and financial report shall be signed by:

in the case of banking company incorporated in Bangladesh by the managing director or the chief executive of the company and where there are more than three directors of the company, by at least three of those directors, or where there are not more than three directors, by all the directors; and

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.

**Board's report, authentication, consequences of default**

As per section 184(1) there shall be attached to every balance sheet laid before a company in the general meeting a report by its Board of directors which shall include:

- the state of the company's affairs;
- the amount, if any, which the Board proposes to carry to any reserve in such balance sheet
- material changes & commitments, if any, affecting the position of the company which has occurred between the end of the financial year of the company to which the balance sheet is related and the date of the report.

As per section 184(1) the Board's report and any addendum thereto shall be signed by the chairman if authorized in that behalf by the Board or by the directors as required to authenticate accounts of the company.

**Filing of Annual list of members and summary**

As per section 36(1) every company having share capital shall within eighteen months from its incorporation & thereafter once at least in every year make a list of all persons who on the day of the first or only ordinary general meeting in the year are members of the company and of all persons who have ceased to be members since the date of last return or in case of first return, since the date of incorporation of the company.

Section 36(2): The following shall be stated in the list namely:

- a. the names, addresses, nationality and occupation of all past and present members;
- b. the number of shares held by each of the existing members at the date of return specifying the shares transferred since the date of last return or, in the case of first return, since the date of incorporation, by persons who are still members and by persons who have ceased to be members respectively and also the dates of registration of such transfer; and
- c. a summary distinguish between shares issued for cash and shares issued as fully or partly paid up otherwise than in cash and specifying the following:
- d. the amount of the share capital of the company, and the number of the shares into which it is divided;
- e. the number of shares taken from the commencement of the company up to the date of the return;
- f. the amount called up on each share;
- g. the total amount of calls received;
- h. the total amount of calls unpaid;



- i. the total amount of the sums, if any, paid by way of commission in respect of any share or debentures, or allowed by way of discount, in respect of any shares or debentures, since the date of the last return or so much thereof as has not been written of at the date of the return;
- j. the total number of shares forfeited;
- k. the total amount of shares or stock for which share warrants are outstanding at the date of the last return;
- l. the total amount of share-warrants issued and surrendered respectively since the date of the last return;
- m. the latest date on which the general meeting should have been held and whether it was actually so held;
- n. the number of shares or amount of stock compromised in each share warrant;
- o. the names and address of the person who at the date of return are the directors of the company and of the persons, if any, who at the said date are the managers managing agents or auditors of the company, and the changes in the personnel of the directors, manager managing agents since the last return together with the dates on which the took place; and
- p. the total amount of debt due from the company in respect of all mortgage and charges which are required to be registered with the Register under this Act.

As per section 36(3): the list & summary under section 36 shall

- a. be contained in a separate part of the register of members and shall be completed within 21 days from the date of first or ordinary general meeting in that year;
- b. have to be filed with the Registrar;
- c. to be signed by the Managing Director and one director or if there is no managing director, by a director and managing agent or manager or secretary;

A private limited company shall have to submit a certificate stating that it has not issued any invitation to the public to subscribe for any shares or debentures.

The return in the form set out in Schedule X of the Act cannot be filed without holding the general meeting.

### **Dividends and Reserve**

Regulation 96 of Schedule-I: The company in general meeting may declare dividends, but no dividends shall exceed the amount recommended by the directors. Dividend shall be paid within two months from the date of its declaration.

Provided that the period of two months shall not apply in case where:

There is a dispute regarding the right to receive the payment; or

The dividend has been lawfully adjusted by the company against any sum due to it from the shareholder.

However, clause 28 of Dhaka Stock Exchange (Listing) Regulations, 2015 states the followings:

- a. The issuer of listed securities shall, within 30 (thirty) days of declaration or approval, as the case may be, based on the written option collected from the securities holder concerned, pay off the dividend,
- b. through transfer of cash dividend to the bank of the securities holder for depositing into the securities holder's account:

Provided that, the securities holder will bear the applicable service charge, if any, of the securities holder's banker, and also that the issuer shall simultaneously issue a letter of intimation to the securities holder containing, among others, the amount of tax deducted at source, if any, the date and amount remitted with details of the bank through and to which bank such remittance has been effected; or through issuance of cash dividend warrant in the name and address of the securities holder concerned as provided in the beneficial owner's (BO) account set up in case of dematerialized securities, or as provided by the securities holder in case of paper securities;

- a. through transfer of stock dividend into the beneficial owner's (BO) account of the shareholder in case of dematerialized share, or through issuance and delivery of the share certificate to the shareholder in case of paper share.

An issuer of listed securities, which makes a default in complying with the provision of sub-regulation (1), respective director/ officer shall be jointly and severally liable to pay to the Exchange a penalty of Taka 5,000.00 (five thousand) only for every day during the default continues:

Provided that the Exchange shall notify the fact of such default and the name of defaulting issuer by notice or through online news of the Exchange:

Provided further that any action under this sub regulation (2) shall be without prejudice to the action or steps taken by any other person or authority.

**Regulation 97 & 98 of Schedule-I:** The directors may from time to time pay to the members such interim dividends as appear to the directors to be justified by the profits of the company. No dividends shall be paid otherwise than out of profits [of the year or any other undistributed profits.

**Regulation 99 of Schedule-I:** Subject to the rights of persons (if any) entitled to shares with special rights as to dividends, all dividends shall be declared and paid according to the amounts paid on the shares, but if and so long as nothing is paid upon any of the shares in the company, dividends may be declared and paid according to the amounts of the shares. No amount paid on a share in advance of calls shall, while carrying interest, be treated for the purposes of this article as paid on the share.

**Regulation 100 of Schedule-I:** The directors may, before recommending any dividend, set aside out of the profits of the company such sums as they think proper as a reserve or reserves which shall, at the discretion of the directors, be applicable for meeting contingencies, or for equalizing dividends, or for any other purpose to which the profits of the company may be properly applied, and pending such application may, at the like discretion either be employed in the business of the company or be invested in such investments (other than shares of the company) as the directors may from time to time think fit.

**Regulation 101 of Schedule-I:** If several persons are registered as joint-holders of any share, any one of them may give effectual receipts for any dividend payable on the share. Notice of any dividend that may

have been declared shall be given in manner hereinafter mentioned to the persons entitled to share therein. No dividend shall bear interest against the company.

**QUESTIONS FOR DISCUSSION:**

**Question** The following issues have been brought to your attention. You are requested to give opinion with reference to the provisions of The Companies Act, 1994:

ABC Limited, a public limited company listed with the Stock Exchanges of Bangladesh.

The company follows financial year from July to June each year. The 3<sup>rd</sup> AGM of the company was held on December 15, 2017. What will be the deadline for holding the 4<sup>th</sup> AGM of the company?

XYZ Insurance Company Limited is listed with the Stock Exchanges of Bangladesh. The Company follows financial year as defined in section 2(i) of The Companies Act, 1994. The 6<sup>th</sup> AGM of the Company was held on July 20, 2017. What will be the deadline for holding the 7<sup>th</sup> AGM of XYZ Insurance Company Limited assuming that the company:

- i) does not have any business or interest outside Bangladesh?
- ii) has business or interest outside Bangladesh?

- Answer**
- a. Considering the provisions of section 81 and 183 together, it can be said that since July-June is the financial year of ABC Company Limited and the 3<sup>rd</sup> AGM was held on December 15, the 4<sup>th</sup> AGM may be held not, beyond December 31, 2018 to remain within one AGM in each calendar year.
  - b. i. As per provision of section 2(i) of The Companies Act, 1994 financial year of an insurance company shall mean the calendar year. Therefore, financial year of XYZ Insurance Company Limited is January to December. Hence, the 7<sup>th</sup> AGM of the Company is to be held within September 30, 2018. i.e. within nine months from the date of ending of the financial year [section 183(2)(i)].
  - ii. If the company has business or interest outside Bangladesh the 7<sup>th</sup> AGM of the company may be held within December 31, 2018 [section 183(2)(ii)].

**Question** The AGM of XYZ Company Limited was called at the factory premises situated at about 350 km away from its registered office. On the day of the meeting the conveners i.e. the Chairman, the Directors & the Company Secretary could not be present in the meeting place due to reasons not within their control. The shareholders who assembled at the factory premises found that the conveners of the meeting were absent & the meeting place was under lock & key. The shareholders present convened the meeting in a nearby building. They ascertained that quorum was present, appointed one of them as the chairman for that meeting since the Chairman and the Directors were not present within the waiting time as per articles of association and conducted the meeting as per agenda. Everything was done according to articles to ensure a valid meeting. They took all resolution as per agenda of the meeting except that they approved a higher rate of dividend than the rate

recommended by the board. Please answer the followings with reference to the relevant provisions of Companies Act 1994.

Is the AGM conducted by the shareholders valid?

Are the resolutions taken in the AGM binding on the Company?

If the chairman claims that he has postponed the meeting on the basis of a board decision made on way to the meeting place where they were bound to halt, what will be legal status of his claim, if he wants to hold the AGM on another date?

What else the company should do if it does not want to give cognizance to the said general meeting?

**Answer**

a. A meeting would be valid if proper notice has been given, quorum was present and Chairman of the meeting was appointed as per articles. The presence of Chairman/Directors/Company Secretary in the general meeting is not mandatory.

Even a retiring director who may be re-elected, his presence is also not needed. Question arises whether a meeting can be held at a place other than place of the meeting mentioned in the notice. It was established that meeting place may be changed by the members assembled for the meeting. Therefore, it seems that the meeting was valid.

With regard to validity of the resolutions, it can be said that approval of dividend at a rate more than the rate recommended by the board is invalid although it is approved by all the shareholders. The board of directors at its discretion may recommend dividend at a particular rate. The general meeting may approve the declaration of dividend at recommended by the board or any other lower rate or disapprove the declaration. The general meeting cannot increase the rate of dividend. Therefore, this resolution cannot bind the company though the meeting might be validly convened. However, other resolutions are binding on the Company.

With regard to holding the AGM on different date in view of the Chairman's claim that the AGM was postponed & giving no cognizance to the AGM held without conveners, it is essential to prove that the meeting was validly postponed. A properly convened meeting cannot be postponed for personal reason of anybody. The members present are entitled to ignore the notice of postponement. If there is a quorum, they may hold the meeting as originally convened & validly transact the business. In fact, in the above situation no formal and valid notice was served to postpone the AGM.

With regard to other option available, the Directors may claim that the AGM was not conducted properly & take shelter of the Court to declare the meeting invalid & seek for direction to convene a general meeting under section 85 (3) at future date.

**Question** 'A' is a friend of B, C & D who are directors of XYZ Company Limited. B, C, D decided to take 'A' as a shareholder as well as a director with the object to utilize his expertise. B, C, D in their board meeting allotted shares to 'A' and co-opted him as director, issued share certificates, filed Return of Allotment, Particulars of Directors & Consent Form. Accordingly, name of 'A' was also shown in the annual list of members. After some years B, C & D decided to get rid of 'A' because 'A' has now become burden for the company & he ('A') has been acting contrary to the decisions of B, C and D. Please answer the followings in line with provisions of Companies Act, 1994:

Can 'A' be removed from the directorship by B, C and D?

Can 'A' be removed from the membership who in fact did not pay any money against the shares issued to him?

Is there any other remedy in company law to get rid of 'A' as desired by B, C & D?

**Answer** a. If B, C & D and any other shareholders who want to remove 'A' have over 75% voting right together (i.e. 75% of the paid up capital), then they can remove 'A' by special resolution passed at an extraordinary general meeting to be convened by giving 21 days' notice. According to section 106(1) & regulation 87 of schedule 1, a director may be removed by passing special resolution before expiration of his term of office and appoint another person in his/her place by an ordinary resolution.

With regard to removal of 'A' from membership it may be said that when share certificate is issued, the name of the person appears in the share register and annual list of members; the company has two bindings. The first one is relating to title when share certificate is issued; it is declaration by the company to all that the person in whose name the certificate is issued is a shareholder of the company. In others words, the company is estopped from denying his title to the share. The second binding is estoppel as to payment. If the certificate states that on each of the shares, full amount has been paid, the company is stopped from alleging that no payment was made. It has been established that where share certificates were issued as fully paid shares though nothing was paid on those shares, neither the company nor the liquidator can deny that shares were fully paid & therefore the name of the shareholder cannot be removed from the membership of the Company.

With regard to any other remedy it may be said that the company or the board, while exercising their powers bona fide, such remedy may happen to come in case of alteration of share qualifications, issue of right shares etc. which might cause loss of directorship, reduction in the percentage of shares, if future amount is not invested by 'A'.

**Question** The shares of a Private Limited Company are held by the shareholders as follows:

|       |     |
|-------|-----|
| Mr. A | 45% |
| Mr. B | 35% |
| Mr. C | 20% |

The Company offered Right Shares at 1:1. Mr. C did not exercise the right offer. Mr. B wants to subscribe the shares not taken by C. Can the Board comprising of A, B, and C allot the unsubscribed shares to Mr. B, if Mr. A opposes the same?

**Answer** The Directors cannot allot shares in a manner by which the exiting percentage of shareholding is changed. If Mr. C regrets to accept the right offer the unsubscribed portion must be offered to the remaining shareholders in proportion to their current holding. Since Mr. A opposes to allot the unsubscribed shares only to Mr. B the allotment will not be valid. Mr. B can accept the entire unsubscribed portion of shares if Mr. A also refuses to accept the same.

**Question** The annual general meeting of a publicly traded company was called at a local hotel. The time fixed for the meeting was 10:00 a.m. The meeting was called as per provisions of the Companies Act, 1994. At the scheduled time of the AGM the Chairman entered into the meeting room and found that 75 shareholders were sitting there. As per record date data the company had 5,590 shareholders. The Chairman asked the Company Secretary whether the quorum was present. The Company Secretary confirmed that the quorum was present (as per articles of association of the company presence of 50 shareholders fulfills the quorum). The Chairman started the meeting and proceeded as per agenda. The meeting was over within 15 minutes. When the Chairman and other shareholders were leaving the meeting place about 250 shareholders entered into the meeting room. They collectively held a significant portion of shares of the company and claimed that the Chairman should have wait for 30 minutes to start the meeting. Was the meeting valid without them? Give proper justification in favor of your answer.

**Answer** A meeting will be valid when quorum is present, notice is valid & legal formalities are fulfilled. There is no legal provision to delay the starting of business at a meeting if the Chairman and quorum are present. The 30 minutes waiting time is allowed only when quorum is not present (Regulation 53 of The Companies Act, 1994). According to Regulation 55 starting of business may also be delayed by 30 minutes if the Chairman is not present. If the Chairman is not present within 30 minute of appointed time of the meeting, the members present may elect a Chairman among themselves for the meeting. Therefore, demand of the 250 shareholders regarding waiting for 30 minutes to start the meeting is not valid and the proceedings of the meeting will be valid.

**Question** 75 shareholders (holding 15% shares of the Company) out of 650 shareholders of XYZ Company Limited submitted a requisition on January 15, 2018 for holding of an Extra-Ordinary General Meeting in order to remove the Managing Director on some valid grounds. On failure of the Company to call the General Meeting, the requisitionists themselves called the meeting on April 30, 2018 at the registered office of the Company. On the date of the meeting they found that the registered office was kept under lock and key although it was a working day. The shareholders held the meeting in a nearby place and adopted a resolution removing the Managing Director. Is the resolution taken in the meeting valid? Give arguments in support of your answer.

**Answer** Notwithstanding anything contained in the articles, the directors of a company which has a share capital shall, on the requisition of the holders of not less than one tenth of the issued share capital of the company upon which all calls have been paid, forthwith proceed to call an extraordinary general meeting of the company.

The requisition must state the objects of the meeting and must be signed by the requisitionists and deposited at the registered office of the company, and may consist of several relevant documents, each signed by one or more requisitionists.

If the directors do not, within twenty-one days from the date of deposit of the requisition proceed duly to call a meeting on a day not later than forty-five days from the date of the deposit of the requisition, then the requisitionists, or a majority of them in value, may themselves call the meeting, but any meeting so called shall be held within three months from the date of the deposit of the requisition.

The requisitionists may hold the meeting at any suitable place if the registered office is not made available for them. Since the meeting has been held after three months from the date of the requisition the resolution taken in the meeting is not valid.

**Question** The Board of Directors of XYZ Company Limited, a company listed with both the Stock Exchanges of Bangladesh, has planned to hold its meeting on June 30, 2015. Agenda of the meeting (among others) is to recommend dividend for the year ended December 31, 2014. The Board also planned to take the following decisions in this regard:

To fix record date on July 9, 2015 which is a public holiday;

To fix date of the Annual General Meeting on October 15, 2015.

It is to mention that last Annual General Meeting of the company was held on June 15, 2014. You are requested to give your opinion regarding the above decisions to be taken by the directors of XYZ Company Limited and give your recommendations, if any. Assume that you were communicated to give your opinion on March 31, 2015.

**Answer** Regarding the above planning of the Board of Directors of XYZ Company Limited some non-compliance is noted. My advices in this regard are as follows:

As per Listing Regulations of Dhaka Stock Exchange Limited record date for corporate entitlement will be at least **7 (seven) market days** after the date of declaration of dividend and/or holding of general meeting, if the concerned company falls under other than Z category company. If the company is a Z category company, the record date will be at least **14 (fourteen) market days** after the date of

declaration of dividend and/or holding of general meeting. Assuming that XYZ Company Limited falls under other than Z category company the planned record date must be fixed in any day after seven market days and the record date also must be a market day. In this regard other provisions of the law must be kept in mind.

As per BSEC notification the Annual General Meeting of the company shall be held fulfilling the following conditions:

Within 45 working days from the date of the record date;

Within six months from the date of closing of the accounting year; and

Within 15 months from the date of the last AGM

Therefore, date of the AGM must be fixed considering all the relevant regulations. Hence, the AGM shall be held within June 30, 2015.

**Question** The Directors of a company convened a Board meeting before AGM and recommended cash dividend @ 20% & carried other business as is usually done in such board meeting before AGM. The proposed dividend was notified to the Stock Exchanges accordingly. But the AGM was called and adjourned for indefinite period.

Is the recommended dividend payable?

Is there a default by the company with regard to the provisions of The Companies Act, 1994?

**Answer** According to section 184(1)(c) the board may recommend final dividend through its report to the members. The dividend becomes payable after the members approve it in the General Meeting. According to regulation 96 of Schedule I of The Companies Act, 1994 dividend shall have to be paid within two months (as per BSEC circular within one month) shall not apply in case where:

- there is a dispute regarding right to receive payment; or
- the dividend has been lawfully adjusted by the company against any sum due from any shareholder.

This regulation is not compulsory according to sec 17(2) of the Companies Act. Therefore, if the company's articles do not include this regulation relating to time for payment; even if provision for the proposed dividend is made in the accounts, yet it will not become a liability of the company because the same has not been approved by the shareholders in the General Meeting.

The Chairman may, with the consent of the meeting adjourn the meeting. A valid adjournment cannot go beyond the date whichever date falls earlier determined in the following way:

Last day of the calendar year or

Last day of 15 months from the date of previous AGM or



Last day of nine months (in case of company having interest outside Bangladesh 12 months) from the date of close of accounts. As per BSEC circular the duration is six months.

If there is no objection of adjournment, shareholders have to wait till the date which falls earlier determined in above way. If the adjourned meeting is not convened within the date, shareholders may give requisition for EGM.

In order make dividend a liability to the company, two or more members holding not less than one tenth of the paid up capital may submit a requisition under section 84 to hold EGM to approve the dividend or they may apply to the court under section 83(3) to hold the annual general meeting, if they think that adjournment was not valid.

**Question** The following issues have been brought into your attention for your opinion. You are requested to give your expert opinion in accordance with the provisions of The Companies Act, 1994:

ABC Company Limited circulated the notice of the Annual General Meeting dated March 1, 2018. Actually the notice was circulated on March 3, 2018 mentioning that the AGM will be held on March 12, 2018. The company has 250 shareholders. On the date of the meeting two shareholders having their voting right raised the issue that the meeting was not convened complying with the provisions of The Companies Act, 1994.

Max Company Limited circulated the notice of the Extraordinary General Meeting dated April 15, 2018 mentioning that the EGM will be held on May 3, 2018 for passing some special resolutions. The agenda and proposed resolutions were circulated along with the notice. The company has 150 shareholders. On the date of the meeting ten shareholders having 4% of the voting right in the company raised the issue that the meeting was not convened complying with the provisions of The Companies Act, 1994.

The Annual General Meeting of Alfa Company Limited (a public limited company) was held on was held on May 31, 2018 complying with the relevant rules and regulations. Out of 45 shareholders 24 shareholders were present in the AGM. The meeting was conducted as per agenda. When the agenda on retirement and re-election of directors was placed for discussion around 4 shareholders (holding 9.85% of the issued capital) requested the Chairman to elect one them namely Muzahid Chowdhury as a director of the company. The Chairman refused the proposal. Then those shareholders demanded poll for electing Mr. Muzahid Chowdhury as a director of the company. The Chairman did not take the demand for poll into his cognizance. The aggrieved shareholders challenged the proceedings of the meeting.

- Answer**
- a. As per provisions of section 85(1) of The Companies Act, 1994 notwithstanding anything contained in the articles of association of a company 14 days' notice shall be given for calling an annual general meeting. However, AGM may be called giving shorter notice if all the members entitled to attend and vote thereto agree in writing to hold the AGM with shorter period of notice. In the stated situation since two shareholders have raised objection holding of the AGM will not be valid.
  - b. As per provisions of section 85(1) of The Companies Act, 1994 notwithstanding anything contained in the articles of association of a company 21 days' notice shall be given for calling a general meeting. However, general meeting/EGM may be called giving shorter notice if the members holding at least 95% paid up shares of the company entitled to attend and vote thereto agree in writing to hold the EGM with shorter period of notice. In the stated situation since shareholders holding 96% paid up shares of the company agreed (assuming that in writing) to hold the EGM; there is no legal issue to hold the meeting.
  - c. As per provisions of section 85(1)(c) of The Companies Act, 1994 five members present in person or by proxy or the chairman of the meeting or any member or members holding not less than one-tenth of the issued capital which carries voting rights shall be entitled to demand a poll. In the stated situation the demand of 4 shareholders holding 9.85% of the issued capital of the company is not valid. Hence, all the proceedings of the AGM will be valid and there is no obligation to appoint Mr. Muzahid Chowdhury as a director of the company.

### **Maintenance of Books of Account and Audit**

The directors shall cause to be kept proper books of account with respect to -

- all sums of money received and expended by the company and the matters in respect of which the receipts and expenditure take place,
- all sales and purchases of goods by the company,
- the assets and liabilities of the company,
- cost accounts, where applicable.

The books of account shall be kept at the registered office of the company or at such other place as the directors shall think fit and shall be open to inspection by the directors during business hours.

The directors shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the company or any of them shall be open to the inspection of members not being directors, and no member (not being a director) shall have any right of inspecting any account or book or document of the company except as conferred by law or authorized by the directors or by the company in general meeting.

The directors shall, as required by Sections 183 and 184 of the Companies Act 1994, cause to be prepared and to be laid before the company in general meeting such profit and loss accounts, (income and expenditure accounts) balance-sheets, and reports as are referred to in those sections.

The profit and loss account shall (in addition to the matters referred to in sub-section (2) of Section 185 of the Companies Act, 1994,) show, arranged under the most convenient heads, the amount of gross income, (diminished in the case of a banking company by the amount of any provision made to the satisfaction of the auditors for bad and doubtful debts) distinguishing the several sources from which it has been derived, and the amount of gross expenditure distinguishing the expenses of the establishment, salaries and other like matters. Every item expenditure fairly chargeable against the year's income shall be brought into account so that a just balance of profit and loss may be laid before the meeting and, in cases where any item of expenditure which may in fairness be distributed over several years has been incurred in any one year, the whole amount of such item shall be stated, with the addition of the reasons why only a portion of such expenditure is charged against the income of the year.

A balance-sheet shall be made out in every year and laid before the company in general meeting made up to a date not more than six months before such meeting. The balance-sheet shall be accompanied by a report of the directors as to the company's affairs, and the amount which they recommend to be paid by way of dividend, and the amount (if any) which they propose to carry to a reserve fund.

A copy of the balance-sheet and report shall, fourteen days previously to the meeting, be sent to the persons entitled to receive notice of general meetings in the manner in which notices are to be given hereunder.

The directors shall in all respects comply with the provision of Sections 181 to 191 of the Companies Act, 1994, or any statutory modification thereof for the time being in force.

## **Audit**

Auditors shall be appointed and their duties regulated in accordance with Sections 212 and 213 of the Companies Act, 1994 or any statutory modification thereof for the time being in force.

## **DIRECTORS**

### **MEANING AND NUMBER OF DIRECTORS**

Directors are persons elected by the shareholders from among themselves for the purpose of managing the business of the company. In a public company, there is a separation of ownership from control. To protect the interest of the company and of the shareholders, there must be directors. Section 90 (1) states that every public company and a private company which is a subsidiary of a public company shall have at least three directors. Every private company other than a private company mentioned in subsection (1) shall have at least two directors.

### **APPOINTMENT OF DIRECTORS**

There are certain mandatory provisions which must be observed while appointing directors in the case of public limited companies. For private companies, it is usual that the articles provide the mode of appointment of the directors. But they have to look for the provisions applicable both for the public as well as private companies. The provisions for appointment of directors in public limited companies are:

- Every company shall have at least three directors [(sec. 90(1)).
- Only natural persons can be appointed directors [sec.90 (3)].
- The directors shall be appointed by the members in general meeting [91(1) ©].
- Causal vacancy may, however, be filled up by the directors [91(1) ©].
- The duration of office of a director shall be liable to determination at any time by retirement in rotation [91(2)].
- A consent in writing by persons to act as directors must be filed with the registrar [92(1) (a)].
- A consent of directors to take qualification shares must be filed with the registrar or sign the memorandum of association by taking qualification shares [92(1)(b)].
- A signed consent to act as director should accompany the proposal for directorship to the company (93).
- A director away from Bangladesh for a consecutive period of at least three months may appoint his alternate director if so authorized by the article or by a resolution of the general meeting (sec. 101).

### **RESTRICTIONS ON APPOINTMENT**

Section 92 of the Companies Act lays down that a person shall not be capable of being appointed director of a company by the articles and shall not be named as a director or proposed director of a company or in relation to any intent company in any prospectus issued by the company or in any statement in lieu of prospectus filed by or on behalf of a company unless before the registration of the articles of the publication of the prospectus or the filing of the statement in lieu of prospectus, as the case may be, he has by himself or by his agent authorized in writing:

- Signed and filed with the registrar to consent in writing to act as such director ; and
- In the case of companies having a share capital either signed the memorandum for a number of shares not less than his qualification shares ; or taken from the company and paid or agreed to pay for his qualification shares; or signed and filed with the registrar a contract in writing to take

from the company and pay for his qualification shares ; or made and filed with the registrar and affidavit to the effect that a number of shares not less than his qualifications shares are registered in his name.

On the application for registration of the memorandum and articles if any, of a company, the applicant shall file with the registrar a list of the persons who have consented to be directors of the company, and, if this list contains the name of any person who has not so consented, the applicant shall be liable to a fine not exceeding two thousand taka.

The above provisions shall not apply to the appointment of the chief executive, by whatever name called, of any insurance company or a banking company as a director of that company if the articles; thereof provides for such appointment.

#### **QUALIFICATION SHARES**

The articles of a company usually fix a minimum number of shares which every director must subscribe in order to become a director. This minimum number is known as the qualification shares. It is the duty of every director who is required by the articles to hold a specified share qualification and who has not already qualified himself accordingly, to obtain his qualification within two months after his appointment or such shorter time as may be fixed by the articles [sec 97(1)]. If, after the expiration of the period mentioned in sub-section (1) any such unqualified person acts as a director of the company, he shall be liable to a fine not exceeding two hundred taka for every day between the expiration of the said period and the last day on which it is proved that he acted as a director (both days inclusive) [sec. 97 (2)]

#### **DISQUALIFICATIONS OF DIRECTORS**

According to section 94, a person shall not be capable of being appointed as director of a company, if-

- he has been found to be of unsound mind by a competent court and the finding is in force; or
- he is an undercharged insolvent ; or
- he has applied to be adjudicated as an insolvent and his application is pending; or
- he has not paid any call in respect of shares of the company held by him, whether alone or jointly with others, and six months have elapsed from the last day fixed for the payment of the call ; or
- he is a minor.

A company may in its articles provide additional grounds for disqualification of a director.

## **VACATION OF OFFICE OF DIRECTOR**

Under section 108 of the Companies Act, the office of a director shall become vacant under the following circumstances:

- if he fails to obtain within the due time or at any time thereafter ceases to hold, the qualifications shares, if any, necessary for his appointment; or
- if he is found to be of unsound mind by a competent court; or
- if he is adjudged an insolvent; or
- if he fails to pay calls made on him in respect of shares held by him within six months from the date of such calls being made; or
- if he or any firm of which he is a partner or any private company of which he is a director, without the sanction of the company in general meeting accepts or holds any office of profit under the company other than that of a managing director or manager or a legal or technical adviser or a banker; or
- if he absents himself from three consecutive meeting of the directors or from all meetings of the directors for a continuous period of three months, whichever is the longer, without leave of absent from the Board of Directors; or
- if he or any firm of which he is a partner or any private company of which he is a director accepts a loan or guarantee from the company in contravention of section 103; or
- if he acts in contravention of section 105.

## **LOAN OF DIRECTOR**

Section 103 (1) states that no company, other than a lending company mentioned below shall make any loan or give any guarantee or provide any security in connection with a loan made by a third party to-

- Any director of the leading company.
- Any firm in which any director of the lending company is a partner.
- Any private company of which any director of the lending company is a director or member.
- Any public company, the managing agent, manager or director where of is accustomed to act in accordance with the directions or instructions of any director of the lending company.

Provisions of this section shall not apply to the making of a loan or giving of any guarantee or providing any security by a lending company if such company is a banking company or a private company not being a subsidiary of a public company, or if such company as a holding company makes the loan or gives the guarantee or provide the security to its subsidiary ; and the loan is sanctioned by the Board of Directors of any company and approved by the general meeting and, in the balance sheet, there is a specific mention of the loan, guarantee or security, as the case may be [sec.103 (2)]. However, in no case the total amount of the loan shall exceed 50 % of the paid up value of the shares held by such director if his own name. In the event of any contravention of sub-section (1), every person who is a party to such contravention including in particular any person to whom a loan is made or on whose behalf a guarantee is given to or security provided, shall be punishable with the fine which extend to five thousand taka or simple imprisonment for six months in lieu of fine and shall be liable jointly and

severally to the lending company for the repayment of such loan or for making good any sum which the lending company may be called up to pay under the guarantee given or security provided by the lending company. The provisions of this section shall apply to any transaction represented by a book debt which was from its inception in the nature of a loan or an advance.

#### **DIRECTOR NOT TO HOLD OFFICE OF PROFIT**

No director or firm of which such director is a partner of private company of which such director is a Director shall, without the consent of the company in general meeting, hold any office of profit under the company except that of a managing director or manager or a legal or technical adviser or a banker (Section-104).

#### **REMOVAL OF DIRECTORS**

A company may remove any shareholder director before the expiration of his period of office by extraordinary resolution and may by ordinary resolution appoint another person in his stead and the person so appointed shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected director. A director so removed shall not be re-appointed a director by the Board of Directors (Section – 106).

#### **RESTRICTIONS ON POWER OF DIRECTORS**

The directors of a company or of a subsidiary company of a public company shall not, except with the consent of the company concerned in general meeting sell or dispose of the undertaking of the company; and Remit any debt due by a director (Section-107)

#### **APPOINTMENT OF MANAGING DIRECTOR**

Section 110 states that-

- A company shall not appoint or employ any individual as its managing director for a term exceeding five years at a time.
- Any individual holding, at the commencement of this Act, the office of the managing director in a company shall, unless his term expires earlier, be deemed to have vacated his office immediately, on the expiry of five years from the commencement of this Act.
- Nothing contained in sub-section (1) shall be deemed to prohibit the re-employment or the extension of the term of office of any person as managing director for a further period not exceeding five years on each occasion. However, no such re-appointment, re-employment or extension of term of office shall be made without the consent of the company in general meeting.

## **Liquidation**

### **Section overview**

- Winding up, or liquidation, is the process of terminating the life of a company and is carried out by a liquidator.
- A company is most likely to be wound up where it has become insolvent.
- Liquidation may proceed as a members' voluntary winding up (where the company is solvent) or as a creditors' voluntary winding up.
- Alternatively, liquidation may be imposed compulsorily on the company by the court.
- The liquidator is bound to realize the company's assets and apply the proceeds in a particular order, including distributing any surplus to contributories once creditors have been satisfied.

### **Members' voluntary winding up**

Subject to the requirement for a declaration of solvency (see below), the members may resolve to wind up the company

- By ordinary resolution where the articles provide for dissolution on the expiry of a fixed term or the happening of a specified event (this is rare)
- By special resolution for any reason whatsoever

The winding up is deemed to commence when the resolution is passed and notice must be given in the Gazette within 14 days.

A voluntary winding up is a members' voluntary winding up only if the directors make and deliver to the registrar a declaration of solvency (s 89 IA '86).

This is a statutory declaration that the directors have made full enquiry into the affairs of the company and are of the opinion that it will be able to pay its debts in full, together with interest (at the applicable rate), within a specified period not exceeding 12 months. It is a criminal offence punishable by fine or imprisonment for a director to make a declaration of solvency without having reasonable grounds for it.

The declaration must

- Be made by all the directors or, if there are more than two, by a majority of them.
- Include a statement of the company's assets and liabilities as at the latest practicable date before the declaration is made.

The declaration must be:

- Made not more than five weeks before the resolution to wind up is passed, and
- Delivered to the registrar within 15 days after the meeting (s 89 IA '86).

The company may appoint a liquidator by passing an ordinary resolution to that effect. If the liquidator later concludes that the company will be unable to pay its debts, he must call a meeting of creditors and lay before them a statement of assets and liabilities (s 95 IA '86).



In a members' voluntary winding up the creditors play no part, since the assumption is that their debts will be paid in full. However, a members' voluntary liquidation may become a creditors' voluntary liquidation where the liquidation process is not progressing to the satisfaction of the company's creditors.

### **Creditors' voluntary liquidation**

Where a company intends to wind up voluntarily (and passes an ordinary or special resolution to that effect as the case may be) but the directors are unable to make a declaration of solvency, the liquidation proceeds as a creditors' voluntary winding up, even if in the end the company pays its debts in full (s 96 IA '86). Despite its label, this type of liquidation is not initiated by the creditors.

The company must convene a meeting of creditors within 14 days of the proposed members' resolution to wind up the company, giving at least seven days' written notice of this meeting. The notice must be advertised in the Gazette and two local newspapers. The notice must either

- Give the name and address of a qualified insolvency practitioner to whom the creditors can apply before the meeting for information about the company, or
- State where a list of creditors can be inspected.

One of the directors presides at the creditors' meeting and lays before it a full statement of the company's affairs and a list of creditors with the amounts owing to them. The members and the creditors are entitled to nominate a liquidator. If the creditors nominate a different person to be liquidator, their choice prevails over the nomination by the members. If they do not appoint one, it will be the members' nominee who will take office. The creditors may also appoint a liquidation committee to act with the liquidator.

It may be the case that the members' nominee takes office as liquidator pending the creditors' meeting. During this period the powers of the members' nominee as liquidator are restricted to

- Taking control of the company's property
- Disposing of perishable or other goods which might diminish in value if not disposed of immediately, and
- Doing all other things necessary for the protection of the company's assets.

This prevents an obliging liquidator selling assets to a new company formed by the members of the insolvent company, in order to defeat the claims of the creditors at minimum cost and enable the same people to continue in business until the next insolvency supervenes. Such a transaction is referred to as 'centrebinding' following *Re Centrebond Ltd 1966*.

- *Re Centrebond Ltd 1966*

*The facts:* The directors convened a general meeting, without making a statutory declaration of solvency, but failed to call a creditors' meeting for the same or the next day, for which they were liable to pay a small fine. The liquidator chosen by the members had disposed of the assets before the creditors could appoint a liquidator. The creditors' liquidator challenged the sale of the assets (at a low price) as invalid.

*Decision:* The first liquidator had been in office when he made the sale and so it was a valid exercise of the normal power of sale.

If the members' liquidator wishes to perform any other act, he will have to apply to the court for leave.

### **Compulsory liquidation**

A company may be obliged to wind up by the court on the petition of, usually, a creditor or member. It tends to be a less straightforward and more time-consuming and expensive process than a voluntary winding-up. Around 90% of all compulsory liquidations follow a creditor's petition and most of these are on the grounds of the company's insolvency.

A petition may be brought for a compulsory winding up on one of seven statutory grounds (s 122 IA '86), the most significant of which are:

| <b>Ground</b>  | <b>Explanation</b>   |
|--|--|
| That the company is unable to pay its debts (s 122 (i)(f)) | A creditor must (in petitioning on the grounds that the company is unable to pay its debts) show either<br>That he is owed more than £750 and has served on the company at its registered office a written demand for payment and the company has neglected, either to pay the debt or to offer reasonable security for it within 21 days, or<br>That he has attempted to enforce a judgment against the company by execution on the company's property but it has failed to satisfy the debt, or<br>That, taking into account the contingent and prospective liabilities of the company, it is unable to pay its debts as they fall due or that its assets are less than its liabilities. |
| That it is just and equitable to wind up the company       | This ground is usually relied on by a member who is dissatisfied with the directors or controlling shareholders over the management of the company (for example, where there is management deadlock or where relations within a quasi-partnership break down). It must be shown that no other remedy is available.   |

(This provision was discussed in Chapter 6.)

A member's petition to wind up the company on the grounds that it is just and equitable to do so, will only be considered if the company is solvent (otherwise he has nothing to gain from it) and he has been a registered shareholder for at least six of the last 18 months prior to the petition (subject to some exceptions).

The DTI may petition for the compulsory winding up of a company

If a public company has not obtained a trading certificate within one year of incorporation

Following a report by DTI inspectors that it is in the public interest and just and equitable for the company to be wound up.

On a compulsory winding up, the court will usually appoint the Official Receiver (an officer of the court) as liquidator, although he may be replaced by an insolvency practitioner at a later date. The Official Receiver must investigate (s 132) the causes of the failure of the company, and generally, its promotion, formation, business dealings and affairs.

The liquidation is deemed to have commenced at the time (possibly several months earlier) when the petition was first presented, with the following consequences:

- Any disposition of the company's property and any transfer of its shares subsequent to the commencement of liquidation is void unless the court orders otherwise.
- Any legal proceedings in progress against the company are halted (and none may be commenced) unless the court gives leave.
- Any seizure of the company's assets after commencement of liquidation is void.
- The employees of the company are automatically dismissed and the liquidator assumes the powers of management previously held by the directors.
- Any floating charge crystallizes.
- The assets of the company may remain the company's legal property but under the liquidator's control, unless the court orders the assets to be vested in the liquidator.
- The business of the company may continue, but it is the liquidator's duty to continue it with a view only to realization, for instance by sale as a going concern.

**Worked example: Petition for compulsory liquidation**

A has sold goods worth £29,567 to B on credit. B Ltd has exceeded the credit terms extended and A has presented B Ltd with a written demand to their registered office, which B Ltd has not responded to after a month. B Ltd have sold on the goods which they purchased from A and do not dispute the value of the invoice.

**What action can A take?**

A can petition the court for the compulsory winding up of the company because the company has failed to satisfy its demand for a debt of over £750 within 21 days. He will petition on the ground that the company is unable to pay its debts.

**Interactive question 1: Insolvency [Difficulty level: Exam standard]**

Zorro Ltd incorporated 15 years ago and is in the business of supplying pet foods and products to small retailers. After 13 successful years it borrowed £150,000 to expand its premises and the loan was secured by a fixed charge on those premises. Due to a nearby out-of town retail park completed 18 months ago, Zorro Ltd has suffered a significant downturn in its business. One of its regular suppliers of Bunny Mix, who often extended credit terms over short periods and who was also suffering due to the new retail park, has recently tried to recover a debt of £1,725 against the company but he has received no reply to his latest written demand 25 days ago. He is seriously concerned that he will never see his £1,725 again but he would rather see Zorro Ltd recover its fortunes in spite of the retail park.

Can he petition the court for a compulsory winding up?

Can he appoint an administrator in the hope that the company can be rescued?

**The role of the liquidator**

Once a liquidator is appointed, whether in a voluntary or a compulsory winding up, his role is to:

Settle the list of contributories (i.e. members who have a liability to contribute in the event of a winding up)

Collect and realise the company's assets

Discharge the company's debts

Redistribute any surplus to the contributories according to the entitlement rights attached to their shares.

On his appointment, the powers of the directors cease save to the extent that they are permitted to continue by the liquidator or (in a voluntary winding up) by the company or creditors as appropriate.

Once the liquidation is complete, the liquidator must act as follows.

In a voluntary winding up, he must prepare an account showing how the winding up has been dealt with and lay it before a meeting of the members and/or creditors. Within the following week he should then file details with the Registrar who will enter the details on the company's file and the company will be deemed to be dissolved three months thereafter.

In a compulsory winding up the liquidator must go back to the court which then makes an order dissolving the company. He then files the order and the Registrar records on the company file that the company is dissolved as from the date of the order.

### **Priorities on liquidation**

A liquidator in a compulsory winding up must, and in a voluntary winding up is likely to, adhere to the following prescribed order for distributing the company's assets:

| <b>Priority</b>                 | <b>Explanation</b>  |
|---------------------------------|---|
| 1. Costs                        | Including the costs of getting in the assets, liquidator's remuneration and all costs incidental to the liquidation procedure   |
| 2. Preferential debts           | Employees' wages due within four months (max £800 per employee)<br>Accrued holiday pay<br>Contributions to an occupational pension fund<br>These rank equally   |
| 3. Floating charges             | Subject to ring-fencing (see below)   |
| 4. Unsecured ordinary creditors | A certain percentage of assets is 'ring-fenced' for unsecured creditors where there is a minimum fund for distribution of £10,000, namely 50% of the first £10,000 of floating charge realizations and 20% of the floating charge realizations thereafter |
| 5. Deferred debts               | For example dividends declared but not paid and interest accrued on debts since liquidation   |
| 6. Members                      | Any surplus (meaning that the company is in fact solvent) is distributed to members according to their rights under the articles or the terms of issue of their shares.   |

Note that secured creditors with fixed charges (and indeed floating charges) may appoint a receiver to sell the charged asset, passing any surplus to the liquidator. In the event of a shortfall they must prove for the balance as unsecured creditors.

**Interactive question 3: Priorities on liquidation [Difficulty level: Exam standard]**

Buffers Ltd has an issued share capital of 5,000 × £1 shares and is in compulsory liquidation. The liquidator has a fund of £8,500 available for distribution and needs to distribute the fund to settle the following claims so far as possible:

- The directors declared a dividend of 10p, six months ago but it has not been paid.
- The liquidation costs, including remuneration, amount to £2,500
- Moneylender plc had a floating charge over the company's stock in trade which has now crystallized and the value is £4,000
- The company's employees have been paid, with the exception of some accrued holiday pay worth £1,200
- Mr. Staples, the local stationery supplier is an unsecured creditor and is owed £830.

It is clear that there will not be a surplus for distribution to the members.

Which debt will be discharged first?

Will Mr Staples receive all of the money owed to him?

Will the members receive the dividend?

Do the ring-fenced provisions apply?

Following dissolution of a company (by whatever means) its property vests in the Crown as bona vacantia (s 1012 CA '06), which means that there is no known person entitled to it. However the Crown has the power to disclaim it, in which case any interested person may apply to the court to have the property vested in them on such terms as the court sees fit.

**Individual voluntary arrangements**

**Section overview**

- An individual voluntary arrangement ('IVA') is an arrangement available to an individual (including sole traders and partners) to reach a compromise with his creditors, with the aim of avoiding bankruptcy.
- IVAs are governed by the Insolvency Act 1986 and supervised by licensed insolvency practitioners.

Sole traders and partners may well wish to pursue the option of an IVA in order to protect the survival of their business. An IVA normally provides for the debtor to pay reduced amounts towards his total debt over a period of, usually, five years. Once approved, an IVA binds all of the debtor's creditors and none may pay petition for bankruptcy.

## 5.1 The procedure

The individual, or more likely his nominee (who must be a licensed insolvency practitioner), submits proposals to court, together with the nominee's comments on their chances of success, in an application for an interim order. Once an interim order is made, creditors cannot take any action against the debtor pending the creditors' meeting. Effectively a moratorium on actions against the debtor is put in place (although a secured creditor may continue to enforce his security against the debtor). The nominee must call this meeting to be held within 14 days of the notice, which notice must include:

The proposals and the nominee's comments thereon

A list of creditors

A statement of affairs, i.e. a list of the debtor's assets and liabilities

Details of the meeting including a form of proxy.

The creditors may reject the proposals or accept them (with or without modification) by a majority of 75% in value of those creditors who vote, either in person or proxy. Once approved, a supervisor is appointed (who is usually the nominee) to be responsible for supervising the scheme and distributing sums to the creditors. Upon completion of the IVA, assuming all its terms are complied with, the debtor is fully discharged from all liabilities contained in it.

Application may be made to the court on the basis that the terms of the IVA are unfairly prejudicial to a creditor or that there has been some material irregularity in relation to a meeting of the creditors. In addition, a creditor may petition the court for bankruptcy in exceptional circumstances, for example where the debtor fails to comply with the terms of the IVA.

## 5.2 Advantages and disadvantages of an IVA

The advantages of an IVA are as follows:

### Advantages

#### For the individual

The sole trader is permitted to continue in business and to operate a normal bank account (but without an overdraft facility)

There is flexibility in drawing up the proposals to suit his personal and financial circumstances

He does not suffer the restrictions that would be imposed by bankruptcy, for example not being able to act as a director of a limited company

Details of IVAs are not published in the press as are details of bankruptcy

#### For the creditor

It is essential that an IVA is considered as it is likely to give greater satisfaction to creditors than bankruptcy would

The costs of administering an IVA are significantly less than bankruptcy, thus enabling a higher return to creditors

However, there are some disadvantages, namely

The period of an IVA is usually five years which is longer than the three years applicable in bankruptcy

There is no opportunity for a trustee in bankruptcy to investigate the debtor's actions or the possibility of hidden assets.

Note that the debtor's home and assets are still at risk unless excluded from the IVA and that if the terms of the IVA are not complied with, he may still be made bankrupt.

- **Bankruptcy**

- **Section overview**

- A person may become bankrupt either by petitioning the court himself or by his creditor petitioning the court for bankruptcy.

- Bankruptcy is effectively the equivalent for a sole trader or partnership (or other individual) of a compulsory winding up in the case of a company.

- It should be considered as a last resort after IVAs.

## **6.1 The procedure**

A petition is presented to the court either

- By the individual or
- By an unsecured creditor who is owed £750 or more (at the time the petition is presented) or
- By the supervisor of, or any person bound by, an approved IVA

The court hearing will normally take place at least 14 days after the service of the petition to give time for the debtor to file objections and for creditors to attend. If the court is satisfied that the debtor is unable to pay his debts as and when they fall due, it will make a bankruptcy order.

Where the debtor himself petitions for bankruptcy, the court will not make a bankruptcy order where

- The total unsecured bankruptcy debts would be less than £20,000
- The estate would be at least £2,000
- The debtor has not, in the previous five years either been made bankrupt or entered into a composition or scheme with his creditors, and
- It would be appropriate to appoint someone to make a report which may lead to approval of an IVA (s 273 IA '86).

The reason for this provision (which does not apply where a creditor petitions for bankruptcy) is to discourage bankruptcy, in favor of an IVA, where there is this level of value in the estate as against the total debt.

Where a creditor petitions for bankruptcy, he will be able to show that the debtor is unable to pay his debts, if he can show that

- He has served a statutory demand on the debtor that has not been satisfied or set aside within 21 days or
- His attempts to enforce a judgment order have not been satisfied.

The creditor may present a petition within the three-week period following service of a statutory demand where the value of the property is likely to be diminished significantly during that period. In such cases an interim receiver is appointed, rather like a provisional liquidator. However, if a bankruptcy order is made, the debtor becomes an undischarged bankrupt and the order is advertised in the Gazette and in a local and/or national newspaper.

Also from the date of the order, the Official Receiver is appointed to administer the bankruptcy and to act as trustee of the bankrupt's estate, unless an insolvency practitioner is appointed to act as trustee (which is likely where the estate is sufficient to pay his fees and the creditors). The Official Receiver must investigate the debtor's financial affairs and must report to his creditors, and may report to the court. He will also give notice of the bankruptcy order to local authorities, utility suppliers, the land registry and any other relevant bodies or organizations. He must act to maximize the funds available to satisfy the creditors and then pay creditors with provable debts in a prescribed order, similar to the compulsory winding up of a company. If there is insufficient money available to pay all unsecured creditors, the trustee in bankruptcy will declare a dividend, i.e. so many pence in the pound, so that the creditors receive part-payment of their debts.

## **6.2 The effect of bankruptcy**

Regardless of who petitions the court, once a bankruptcy order is made, the debtor becomes an undischarged bankrupt and is subject to a number of personal restrictions, for example

He cannot act as a director of a company or an insolvency practitioner

- He faces criminal liability for failure to provide information or co-operate with the Official Receiver by handing over his property, for example.
- He may practice as a chartered accountant only if he informs all persons concerned that he is a bankrupt.

From the date of the petition, any payment of money or disposition of property is void unless approved by the court. The court may stay any action against the debtor from the date of the petition and, generally speaking, the bankrupt can no longer be sued by his creditors once the order is made. There are exceptions however, for example a secured creditor can still enforce his security.

Most importantly, the bankrupt's estate automatically vests in the trustee in bankruptcy as soon as he is appointed and, from the time the order is made, the Official Receiver act as receiver and manager of the estate and must protect it pending the appointment. Such vesting occurs automatically and does not need any written contract or transfer of rights or property.

Note that the bankrupt's 'estate' is defined to exclude

Such tools of the trade and other items as are necessary for use personally in his employment, business or vocation.

Such clothing and household provisions as are necessary to satisfy the basic domestic needs of the bankrupt and his family

Property held by the bankrupt on trust for another person



Certain tenancies protected in some way by legislation

The estate is vested subject to the rights of secured creditors.

### **6.3 Distribution to creditors**

The trustee in bankruptcy must require the creditors to prove their debts (which they do by completing proof forms) and he will then rank them according to the prescribed order and make payments accordingly. The order is as follows:

| <b>Debt</b>                     | <b>Explanation</b>  |
|---------------------------------|---|
| <b>1 Costs</b>                  | The costs of realizing the estate, the remuneration of the trustee and incidental expenses  |
| <b>2 Pre-preferential debts</b> | As provided by certain statutory provisions, for example funeral expenses where the bankrupt is deceased  |
| <b>3 Preferential debts</b>     | Remuneration of employees for up to four months subject to a maximum of £800<br>Sums payable in connection with occupational pension schemes<br>Accrued holiday pay |
| <b>4 Ordinary debts</b>         | Where the fund is insufficient to pay all unsecured creditors they rank equally   |
| <b>5 Interest</b>               | Creditors may prove for interest up to the date of bankruptcy (and therefore only if all preferential and ordinary creditors have been paid in full)                |
| <b>6 Postponed debts</b>        | For example a debt owed to the bankrupt's spouse  |
| <b>7 Surplus</b>                | Any surplus is returned to the bankrupt (this is of course unlikely)  |

Once the trustee has completed the distributions, he reports to the creditors who will usually release him from his trusteeship.

### **6.4 Discharge of bankruptcy**

One year after the bankruptcy order, a bankruptcy is discharged (although he may be made subject to a bankruptcy restrictions order or undertaking for between 2 and 15 years where he was culpable to some extent for his insolvency). This means that all his debts are treated as discharged, all personal restrictions are lifted and effectively his slate has been wiped clean. However, there may remain a certain stigma attached to a discharged bankrupt and his credit history will have been damaged.

## **PROCEDURE FOR FORMATION AND REGISTRATION OF A COMPANY**

The procedure for formation and registration of companies under the Companies Act, 1994, is laid down below:

- i. When the Promoters will desire to form a company, at first they will have to select its name and will apply to the Registrar for the same in a plane paper with a fee of TK. 5/- for each name along with the properly executed deed of settlement or the minutes of their first meeting.
- ii. The Promoters may primarily select the name of their proposed company through searching the list of companies by the use of [www.registrationofcompaniesbangladesh.com](http://www.registrationofcompaniesbangladesh.com) website.
- iii. The deed of settlement/minutes of the first meeting of the promoters may be prepared in plane paper and then to be signed by all of them and amongst others it must contain the name, address and occupation of the authorized person with his connection with the proposed company who will apply for the clearance of name.
- iv. After obtaining the name clearance the Promoters shall prepare and print the Memorandum and Articles of Association which shall be signed by them before at least two witnesses.
- v. The Promoters shall collect the necessary special adhesive stamp on the basis of authorized share capital of the proposed company from treasury by depositing the money through treasury challan in the Bangladesh Bank and will affix the same on the printed Memorandum and Articles of Association of the company.
- vi. For the purpose of registration of a company the special adhesive stamp worth Tk. 500/- to be affixed on the Memorandum of Association irrespective of authorized capital and stamp worth Tk. 155/-, 4000/- and 10,000/- to be affixed on the Article of Association for the authorized capital of Tk. 10,00,000/-, Tk. 3,00,00,000/- and above Tk. 3,00,00,000/- up to any amount respectively.
- vii. Three copies of Memorandum and Articles of Association including the original one on which the special adhesive stamp is affixed along with dully filled in Form I, VI, IX and XII, the clearance of name and the copy of treasury challan relating to the collection of adhesive stamp to be filed in the case of a private company and in the case of a public company a statement in lieu of prospectus (Schedule 4), the declaration for commencement of business (Form XIV) and (Form XI) as and when necessary to be filled by the promoters in addition to the Memorandum and Articles of Association, papers and documents as mentioned above (see appendix 1-5).

## **DOCUMENTS TO BE PREPARED AND SUBMITTED**

For registration, the preparation and the filling of certain documents are necessary. These documents are to be filled with the Registrar of Joint Stock Companies together with the requisite fees. The documents to be delivered are the following:

- i. Memorandum of association signed by each subscriber and dated. The signatures of the subscribers must be witnessed by a third person. Each of the subscribers undertakes to subscribe for one or more shares of the company.

- ii. Articles of association signed, dated and witnessed as for the Memorandum (and by the same subscribers).
- iii. A statutory declaration of compliance by an advocate entitled to appear before High Court who is engaged in the formation of a company or by a person named in the articles as a director, manager or secretary of the company to the effect that the requirements of the Act as to registration have been complied with [(Sec. 25 (2)].
- iv. Notice of situation of registered office (Sec. 77).
- v. Particulars of Directors, Managing Agent, Managers (Sec. 115).
- vi. A list of persons who have consented to become directors (S.92).
- vii. A written consent of the directors to act (5. 92). This does not apply to a private company.

Thereafter the proper stamp duty for registration has to be paid and the Registrar then enters the name of the company on the register of companies and issues a certificate of incorporation. The company then comes into existence as legal person.

#### **EFFECT OF REGISTRATION**

After registration of the company, it takes the shape of an incorporated organization under the name mentioned in its memorandum. This organization is empowered to perform all the works of an incorporated company. It acquires the permanent inheritance and it shall have a common seal. The liability of its members is limited by shares. Upon incorporation of the company it is treated as a juristic person and it shall have a registered office.

#### **EXPERT KNOWLEDGE OF MEMORANDUM AND ARTICLES**

The memorandum and articles of association, bound generally in one booklet form, are the charter of the company. While memorandum of association lays the foundation of the company, articles are the constitution for internal administration of the company. Both need to be printed and paragraphed with consecutive para numbers. The Act is clearly absent on the language to be adopted for framing the memorandum or the articles. However, in the context of publication of name by a limited company it is prescribed in section 78 that the signboard and the letterhead of a company should be in legible Bangla or English characters. This may be treated as a hint in this respect.

The memorandum of association provides for name, place of business, object, limited liability of members and the capital of the company. The name of the company should be a concrete one, separate from any other company name. There should be the mention of a specific place of business of the company known as the Registered Office. The Act provides at section 78(a) that the name (street no. and place) should be prominently displayed in a conspicuous place outside the company office. The object of the company should include all present and foreseeable future areas of activities so that no legal complications arise on this. The memorandum should be signed by each original subscriber in the presence of a witness who shall attest the signature.

The articles of association governs the administration of the company in that it spells out all internal regulations such as the directors, their appointment, conduct of Board meetings, general meetings, share transfer, books of accounts and audit etc. The articles cannot go beyond the terms of the memorandum and it constitutes an agreement between the company and its shareholders.

The registration of articles by a company limited by shares is only optional. It may adopt schedule – I in its entirety or frame its articles to meet its special needs and register it. Where the articles of a company are silent over any matter, the regulations of schedule- I regarding that matter will apply. But a company limited by guarantee or an unlimited company or a private company must register its articles.

The articles of association shall also be signed by the subscriber of the memorandum with at least one witness. The memorandum and articles are public documents and can be inspected by any one dealing with the company.

#### **REGULATION OF SCHEDULE – I TO BE INCLUDED IN ARTICLES**

The article of association of a company may include all or any of the regulations contained in the First Schedule of the Companies Act 1994. But whatever may be the case, there are certain mandatory regulations which must find places in the Articles. Based on section 17(2) the following regulations of Schedule – I are compulsory for all companies, including private companies:

| <b>No of Regulation</b> | <b>Description</b>  |
|-------------------------|---|
| 56                      | About meetings at different places and adjournment                        |
| 66                      | On signature of proxies   |
| 71                      | Directors qualification shares  |
| 95                      | Defect in appointment not to invalidate acts of directors                 |
| 96                      | Directors may pay interim dividend  |
| 105                     | Books of accounts to be at head office and open for director's inspection |
| 108                     | Contents of profit and loss account                                       |
| 112                     | About appointment of auditors   |
| 113 to 116              | Provisions for sending notices.   |

For the public companies and their private subsidiaries the following regulations of schedule- I are also compulsory:

|    |                                     |
|----|-------------------------------------|
| 78 | Disqualification of directors       |
| 79 | Rotation of directors               |
| 80 | Which of the directors to retire    |
| 81 | Eligibility for re-election         |
| 82 | General meeting to elect directors. |

If the articles of association of any company fails to include the mandatory regulations, it will automatically apply for the company and anything contrary shall stand null and void in the eye of law. The Act requires that a company can exercise powers only when it is authorized to do so by its articles. Therefore care and expertise has to be applied in preparing the articles of association of the company. The nature of business and the administrative interests are to be considered while drafting articles. The contents of articles are available in part – 1 (chapter -2 of the Companies Act) of this manual.

**AMENDMENTS**

There are certain statutory provisions as to alteration / amendment of the memorandum and articles of association of the company. The following table will show the course of changes in the memorandum or articles:

| Changes           | Resolution required | Statutory obligations                           | Whether returns to be filed with section and return form no  |
|-------------------|---------------------|---|--|
| Name              | Special resolution  | Permission form Registrar and BOI               | Required sec. 11(6) & 88. Return Form - VIII   |
| Registered Office | Ordinary resolution | Permission form BOI                             | Needed by sec. 77(2), and return Form - VI   |
| Objectives        | Special resolution  | Permission form BOI and High Court confirmation | Amended MA with HC confirmation must be filed. Sec. 12, 15 & 88. Form –VIII (for allotment of new shares form – XV vide section 151 (1) (a). |
| Capital Increase  | Ordinary resolution | None  | Required. For authorized capital requisite fee to be deposited. Section 53 & 56. Form - IV   |
| Articles          | Special resolution  | None  | Required under sec. 20 & 88. Form - VIII   |

Every alteration or amendment needs to be incorporated in all copies of the memorandum and articles of association of the company.

**EFFECTS OF AMENDMENT**

Amendment in the memorandum and articles have got some statutory obligations and effects which cannot be overlooked. In the case of amendment of memorandum, section 10 lays down that a company shall not alter the conditions contained in its memorandum except in the cases and in the mode and to the extent for which express provision is made in the Act. Again, in section 20 it is prescribed that the conditions of articles can be altered by way of special resolution provided that it does not conflict the Act or the memorandum. The cases and places of amendments are listed in the previous topic. Here the effects of a few of the changes are amplified.

**Name:** The shareholders may decide to change the name of their organization by passing a special resolution at any time. But before tabling the issue in a general meeting the Board has to decide, propose and resolve about the new name of the company. The corporate secretariat, after a new name is adopted by the shareholder at a general meeting, will then approach the Board of Investment (BOI) of the Government of Bangladesh with an extract of the resolution for approval and confirmation of such changes. The change will not affect any right and obligation of the company or render defective any legal proceeding by or against the company. The Registrar must also be informed of the change in appropriate format (i.e. in form VIII for special resolution) together with an extract of the resolution and with a copy of BOI’s confirmation of the change. The time limit for this return is fifteen days from the date of resolution (sec. 88). However, any change in the name of a company will not be effective until it is approved by the Registrar [sec. 11(6)]. This change should be carried out in all documents of the company, primarily in the memorandum and articles, share certificates, letter pads, bill-heads, sign boards and elsewhere after alteration duly approved and confirmed.

**Registered Office:** The Act does not define a registered office but instead has laid down special emphasis on having a known seat of office of a company and also on forming the Registrar about it.

Strong penal provision is there in section 77 for not sending notice of situation of a registered office or of any change therein to the Registrar.

From the term it can be construed that registered office is the one which the company declares to be its place of office at the time of incorporation or afterwards but within twenty-eight days of incorporation.

The matter of registered office has come up even earlier in the Act in section 3 dwelling on jurisdiction of the court. At an interpretation given in section 3, registered office is explained to mean 'the place which has been the registered office of the company during the six months immediately preceding the presentation of the petition for winding up'.

The situation or change of address of the company is not an ordinary matter to deal with. The memorandum of association mentions about registered office, though not very distinctly, at the beginning of it. And once the memorandum is filed with the Registrar, change in situation of its office will require certain formalities to be followed. This includes informing the Board of investment and obtaining its confirmation and a return in form VI to the Registrar.

However, section 77(3) stipulates that the notice of situation or change of situation of the registered office cannot be made by way of any collateral document. It has to be made separately by a return (in form –VI) the time limit for which is twenty-eight days from the date of situation or of any change therein. If it is a listed company, such a change has also to be intimated to the Securities and Exchange Commission and the stock exchange.

**Object:** Change of object is bothersome. A change in the object clause requires (i) a Board resolution to decide about the necessity and exact amendment, (ii) special resolution of shareholders to pass the amendment, (iii) intimation to the BOI about change in the object clause, (iv) petition before the High Court for confirmation of the amendment, and (v) a return to the Registrar within fifteen days of resolution (sec. 88) enclosing form – VIII duly filled out with extract of special resolution.

On the petition for confirmation of amendment the court will accord its sanction if it is satisfied that sufficient notice has been given to all concerned and consent of creditors obtained or their claims discharged to the satisfaction of the court. A certified copy of the order confirming the alteration together with a copy of the amended memorandum must be sent to the Registrar within ninety days of the date of order to note the changes and to issue a certificate for conclusive evidence (sec. 15). The alteration will be effective on the Registrar's certifying that the alteration has been registered. A certified copy of the return together with certified amendment from the Registrar may also serve the purpose. The provisions relating to change of the object are contained in section 12 to 16.

**Capital:** A company limited by shares may alter the conditions of its memorandum for amendment in the capital clause, if authorized by its articles [sec. 53(1)]. The procedure for alteration of capital is rather simple because the company can exercise its powers in this respect simply in a general meeting without the consent of the court and the resolution need not be special or extraordinary, unless the articles of the company so provide. The conditions of the memorandum may be altered with a view to:

- Increase its share capital by the issue of new shares of such amount as it thinks proper;
- Consolidate and divide all or any of its share capital into shares of larger denominations;
- Convert all or any of its paid-up shares into stock and reconvert that stock into paid-up shares of any denomination;

Sub-divide its shares or any of them into shares of smaller amount than is fixed by the memorandum; Cancel shares which, at the date of passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled. This cancellation, however, shall not amount to reduction of capital within the meaning of the Act.

It is further provided in sub-section (2) of this section that the powers conferred by this section must be exercised by the company in general meeting. A notice specifying the alteration should be given to the Registrar within fifteen days of the alteration in case of increase (sec. 54).

### **AMENDMENT OF ARTICLES OF ASSOCIATION**

Any amendment in the articles of association requires a special resolution. It is provided in section 20 that, subject to the provisions of the Act and the memorandum, a company may, by special resolution alter or add to its articles. Any alteration or addition so made shall be as valid as if originally sanctioned in the articles.

However, the general restrictions inherent in the power of the company to alter its articles are explained below:

- The articles can only be changed by passing a special resolution and not by passing any other type of resolution.
- Even the passing of a special resolution will not be effective if it is inconsistent with an existing article and a special resolution has not been passed in previous meetings altering that article.
- The alteration must not contravene the provisions of Companies Act.
- If any additional financial obligation is created on any member by altering the articles, the alteration shall be binding only if the consent of such member in writing has been obtained before or after the passing of such resolution.
- The alteration in the articles should be fair and for the benefit of the company as a whole and not for a class or group of members only.
- Articles must not be amended to commit a breach of contract with outsiders.
- By the amendment, articles cannot give to a person, whether a member or not, any right in a capacity other than that of member, as for instance as solicitor, proper etc. for such a right cannot be enforced against the company.
- If proper and due notice of the facts and effects of the proposed alteration is not given in time to all shareholders, the meeting would be invalid and such an alteration would be of no effect.
- The alteration approved should not be such as would constitute a fraud by the majority on the minority.
- The alteration must not be opposed to the provisions of the memorandum of association and particularly its object clause.

Every special resolution amending the articles of association must be supported by a return to the Registrar within fifteen days of passing of the resolution as required under section 88 of the Act.

## **RETURNS TO BE FILED AND THE TIME FRAME**

The Companies Act 1994 is the prescription to guide and control the activities of the registered companies. It also, in its text and spirit, exercises some protection to the shareholders, in that it requires some returns to be filed to the Registrar of Joint Stock Companies which have bearing on the shareholders' interests. Returns are nothing but disclosure of some facts as per the relevant sections, in the prescribed format to the Registrar.

The submission of returns are mandatory, failure of which leads to various penalties and other complications. Therefore, due care is to be laid in submitting returns as per statutory time limit and according to various provisions. Some important returns as per different sections are given below:

- **Returns of Allotment [Form XV]:** To be filed within 60 days after the date of allotment (section 151). The capital allotted to be added and entered in the next annual list of members and summary.
- **Particulars of Mortgage (PM):** To be filed within 21 days after the date of execution of the mortgage deed (section 159).
- **Particulars of Modification of Mortgages (PMM):** To be filed within 21 days after the date of execution of modification deed [section 167(3)].
- **Particulars of Satisfaction of Registration of Office (PSM):** To be filed within 21 days from the date of satisfaction of the loans or debts (section 172).
- **Notice of situation of Registration of Office:** To be filed within 28 days after establishment or change of the registered office [section 77][Form VI].
- **Proceeding of Special or Extra Ordinary General Meeting:** To be filed within 15 days from the date of meeting (section 88).
- **Prospectus:** On or before the date of issue of the prospectus (section 138).
- **Change of name of the company:** To be filed within 15 days from the date of special resolution relating to change of name [section 11(6) and 88].
- **Change of Memorandum of Association:** To be filed within 90 days from the date of order of the court or within the extended period sanctioned by the court [section 12 and 54].
- **Notice relating to consolidation or sub-division of shares or the conversion of shares into stock:** To be filed within 15 days from the date of change or conversion [section 54].
- **Conversion of private company into public company:** To be filed within 30 days after the date of taking decision of conversion [section 231].
- **Conversion of public company into private company:** To be filed within 15 days from the date of taking decision of conversion [section 232].
- **Notice of increase of share capital or the number of members:** To be filed within 15 days from the date of taking decision of such increase [section 56].



## **STATUTORY RETURNS**

A company having share capital and incorporated under the Companies Act, 1994 shall have to file the following statutory returns to the Registrar every year:

- **The annual list of members and summary [Schedule-X]:-** To be filed within 21 days after the date of holding the annual general meeting. The transfer of share if any shall be entered or reflected in this return.
- **Balance sheet and Profit & Loss accounts:** To be filed within 30 days from the date of annual general meeting (section 190). The profit and loss accounts to be filed separately in the case of a private company.
- **Consent of auditor [section 210]:-** The company shall inform the auditor or auditors in respect of his / their appointment within 7 days from the date of annual general meeting and the auditors shall inform the Registrar whether the appointment has been accepted or refused by him or them within 30 days from the date of receipt of such information.
- **Statutory Report:** It is applicable in the case of public limited companies (section 83).
- **Particulars of directors (Form XII):-** The information in respect of appointment of Directors or any change thereof and in the case of retirement of Directors by rotation and re-election in public company.

The consent of Directors to act (Form IX), section 92.

## **STATUTORY BOOKS AND REGISTERS**

To meet the requirements of Companies Act, it is obligatory to maintain certain books and registers which should record the important data and information of the company. Because those are specifically prescribed by the statute, in addition to the customary books and records, they are called the statutory registers. It is to be mentioned that the Act, in cases, allows gap in specifically mentioning about requirements of some registers, but instead has, in the length of the particular section, given the sense of those registers. Such a few cases are sections 38, 148, 176 etc. where it is not precisely mentioned that a register has to be maintained, though those cannot be overruled. The Act also requires the registers to be open for inspection by those concerned. Also there are some other books the purpose of which cannot be dispensed with. Those are the subsidiary registers. The fact that various statistical and financial information are available in those documents, they are called the statistical registers.

The following are the statutory registers:

- **Member Registers (section 34):** It contains names, addresses and descriptions of the members, number of shares held, distinctive numbers, number of certificates, amount paid, shares transferred, date of becoming a shareholder and the date of ceasing to be shareholder. An entry in this register is the prima-facie evidence of membership in the company.

For companies having more than fifty shareholders, an Index of members (sec. 35) is also necessary, if, however, the members register is not in a shape to contain an index in itself. This should contain sufficient indication so as to enable the account of any member in the register be readily traceable. There should also be a register or a file to contain the Annual list of members and summary of share capital [sec. 36(3)] which is required to be filed with the Registrar every year after the annual general

meeting. The register of members is of vitally important and the maintenance of which must be followed meticulously.

In case of any lapse or breach, the court may, on the application of any member ask the company to rectify the register (sec. 43). If a company makes default in complying with the requirements of section 34, it shall be liable to a fine not exceeding taka one hundred for every day during which the default continues and every officer of the company who knowingly and willfully authorizes or permits the default shall also be liable to like penalty.

- **Register of Directors (sec. 115):** The company is obliged to maintain a register of its directors. The names, nationalities, addresses, occupations and other business connections of all directors, with date of becoming or ceasing to be directors are entered in this book. All changes of the particulars of the directors are also to be noted in this book with the date of change. If the company fails to maintain this register, the company and every other officer of the company knowingly and in default shall be liable to a fine of Taka five hundred.
- **Register of mortgages and charges (sec. 174):** There should be a register to record all mortgages and charges specifically affecting the property of the company. This register contains the kinds, particulars and descriptions of the mortgages, the amount received and description of the property in respect of each mortgage and the names of the mortgagees or the persons entitled thereto. If any director, manager or other officer of the company knowingly and willfully authorizes or permits the omission of any entry required under section 174, he shall be liable to a fine not exceeding Taka two thousand.
- **Register of contracts with Directors (sec. 130):** It must contain the full particulars of all contracts or arrangements in which any director is directly or indirectly interested. This register also is indispensable and every officer of the company who knowingly and willfully acts in contravention of the provisions of this section shall be liable to a fine not exceeding Taka one thousand.
- **Register of Debenture holders (sec. 176):** The full particulars of the debenture holders, their names, addresses and occupations, the date of allotment and redemption, the number of debentures held by each, distinctive numbers, amount paid upon each debenture, the dates when paid and transfers in respect of any debenture are all to be incorporated in this register. The Act in this section does not say that this register is necessary, but starts with inspection of such a register. However, treatment of this book is almost the same as with the register of members.
- **Minute Books (sec. 89):** These are used for recording all resolutions and the proceedings of meetings of the directors and the members of the company. Two minute books are maintained, one being directors minute book and another for the meetings of the shareholders.

The shareholders minute book should be kept open for inspection by any interested members and copy of extracts thereof furnished if so requested. If any such inspection is refused or copy not provided, the company and every officer of the company who knowingly and willfully is in default shall be liable in respect of each offence to a fine not exceeding Taka one hundred and a further fine of Taka one hundred for every day during which the default continues. In case of any such refusal or default, the court may by order compel an immediate inspection of the books in respect of all proceedings of general meetings or direct that the copies required be sent to the persons requiring them. However,

directors' minute books cannot be inspected by anybody other than a director or the auditor of the company.

### **STATISTICAL BOOKS**

Statistical Books are required more of necessary than by the Act and are subsidiary in nature. The following are some of the commonly used statistical books:

- **Application and Allotment register (sec. 148):** This book contains names, addresses and occupations of the applicants of shares, the amount of application money received, number of shares applied for, the number of shares allotted, their distinctive numbers, if any money is refunded its particulars, cheque number, date etc. The register is required in case of a new company or at the time of share flotation for public subscription. The particulars in this book are important till filing the Allotment Return, after which the descriptions are shifted to the register called the members register. The Act is not very clear about such a register. But the particulars as mentioned in section 148 cannot be properly recorded and maintained or monitored unless such a register is there.
- **Register of Share Transfer (sec. 38):** This register contains the names, addresses and occupations of the transferor and the transferee, number of shares transferred, date of transfer and the number of share certificate. This register though not specifically mentioned in this section, cannot be dispensed with if the details of all transfers are required to be kept in one concise place. Such details may be necessary for any future use; say for any case of litigation.
- **Share Certificate and Debenture Book:** The details of each share certificate and debenture certificate in relation to their number, distinctive number, number of shares contained in each certificate, name of the holder of the certificate etc., are recorded in these registers. They are also called scrip register which contains the details of share scrips.
- **Attendance Book:** This book is necessary to record the presence of directors in the board meeting and the amount paid to them as their attendance fees. Signatures of all the directors present in the meeting are recorded in original and when there is any absence, the reason is laid down if it is a leave of absence against the director's name (regulation 76).
- **Agenda Book:** The agenda book contains, in the left hand side, the agenda points, in chronological order and in the right hand side- noting of the Company Secretary as per agenda. This is very helpful for preparing the minutes of the meetings after the meeting is over.
- **Proxy register:** This book records, meeting wise, the detail of proxies received from different members. It facilitates a permanent record of who was the proxy and who appointed him and for which meeting. This may be necessary for any future use.

### **BOARD MEETING**

This means the meeting of the board of directors. This is purely an in-house event. Directors are the elected representative of the shareholders and the control and administration of the company affairs are vested in them. That requires them to meet from time to time to discuss and decide matters relating to policy and for reviewing its affairs and progress. In this way, they exercise their control over the company and discharge their responsibilities to the shareholders.

- **Procedures:** The procedure at the Board meeting is less formal than the general meetings and the directors may regulate their own meetings. Articles may also provide for the codes of conduct. But those cannot move past the Act. The directors sit for the board meeting frequently. However, the Companies Act 1994 requires that the Board must meet once in every three months and at least four times a year (sec. 96). The directors may meet more often but they must meet together as a board to constitute a valid board meeting.
- **Notice:** The chairman, managing director or any director can issue notice calling a board meeting. The company secretary on the requisition of any one of the above shall convene a board meeting. Such a notice under the signature of the secretary should be qualified by the words: "By order of the Board." A meeting convened by secretary without authority may, however, be ratified by the directors at the Board meeting. All the directors are entitled to notice of such meeting at their usual address at a reasonable time with details of the agenda. Notice need not to be given to a director who is out of Bangladesh for the time being. Section - 95 says that notices of Board meetings are to be served to directors residing in Bangladesh only.

The length of notice should be reasonable. No such time is prescribed by the Act. Extremely short notice is acceptable if all directors can attend but if a short notice is issued to exclude a particular director, it will render the meeting void. The notice should mention the day, date, time, place and number of the board meeting. It should also include agenda of the meeting.

- **Agenda:** the agenda points should be clear, lucid and unambiguous. There is nothing in the Act on this. However, the agenda needs to be arrayed in good order so that matters are transacted conveniently at the meeting. The order of business set out in the meeting should be adhered to. If for convenience of some directors it is desired to change the order, consent of all directors should be obtained by the chairman at the meeting. The Board however, can take the business in any order as it thinks proper, provided that the directors present consent to it.
- **Quorum:** The quorum requisite for directors meeting is subject to the provisions of the Articles of Association of the Company. Regulation 89 of the Companies Act, however, provides that the quorum necessary for the transaction of business at the board meeting may be fixed by the directors, and unless so fixed, it shall (when the number of directors exceeds three) be three. Business at the board meeting will be valid if only quorum requisite is present. But this quorum should consist of disinterested directors. This is because, the directors who are directly or indirectly interested in certain matters, are not entitled to vote on the resolution of such matters. This is called disinterested quorum. If at a board meeting, there is no quorum, the meeting will be automatically adjourned to the same day next week at the same time and place. If the day, to which the meeting so adjourned, is a public holiday, then the meeting will be held on the next working day. These all of course, are subject to the provisions of the Articles.
- **Proxy:** There is no room for proxy in the Board meeting. The merit of directorship is limited to the appointed individual only which cannot be delegated to any other person. So no proxy is allowed in directors meeting. A director cannot send his representative or relation to attend and vote for him in board meeting.

- **Chairman:** There should be a chairman to preside over the board meeting. The directors may elect a chairman for their meeting and determine the period of office for which he is to hold the position (Reg. 91). There may, as well, be a permanent chairman from amongst the directors. He will preside over all the board meetings. When he is absent, a chairman may be elected temporarily to conduct the meeting. The permanent chairman is usually is empowered to act as the chairman of the general meeting of the shareholders. This custom has other important aspect also. When in the general meeting there will be an equality of votes, the chairman of the meeting will have a second and casting vote which may shape the resolution. To protect that right of the vote, it is usual that there be a permanent chairman. However, these provisions must be there in the articles which govern the administration of the company.

### **BUSINESS AT THE BOARD MEETING**

The directors in their meeting may take up anything of the company, which do not fall within the purview of the members meeting, for transaction. However, the usual businesses transacted at a Board meeting are as follows:

- Determining overall business and management policy.
- Issuance, allotment, call and forfeiture of shares.
- Approving transfer and transmission of shares.
- Issuance of debentures and allotment thereof.
- Exercise borrowing powers.
- Investment of company funds.
- Appropriation of profit with recommendation of final and declaration of interim dividend.
- Adopting annual report.
- Convening general meeting.
- Fixation of the period of book closure.
- Framing and approval of company contracts and agreements.
- Recording and correction of statutory books.
- Filing of various returns and statements.
- Review progress and affairs of the company.
- Conduct nay specific inquiry.
- Appointment, promotion and dismissal of staff.

### **NOTICE OF MEETINGS**

Notice, in corporate terminology, is an information, intimation or invitation in writing, of any meeting to persons who are entitled to participate in it for due deliberations. For a meeting to be valid, notice must be served to persons who are entitled to receive the same. However, accidental omission or non-receipt of notice by any individual member shall not invalidate the proceedings of a meeting [sec. 85(1) (b)]. But the notice must be clear and absolute so far as the date, time and place are concerned. Also, it should state clearly whether it is annual or extraordinary meeting. All general meetings except an annual general meeting would require a 21 clear days notice [sec. 85(1) (a)].

The notice must give substantial information as to what is proposed to be done in the meeting. Resolutions passed upon insufficient notice may be invalid. If specific business is to be transacted, the notice must state clearly its nature. For example, notice of a meeting to increase the capital must specify the amount of the proposed increase. However, the terms of any specific resolution to be proposed need not be set out in the notice, unless an extraordinary or special resolution is intended to be passed. For a Board meeting, however, notice indicating the main lines of items to be covered will suffice.

The notice of company meetings are governed, in general, by the following rules:

Notice is to be issued with due authority granted by the directors. For all purposes, only directors are authorized to convene a meeting. The Company Secretary may issue notice for a meeting, but his signature must be qualified by the words “by order of the Board.”

### **AGENDA**

The list of items to be discussed at any meeting is called the agenda, literature meaning – things to be done. It serves the purpose of a systematic array of the items of business in their order of importance, defines the nature of business for information of the persons concerned and also, in this way puts a check on any omission or commission of the matters to be discussed. The steps to be taken in the preparation of agenda are as follows:

- The success of a meeting depends largely on the careful array of the agenda points. Therefore, agenda should be clear and explicit summary of the business of the meeting.
- The items of agenda may be stated briefly with subject headings of the matters, such as: i) confirmation of minutes of the last meeting, ii) directors report, iii) declaration of dividend etc.
- The agenda should be circulated along with the notice so that the members may think over the various matters and come prepared with their considered views. Agenda may form part of the notice, or may even be given in a separate sheet attached to the notice. This may help make expeditious disposal of the matters.
- In preparing agenda, routine matters should be placed first and controversial or time involving matters following. If this order is maintained the routine matters will be dispatched quickly and lengthy matters next, or if the time does not permit, those may be deferred to the following meeting or in the adjournment thereof.
- The agenda points should contain sufficient blank space against each item so that participants in the meeting, or even the Chairman or the Secretary may take down some notes on it.

### **QUORUM**

Quorum is the minimum number of persons required to enable a meeting go into session. In order to serve the purpose of a meeting, it is desirable and necessary that it should be attended by a moderate number of its members to prevent misuse or abuse of powers. For this reason, a convention has grown up for minimum attendance in a meeting. The number of this minimum attendance, which is otherwise known as ‘quorum’, is laid down in the rules for quorum. The articles usually provide a reasonable number of required attendances. Without quorum a meeting is invalid. The quorum must be present before a meeting can proceed to business. The quorum requisite is generally a matter of Articles of any company. However, Regulation 52 provides that the quorum be present at the beginning of the meeting

and not throughout the meeting. Any resolution passed without a quorum at the outset will render the whole meeting void. But quorum at the beginning will validate all resolutions, even if subsequently there was no quorum.

If the quorum be not present within five minutes of the stipulated time, the meeting is adjourned to next week, same day and time. If at the adjourned meeting also there is no quorum, the members present will form the quorum. If at the requisitioned meeting of the shareholders, there is no quorum for half an hour, the meeting stands dissolved.

### **MOTION**

Motion is a proposal which is formally put before a meeting for discussion and decision with or without amendments. A motion when passed is called a resolution. A motion may, therefore, be called 'proposal resolution'. The requirements to move a motion in a meeting are that;

- It has to be in writing so that a copy of the motion can be passed on to the Chairman for his consideration.
- It should usually be seconded by somebody. However, there is no hard and fast rule that it is required to be seconded by someone.
- It must be within the powers of the meeting and the scope of the notice covering the meeting.
- It needs to be framed in definite and unambiguous words and in affirmative terms.
- It should commence with word 'That' so that when passed it reads 'Resolved that'.

### **VOTING**

Shareholders may claim the use of voting as a matter of right. Such right is endowed to them by section 85(1). But to exercise the right to vote, a shareholder must be present in person or proxy. Then again, on a show of hands a proxy cannot vote. Shareholders present may demand a poll on any question other than selection of Chairman of the meeting or the adjournment thereof. On a poll votes may be given either personally or the proxy. Apart from sec. 85(1), regulation 61, 62, 63, 64 e) deals with votes of members.

### **PROXY**

A proxy is a written document authorizing the person named therein to vote at a meeting for and in place of the appointer. The term proxy is also applied to the appointee. A shareholder entitled to attend and vote at a meeting is entitled to appoint a proxy in his stead to represent him at the meeting. This privilege is allowed by sec. 85 and regulations 61 to 68 of the Act. The person appointed as proxy may or may not be an existing member of the company concerned.

There is, however, difference between a proxy and representative. A proxy is appointed by an individual shareholder who, necessary, is another person. But when the shareholder is a corporate body, it is represented through an authorized person who, in the meeting concerned, will be known as representative and not just a proxy in anybody's place. Such a representative, according to sec. 86, will exercise the same powers on behalf of the company which he represents, as if he were an individual shareholder of that other company.

It seems that the job of a proxy is only to attend and vote at a meeting. But if a shareholder appoints a proxy, he can still attend the meeting and vote regardless of whether or not he has given notice of revocation. A vote by proxy, in that case has to be rejected.

The proxy form, usually supplied by the company, duly executed and stamped must be deposited with the company concerned at least 48 hours before the meeting (reg. 67). This was a mandatory provision in the old Act of 1913, but is not made mandatory in the Act of 1994, may due to oversight. Section 15 of the Securities and Exchange Ordinance 1969 on regulation of proxies may also be noticed.

### **MINUTE**

**Recording in minutes:** It is the chairman who will decide what to and what not to record in the minutes. The chairman at his absolute discretion may omit to record in the minutes any matter which is or could reasonably be regarded as defamatory of any person, or is irrelevant or immaterial to the proceedings or is detrimental to the interest of the company. This discretionary power, however, does not entitle the chairman to omit to record a resolution passed at the meeting.

**Corrections of minutes:** There may be occasions where it would be desirable to make a correction in the minute. If any correction is necessary, that can be done by a resolution and recorded in another minute. But in no case the original minute should be deleted, erased or crossed out.

### **ISSUES AND ALLOTMENT OF SHARES**

In the course of formation of the company or consequent upon any expansion program, shares are issued for subscription. A public company after incorporation often issues prospectus inviting public for subscribing to the capital of the company. Banks collect share application money and send those to the company concerned. The applicants are allotted with shares on the basis of their application. If subscription surpasses the extent of the offer, the matter is generally settled in the following ways:

- a) Full allotment is made to the applicants of minimum acceptable units.  
Allotment is made for the remainders on pro-rata basis.  
Refund warrant is issued for the balance amount.

Or

- b) Allotment is made by lottery or as prescribed by the Securities and Exchange Commission (SEC).  
Refund warrants are issued to the unsuccessful applicants.

### **Initial Public Offer or IPO**

Business is like a wheel. It keeps moving, and as it moves, it expands. When it expands, it needs further fund to finance the expansion. This fund may be generated from: 1) internal mobilization of resources, 2) bank finance, 3) lease finance, 4) suppliers credit and 5) public floatation of shares etc. In our present context, we will focus on public floatation of shares.

### **EQUITY**

This is the fund available to the organization in the form of capital. Equity, however, also includes the profit generated internally and remaining unpaid to the owners. So, equity consists of capital, reserves and undistributed surplus. When a company, generally the big industrial enterprise, with public limited status, cannot cope with the ever increasing demand of equity, say for working capital needs or for



meeting the current commitments because of businesses expansion, it takes recourse to public flotation. This is a common, increasingly popular and widely accepted means of raising fund or capital from the market. There are two ways of raising capital from the market, viz. 1) by offering of shares, and 2) by offering of debentures.

- **Sale of shares:** Shares of public limited companies are offered in the open market for buying by the public which is called public subscription. This is an open invitation to the public to participate in the ownership of the company and thereby taking the risk of profit or loss of the undertaking to the extent of their participation. This extent of participation is what is generally referred to by the phrase 'limited liability' of the company. The buyers of shares are then known as the shareholders of the company. They sit yearly in a meeting called the annual general meeting, appoint the directors of the company and engage them for running the business. This is the whole philosophy behind public participation in shares of a company.
- **Issue of debentures:** Debenture is an instrument acknowledging a debt by the company. It can also be offered for sale in the open market. The amount borrowed from the public by the sale of debentures is refundable with interest over a period of time. Debentures are issued usually in bonds by a company and are offered by means of prospectus. The formalities for floatation of debenture in the market are the same as in the case of shares. However, in the case of debenture a trust is required to be created before the same is offered to the public. In the case of debenture issues, credit rating and worthiness of the company is an important factor.

#### **FORMALITIES IN PUBLIC SUBSCRIPTION**

The following are the steps required for making a public offer of shares:

- Drafting of a prospectus.
- Sanctioning of capital by the Securities and Exchange Commission beyond certain limit.
- Approval of the prospectus by the SEC.
- Filing of the prospectus with the Registrar of Joint Stock Companies.
- Underwriting agreement with the underwriters.
- Arrangement with bankers and Manger to the Issue.
- Listing with stock exchange.
- Publication of prospectus.
- Data entry and summation of applications.
- Board meeting for consideration of allotment.
- Allotment under SEC guidelines, within a time limit.
- Refund of excess subscription, if any, within a time limit.
- Return of allotment to be submitted with the Registrar of Joint Stock Companies within a time limit.
- Share certificates are to be issues within a time limit.

## **UNDERWRITING**

Underwriting means a contract to take up a number of shares of the company in consideration of the payment of a certain amount of commission, in case the issue is not fully subscribed for. Those who enter into this contract are known as underwriters. As we have seen before, commission for underwriting must be allowed by the articles and the prospectus must disclose the rate of the underwriter's commission.

## **ALLOTMENT RULES**

The general rules and procedures governing allotment of share are as follows:

- No allotment can be made before filing of the prospectus or a statement in lieu of prospectus with the Registrar of Joint Stock Companies [Sec. 138(1) and 141(1)].
- Allotment is to be made on the basis of application on prescribed form. The acceptance of application should be absolute, unqualified and needs to be communicated to the applicants. Mere entry of the applicant's name in the register is not sufficient to establish that allotment was made.
- No allotment can be made unless applications to the extent of minimum subscription as stated in the prospectus have been received and at least 5% of the minimum subscription has been received in cash [sec.148 (1)].
- All moneys received from the applicants must remain deposited in a scheduled bank. The money cannot be withdrawn before the receipt of the certificate of commencement [148(4)]
- The company shall proceed to make allotment after closure of the subscription list (DSE Listing Regulations).
- The work for dispatch of allotment letters after receipt of the applications must be completed within 40 days after the closure of subscription list (Listing Regulations).
- In case the prospectus contains reference that application will be made for shares to be traded on the floor or recognized stock exchange, that applications is to be made soonest possible.
- Within sixty days after allotment, the company must file with the Registrar a Return of Allotment according to section 151 in respect of shares allotted for cash and otherwise than for cash.

## **RENUNCIATION OF ALLOTMENT**

Renunciation means giving up claim in favor of others. The allottee may be given the right of renounce his title to the shares in favor of his nominee. For this, the allottee will have to forward to the company a Letter of Renunciation, a printed copy of which is often attached to the letter of allotment or generally printed on the reverse side of the allotment letter. The renunciation is preceded by a letter of request from the nominee to the company requesting for enrollment if his name in the register of members in place of the original allottee. The company generally on its own allows a specified date for such renunciation, otherwise, the name of the original allottee will be entered on the register and the transfer after that date will follow the usual transfer procedures.

## **ISSUE OF SHARES AT A PREMIUM AND DISCOUNT**

It is not always that shares of the company have to be issued at par value for subscription by the public. Depending on specific circumstances, a company may, subject to certain control and restrictions by the government, issue its shares at discount, i.e. at a price below the nominal value; or at a premium, that is at a price more than the actual value per share. There are specific provisions in the Companies Act for both situations which are discussed below:

### **ISSUE OF SHARE AT A PREMIUM**

Shares may be issued at a premium that is at a price more than their face value. The Companies Act provides that a company may issue shares at a premium, but stipulates specific application of the premium fund (sec. 57). There is also no prohibition in the Act against issue of shares at differential premiums. But such premiums are to be transferred to a separate Share Premium Account and utilized for certain specific purposes, such as:

- In paying up un-issued shares of the company to be issued to members as fully paid bonus shares.
- In writing off the preliminary expenses.
- In writing off the expenses of or the commission paid or discount allowed on any issue of shares or debentures of the company.
- In providing for the premium payable on redemption on any redeemable preference shares or debentures of the company.
- Subject to prior approval, for adjustment or amortization of intangible assets.

Shares issued at a premium and accepted by the public establish the strength and trust owned by the issuing company.

### **ISSUE OF SHARE AT A DISCOUNT**

There is specific statutory provision for issuance of shares at a discount. Section 153 of the Companies Act provides that a company can issue shares at a discount, i.e., at a value less than its face value if the following conditions are fulfilled:

- Such issuance of shares at a discount must be  
Sanctioned by the court,  
Authorized by shareholders in general meeting.
- The resolution of the shareholders must be specific, that is –  
It must fix the rate of discount  
This rate cannot exceed 10% as the maximum.
- The company cannot issue shares at a discount before expiry of at least one year from the date of its commencement of its business.
- The issuance of shares at a discount must be made within six months of the sanction of the court, or within such extended time as is allowed by the court.

- It is provided further in sub-section (2) of this section that the prospectus for the issue and the balance sheet issued subsequently must contain detailed particulars of the discount allowed, failing which a fine of Taka five hundred is prescribed in sub-section (3) of this section.

### **SHARE CERTIFICATE**

Letters of allotments are supposed to be exchanged by definitive scrips called the share certificates. A share certificate is often referred to as 'scrip' (not script) by the trading circle, meaning an instrument containing shares. This term is in vogue particularly in the stock exchange.

The Act provides ninety days' time after allotment by which period those certificates are to be completed and kept ready for delivery [sec. 185(1)]

Share certificates are issued only in pursuance of a Board resolution and in exchange of allotment letters. If the letter is lost or destroyed, sufficient indemnity in the form of an indemnity bond and other formalities, such as FIR at the police station and press announcement shall have to be made by the incumbent. If the share certificate is lost or destroyed the same procedures need to be followed. Before issuance of a duplicate certificate, it is a good practice to notify the Stock Exchange about the matter.

The share certificate should also conform to certain degree of standards so far as size, thickness and contents etc. are concerned. However, there is no such rule framed so far in Bangladesh in this regard. Based on the usage and practice, a share certificate should match and include the following:

- It should look like a certificate of worth with a consecutive number.
- Name of the company with monogram, authorized capital with nominal value.
- Specification of the shareholder.
- Number of shares, distinctive numbers and folio.
- Embossed Common Seal of the company.
- At least two authorized signatures.
- Revenue stamp as per the Stamp Act (if required).

Share certificates should be delivered to the shareholders without incorporating the details of each certificate in the members' register and in the scrip book. The best is to make out the computerized print.

### **SHARE WARRANTS**

By virtue of section 46 of the Companies Act, a public limited company, limited by shares, if authorized by its articles may, in respect of fully paid shares, issue under its common seal, a share warrant stating that the bearer thereof is entitled to shares therein specified and may further provide for the payment of future dividends on the shares included in the warrants by means of coupons or otherwise.

It is to be noted that, only public companies may issue share warrants and that too on the fulfillment of certain conditions as stated below. A public company may issue share warrants under its common seal provided:

- there is authority in the articles to issue them;
- the shares are fully paid up.

Since share warrants entitle the bearer to the shares specified in it, and since the shares may be transferred by mere delivery of the share warrant, it follows that a share warrant, unlike a share certificate, is a negotiable instrument.

Section 50(1) provides that on the issue of a share warrant, the company must strike out of its register of members the name of the member and must enter the following particulars:

- The fact of the issue of the share warrant;
- the description of the shares included in the warrant, distinguishing each share by its number;
- date of issue of the warrant.

### **RIGHT SHARES**

Right shares are those shares which are issued after the original issue of shares, but having an inherent right of the existing shareholder to subscribe to these shares in proportion to their holdings. This right has been conferred on the equity shareholders by the Companies Act in section 155(1). This right has authorized the directors to issue right shares. The articles of the company may also include similar provisions. These shares can, however, be issued to the non-members when the existing shareholders renounce or do not accept the offer within a prescribed time limit. The issue of right shares must be within the limit of authorized capital of the company.

Generally right shares are issued to the existing shareholders at a concessive rate, that is when the prevailing market price of the shares are much above par they are offered to the existing shareholders at nominal value. Alternatively, if shares are sold in the market at par or even below the face values, right shares may be offered at a price lower than that.

Right issues are to be made as per SEC guidelines and listing regulations. According to regulation 22(1) of the DSE listing regulations, a listed company shall issue entitlement letters or right offers to all the shareholders within a period of forty five days from the date of re-opening of the share register of the company closed for this purpose.

### **BONUS SHARES**

The company may capitalize its accumulated resources and profits by the issue of shares called bonus shares. Bonus shares are issued by ploughing back un-appropriated profit or reserve in order to strengthen the capital structure or to meet the working capital needs of the company.

But the articles of the company must permit the issue of such bonus shares. Like the right shares, the bonus shares are also issued to the existing shareholders in proportion to their shareholding and dividend rights. But bonus shares cannot be renounced. Often bonus shares are issued in lieu of dividend. So bonus shares may well be termed as dividend in kind. However, in the annual return bonus shares are shown and included as cash issue. The right shares of the bonus issue do not affect the rights of the existing shareholder in any way.

The requirements to issuance of bonus shares are outlined below. If bonus shares are to be issued by a company:

- There must be like provisions in the company's articles.
- Its authorized capital must be sufficient to cover the same.

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- The shareholders must resolve to capitalize profits or to apply the share premium account or utilize other reserves and to issue bonus shares.
- The shares must be allotted by a Board resolution in the proportion determined by shareholders in general meeting.
- A return of allotment must be submitted to the Registrar within sixty days after allotment of shares.

### **TRANSFER OF SHARES / DEBENTURES**

Shares are movable properties and transferable from one person to another in a manner provided by articles [sec. 30(1)]. But the fact of this transfer must be intimated to the company together with the share certificate or the letter of transferee. It is to be remembered that share certificate is not a negotiable instrument in the first place, but it can transfer hands subject to endorsement, registration and delivery by the company concerned. The transfer instrument duly executed by both parties and properly signed must be deposited to the company office together with the certificate [sec.38 (3)]. The company Secretary will then place it before the Board for approval of that transfer and on approval he will endorse the name of the transferee at the back of the share certificate under authorized signature.

The share certificate, with transfer endorsement, should be ready to be returned to the new owner within ninety days from the date of lodgment for transfer [sec. 158(1)]. This time limit, according to DSE listing regulations, however, is 45 days and as per the SEC-7 days which is puzzling indeed. The important statutory provision in this regard is that 'if a company refuses to register the transfer of any shares or debentures, the company shall, within one month from the date on which the instrument of transfer was lodged with the company, send to the transferee and the transferor notice of the refusal' [sec.38(4)]. Failure to do so may lead to legal complications. The act provides heavy fine as punitive measures- Taka one hundred for every day during which the default continues [sec. 38(5)]. The signature of the transferor on the transfer instrument is vital and is the only source of checking the genuineness of the intention of transfer. It is, as such, the duty of the Company Secretary to compare the signature of the transferor with his admitted signature kept in the office. For this purpose, specimen signatures of all shareholders should be called for and preserved in a separate card index in alphabetic order. The Secretary still cannot shrug off his responsibility in the event of fraudulent transfer.

It is therefore, good as a practice to notify both the parties after endorsement of each transfer if, however, the volume is not too large.

The formalities for transfer of debentures are somewhat the same except that those are to be recorded in separate registers.

### **TRANSMISSION OF SHARES / DEBENTURES**

Transfer of shares through sale or otherwise is a voluntary act of the transferor or the transferee. But transmission of shares is an involuntary act resulting from the operation of law due to death or insolvency of a shareholder. The owner of shares of a deceased member, in such a case, vests in his heirs or legal representative. A succession certificate from the court of competent authority is the legal requirement in case of transmission of shares. However, the documentary entries are the same for transfer or transmission of shares in the books of the company.

### **CORPORATE DISCLOSURE POLICY**

Disclosure policy of publicly traded companies is of great concern to the stakeholders in general and to the stockholders in particular. Because, in such companies, there is a separation of ownership from

control. Therefore, the Exchange consider that the conduct of a fair and orderly market requires, every listed company to make available to the public information necessary to informed investing; and to take reasonable steps to ensure that all who invest in its securities enjoy equal access to such information. In applying this fundamental principle, the Stock Exchange has adopted the following specific policies concerning disclosure (Regulation - 43):

- Immediate Public Disclosure of Material Information
- Thorough Public Dissemination
- Clarification or Confirmation of Rumours and Reports
- Response to Unusual Market Action
- Unwarranted Promotional Disclosure
- Insider Trading
- Buy/ Sell of Shares by Sponsors

#### **41.1 IMMEDIATE PUBLIC DISCLOSURE OF MATERIAL INFORMATION**

Material information refers to the information relevant to the interest of the stockholders. A listed company is required to release material information to the public in a manner designed to obtain its fullest possible public dissemination.

##### **41.1.1 Standards to be employed to determine whether disclosure should be made:**

Immediate disclosure should be made of information about a company's affairs or about events or conditions in market for the company's securities which meets either of the following standards:

- Where the information is likely to have a significant effect on the price of any of the company's securities, or
- Where such information (after any necessary interpretation by securities analysts or other experts) is likely to be considered important, by a reasonable investor in determining his choice of action

##### **41.1.2 Information to be disclosed:**

Any material information of a factual nature that has a bearing on the value of a company's securities or on investor decisions as to whether or not to invest or trade in such securities should be disclosed. Such information include information concerning the company's property, business financial conditions and prospects, mergers and acquisitions and dealings with employees, suppliers, customers and others as well as information concerning a significant change in ownership of the company's securities owned by insiders or representing control of the company.

The Exchange does not normally consider disclosure of a company's internal estimates or projections of its earnings or of other data relating to its affairs to be necessary. If such estimates or projections are released, they should be prepared carefully, on a reasonable factual basis, and should be stated realistically, with appropriate qualifications. Moreover, if such estimates or projections subsequently appear to have been mistaken, they should be promptly and publicly corrected.

##### **41.1.3 Events and conditions in the market that may require disclosure:**

The price of a company's securities, as well as a reasonable investor's decision whether to buy or sell those securities, may be affected as much by factors directly concerning the market for the securities as by factors concerning the company's business. Factors directly concerning the market for a company's securities, or events materially affecting the size of the "public issue" of its securities.

While, as is noted above; a company is expected to make appropriate disclosure about significant change in insider ownership of its securities, the company should not indiscriminately disclose publicly any knowledge it has of the trading activities of outsiders, such as trading by unit trusts or other institutions, for such outsiders normally have a legitimate interest in preserving the confidentiality of their securities transactions.

**41.1.4 Examples of a company's affairs or market conditions typically requiring disclosure:**

The following events, while not comprising a complete list of all the situations which may require disclosure are particularly likely to require prompt announcements:

- A joint venture, mergers, acquisitions or takeovers.
- The declaration or omission of dividends or the determination of earnings.
- The acquisition or loss of a significant contract.
- A significant new product or discovery.
- A change in control or a significant change in management.
- A call of securities for redemption.
- The borrowing of a significant amount of funds.
- The public or private sale of significant amount of additional securities.
- Significant litigation.
- The purchase or sale of a significant assets.
- A significant change in capital investment plans.
- A significant labor dispute with sub-contractors or suppliers.
- A tender offer for another company's securities.
- An event of default on interest and/or principal payment in respect of loans.

**41.1.5 Withholding information:**

Occasionally, circumstances arise in which provided that complete confidentiality is maintained a company may temporarily refrain from publicly disclosing material information. The following circumstances where disclosures can be withheld are limited and constitute an infrequent exception to the normal requirement of immediate public disclosure. Thus, in cases of doubt the presumption must always be in favor of disclosure:

- When immediate disclosure would prejudice the ability of the company to pursue its corporate objectives.

Although public disclosure is generally necessary to protect the interest of investors, circumstances may occasionally arise where disclosure would prejudice a company's ability to achieve a valid corporate objective, public disclosure of plan to acquire certain real estate for example, could result in an increase in the company cost of the desired acquisition or could prevent the company from carrying out the plan at all. In such circumstances, if the unfavorable result to the company outweighs the undesirable consequences of non-disclosure, disclosure may properly be deferred to a more appropriate time.



- When the facts are in a state of flux and a more appropriate moment for disclosure is imminent.

Occasionally corporate developments give rise to information which, although material, is subject to rapid change. If the situation is about to stabilize or resolve itself in the near future, it may be proper to withhold public announcements concerning the same subject but based on changing facts may confuse or mislead the public rather than enlighten it.

In the course of a successful negotiation for the acquisition of another company, for example, the only information known to each party at the outset may be the willingness of the other to hold discussions. Shortly thereafter it may become apparent to the parties that it is likely an agreement can be reached. Finally, agreement in principle may be reached on specific terms. In such circumstances a company need not issue a public announcement at each stage of constantly changing facts but may await agreement in principle on specific terms. If, on the other hand, progress in the negotiations should stabilize at some other point, disclosure should then be made if the information is material.

Whenever the material information is being temporarily withheld, the strictest confidentiality must be maintained, and the company should be prepared to make an immediate public announcement, if necessary. During this period, the market action of the company's securities should be closely watched, since unusual market activity frequently signifies that a "leak" may have occurred. Company or securities laws may restrict the extent of permissible disclosures before or during a public offering of securities or a solicitation of proxies.

**41.1.6. Action required if insider trading occurs while material information is being temporarily withheld:**

Immediate public disclosure of the information in question must be effected if the Company should learn that insider trading, has taken or is taking place. In unusual cases, where the trading is insignificant and does not have any influence on the market measures sufficient to halt the insider trading and prevent its recurrence are taken exceptions might be made which should be discussed with the Exchange. The Exchange listing department can provide current information regarding market activity in the Company's securities with which to help assess the significance of such trading.

**41.1.7 Maintaining confidentiality:**

Information that is to be kept confidential should be confined, to the extent possible to the highest possible echelons of management and should be disclosed to officers, employees and others on a need to know basis only. Distribution of paper work and other data should be held to a minimum. Where the information must be disclosed more broadly to company personnel or others their attention should be drawn to its confidential nature and to the restrictions that apply to its use, including the prohibitions of insider trading.

It may be appropriate to require each person who gains access to the information to report any transactions which affects in the company's securities to the Company. If company's accountants or financial or public relations advisers or other outsiders are consulted, steps should be taken to ensure that they maintain similar precautions within their respective organizations to maintain confidentiality.

**41.2 THOROUGH PUBLIC DISSEMINATION**

A listed company is required to release material information to the public in a manner designed to obtain its fullest possible public dissemination.

#### **41.2.1 Disclosure techniques to be employed by a company:**

The steps required are as follows:

- Disclosure of material information can often be made after the market closes. Otherwise, when it is necessary to make disclosure of material information before or during trading hours, the Exchange expects a company to notify the Exchange in advance of such disclosure if the material information is of a non-routine nature or is expected to have a substantial impact on the market for the securities of the company. The Exchange with the benefit of all the facts provided by the company will be able to consider a temporary halt in trading pending an announcement would be desirable on the company or its securities, but provides an opportunity for disseminating and evaluating the information released.

Such a step frequently helps avoid rumours and market instability as well as the unfairness to investors that may arise when material information has reached part but not yet all of the investing community. Thus in appropriate circumstances, the Exchange can often provide a valuable service to investors and listed companies by arranging for such a halt.

- At time of Public Disclosure: As a minimum, any public disclosure of material information should be made by an announcement released simultaneously to business and financial news media the Chittagong Stock Exchange.

Companies may also wish to broaden their distribution to other news or broadcast media such as those in the location of the company's plants or offices and to trade publications. The information in question should always be given to the media in such way as to promote publication by them as promptly as possible i.e. telephone or in writing by hand delivery in both cases on an immediate release basis. Companies are cautioned that some of these media may refuse to publish information given by telephone until it has been confirmed in writing or may require written confirmation after its publication.

Forty copies or such other number as the Exchange may determine of all public announcements should be sent to the Exchange.

#### **41.2.2 Application of the policy on thorough public dissemination to meeting with securities analysts, journalists, stockholders and others:**

The Exchange recommends that companies observe an open door policy in dealing with analysis of journalist, stockholders and others. However, under no circumstances, should disclosure of material corporate developments be made on an individual or selective basis to analysts, stockholders or other persons unless such information has previously been fully disclosed and disseminated to the public. In the event that material information is inadvertently disclosed on the occasion of any meetings with analysts or others, it must be publicly disseminated as promptly as possible by the means described above.

The exchange also believes that even any appearance of preference or partiality in the release of explanation or information should be avoided. Thus meeting with analysts or other special groups where the procedure of the group sponsoring the meetings permits representatives of the news and other media should be permitted to attend any such meeting.

### **41.3 CLARIFICATION OR CONFIRMATION OF RUMOURS AND REPORTS**

Whenever a listed company becomes, or is made aware of a rumour or report true or false, that contains information that is likely to have, or has had an effect on the trading in the Company's securities or would be likely to have a bearing on investment decisions, the company is required to publicly clarify the rumour reports as promptly as reports as possible.

#### **41.3.1 Rumours and reports to be clarified or confirmed:**

A public circulation by any means whether by an article published in a newspaper, by a brokers market letter or by word of mouth information either correct or false which has not been substantiated by the company and which is likely to have or has had an effect on the price of the company securities or would be likely to have a bearing on investment decision must be clarified or confirmed.

#### **41.3.2 Response to be made to rumours or reports:**

In the case of material rumour or report, containing erroneous information which has been circulated the company should prepare an announcement denying the rumour or report and setting forth facts sufficient to clarify any misleading aspect of the rumour. In the case of a material rumour or report containing information that is correct an announcement setting forth the facts should be prepared for public. In addition in the case of false rumour or report a reasonable effort should be made to bring the announcement to the attention of the particular group that initially distributed it. In the case of an erroneous newspaper article for example by sending a copy of the announcement to the newspapers, financial editor or in the case of an erroneous market letter by sending a copy to the broker responsible for the letter.

In the case of rumour or report predicting future sales earning or other data no response from the company is ordinarily required. However if such a report is manifestly based on erroneous information or is wrongly to the supposedly factual source the company should respond promptly to the supposedly factual elements of the rumour of a supposedly factual nature. Moreover if a rumour or report contains a prediction that is clearly erroneous that company should ensure an announcement to the effect that company itself has made no such predictions and currently knows of no facts that would justify making such prediction.

### **41.4 RESPONSE TO UNUSUAL MARKET ACTION**

Whenever unusual market action takes place in a listed company's securities, the company is expected to make inquiry to determine whenever rumors or other conditions requiring corrective action exists, and if so, to take, whatever action is appropriate. If, after the company's review, the unusual market action remains unexplained it may be appropriate for the company to announce that there has been no material development in its business and affairs not previously disclosed to its knowledge, nor any other reason to account for the unusual market action.

#### **41.4.1 Significance of unusual market activity:**

Where unusual market action, in price movement, trading activity or both occurs without any apparent publicly available information which would account for the action, it may signify trading by persons who are acting either on unannounced information or on a rumour or report whether true or false about the company . Most often, of course, unusual market activity may not be trace-able either to insider trading or to rumor or report. Nevertheless the market action itself may be misleading to investors who are likely to assume that a sudden and appreciable change in the price of a company's stock must reflect a

parallel change in its business or prospects similarly unusual trading volume even when not accompanied by a significant change in price tenders to encourage rumors and give rise to excessively speculative trading which may be unrelated to actual development in the affairs.

#### **41.4.2 Response required of a company when unusual market action in its securities takes place:**

First the company should attempt to determine the reason for the market action by considering in particular (a) whether any information about its affairs which would account for the action has recently been publicly disclosed, (b) whether there is any information of this type that has not been publicly disclosed in which case the unusual market action may signify that a leak has occurred and (c) whether the company is the subject of rumour or report.

If the company determines that the market action results from material information that has already been publicly disseminated generally no further announcement is required. Although if the market action indicates that such information may have been misinterpreted it may be helpful after discussion with the Exchange to issue a clarifying announcement.

If the market action results from the leak of previously undisclosed information, the information in question must promptly be disseminated. If the market results from a false rumor or report, the Exchange policy on correction of such rumors and report should be complied with. Finally, if the company is unable to determine the cause of the market action, The Exchange may suggest that the company a public announcement to the effect that there have been no undisclosed recent developments affecting the company or its affairs which would account for the unusual market activity

#### **41.5 UNWARRANTED PROMOTIONAL DISCLOSURE**

A listed Company should refrain from promotional disclosure activity which exceeds what is necessary to enable the public to make informed investment decisions. Such activity includes inappropriately worded news release, public announcements not justified by actual development in a company's affairs, exaggerated reports or predictions, flamboyant wording and other forms of overstated or overzealous disclosure activity which may mislead investors and cause unwarranted price movements and activity in a company's securities.

##### **41.5.1 Unwarranted promotional disclosure activity:**

Disclosure activity beyond that necessary to inform investor and explicably essential as an attempt to influence securities' prices, is considered to be unwarranted and promotional. Although the distinction between legitimate public relation activities and such promotional activity is one that must necessarily be drawn from the facts of a particular case the following are frequent instances of promotional activity:

A series of public announcements unrelated in volume or frequency to the materiality of actual developments in a company's business and affairs.

Premature announcements of products still in the developments stage with unproven commercial prospects.

Promotion and expense-paid trips or the seeking out of meetings or interviews with analysts and financial writers which could have the effect of unduly influencing the market activity in the company's securities and are not justified in frequency or scope by, the need to disseminate information about actual developments in the company's business and affairs.

Press release or other public announcement of a one-sided or unbalanced nature.

Company's or product advertisement which in effect promotes the company's securities.

#### **41.6 INSIDER TRADING**

Insiders should not trade on the basis of material information which is not known to the investing public. Moreover, insiders should refrain from trading, even, after material information has been released to the press and other media, for a period at least 5 marked days to permit through public dissemination and evaluation of the information.

##### **41.6.1 Insiders:**

Insiders are all persons who come into possession to material information, before its public release is considered. Such persons include controlling shareholders, directors, officers and employees and frequently also include outside attorneys accountants, investment bankers, public relation advisers, advertising agencies, consultants and other independent contractors. The husbands, wives, immediate families and those under the control of insiders may also be regarded as insiders. Where acquisition or other negotiations are concerned, the above relationships apply to the other parties to the negotiations as well. Finally, for purpose of the Exchange disclosure policy, insiders include tepees who come into possession of material inside information.

##### **41.6.2 Insider information:**

Insider information is that which has not been publicly released and which is intended for use solely for a corporate purpose and not for any personal use and which the company withholds.

##### **41.6.3 Insider trading:**

Insider Trading refers not only to the purchase or sale of a company's securities but also to the purchase or sale of options with respect to such securities. Such trading is deemed to be done by an insider whenever he has any beneficial interest, direct or indirect in such securities or options regardless of whether they are actually held in his name.

Included in the concept of insider trading is tipping, or revealing inside information to outside individuals to enable such individuals to trade in the company securities on the basis of undisclosed information.

##### **41.6.4 How soon after the release of material information any insiders begin to trade?**

This depends both on how thoroughly and how quickly after its release the information is published by the news media services and the press. In addition, following dissemination of the information, insider should refrain from trading until the public has had an opportunity to evaluate it thoroughly. Where the effect of the information on investment decisions is readily understandable, as in the case on earnings, the required waiting period will be shorter than where the information must be interpreted before its bearing on investment decisions can be evaluated. While the waiting period is dependent on the circumstances, the Exchange recommends that, as a basic policy, when dissemination is made in accordance with Exchange policy insiders should wait for at least twenty-four hours after the general publication of the release in news media.

##### **41.6.5 Steps can be taken to prevent insider trading:**

Companies can establish, publish, and enforce effective procedures applicable to purchase and sale of its securities by officers, directors, employees and other insiders designed not only to prevent improper

## *Corporate Laws and Practices*

trading but also to avoid any question of the propriety of insider purchases or sales. One such procedure might require corporate insiders to restrict their purchases and sale of the company's securities with following the release of the annual statements, or other releases setting forth the financial condition and status of the company. Another could involve the purchase of a company's securities on a regular periodic basis by an agent over which neither the company nor the individual has any control.

**Corporate Governance Code**  
**Notification dated 3 June 2018**

No. BSEC/CMRRCD/2006-158/207/Admin/80:Whereas, the Bangladesh Securities and Exchange Commission (hereinafter referred to as the “Commission”) deems it fit that the consent already accorded by the Commission, or deemed to have been accorded by it, or to be accorded by it in future, to the issue of capital by the companies listed with any stock exchange in Bangladesh, shall be subject to certain further conditions, i.e., Corporate Governance Code in order to enhance corporate governance in the interest of investors and the capital market;

Now, therefore, in exercise of the power conferred by section 2CC of the Securities and Exchange Ordinance, 1969 (XVII of 1969), the Commission hereby repeals its earlier Notification No. SEC/CMRRCD/2006-158/134/Admin/44 dated 07 August 2012, published in the official gazette on 30 August 2012 and the relevant Notification(s) on the same matter and, imposes the following further conditions, i.e., Corporate Governance Code to the consent already accorded by it, or deemed to have been accorded by it, or to be accorded by it in future, to the issue of capital by the companies listed with any stock exchange in Bangladesh:

Provided, however, that these conditions or Code are imposed on ‘comply’ basis; the companies listed with any stock exchange in Bangladesh shall comply with these conditions or Code in accordance with the condition No. 9.

**The Conditions, i.e., Corporate Governance Code:**

**1. Board of Directors. –**

**(1) Size of the Board of Directors**

The total number of members of a company’s Board of Directors (hereinafter referred to as “Board”) shall not be less than 5 (five) and more than 20 (twenty).

**Independent Directors**

All companies shall have effective representation of independent directors on their Boards, so that the Board, as a group, includes core competencies considered relevant in the context of each company; for this purpose, the companies shall comply with the following: -

- At least one-fifth (1/5) of the total number of directors in the company’s Board shall be independent directors; any fraction shall be considered to the next integer or whole number for calculating number of independent director(s);
- For the purpose of this clause “independent director” means a director-
- who either does not hold any share in the company or holds less than one percent (1%) shares of the total paid-up shares of the company;
- who is not a sponsor of the company or is not connected with the company’s any sponsor or director or nominated director or shareholder of the company or any of its associates, sister concerns, subsidiaries and parents or holding entities who holds one percent (1%) or more shares of the total paid-up shares of the company on the basis of family relationship and his or her family members also shall not hold above mentioned shares in the company;

Provided that spouse, son, daughter, father, mother, brother, sister, son-in-law and daughter-in-law shall be considered as family members;

- who has not been an executive of the company in immediately preceding 2 (two) financial years;
- who does not have any other relationship, whether pecuniary or otherwise, with the company or its subsidiary or associated companies;
- who is not a member or TREC (Trading Right Entitlement Certificate) holder, director or officer of any stock exchange;
- who is not a shareholder, director excepting independent director or officer of any member or TREC holder of stock exchange or an intermediary of the capital market;
- who is not a partner or an executive or was not a partner or an executive during the preceding 3 (three) years of the concerned company's statutory audit firm or audit firm engaged in internal audit services or audit firm conducting special audit or professional certifying compliance of this Code;
- who is not independent director in more than 5 (five) listed companies;
- who has not been convicted by a court of competent jurisdiction as a defaulter in payment of any loan or any advance to a bank or a Non-Bank Financial Institution (NBFI); and
- who has not been convicted for a criminal offence involving moral turpitude;
- The independent director(s) shall be appointed by the Board and approved by the shareholders in the Annual General Meeting (AGM);
- The post of independent director(s) cannot remain vacant for more than 90 (ninety) days; and
- The tenure of office of an independent director shall be for a period of 3 (three) years, which may be extended for 1 (one) tenure only;

Provided that a former independent director may be considered for reappointment for another tenure after a time gap of one tenure, i.e., three years from his or her completion of consecutive two tenures [i.e. six years]:

Provided further that the independent director shall not be subject to retirement by rotation as per the Companies Act, 1994.

**Explanation:** For the purpose of counting tenure or term of independent director, any partial term of tenure shall be deemed to be a full tenure

**Qualification of Independent Director. –**

Independent director shall be a knowledgeable individual with integrity who is able to ensure compliance with financial laws, regulatory requirements and corporate laws and can make meaningful contribution to the business;



Independent director shall have following qualifications:

Business Leader who is or was a promoter or director of an unlisted company having minimum paid-up capital of Tk. 100.00 million or any listed company or a member of any national or international chamber of commerce or business association; or

Corporate Leader who is or was a top level executive not lower than Chief Executive Officer or Managing Director or Deputy Managing Director or Chief Financial Officer or Head of Finance or Accounts or Company Secretary or Head of Internal Audit and Compliance or Head of Legal Service or a candidate with equivalent position of an unlisted company having minimum paid up capital of Tk. 100.00 million or of a listed company; or

**Explanation:** Top level executive includes Managing Director (MD) or Chief Executive Officer (CEO), Additional or Deputy Managing Director (AMD or DMD), Chief Operating Officer (COO), Chief Financial Officer (CFO), Company Secretary (CS), Head of Internal Audit and Compliance (HIAC), Head of Administration and Human Resources or equivalent positions and same level or ranked or salaried officials of the company.

Former official of government or statutory or autonomous or regulatory body in the position not below 5th Grade of the national pay scale, who has at least educational background of bachelor degree in economics or commerce or business or law; or

University Teacher who has educational background in Economics or Commerce or Business Studies or Law; or

Professional who is or was an advocate practicing at least in the High Court Division of Bangladesh Supreme Court or a Chartered Accountant or Cost and Management Accountant or Chartered Financial Analyst or Chartered Certified Accountant or Certified Public Accountant or Chartered Management Accountant or Chartered Secretary or equivalent qualification;

The independent director shall have at least 10 (ten) years of experiences in any field mentioned in clause (b);

In special cases, the above qualifications or experiences may be relaxed subject to prior approval of the Commission.

**Duality of Chairperson of the Board of Directors and Managing Director or Chief Executive Officer:**

The positions of the Chairperson of the Board and the Managing Director (MD) and/or Chief Executive Officer (CEO) of the company shall be filled by different individuals;

The Managing Director (MD) and/or Chief Executive Officer (CEO) of a listed company shall not hold the same position in another listed company;

The Chairperson of the Board shall be elected from among the non-executive directors of the company;

The Board shall clearly define respective roles and responsibilities of the Chairperson and the Managing Director and/or Chief Executive Officer;

In the absence of the Chairperson of the Board, the remaining members may elect one of themselves from non-executive directors as Chairperson for that particular Board's meeting; the reason of absence of the regular Chairperson shall be duly recorded in the minutes.

## **The Directors' Report to Shareholders**

The Board of the company shall include the following additional statements or disclosures in the Directors' Report prepared under section 184 of the Companies Act, 1994 (Act No. XVIII of 1994): -

- An industry outlook and possible future developments in the industry;
- The segment-wise or product-wise performance;
- Risks and concerns including internal and external risk factors, threat to sustainability and negative impact on environment, if any;
- A discussion on Cost of Goods sold, Gross Profit Margin and Net Profit Margin, where applicable;
- A discussion on continuity of any extraordinary activities and their implications (gain or loss);
- A detailed discussion on related party transactions along with a statement showing amount, nature of related party, nature of transactions and basis of transactions of all related party transactions;
- A statement of utilization of proceeds raised through public issues, rights issues and/or any other instruments;
- An explanation if the financial results deteriorate after the company goes for Initial Public Offering (IPO), Repeat Public Offering (RPO), Rights share Offer, Direct Listing, etc.;
- An explanation on any significant variance that occurs between Quarterly Financial performances and Annual Financial Statements;
- A statement of remuneration paid to the directors including independent directors;
- A statement that the financial statements prepared by the management of the issuer company present fairly its state of affairs, the result of its operations, cash flows and changes in equity;
- A statement that proper books of account of the issuer company have been maintained;
- A statement that appropriate accounting policies have been consistently applied in preparation of the financial statements and that the accounting estimates are based on reasonable and prudent judgment;
- A statement that International Accounting Standards (IAS) or International Financial Reporting Standards (IFRS), as applicable in Bangladesh, have been followed in preparation of the financial statements and any departure there from has been adequately disclosed;
- A statement that the system of internal control is sound in design and has been effectively implemented and monitored;
- A statement that minority shareholders have been protected from abusive actions by, or in the interest of, controlling shareholders acting either directly or indirectly and have effective means of redress;
- A statement that there is no significant doubt upon the issuer company's ability to continue as a going concern, if the issuer company is not considered to be a going concern, the fact along with reasons there of shall be disclosed;

- An explanation that significant deviations from the last year's operating results of the issuer company shall be highlighted and the reasons thereof shall be explained;
- A statement where key operating and financial data of at least preceding 5 (five) years shall be summarized;
- An explanation on the reasons if the issuer company has not declared dividend (cash or stock) for the year;
- Board's statement to the effect that no bonus shares or stock dividend has been or shall be declared as interim dividend;
- The total number of Board meetings held during the year and attendance by each director;
- A report on the pattern of shareholding disclosing the aggregate number of shares (along with name-wise details where stated below) held by: -
- Parent or Subsidiary or Associated Companies and other related parties (name-wise details);
- Directors, Chief Executive Officer, Company Secretary, Chief Financial Officer, Head of Internal Audit and Compliance and their spouses and minor children (name-wise details);
- Executives; and
- Shareholders holding ten percent (10%) or more voting interest in the company (name-wise details);

**Explanation:** For the purpose of this clause, the expression "executive" means top 5 (five) salaried employees of the company, other than the Directors, Chief Executive Officer, Company Secretary, Chief Financial Officer and Head of Internal Audit and Compliance.

In case of the appointment or reappointment of a director, a disclosure on the following information to the shareholders: -

brief resume of the director;

nature of his or her expertise in specific functional areas;

names of companies in which the person also holds the directorship and the membership of committees of the Board;

A Management's Discussion and Analysis

signed by CEO or MD presenting detailed analysis of the company's position and operations along with a brief discussion of changes in the financial statements, among others, focusing on:

accounting policies and estimation for preparation of financial statements;

changes in accounting policies and estimation, if any, clearly describing the effect on financial performance or results and financial position as well as cash flows in absolute figure for such changes;

comparative analysis (including effects of inflation) of financial performance or results and financial position as well as cash flows for current financial year with immediate preceding five years explaining reasons thereof;

compare such financial performance or results and financial position as well as cash flows with the peer industry scenario;

briefly explain the financial and economic scenario of the country and the globe;

risks and concerns issues related to the financial statements, explaining such risk and concerns mitigation plan of the company; and

future plan or projection or forecast for company's operation, performance and financial position, with justification thereof, i.e., actual position shall be explained to the shareholders in the next AGM;

Declaration or certification by the CEO and the CFO to the Board as required under condition No. 3(3) shall be disclosed as per **Annexure-A**; and

The report as well as certificate regarding compliance of conditions of this Code as required under condition No. 9 shall be disclosed as per **Annexure-B** and **Annexure-C**.

### **Meetings of the Board of Directors**

The company shall conduct its Board meetings and record the minutes of the meetings as well as keep required books and records in line with the provisions of the relevant Bangladesh Secretarial Standards (BSS) as adopted by the Institute of Chartered Secretaries of Bangladesh (ICSB) in so far as those standards are not inconsistent with any condition of this Code.

### **Code of Conduct for the Chairperson, other Board members and Chief Executive Officer**

- The Board shall lay down a code of conduct, based on the recommendation of the Nomination and Remuneration Committee (NRC) at condition No. 6, for the Chairperson of the Board, other board members and Chief Executive Officer of the company;
- The code of conduct as determined by the NRC shall be posted on the website of the company including, among others, prudent conduct and behavior; confidentiality; conflict of interest; compliance with laws, rules and regulations; prohibition of insider trading; relationship with environment, employees, customers and suppliers; and independency.

### **Governance of Board of Directors of Subsidiary Company. -**

- Provisions relating to the composition of the Board of the holding company shall be made applicable to the composition of the Board of the subsidiary company;
- At least 1 (one) independent director on the Board of the holding company shall be a director on the Board of the subsidiary company;
- The minutes of the Board meeting of the subsidiary company shall be placed for review at the following Board meeting of the holding company;
- The minutes of the respective Board meeting of the holding company shall state that they have reviewed the affairs of the subsidiary company also;
- The Audit Committee of the holding company shall also review the financial statements, in particular the investments made by the subsidiary company.

**Managing Director (MD) or Chief Executive Officer (CEO), Chief Financial Officer (CFO), Head of Internal Audit and Compliance (HIAC) and Company Secretary (CS). –**

**Appointment:**

- The Board shall appoint a Managing Director (MD) or Chief Executive Officer (CEO), a Company Secretary (CS), a Chief Financial Officer (CFO) and a Head of Internal Audit and Compliance (HIAC);
- The positions of the Managing Director (MD) or Chief Executive Officer (CEO), Company Secretary (CS), Chief Financial Officer (CFO) and Head of Internal Audit and Compliance (HIAC) shall be filled by different individuals;
- The MD or CEO, CS, CFO and HIAC of a listed company shall not hold any executive position in any other company at the same time;
- The Board shall clearly define respective roles, responsibilities and duties of the CFO, the HIAC and the CS;
- The MD or CEO, CS, CFO and HIAC shall not be removed from their position without approval of the Board as well as immediate dissemination to the Commission and stock exchange(s).

**(2) Requirement to attend Board of Directors' Meetings**

The MD or CEO, CS, CFO and HIAC of the company shall attend the meetings of the Board:

Provided that the CS, CFO and/or the HIAC shall not attend such part of a meeting of the Board which involves consideration of an agenda item relating to their personal matters.

**Duties of Managing Director (MD) or Chief Executive Officer (CEO) and Chief Financial Officer (CFO)**

- The MD or CEO and CFO shall certify to the Board that they have reviewed financial statements for the year and that to the best of their knowledge and belief:
  - i. these statements do not contain any materially untrue statement or omit any material fact or contain statements that might be misleading; and
  - ii. these statements together present a true and fair view of the company's affairs and are in compliance with existing accounting standards and applicable laws;
- The MD or CEO and CFO shall also certify that there are, to the best of knowledge and belief, no transactions entered into by the company during the year which are fraudulent, illegal or in violation of the code of conduct for the company's Board or its members;

The certification of the MD or CEO and CFO shall be disclosed in the Annual Report.

**Board of Directors' Committee. -**

For ensuring good governance in the company, the Board shall have at least following sub-committees:

- Audit Committee; and
- Nomination and Remuneration Committee.

**Audit Committee. -**

**(1) Responsibility to the Board of Directors:**

- The company shall have an Audit Committee as a sub-committee of the Board;
- The Audit Committee shall assist the Board in ensuring that the financial statements reflect true and fair view of the state of affairs of the company and in ensuring a good monitoring system within the business;
- The Audit Committee shall be responsible to the Board; the duties of the Audit Committee shall be clearly set forth in writing.

**(2) Constitution of the Audit Committee**

- The Audit Committee shall be composed of at least 3 (three) members;
- The Board shall appoint members of the Audit Committee who shall be nonexecutive directors of the company excepting Chairperson of the Board and shall include at least 1 (one) independent director;
- All members of the audit committee should be “financially literate” and at least 1 (one) member shall have accounting or related financial management background and 10 (ten) years of such experience;

**Explanation:** The term “financially literate” means the ability to read and understand the financial statements like statement of financial position, statement of comprehensive income, statement of changes in equity and cash flows statement and a person will be considered to have accounting or related financial management expertise if he or she possesses professional qualification or Accounting or Finance graduate with at least 10 (ten) years of corporate management or professional experiences.

When the term of service of any Committee member expires or there is any circumstance causing any Committee member to be unable to hold office before expiration of the term of service, thus making the number of the Committee members to be lower than the prescribed number of 3 (three) persons, the Board shall appoint the new Committee member to fill up the vacancy immediately or not later than 1 (one) month from the date of vacancy in the Committee to ensure continuity of the performance of work of the Audit Committee;

The company secretary shall act as the secretary of the Committee;

The quorum of the Audit Committee meeting shall not constitute without at least 1 (one) independent director.

**Chairperson of the Audit Committee:**

The Board shall select 1 (one) member of the Audit Committee to be Chairperson of the Audit Committee, who shall be an independent director;

In the absence of the Chairperson of the Audit Committee, the remaining members may elect one of themselves as Chairperson for that particular meeting, in that case there shall be no problem of constituting a quorum as required under condition No. 5(4)(b) and the reason of absence of the regular Chairperson shall be duly recorded in the minutes.

Chairperson of the Audit Committee shall remain present in the Annual General Meeting (AGM):

Provided that in absence of Chairperson of the Audit Committee, any other member from the Audit Committee shall be selected to be present in the annual general meeting (AGM) and reason for absence of the Chairperson of the Audit Committee shall be recorded in the minutes of the AGM.

### **Meeting of the Audit Committee**

The Audit Committee shall conduct at least its four meetings in a financial year:

Provided that any emergency meeting in addition to regular meeting may be convened at the request of any one of the members of the Committee;

The quorum of the meeting of the Audit Committee shall be constituted in presence of either two members or two third of the members of the Audit Committee, whichever is higher, where presence of an independent director is a must.

**Role of Audit Committee:** The Audit Committee shall: -

- Oversee the financial reporting process;
- monitor choice of accounting policies and principles;
- monitor Internal Audit and Compliance process to ensure that it is adequately resourced, including approval of the Internal Audit and Compliance Plan and review of the Internal Audit and Compliance Report;
- oversee hiring and performance of external auditors;
- hold meeting with the external or statutory auditors for review of the annual financial statements before submission to the Board for approval or adoption;
- review along with the management, the annual financial statements before submission to the Board for approval;
- review along with the management, the quarterly and half yearly financial statements before submission to the Board for approval;
- review the adequacy of internal audit function;
- review the Management's Discussion and Analysis before disclosing in the Annual Report;
- review statement of all related party transactions submitted by the management;
- review Management Letters or Letter of Internal Control weakness issued by statutory auditors;
- oversee the determination of audit fees based on scope and magnitude, level of expertise deployed and time required for effective audit and evaluate the performance of external auditors; and
- oversee whether the proceeds raised through Initial Public Offering (IPO) or Repeat Public Offering (RPO) or Rights Share Offer have been utilized as per the purposes stated in relevant offer document or prospectus approved by the Commission:
- Provided that the management shall disclose to the Audit Committee about the uses or applications of the proceeds by major category (capital expenditure, sales and marketing

expenses, working capital, etc.), on a quarterly basis, as a part of their quarterly declaration of financial results:

Provided further that on an annual basis, the company shall prepare a statement of the proceeds utilized for the purposes other than those stated in the offer document or prospectus for publication in the Annual Report along with the comments of the Audit Committee.

**Reporting of the Audit Committee:**

**Reporting to the Board of Directors**

The Audit Committee shall report on its activities to the Board.

**a. The Audit Committee shall immediately report to the Board on the following findings, if any: -**

- report on conflicts of interests;
- suspected or presumed fraud or irregularity or material defect identified in the internal audit and compliance process or in the financial statements;
- suspected infringement of laws, regulatory compliances including securities related laws, rules and regulations; and
- any other matter which the Audit Committee deems necessary shall be disclosed to the Board immediately;

**b. Reporting to the Authorities:**

If the Audit Committee has reported to the Board about anything which has material impact on the financial condition and results of operation and has discussed with the Board and the management that any rectification is necessary and if the Audit Committee finds that such rectification has been unreasonably ignored, the Audit Committee shall report such finding to the Commission, upon reporting of such matters to the Board for three times or completion of a period of 6 (six) months from the date of first reporting to the Board, whichever is earlier.

**C. Reporting to the Shareholders and General Investors**

Report on activities carried out by the Audit Committee, including any report made to the Board under condition No. 5(6)(a)(ii) above during the year, shall be signed by the Chairperson of the Audit Committee and disclosed in the annual report of the issuer company.

**Nomination and Remuneration Committee (NRC):**

**Responsibility to the Board of Directors**

- b. The company shall have a Nomination and Remuneration Committee (NRC) as a sub-committee of the Board;
- c. The NRC shall assist the Board in formulation of the nomination criteria or policy for determining qualifications, positive attributes, experiences and independence of directors and top level executive as well as a policy for formal process of considering remuneration of directors, top level executive;



The Terms of Reference (TOR) of the NRC shall be clearly set forth in writing covering the areas stated at the condition No. 6(5)(b).

#### **Constitution of the NRC**

- The Committee shall comprise of at least three members including an independent director;
- All members of the Committee shall be non-executive directors;
- Members of the Committee shall be nominated and appointed by the Board;
- The Board shall have authority to remove and appoint any member of the Committee;
- In case of death, resignation, disqualification, or removal of any member of the Committee or in any other cases of vacancies, the board shall fill the vacancy within 180 (one hundred eighty) days of occurring such vacancy in the Committee;
- The Chairperson of the Committee may appoint or co-opt any external expert and/or member(s) of staff to the Committee as advisor who shall be non-voting member, if the Chairperson feels that advice or suggestion from such external expert and/or member(s) of staff shall be required or valuable for the Committee;
- The company secretary shall act as the secretary of the Committee;
- The quorum of the NRC meeting shall not constitute without attendance of at least an independent director;

No member of the NRC shall receive, either directly or indirectly, any remuneration for any advisory or consultancy role or otherwise, other than Director's fees or honorarium from the company.

#### **Chairperson of the NRC**

- The Board shall select 1 (one) member of the NRC to be Chairperson of the Committee, who shall be an independent director;
- In the absence of the Chairperson of the NRC, the remaining members may elect one of themselves as Chairperson for that particular meeting, the reason of absence of the regular Chairperson shall be duly recorded in the minutes;
- The Chairperson of the NRC shall attend the annual general meeting (AGM) to answer the queries of the shareholders:

Provided that in absence of Chairperson of the NRC, any other member from the NRC shall be selected to be present in the annual general meeting (AGM) for answering the shareholder's queries and reason for absence of the Chairperson of the NRC shall be recorded in the minutes of the AGM.

**(4) Meeting of the NRC**

- The NRC shall conduct at least one meeting in a financial year;
- The Chairperson of the NRC may convene any emergency meeting upon request by any member of the NRC;
- The quorum of the meeting of the NRC shall be constituted in presence of either two members or two third of the members of the Committee, whichever is higher, where presence of an independent director is must as required under condition No. 6(2)(h);
- The proceedings of each meeting of the NRC shall duly be recorded in the minutes and such minutes shall be confirmed in the next meeting of the NRC.

**Role of the NRC**

- NRC shall be independent and responsible or accountable to the Board and to the shareholders;
- NRC shall oversee, among others, the following matters and make report with recommendation to the Board:
  - formulating the criteria for determining qualifications, positive attributes and independence of a director and recommend a policy to the Board, relating to the remuneration of the directors, top level executive, considering the following:
    - the level and composition of remuneration is reasonable and sufficient to attract, retain and motivate suitable directors to run the company successfully;
    - the relationship of remuneration to performance is clear and meets appropriate performance benchmarks; and
    - remuneration to directors, top level executive involves a balance between fixed and incentive pay reflecting short and long-term performance objectives appropriate to the working of the company and its goals;
  - devising a policy on Board's diversity taking into consideration age, gender, experience, ethnicity, educational background and nationality;
  - identifying persons who are qualified to become directors and who may be appointed in top level executive position in accordance with the criteria laid down, and recommend their appointment and removal to the Board;
  - formulating the criteria for evaluation of performance of independent directors and the Board;
  - identifying the company's needs for employees at different levels and determine their selection, transfer or replacement and promotion criteria; and
  - developing, recommending and reviewing annually the company's human resources and training policies;

The company shall disclose the nomination and remuneration policy and the evaluation criteria and activities of NRC during the year at a glance in its annual report.

**External or Statutory Auditors. –**

The issuer company shall not engage its external or statutory auditors to perform the following services of the company, namely:

- appraisal or valuation services or fairness opinions;
- financial information systems design and implementation;
- book-keeping or other services related to the accounting records or financial statements;
- broker-dealer services;
- actuarial services;
- internal audit services or special audit services;
- any service that the Audit Committee determines;

audit or certification services on compliance of corporate governance as required under condition No. 9(1); and (ix) any other service that creates conflict of interest.

No partner or employees of the external audit firms shall possess any share of the company they audit at least during the tenure of their audit assignment of that company; his or her family members also shall not hold any shares in the said company:

Provided that spouse, son, daughter, father, mother, brother, sister, son-in-law and daughter-in-law shall be considered as family members.

Representative of external or statutory auditors shall remain present in the Shareholders' Meeting (Annual General Meeting or Extraordinary General Meeting) to answer the queries of the shareholders.

**Maintaining a website by the Company.**

The company shall have an official website linked with the website of the stock exchange.

The company shall keep the website functional from the date of listing.

The company shall make available the detailed disclosures on its website as required under the listing regulations of the concerned stock exchange(s).

**Reporting and Compliance of Corporate Governance. –**

The company shall obtain a certificate from a practicing Professional Accountant or Secretary (Chartered Accountant or Cost and Management Accountant or Chartered Secretary) other than its statutory auditors or audit firm on yearly basis regarding compliance of conditions of Corporate Governance Code of the Commission and shall such certificate shall be disclosed in the Annual Report.

**Explanation:** "Chartered Accountant" means Chartered Accountant as defined in the Bangladesh Chartered Accountants Order, 1973 (President's Order No. 2 of 1973); "Cost and Management Accountant" means Cost and Management Accountant as defined in the Cost and Management Accountants Ordinance, 1977 (Ordinance No. LIII of 1977); "Chartered Secretary" means Chartered Secretary as defined in the Chartered Secretaries Act, 2010.

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The professional who will provide the certificate on compliance of this Corporate Governance Code shall be appointed by the shareholders in the annual general meeting.

The directors of the company shall state, in accordance with the **Annexure-C** attached, in the directors' report whether the company has complied with these conditions or not.

**Name of the company .....**  
**Declaration by CEO and CFO**

Date:

The Board of Directors

..... Limited

.....

.....

Subject: Declaration on Financial Statements for the year ended on

Dear Sirs,

Pursuant to the condition No. 1(5)(xxvi) imposed vide the Commission's Notification No. Dated under section 2CC of the Securities and Exchange Ordinance, 1969, we do hereby declare that:

(1) The Financial Statements of ..... Limited for the year ended on

..... have been prepared in compliance with International Accounting

Standards (IAS) or International Financial Reporting Standards (IFRS), as applicable in the Bangladesh and any departure there from has been adequately disclosed;

The estimates and judgments related to the financial statements were made on a prudent and reasonable basis, in order for the financial statements to reveal a true and fair view;

The form and substance of transactions and the Company's state of affairs have been reasonably and fairly presented in its financial statements;

To ensure above, the Company has taken proper and adequate care in installing a system of internal control and maintenance of accounting records;

Our internal auditors have conducted periodic audits to provide reasonable assurance that the established policies and procedures of the Company were consistently followed; and

The management's use of the going concern basis of accounting in preparing the financial statements is appropriate and there exists no material uncertainty related to events or conditions that may cast significant doubt on the Company's ability to continue as a going concern.

In this regard, we also certify that: -

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(i) We have reviewed the financial statements for the year ended on ..... and that to the best of our knowledge and belief:

these statements do not contain any materially untrue statement or omit any material fact or contain statements that might be misleading;

these statements collectively present true and fair view of the Company's affairs and are in compliance with existing accounting standards and applicable laws.

(iii)..... There are, to

the best of knowledge and belief, no transactions entered into by the Company during the year which are fraudulent, illegal or in violation of the code of conduct for the company's Board of Directors or its members.

Sincerely

yours,

**(Name and Signature with date)**

Chief Executive Officer (CEO)

**(Name and Signature with date)** Chief

Financial Officer (CFO)

[Certificate as per condition No. 1(5)(xxvii)]

**Report to the Shareholders of \_\_\_\_\_ Limited on compliance on the Corporate Governance Code**

We have examined the compliance status to the Corporate Governance Code by \_\_\_\_\_ Limited for the year ended on ..... This Code relates to the Notification No ..... dated ..... of the Bangladesh Securities and Exchange Commission.

Such compliance with the Corporate Governance Code is the responsibility of the Company. Our examination was limited to the procedures and implementation thereof as adopted by the Management in ensuring compliance to the conditions of the Corporate Governance Code.

This is a scrutiny and verification and an independent audit on compliance of the conditions of the Corporate Governance Code as well as the provisions of relevant Bangladesh Secretarial Standards (BSS) as adopted by Institute of Chartered Secretaries of Bangladesh (ICSB) in so far as those standards are not inconsistent with any condition of this Corporate Governance Code.

We state that we have obtained all the information and explanations, which we have required, and after due scrutiny and verification thereof, we report that, in our opinion:

- The Company has complied with the conditions of the Corporate Governance Code as stipulated in the above mentioned Corporate Governance Code issued by the Commission or not complied (if not complied, specify non-compliances);
- The company has complied with the provisions of the relevant Bangladesh Secretarial Standards (BSS) as adopted by the Institute of Chartered Secretaries of Bangladesh (ICSB) as required by this Code or not complied (if not complied, specify noncompliance);
- Proper books and records have been kept by the company as required under the Companies Act, 1994, the securities laws and other relevant laws or not complied (if not complied, specify non-compliances); and
- The governance of the company is highly satisfactory or satisfactory or not satisfactory.

Place: \_\_\_\_\_ For ..... (Name of the firm)

Dated: \_\_\_\_\_ (Signature with name and designation)

**QUESTION FOR DISCUSSION:**

- Question** XYZ Company Limited (a publicly listed company) has appointed your firm to certify the compliance status of Notification dated July 3, 2012 of Bangladesh Securities and Exchange Commission. You are required to give appropriate recommendation, if required, from the following facts:
- a. The Board of XYZ Company Limited is consisted of nine directors out of whom one is independent director. The independent director holds 1.00% shares of the Company.
  - b. The Audit Committee of XYZ Company Limited is consisted of three directors. The Chairman of the Audit Committee holds 5% shares of the Company;
  - c. The Statutory Auditors of XYZ Company Limited have been assigned to look after the internal audit issues and financial information systems design.
  - d. XYZ Company Limited has one fully owned subsidiary namely ABC Company Limited. The Board of the subsidiary is comprised of two directors who are also directors of XYZ Company Limited.
  - e. The Audited Financial Statements of the Company which was duly recommended by its Audit Committee was approved by the Board of Directors of the Company for placement in the AGM to be held in the next month.
  - f. What should the Company do if it wants to be compliant in the situation mentioned in (a) above keeping all of its existing directors and their shareholdings unchanged?

- Answer**
- a. Regarding appointment of independent director(s) XYZ Company Limited is fully non-compliant. The Company should have at least two independent directors (one fifth of the total number of directors) whose individual shareholding shall be less than 1.00% in the share capital of the Company.
  - b. The Chairman of the Audit Committee of XYZ Company Limited shall be an independent director holding less than 1.00% shares in the Company. Hence, the shareholding of the existing Independent Director must be reduced.
  - c. XYZ Company Limited cannot assign its Statutory Auditors to look after the internal audit issues and financial information systems design.
  - d. Since ABC Company Limited is a subsidiary of XYZ Company Limited, a public limited company, it shall have minimum three directors in its Board at least one of whom shall be independent director.
  - e. Since the formation of the Audit Committee is not in accordance with the Guidelines of Bangladesh Securities and Exchange Commission the recommendation of the said Audit Committee will not be valid. Therefore, the Audited Financial Statements of the Company to be placed in the upcoming AGM will not be valid. The followings shall be followed:



The AGM should be postponed;  
The Audit Committee shall be formed complying with the Guidelines of Bangladesh Securities and Exchange Commission;  
The newly formed Audit Committee shall recommend the Audited Financial Statements afresh;  
Board meeting shall be held afresh for approval of the Audited Financial Statements;  
and  
New date for AGM and record date shall be declared complying with the relevant regulations.

If XYZ Company Limited wants to be compliant in the situation mentioned in (a) above keeping all the existing directors it should appoint three more independent directors complying with the guidelines of Bangladesh Securities and Exchange Commission.





## Chapter 2

### Laws relating to The Securities and Exchange

#### Bangladesh Securities and Exchange Commission (Public Issue) Rules, 2015

##### Requirements for filing application for a public offer:

- Application for consent under these Rules may be made on any of the following methods:
  - fixed price method, when offered at par value; or
  - book-building method, when offered above par value.

General requirements: An issuer may make an application for public offer of its securities, if-

- it offers an amount of at least equivalent to 10% of its paid-up capital (including intended offer) or Tk. 15 crore at par value, whichever is higher;
- it has minimum existing paid up capital of Tk. 15 crore;
- it has not made any material change including raising of paid-up capital after the date of audited financial statements as included in the prospectus;
- the issue manager is in no way connected with the issuer not does hold any of its securities;
- it has prepared its financial statements in accordance with the requirements of the Securities and Exchange Rules 1987, the provisions of IFRS /IAS as adopted in Bangladesh and audited the same as per Bangladesh Standards on Auditing (BSA) as well as the Companies Act, 1994 and other applicable legal requirements;
- it has got cost audit by professional accountants as per the Companies Act 1994, if applicable;
- it has got its latest financial statements audited by the panel auditors as declared by the Commission from time to time;
- it has been regular in holding annual general meeting (AGM);
- it has complied with the provisions of Corporate Governance guidelines as published by the Commission from time to time;
- it has complied with all the requirements of these Rules in preparing prospectus;

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- it has no accumulated retained loss at the time of application;
- it has complied with the provisions of guidelines regarding valuation of assets, if any, as published by the Commission from time to time; and
- The issuer or any of its directors is not a bank defaulter.

Additional requirements for fixed price method:

- if it has been in commercial operation at least for immediate last 3 (three) years, it has positive net profit after tax and net operating cash flow at least for immediate preceding 2 (two) financial years; if it has been in commercial operation for a period less than 3 (three) years, it has positive net profit after tax and net operating cash flow at least for the latest financial year; if it has not started its commercial operation or not completed any financial period yet, it has positive projected net profit after tax and net operating cash flow; and
- at least 35% of the issue has been underwritten on a firm commitment basis by the underwriter(s).

Additional requirements for book-building method:

- it has been in commercial operation at least for immediate last 3 (three) years;
- it has made net profit after tax at least for immediate preceding 2 (two) financial years;
- it has positive net operating cash flow at least for immediate preceding 2 (two) financial years;
- it has appointed separate persons as issue manager and registrar to the issue for managing the issue;
- the issuer/issue has been rated by a credit rating company registered with the Commission;
- at least 35% of the issue has been underwritten on a firm commitment basis by the underwriter(s).

Additional requirements for Repeat Public Offer:

An issuer of a listed securities may make repeat public offer, subject to compliance with the following conditions:

- Information concerning the repeat public offer shall be disseminated as price sensitive information immediately upon board decision as well as upon approval at the general meeting and approval of the Commission, in accordance with the relevant notifications issued by the Commission;
- There should be an explicit announcement while disseminating the information in first two events under sub-rule (a) that the repeat public offer shall be subject to approval of the Commission;
- Such offer has been approved by the board, the shareholders in a general meeting, and the consent to which is obtained from the Commission;

- The proceeds of previous public offer or rights issue, as the case may be, have been utilized fully and relevant reports were duly submitted to the Commission;
- The issue has been fully underwritten on a firm commitment basis by the underwriter(s); and
- The issuer/issue has been rated by a credit rating company registered with the Commission.

Distribution mechanism of securities having conversion features:

- At least 40% of the issue shall be reserved for the existing shareholders;
- At least 40% of the issue shall be reserved for Public Offer; and
- Maximum 20% of the issue may be made through private placement:

Provided that the securities so issued shall not be converted either partly or fully before a minimum period of 2(two) years of issuance.

Submission of application and processing thereof:

**General Requirements:**

- an issuer shall submit the application, to the Commission for consent of issuance of securities through public offer and the exchanges for listing in the main boards thereof, as per requirements of these rules and relevant listing regulations of the exchanges, along with ten copies of the red-herring prospectus/prospectus/information memorandum, prepared as per requirements of these Rules, duly completed, together with all annexes thereto, duly signed on each page, by the issuer's chief executive officer or managing director, chief financial officer, company secretary and chief executive officer or managing director of the issue manager;
- immediate after submission of the application, the issuer shall post the red-herring prospectus/prospectus/information memorandum in the websites of the issuer and the issue manager(s) which shall be updated with any change made thereof;
- the audited financial statements of the issuer must be submitted along with the application and prospectus/red-herring prospectus/information memorandum, but the said financial statements shall not be older than 120 days at the time of submission to the Commission;
- all the required documents as per Annexure - A, B, C, D and G shall be submitted with the application;
- any amendment to the prospectus, signed by the said persons, shall also have to be filed with the Commission and the exchanges, in accordance with clause (a);
- after receiving the application, the exchange(s) shall submit its primary recommendation to the Commission along with checklist, within 20 (twenty) days of receipt of the application and public offer documents, after due examination of the same in line with the provisions of these rules;
- the Commission shall verify the application, documents and primary recommendation of the exchanges;

- the Commission or the exchanges may require the issuer or its directors, officers, issue manager(s), auditors, valuer(s), to submit additional disclosure, information, documents, certification and clarification, as the case may be, to produce or to disclose, in the prospectus, red-herring prospectus or the information memorandum for sale of securities, within such time as may be stipulated;
- the issuer or its directors, officers, issue manager(s), auditors, valuer(s) shall fulfill such requirements within such time;
- the exchange(s) shall submit its final recommendation along with a declaration as prescribed in the listing regulations to the Commission on the issue within seven days of receiving such additional disclosure, information, documents, certification and clarification. All the communications to or from the exchanges shall be intimated to the Commission;
- the Commission, after examination of the information, documents, recommendations of the exchanges and considering all the factors, shall take decision to approve or reject the application for public offer of securities through issuance of prospectus.

**Additional requirements for book building method:**

Conducting road show and submission of application:

- i. The issuer/issue manager shall send invitation to the eligible investors, both in writing and through publication in at least 5 (five) widely circulated national dailies, giving at least 10 (ten) working days time, to the road show indicating time and venue of such event. The invitation letter shall accompany a red-herring prospectus containing all relevant information covering the proposed size of the issue and at least 3 (three) years audited financial statements and valuation report, prepared by the issue manager without mentioning any indicative price, as per internationally accepted valuation methods. The red-herring prospectus shall be prepared without mentioning the issue price or number of securities to be offered;
- ii. Representatives from the exchanges shall present in the road show as observers;  
  
Eligible investors shall submit their comments and observations, if any, to the issuer or issue manager within 03(three) working days of the road show;
- iii. After completion of the road show, the red-herring prospectus shall be finalized on the basis of comments and observations of the EIs participated in the road show. The valuation report as finalized must be included in the red-herring prospectus including detail about the qualitative, quantitative factors and methods of valuation;

The application along with the red-herring prospectus and required documents shall be simultaneously submitted to the Commission and the exchanges as per rule 4(1)(a).

Consent for bidding to determine the cut-off price: After examination of the prospectus and relevant documents, the Commission, if satisfied, shall issue consent to commence bidding by the eligible investors for determination of the cut-off price.

Determination of the cut-off price:

- Eligible investors shall participate in the electronic bidding process and submit their intended quantity and price: provided that any connected person or related party of the issuer shall not be eligible to participate in the bidding process;
  - No eligible investor shall quote for more than 10% (ten percent) of the total amount offered to the eligible investors;
  - Eligible investors' bidding shall be opened for 72 (seventy-two) hours round the clock;
  - The bidding will be conducted through a uniform and integrated automated system of the exchanges, especially developed for book building process;
  - The value of bid at different prices will be displayed on the screen without identifying the bidders;
  - The bidders shall deposit at least 20% (twenty percent) of the bid amount in advance in the designated bank account maintained by the exchange conducting the bidding;
  - The bidders can revise their bids for once, within the bidding period, up to 20% variation of their first bid price;
  - After completion of the bidding period, the cut-off price will be determined at nearest integer of the lowest bid price which the total securities offered to eligible investors would be exhausted;
  - All the eligible investors participating in the bidding shall be offered to subscribe the securities at the cut-off price. It is mandatory for EIs bidding at or above the cut-off price to subscribe up to their intended quantity but optional for EIs bidding below the cut-off price;
  - The eligible investors shall be allotted securities on pro-rata basis within their category-wise quota at the cut-off price. The category-wise quota shall be determined on the basis of distributing the total securities reserved for other eligible investors equally to each of the category of eligible investors participating in the bidding, except mutual funds. Mutual funds shall be allotted securities reserved for them on pro-rata basis;
- iv. The securities shall be offered to general public for subscription at an issue price to be fixed at 10% discount (at nearest integer) from the cut-off price;

The issuer and the issue manager shall prepare the draft prospectus including the status of bidding, cut-off price, list of eligible investors with number of securities subscribed for, price and number of securities for offering to the general public and submit with relevant documents, simultaneously to the Commission and the exchanges within 5 (five) working days from the closing day of bidding.

**Subscription by the eligible investors:**

- After examination of the draft prospectus and relevant documents, the Commission, if satisfied, shall issue consent for raising of capital from the general public and approve the prospectus;
- The balance amount of subscription shall be paid by the eligible investors prior to the date of opening of subscription to the general public: provided that in case of failure to deposit

the remaining amount by the eligible investors, advance bid money deposited by them shall be forfeited by the Commission and the unsubscribed securities shall be taken up by the underwriters.

**Publication of prospectus and opening of subscription list**

- Upon receiving the consent of the Commission to the issue of capital under these rules, the abridged version of prospectus as approved by the Commission, shall be published by the issuer in four national daily newspapers (in two Bangla and two English), within the time specified in the letter of consent issued by the Commission. The full prospectus shall, however, be posted on websites of the Commission, exchanges, issuer and the issue manager(s).
- The subscription for general public shall commence after 25 (Twenty-five) days of the publication of the abridged version of the prospectus and shall remain opened up to 25<sup>th</sup> (twenty fifth) working day from the date of publication of abridged version of prospectus. The subscription shall be made as per the public issue application process mentioned in the consent letter.
- Upon completion of the period of subscription for securities as mentioned in sub-rule (2), the issuer shall inform the Commission and the exchanges, within five working days of closure of such completion, in respect of the following matters, namely:
  - total number of securities for which subscription has been received; and
  - amount received from the subscription.

**Prospectus delivery requirements**

- Sufficient copies of prospectus shall be made available by the issuer so that any person requesting a copy may receive one;
- The issuer shall post the prospectus vetted by the Commission in the issuer's website and also put on the websites of the Commission, exchanges, and the issue manager within three working days from the date of according consent which shall remain posted till the closure of the subscription list. The issuer shall submit to the Commission and the exchanges the vetted Prospectus in "MS- Word" format;
- A notice shall be placed on the website that interested persons are entitled to the prospectus, if they so desire, and that copies of prospectus may be obtained from the issuer and the issue manager.

**Lock-in:** Ordinary shares of the issuer shall be subject to lock-in, from the date of issuance of prospectus or commercial operation, whichever comes later, in the following manner:

- All shares held, at the time of according consent to the public offer, by sponsors, directors and shareholders holding 5% or more shares, other than alternative investment funds, for 03(three) years;
- All shares allotted, before 02(two) years of according consent to the public offer, to any person, other than alternative investment funds, for 03(three) years;



- In case any existing sponsor or director of the issuer transfers any share to any person, other than existing shareholders, within preceding 12 (twelve) months of submitting an application for raising of capital or initial public offer (IPO), all shares held by those transferee shareholders, for 03(three) years;
- 25% of the shares allotted to eligible investors, for 03 (three) months and other 25% of the shares allotted to them, for 06 (six) months;
- All shares held by alternative investment funds, for 01(one) year; and
- Shares allotted, within two years of according consent to the public offer, to any person other than the shares mentioned in sub-rules (1), (2), (3), (4), and (5) above, for 01(one) year.

Provided that ordinary shares converted from any other type of securities shall also be subject to lock-in as mentioned above.

#### **Issue Manager**

- The issuer shall appoint one or more issue manager, registered with the Bangladesh Securities and Exchange Commission, for the purpose of making the public offer.
- The issue manager(s) shall be entitled to fees and be responsible for the issue including preparation and disclosures made in the prospectus, road show and use of the public issue proceeds by the issuer.

#### **Underwriters**

- The issuer making public offer shall appoint underwriter(s), registered with the Bangladesh Securities and Exchange Commission, on a firm commitment basis;
- The issuer, in the event of under subscription, shall send notice to the underwriter(s) within ten days of closure of subscription calling upon them to subscribe the securities and pay for this in cash in full within fifteen days of the date of said notice and the said amount shall be credited into securities subscription account within the said period;
- The underwriting agreement shall contain a condition to the effect as mentioned in sub-rule (2);
- The issuer shall, within seven days of the expiry of the period mentioned in sub rule (2), send to the Commission proof of subscription and deposit of the money by the underwriter(s).

#### **Approval, rejection and review**

- On receipt of an application of consent for public offer from an issuer, the Commission shall review the aid application to ascertain whether it is complete and acceptable;
- In case the said application is incomplete, the Commission shall inform the issuer in writing, to remove the incompleteness/deficiencies, within 40 (forty) working days, after examination of the said application;
- If the issuer fails to remove the incompleteness within the stipulated time, it shall have to file a fresh application;

## *Corporate Laws and Practices*

- The Commission shall issue letter of consent, subject to such conditions as it may deem fit to specify, within 60 (sixty) working days of receipt of a complete application, if such application is acceptable to the Commission;
- If the application is not acceptable to the Commission, it shall issue a rejection letter, stating the reasons for such rejection, within 60 (sixty) working days of receipt of the last correspondence;
- The issuer, whose application has been rejected by the Commission, may apply for review to the Commission within 60 (sixty) working days from the date of such rejection, and the decision of the Commission thereon shall be final;

### **Securities and Exchange Commission (Rights Issue) Rules, 2006**

**Conditions to be fulfilled prior to making rights issue:** An issuer of a listed security may make rights issue by issuing rights share offer document subject to compliance with the following:

- a. such rights issue and price thereof have been approved by the shareholders in a general meeting;
  - the proceed of previous public offering, or rights issue, has been utilized fully;
  - annual general meeting has been held regularly;
  - the rights issue has been fully underwritten on a firm commitment basis by the underwriter;
  - the financial statements of the company is prepared as per International Accounting Standards (IAS), as applicable in Bangladesh, and audited as per International Standards of Auditing (ISA) as applicable in Bangladesh;
  - the issuer or any of its directors is not a bank-defaulter;
  - the issuer has been credit rated by a credit rating company, if the offer is at a premium; and
  - Profitability record in the immediate preceding year.

#### **Pricing and ratio of rights share.**

The issuer of a listed security making rights issue shall determine the price of its rights share in consultation with the issue manager.

No issuer of a listed security shall price its rights share above par value, if it has not been in commercial operation for immediate past three years having a track record of profitability.

The number of rights share proposed shall not exceed five for each existing share held in the company.

#### **Filing of the application for rights share offer:**

1. An application for issuing rights share along with the offer document shall be furnished to the Commission for approval within 15 (fifteen) working days of approval of such issue by the shareholders of the company in a general meeting.
2. Such document shall be submitted to the Commission along with
  - the copies of underwriting agreement, issue management agreement, agreement with the banker to the issue;
  - original auditors' report and certificate with the related financial statements;
  - relevant extract of the minutes of the general meeting;
  - undertakings for the company itself and its directors in prescribed CIB form;
  - a bank pay order or demand draft issued in favor of the Securities and Exchange Commission as payment of application fee for an amount of taka ten thousand only;

- Credit Rating Report of the issuer, if the offer is at a premium;
- Memorandum and Articles of Association Return of Allotment of Shares and Particulars of Directors;
- Summarized cash-flows statement, profit and loss account and balance sheet, and dividend declared and paid for each of the five years immediately preceding the issue of rights share offer document or for such shorter period during which the issuer was in commercial operation; and
- Due diligence certificate by the directors as per Form- D.
- The Chief executive officers of the issuer and the issue manager, by whatever name called, shall jointly certify under their full signature and seal on each page of the copy of documents submitted to the Commission under these rules.
- The rights share offer document, along with the audited financial statements, must be submitted to the Commission within 120 days of the end of the period for which the said financial statements is prepared.

**Contents of the rights share offer documents:** Rights share offer document shall include, among others, the following information, namely:

- Date of the rights share offer document.
- Amount of rights shares, divided into number of shares, par value and issue price of each share, and number of right share offered for each existing share.
- Highlight of the rights offer, risk factors, and management plans for reduction of such risks.
- Date and time of opening and closing of subscription.
- Purposes of raising fund through rights share, specifying clearly the heads and amount of the fund utilization and identifying various proposed projects with heads and amount of expenditure for each projects, and also highlights of such projects.
- Name of the products manufactured or to be manufactured or services rendered or to be rendered by the issuer together with capacity or proposed capacity of the existing and proposed projects vis-a-vis capacity utilized by the existing project during the last three years or such shorter period during which the issuer was in commercial operation.
- If the issue price of rights share is higher than the par value thereof, justification of the premium should be stated with reference to-
  - net asset value per share at historical or current costs;
  - earning-based-value per share calculated on the basis of weighted average of net profit after tax for immediately preceding five years or such shorter period during which the issuer was in commercial operation;

- average market price per share for the last six months immediately prior to the offer for rights issue; and
- Cash flows statement, profit and loss account, balance sheet, changes in equity and notes to the accounts of the issuer, together with certificate from the auditors
- Summarized cash-flows statement, profit and loss account and balance sheet, and dividend declared and paid for each of the 5 (five) years immediately preceding the issue of rights share offer document or for such shorter period during which the issuer was in commercial operation.
- Length of time during which the issuer has carried on business.
- Implementation schedule for completion of each segment of the project along with the proposed dates of trial and commercial operation of the proposed project.
- Quantity of shares held by each director and persons who hold 5% or more of the paid-up share capital of the issuer on the date of the rights share offer document.
- Name, address, description and occupation of directors; managing director, managers and company secretary of the company.
- Name of the public listed companies under common management, if any.
- Name and address of the underwriter(s) along with the number of shares underwritten by each underwriter and also the name and address of issue manager, auditors, legal adviser and banker to the rights issue.
- Particulars along with the terms and conditions of the material contracts including vendors' agreement, underwriting agreement, issue management agreement, agreement with the banker to the issue and contract for acquisition of property, plant and equipment.
- Number of rights shares that the directors are going to subscribe and in case they propose to make renunciation, the reasons and extent of such renunciation.
- Statement of actual utilization of fund raised by public offering of shares or rights shares, if any, prior to the proposed rights issue vis-a-vis plan therefor.
- Application form for depositing the subscription money with the bankers to the issue for the rights share, with the provision for renunciation of the rights offer.
- Declaration about the responsibility of the issue manager, the underwriter, the auditors and the directors in Forms-A, B, C and D respectively.
- A statement that a lock-in on the rights shares of the directors (including their renounced shares) for a period of three years from the date of closure of the rights share subscription shall be operative.

- A declaration that the rights shares to be issued in dematerialized form and the subscribing shareholders have to apply with respective depository accounts.
- Credit Rating Report of the issuer, if the offer is at a premium.
- **Public announcement for rights issue:** (1) The issuer of a listed security making offer for rights issue shall:
  - Announce two separate dates, for the purpose of record dates, one for shareholders' decision regarding the proposed rights issue and the other for determination of entitlement of rights issue after the Commission accords approval.
  - For the purpose of determination of entitlement of rights issue under these Rules, the issuer shall, within three working days from the date the Commission accords approval to the issuer under these Rules, announce the record date.
  - Disseminate the receipt of the Commission's approval along with purpose of the rights issue, amount of issue, price of rights shares as a price sensitive information as prescribed by the Commission mentioning the record date for the determination of entitlement of rights share and subscription opening and closing dates will be disclosed within three working day.

Commence record date as per (b) above, not earlier than fourteen working days and not later than twenty-one working days from the date of approval by the Commission.

- deliver offer document approved by the Commission to the shareholders entitled to have rights shares, stock exchange(s) and the Commission within 10 (ten) working days from the record date as mentioned in (b) above.
- The issuer shall post the rights offer document in the issuer's website and also put on the websites of the Commission, stock exchanges, and the issue manager within 3 (three) working days from the date of according consent and shall remain posted till the closure of the subscription period as mentioned in sub-rule (1) of rule 12.
- Once approval is obtained, no rights offer can be withdrawn or cancelled or postponed or varied by the issuer without prior written consent from the Commission.

**Subscription:**

- Subscription shall be received through the banker to the issue during the subscription period of not less than fifteen days and not more than thirty days.
- Subscription opening date shall commence after fifteen days from the record date as mentioned in rule 9(d).
- **Information on raising of rights issue fund:**  
The issuer of rights share shall furnish to the Commission:
- Statement of the subscription received against the offer for rights issue within ten days of the closing of the subscription lists; and

- Statement of the subscription received from the underwriter against the under subscribed shares within seven days of the expiry of the subscription period allowed to the underwriter(s) under rule 6.
- **Lock-in on rights share:**  
The rights share of directors and other shareholders holding 5% or more shares shall be subject to lock-in for a period of three years from the date of closure of the rights share subscription. In the event of renunciation of rights share by aforesaid persons, the renounced shares shall also be subject to lock-in for the same period. The issuer shall ensure compliance of this rule.

## **Securities and Exchange Commission (Private Placement of Debt Securities) Rules, 2012**

### **Rule Number 1: Short title and application:**

- These rules may be called the “Securities and Exchange Commission (Private Placement of Debt Securities) Rules, 2012”.
- These rules shall be applicable for the issuance of debt securities by an issuer, unless otherwise it is either exempted by the Securities and Exchange Commission or governed or regulated by the Commission through any other rules or notification or order issued from time to time.
- These Rules shall be applicable for issuance of debt securities through private placement.
- No issuer shall make an offer of debt securities, or shall publish an information memorandum or offer document for issuance of debt securities unless it obtains consent of the Commission.

### **Rule Number 3: Conditions to be fulfilled prior to making an application for issuance of debt securities**

An issuer may make an application to the Commission for issuance of debt securities, subject to fulfillment of the following:

- Total debt of the issuer, including the proposed issue, does not exceed 60% (sixty percent) of its total tangible assets:

Provided that in case the debt-equity or capital adequacy ratio of an issuer is determined by its primary regulator, the issuer fulfills that requirement:

Provided further that the Commission may consider variation of the above-mentioned ratio, if it thinks fit taking into account the industry scenario of the issuer.

- The issuer has a good track record of profitability and liquidity or its forecasted financial position indicates a significant profitability, liquidity and ability to pay-back with reasonable basis of making such forecasts.
- The issue is rated by a credit rating company and its periodical surveillance rating shall be done by the said rating company up to the full and final redemption or conversion of the debt securities.
- The issuer has a valid enforceable interest over its assets and the right to create charges thereon in course of issuance of the debt instruments. The issuer has obtained necessary permissions or consents from its primary regulator in order to issue of debt securities, if required.
- The issuer has obtained necessary permissions or consents from its primary regulator in order to issue of debt securities;
- The issuer has appointed a trustee for the issue.
- The financial statements of the issuer is prepared as per Bangladesh Accounting Standards (BAS) as applicable in Bangladesh, and audited as per Bangladesh Standards of Auditing (BSA).



- The issue has been approved by the Board of Directors or governing body of the issuer and in case the issuer is a listed company, by the shareholders in a general meeting.
- In case the issuer is a listed company, the information concerning the issue is disseminated as price sensitive information immediately upon Board decision as well as upon approval at the general meeting, in accordance with the relevant notifications issued by the Commission; there should be an explicit announcement while disseminating the information that the issue shall be subject to approval of the Commission.
- Trustee to the issue, if applicable, has examined all the documents including the legal and title documents and has provided a due diligence certificate as per Schedule 'D'.

**Rule Number 4: Application for consent to the issue of debt securities**

An issuer (hereinafter also referred to as the applicant) intending to issue debt securities shall make an application for consent to the Commission as per Schedule 'A'.

The applicant shall pay an amount of taka ten thousand (non- refundable) as application fee, along with the application, by way of pay order or demand draft issued in favor of the Securities and Exchange Commission.

With the said application, the applicant shall submit the following documents along with the information memorandum containing the audited financial statements within 120 (one hundred twenty) days of the end of the period for which the said financial statements are prepared, namely:

- certified copy of memorandum and articles of association or such certified documents, as the case may be;
- certified copy of certificate of incorporation and certificate of commencement of business, where applicable;
- certified copy of particulars of directors or particulars of owners, as the case may be;
- certified copy of return of allotment of shares and annual summary of share capital, where applicable;
- original auditors' report with the related audited financial statements of the issuer;
- purpose of issuance of securities and plan to use of proceeds thereof;
- resolution of the board of directors or promoter's resolution deciding to issue debt securities;
- minutes of the general meeting approving the issue, in case the issuer is a listed company;
- copy of disclosures of Price Sensitive Information, in case the issuer is a listed company;
- banker's certificate, or bank statement showing deposit of an amount equivalent to the owners' stake in the issuer, or auditor's certificate in this regard attested by the Managing Director, or Chief Executive Officer;
- certified copy of vendor's agreement in case of capital raised in other than cash;
- short description of business;

- credit rating report of the issue;
- no objection certificate, or clearance from regulatory authority(s) concerned, if required;
- draft Information Memorandum prepared as per Schedule 'B';
- draft Deed of Trust prepared as per Schedule 'C';
- copy of registration certificate issued by the Commission to the trustee to act as trustee to the issue of debt securities, where applicable;
- Due diligence certificate of the Trustee as per Schedule 'D';
- Repayment schedule of the debt securities in hard and electronic forms.

**Rule Number 5: Consideration of the application and decision thereon**

- On receipt of the application under rule 4, the Commission shall examine it, and if satisfies that all the requirements of rule 4 are fulfilled, the Commission shall accord consent in writing to the issue of debt securities, as sought for, within 07 (seven) working days of receipt of the application with all required documents.
- If the Commission finds that the application does not fulfill all the requirements of rule 4, it may, within 15 (fifteen) days of receipt of the application, direct the applicant to fulfill the requirements within such time as the Commission may determine, and on fulfillment of such requirements the Commission shall accord the consent as prayed for, within 07 (seven) working days of such fulfillment.
- The Commission may call for further information, in addition to the requirements of rule 4, if it so deems necessary.
- If the Commission finds that the application does not fulfill all the requirements of rule 4, or where a direction to fulfill such requirements has been given under sub-rule (2) and/or (3) and the applicant has failed to fulfill such requirements, it may reject the application, stating the reasons thereof.

**Rule Number 5: Review**

The applicant whose application has been rejected by the Commission under sub-rule (4) of rule 5, may apply to the Commission for review of its decision within 30 (thirty) days from the date of such rejection, and the decision of the Commission thereon shall be final.

**Rule Number 5: Review Conditions to be fulfilled after getting consent for issuance of debt securities**

- Before issuance of the debt securities, the following requirements shall adhere to upon obtaining consent of the Commission, namely:
  - The issuer shall execute the deed of trust as approved by the Commission in favor of the trustee and register the same under the Registration Act, 1908 (XVI of 1908) and shall submit a copy of the registered trust deed attested by the Chief Executive Officers of the issuer and the trustee to the Commission;
  - The issuer shall create charges over the assets only for issuance of secured bond, through execution of Charge Document(s) in favor of the trustee adhering due legal procedures;

- The issuer shall execute guarantee(s) in favor of the trustee through observation of required legal procedures;
- The trustee shall submit a report to the Commission to the effect that all charges and/or guarantee(s) as per the deed of trust, Subscription Agreements and IM have been executed properly;
- The issuer of a listed company shall place the IM and the Deed of Trust in electronic form on the websites of the issuer and the trustee up to closing of subscription.
- The consent for issuance of debt securities shall remain valid for one year from the date of consent or for such a period as determined by the Commission in the consent letter.
- The issuer shall submit a status report of the issue to the Commission within 30 (thirty) days of issue of the securities or expiry of the period mentioned in sub-rule (2), whichever comes earlier.
- The issuer shall submit bank statement and banker's certificate to the Commission upon completion of the subscription.
- The issuer shall complete audit of its financial statements and, hold its annual general meeting within such period as may be specified by the Commission at the time of according the consent.
- The issuer shall submit a copy of such audited financial statements and a copy of its annual report and the minutes of its annual general meeting within fourteen days of the completion of the audit or, as the case may be, holding of the annual general meeting.
- The Commission may, on application and on good cause shown, extend the time for auditing the financial statements or submission of the financial statements to the Commission, as the case may be.
- The said company shall inform the Commission any material change that affects the affairs of the company, along with the supporting documents and evidences.
- The issuer can sell debt instruments only to the eligible investors.

**Rule Number 9: Review Registration of Trustee**

- The trustee of a debt security shall be registered by the Commission under these rules and no person shall act as trustee to an issue without such registration.
- The proposed trustee shall apply for registration to the Commission as per Schedule 'E' along with required information and documents and application fee of taka five thousand only.
- The proposed trustee shall have the following eligibility criteria to apply for registration, namely:
  - Have a minimum paid up capital of taka one hundred million;
  - Have adequate manpower and logistic support to discharge its duties as a trustee;

- Have appointed a compliance officer for the trust having a minimum of five years' service experience in the financial market;
- Neither the trustee, nor any of its affiliates or directors have any relation with the issuer;
- The trustee shall not act as arranger of the issue and shall not pursue any eligible investor to or not to invest;
- Have no track record of default, negligence or non-compliance with any of the securities laws for discharging its duties, if it is in any way connected with the securities market.
- The trust deed shall be preserved in the trustee's office for observation of the eligible investors.
- The trustee shall have to perform the following duties and responsibilities in addition to those described in the deed of trust concerned, namely:
  - The trustee shall act on behalf and for the exclusive interest of the eligible investors;
  - The trustee shall ensure compliance of the issuer as per the requirements of these rules;
  - The trustee shall monitor timely payment of all dues of the issuer to the eligible investors in terms of the IM or other terms and conditions of the issue of debt securities;
  - The trustee shall ensure creation of charges by the issuer over collateral securities and obtaining other securities or guarantees in favor of the trustee;
  - The trustee shall enforce its rights, over the collateral securities and other securities or guarantees when it is necessary to do;
  - The trustee shall call the eligible investors' meeting and shall enforce the decisions within such time of any default or any act of the issuer which may affect the interest of the eligible investors as specified in the deed of trust and in the IM;
  - Delay in payment of any dues by the issuer, which is not approved by the trustee shall be treated as final default, in such a case the trustee shall enforce its rights over the collateral securities and other securities or guarantees of the issuer observing due legal process and thereafter the trustee shall dispose-off the same to pay the proceeds proportionately to the eligible investors after deduction of costs related thereto;
  - In case the delay is approved by the trustee for a certain period upon any reasonable ground, the trustee shall ensure repayment of the dues within the approved delay period along with interest for the delay period at a rate of 2% (two percent) p.a. above the usual rate of return of the debt instrument;
- The trustee shall submit an annual compliance report to the Commission regarding the activities of the issuer including repayment of dues to the eligible investors;
- The trustee shall take adequate steps for redressal of grievances of the eligible investors within one month of the date of receipt of the complaints and he shall keep the Commission informed about the number, nature and other particulars of the complaints received and the manner in which such complaints have been redressed;
- The trustee shall be liable to sue or to be sued on behalf of the eligible investors;

- The trustee may, if required, inspect or call for books of accounts, records, register of the issuers and the trust property to the extent necessary for discharging its obligation.
- The trust deed or appointment of the trustee cannot be varied or modified without prior approval of the Commission.
- The Commission may, considering the appeal of two third of the securities holders or in the event of negligence of its duties or in the public interest, if it thinks fit, replace the trustee of an issue by a new trustee:

Provided that the trustee shall be given an opportunity of being heard before cancellation of its appointment.

- A trustee can resign with prior approval of the Commission which shall not be effective until appointment of a new trustee and handing over charges by the resigning trustee.
- A trustee shall cease to exist as trustee of an issue upon full and final settlement of the securities.
- The trustee for an issue shall be entitled to an annual trustee fee of maximum 0.25% of the outstanding amount of the debt securities.

**Rule Number 10: Consideration of the application of trustee and decision thereon**

- On receipt of the application under rule 9, the Commission shall examine it, and if it is satisfied that all the requirements of rule 9 are fulfilled, it shall accord registration to the trustee to act as trustee to the issue, as sought for, within thirty days of receipt of the application.
- If the Commission finds that the application does not fulfill all the requirements of rule 10, it may, within twenty days of receipt of the application, direct the applicant to fulfill the requirements within such time as the Commission may determine, and on fulfillment of such requirements, the Commission shall accord the consent as prayed for within 30 (thirty) days of such fulfillment.
- The Commission may call for further information, in addition to the requirements of rule 9, if it so deems necessary.
- If the Commission finds that the application does not fulfill all the requirements of rule 9, or where a direction to fulfill such requirements has been given under sub-rule (2) and (3) and the applicant has failed to fulfill such requirements, it may reject the application, stating the reasons thereof.
- If the Commission decides to award registration to the trustee, the trustee shall pay, within fifteen days of issuance of the registration certificate, a registration fee of Tk. 50,000.00 (taka fifty thousand) only through a bank draft or payment order issued in favor of the Securities and Exchange Commission.

**Rule Number 11: Substitute trustee**

- If the trustee resigns or fails to perform its duties under the deed of trust or these rules, the debt security holders' association shall appoint a substitute trustee.
- The substitute trustee shall meet the qualification requirements of rule 3 of these rules.
- The trustee which is replaced shall do all that is necessary to substitute the new trustee in its place.

**Rule Number 11: Duties of the trustee upon a default**

- If an event of default as defined in the deed of trust is known to the trustee, the trustee shall mail a notice of the default within 07 (seven) days after it occurs to debt holders, each stock exchange upon which the debts are traded, and the Commission.
- If, within 10 (ten) days after mailing of the notice required by sub-rule (1), the officers of the debt holders' association shall inform the trustee that the debt security holders' association will meet to consider the default, the trustee shall not act until instructed in writing by the debt holders' association.
- If no meeting of the debt security holders' association is called within 10 (ten) days after mailing of the notice required by sub rule (1) or the debt security holders' association issues no written instructions to the trustee within 30 (thirty) days after mailing of the notice, the trustee shall proceed as required by the deed of trust. If the debt security holders' met and issue written instructions to the trustee, the trustee shall follow those instructions.
- The trustee shall incur no liability if it follows the written instructions of the debt security holders' association or, if the debt security holders' association issues no written instructions, the procedures required by the deed of trust.
- If all efforts of negotiation by the trustee fail, it can take legal action against the issuer for recovery of the outstanding including principal and interest of the debt securities as per existing laws.

**Rule Number 16: Penalties for violations of these rules**

- Any person who violates the provisions of these rules shall be subject to civil and criminal penalties in accordance with law.
- No civil penalty may be imposed by the Commission nor criminal
- proceedings begun without notice and an opportunity to be heard. The Commission shall make a record of its proceedings.
- Appeals from civil penalties assessed by the decision of the Commission shall be to the Commission and then to the superior court.

## **NOTIFICATION**

20 June 2018

No. BSEC/CMRRCD/2006-158/208/Admin/81:Whereas, the Bangladesh Securities and Exchange Commission (hereinafter referred to as the “Commission”) deems it fit that the consent already accorded by the Commission, or deemed to have been accorded by it, or to be accorded by it in future, to the issue of capital by the companies listed with any stock exchange in Bangladesh, shall be subject to certain further conditions on financial reporting and disclosure in order to enhance disclosure and transparency in the interest of investors and the capital market;

Now, therefore, in exercise of the power conferred by section 2CC of the Securities and Exchange Ordinance, 1969 (XVII of 1969), the Commission hereby imposes the following further conditions to the consent already accorded by it, or deemed to have been accorded by it, or to be accorded by it in future, to the issue of capital by the companies listed with any stock exchange in Bangladesh, namely: -

### **Preparation of Financial Statements. -**

The financial statements (annual or interim) of the company shall be prepared in accordance with the Securities and Exchange Rules, 1987 as well as the provisions of International Accounting Standards (IAS) or International Financial Reporting Standards (IFRS) as applicable in Bangladesh or as per requirements under the Financial Reporting Act, 2015 as the case may be, unless otherwise specified in the referred Rules and other rules related to the issue or issuer of securities.

### **Auditing of Financial Statements. –**

- The company shall get its annual financial statements or, where applicable, interim financial statements, audited by duly appointing an auditor or audit firm enumerated in the panel of auditors as declared by the Commission from time to time.

**Explanation:** In this sub-condition, “panel of auditors” means any partnership firm of Chartered Accountants which is in the panel of the Commission within the meaning of the Bangladesh Chartered Accountants Order, 1973 (President’s Order No. 2 of 1973) as per the guidelines as prepared by the Commission from time to time in this regard.

- The company shall not appoint any firm of chartered accountants as its statutory auditors for a consecutive period exceeding three years.
- The auditor or audit firm shall not also be eligible for performing the auditing of financial statements of the company for a consecutive period exceeding three years.
- The chartered accountant or auditor or partner of an audit firm shall make the audit report in accordance with the International Standards on Auditing (ISA) applicable in Bangladesh ensuring the provisions of the Companies Act, 1994, the Financial Reporting Act, 2015, securities laws and other relevant laws.
- The chartered accountant or auditor or partner of the audit firm shall have to follow or ensure the compliance with the provisions or professionalisms or practices or ethical requirements of the International Standards on Auditing (ISA), system of quality control requirement under the International Standard on Quality Control (ISQC), the Code of Ethics for Professional Accountants and other relevant standards and pronouncements as applicable in Bangladesh in conduction of auditing and issuing audit report.

- The company shall not get its financial statements audited by any firm of chartered accountants or auditor which or who is convicted for any offence related to securities or stock exchange or financial matter under any law, or which or who has been declared ineligible by the Commission for acting as auditor of any issuer under sub-rule (3B) of rule 12 of the Securities and Exchange Rules, 1987 or against whom any disciplinary action has been taken by the Institute of Chartered Accountants of Bangladesh (ICAB), or the Financial Reporting Council (FRC).

**Adoption of Quarterly Financial Statements.**

- The company shall notify the Commission and the stock exchange in advance the date and time of its board of directors' meeting specially called for consideration or adoption of its quarterly financial statements and for declaration of any entitlement including interim dividend for the shareholders before 3 (three) working days of holding such meeting.
- The board of directors of the company, while considering or adopting any quarterly financial statements, shall, in the same board meeting, declare the net asset value (NAV) per share, earnings per share (EPS) and net operating cash flows per share (NOCFPS) and the board shall not take any decisions with regard to recommending interim dividend for the shareholders on the basis of said financial statements without being duly audited and without declaring the shareholders who shall be entitled to such dividend:

Provided that no stock or bonus entitlement shall be declared as interim dividend:

Provided further that the board of directors may from time to time pay to the shareholders such interim dividend as appears to the board of directors to be justified by the profits of the company on the basis of related periodical audited financial statements:

Provided further that the decision about recommending interim dividend and entitlement for such dividend cannot be changed:

Provided further that the company shall, among others, disclose comparative net asset value (NAV) per share, earnings per share (EPS) and net operating cash flows per share (NOCFPS) in respect of the previous period for such NAV per share, EPS and NOCFPS as declared for the current period's financial statements.

- It is optional that the company may call a conference on its quarterly financial statements or results for its shareholders or investors or analysts or financial reporters or other stakeholders within the shortest possible time but not later than 7 (seven) days from the date of adopting or considering of such quarterly financial statements by the board of directors and duly published in the national dailies and posted in the website as well as in one online daily news site.
- The Chairperson of the board of directors and/or the Chief Executive Officer (CEO) or Managing Director (MD), Chief Financial Officer (CFO) and Head of Internal Audit and Compliance (HIAC) shall remain present in the above conference for providing explanation on the quarterly financial results and to answer the queries of the shareholders or investors or analysts or financial reporters or other stakeholders on the said financial results.
- The company shall notify the stock exchange and the Commission in advance the date, time and venue of the above conference before 3 (three) days of holding such conference and



immediately publish such notice in at least two widely circulated national dailies, one in Bengali and the other in English as well as in one online daily news site.

**Submission of Quarterly Financial Statements.**

- The company excepting the life insurance company shall, within 45 (forty-five) days of end of the first quarter (Q1) of the financial year, submit quarterly financial statements (audited or unaudited) to the stock exchange and the Commission, and publish the same in at least two widely circulated national dailies, one in Bengali and the other in English as well as in one online daily news site:

Provided that in case of significant deviation in any parameter between the quarterly periods, the company shall provide reasons therefor:

Provided further that life insurance company shall, within 90 (ninety) days of end of Q1 of the financial year, submit quarterly financial statements (audited or unaudited) to the Commission and the stock exchange, and publish them in the same manner as above.

- The company shall, within one month of end of the second quarter (Q2) of the financial year, submit quarterly financial statements (audited or unaudited) to the Commission and the stock exchange, and publish the same in at least two widely circulated national dailies, one in Bengali and the other in English as well as in one online daily news site:

Provided that in case of significant deviation in any parameter between the quarterly periods, the company shall provide reasons therefor.

- The company shall, within one month of end of the third quarter (Q3) of the financial year, submit quarterly financial statements (audited or unaudited) to the Commission and the stock exchange, and publish the same in at least two widely circulated national dailies, one in Bengali and the other in English as well as in one online daily news site:

Provided that in case of significant deviation in any parameter between the quarterly periods the company shall provide reasons therefor.

Disclosure of quarterly (Q1, Q2 and Q3) financial statements shall be in accordance with the

provisions of the Securities and Exchange Rules, 1987 as well as the provisions of the International Accounting Standards (IAS) or International Financial Reporting Standards (IFRS) as applicable in Bangladesh, as the case may be, unless otherwise specified in the referred Rules along with special disclosures on:

- detailed break-up or composition of shareholders' equity: paid-up capital, share premium and number of ordinary shares with face value and date of issue, preference share capital, number of preference shares with face value and date of issue, conversion features of preference shares (if any) with conversion date, conversion features of any other securities (if any) with conversion date, detailed break-up of reserve and surplus;
- calculation of net asset value (NAV) per share;
- calculation of basic and diluted earnings per share (EPS);
- calculation of net operating cash flows per share (NOCFPS); and

- in addition to disclosures on direct method of cash flows, a reconciliation of net income or net profit with cash flows from operating activities making adjustments for non-cash items, for non-operating items and for the net changes in operating accruals.

#### **Submission of Annual Financial Statements**

- Annual financial statements of the company except a life insurance company shall be audited within 120 (one hundred and twenty) days from the date on which the company's financial year ends and a copy of such audited financial statements shall be submitted to the Commission and the stock exchange within fourteen days thereof:

Provided that a listed life insurance company shall, within 30th June of Gregorian calendar, submit the audited annual financial statements to the Commission and the stock exchange:

Provided further that on an application filed by the company under rule 12(3A) of the Securities and Exchange Rules, 1987, the Commission may, on good cause shown and only under extreme circumstances, extend the time for auditing the annual financial statements or submission of the annual financial statements to the Commission, as the case may, as it deems fit.

- Disclosure of annual audited financial statements shall be in accordance with the provisions of the Securities and Exchange Rules, 1987 as well as the provisions of the International Accounting Standards (IAS) or International Financial Reporting Standards (IFRS) as applicable in Bangladesh, as the case may be, unless otherwise specified in the referred Rules along with special disclosures on:
  - detailed break-up or composition of shareholders' equity: paid-up capital, share premium and number of ordinary shares with face value and date of issue, preference share capital, number of preference shares with face value and date of issue, conversion features of preference shares (if any) with conversion date, conversion features of any other securities (if any) with conversion date, detailed break-up of reserve and surplus;
  - calculation of net asset value (NAV) per share;
  - calculation of basic and diluted earnings per share (EPS);
  - calculation of net operating cash flows per share (NOCFPS); and
  - in addition to disclosures on direct method of cash flows, a reconciliation of net income or net profit with cash flows from operating activities making adjustments for non-cash items, for non-operating items and for the net changes in operating accruals.

#### **Adoption of Annual Financial Statements.**

- The company shall notify the Commission and the stock exchange in advance the date and time of its board of directors' meeting specially called for consideration or adoption of its annual audited financial statements and for declaration of any entitlement for the shareholders before 7 (seven) days of holding such meeting.
- The board of directors of the company, while considering or adopting annual audited financial statements shall, in the same board of directors' meeting, declare the net asset value (NAV) per share, earnings per share (EPS) and net operating cash flows per share (NOCFPS) and also fix the date of the relevant annual general meeting (AGM) and take specific decisions with regard to:

- recommending or not recommending dividend for the shareholders on the basis of said financial statements; and
- the shareholders who shall be entitled to such dividend, if recommended:

Provided that the decision about recommending or not recommending dividend and entitlement for such dividend, if recommended, shall be taken after considering the interim dividend already distributed and cannot be changed prior to holding of the annual general meeting:

Provided further that no dividend shall be paid other than out of profits of the year or any other undistributed profits:

Provided further that no dividend shall be declared out of the capital reserve account or the revaluation reserve account or any unrealized gain or out of profit earned prior to the incorporation of the company, if any, or through reducing paid-up capital or through doing anything so that the post-dividend retained earnings become negative or a debit balance:

Provided further that in case of declaration of stock dividend for the year, the company shall explain the reason for declaring stock dividend and utilization of such retained amount as capital (stock dividend) shall be disclosed in the annual report:

Provided further that the company shall, among others, disclose comparative net asset value (NAV) per share, earnings per share (EPS) and net operating cash flows per share (NOCFPS) in respect of the previous year for such NAV per share, EPS and NOCFPS as declared for the current year's financial statements.

#### **Authentication of Financial Statements. –**

- Any unaudited financial statements of the company shall be authenticated on behalf of the board of directors with the signatures of the Chief Executive Officer (CEO) or Managing Director (MD), Chief Financial Officer (CFO) or Head of Finance and Accounts and the Company Secretary (CS) including at least two directors of the board until and unless otherwise required by applicable primary regulators.
- Any audited financial statements of the company shall be authenticated as per the provisions of the Companies Act, 1994 and requirement of the Commission as well as requirement of primary regulator of the issuer, if any.

#### **Posting of Financial Statements in the Website. –**

The company shall make available the detailed financial statements (annual or quarterly) in its website as well as in the website of the stock exchange through link arrangement and in case of quarterly (Q1, Q2, Q3) financial statements, the company shall include the following paragraph in bold letters at the end of the quarterly financial statements published in the newspapers:

**“The details of the published quarterly (Q1 or Q2 or Q3) financial statements are available in the website of the company. The address of the website is”.**

#### **Submission of Annual Report.**

- The company shall furnish a copy of its annual report in soft form or printed form as the case may be, including all relevant annual audited financial statements, management's discussion and analysis, report or certificate on compliance of the Corporate Governance

Code and Directors' Report along with the notice of the annual general meeting, etc., to the shareholders at least 14 (fourteen) days before the annual general meeting of the shareholders of the company at which the annual report is to be laid before them and shall simultaneously furnish 30 (thirty) printed copies of such reports to the Commission and to the stock exchange.

- The company shall publish its annual report in its website linked with the stock exchange within at least 14 (fourteen) days before the annual general meeting of the shareholders of the company, with proper notification, specifying the web address, in two widely circulated national dailies (one in Bengali and one in English) as well as in one online daily news site for general information of the shareholders:

Provided that the company shall also send the annual report to the e-mail addresses of the shareholders available in their beneficial owner (BO) accounts with the depository.

- The company shall also print sufficient number of annual reports so that any shareholder may collect the printed copy of the annual report from the registered address of the company or its Investors' Relation Department or from the AGM venue if any shareholder requires in writing beforehand.

#### **Repeal and Savings.**

- This Notification shall repeal following Notifications, Directive and Order of the Commission, in full or part, as stated below:
- Notification No. SEC/CFD-71/2001/Admin/08 dated March 28, 2001, published in the Bangladesh Gazette on April 29, 2001;
- Notification No. SEC/CMRRCD/2009-193/Admin/03-31 dated June 01, 2009, published in the Bangladesh Gazette on June 29, 2009;
- Condition No. 2 of the Notification No. SEC/CMRRCD/2008-183/Admin/03-34 dated September 27, 2009, published in the Bangladesh Gazette on January 12, 2010;
- Directive No. SEC/CMRRCD/2009-193/09/Admin/21 dated January 17, 2010, published in the Bangladesh Gazette on February 20, 2010; and
- Condition No. (b) of the Order No. SEC/CMRRCD/2009-193/104/Admin/26 dated July 27, 2011, published in the Bangladesh Gazette on September 29, 2011 and Order No. SEC/CMRRCD/2009-193/174/Admin/61 dated July 08, 2015, published in the Bangladesh Gazette on August 30, 2015.
- Notwithstanding the repeal of the Notifications, Directive and Order of the Commission, in full or part, as stated above, any document or statement or report made or disclosed, resolution passed, instrument issued or action taken under or in pursuance of the said Notifications, Directive and Order shall, if in force before the commencement of this Notification, continue to be in force and shall have effect as if made, disclosed, passed, issued or done under or in pursuance of this Notification.



## Chapter 3

### The Bank Companies Act, 1991 (Amended up to 2018)

#### **Contents**

*Introduction*

*Examination context*

#### *Topic List*

- Preliminary on Bank Company Act, 1991
- Business of Banking Companies
- Minimum paid up capital and reserves.
- Reserve fund and cash reserve
- appointment and removal of directors and chief executive officer
- Restrictions on the payment of dividends
- Restrictions on loans and advances.
- Licensing and cancel of license of Bank Company
- Audit & inspection
- Illegal banking of companies etc.
- Prohibition of certain activities in relation to banking companies
- Suspension of business and winding up of banking companies.
- Speedy disposal of winding up proceedings (Appeals)
- Miscellaneous (Punishment & fines)
- Important circulars for Bank Companies:

*Bank Companies Act is an important part of the syllabus. Typically, twenty percent of the questions come from the part of Companies Act. Understanding the basic precepts relating to this act is vital. Other than Bank Company Act, you may also expect questions from BRPD & DOS circulars.*

*You are likely to be presented with scenarios and may have to conclude whether the formation of Bank companies is valid, business of Bank company in compliance with law, appointment and removal of directors and chief executive officer has done properly. Candidates should be able to demonstrate their knowledge of the main provisions of the Bank Company Act, 1991.*

**Act to override articles, memorandum etc.**

As per section 6 of Bank Company Act, 1991, this Act will override (supersede) the articles, memorandum, 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 before or after the commencement of this Act of a banking company. 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.

**Business of Banking Companies**

**1.1. What are the businesses of banking companies?**

Bank companies do banking business, where “Banking business means offering of loan or receiving deposits of money from the public for investment payable on demand or otherwise and deserves withdrawal through cheque, draft, order or otherwise (Section-5 (p) of the Bank Company Act, 1991). According to section 7 of the same Act, in addition to the business of banking, a banking company may engage in all or any of the following forms of business, namely:

the borrowing, raising or taking up of money;

the lending or advancing of money either upon or without security;

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

- the granting and issuing of letters of credit, traveler’s checks, and circular notes;
- the buying, selling and dealing in gold and silver coins and coins of other metals;
- the buying and selling of foreign exchange including foreign bank notes;
- 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;
- 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;
- the negotiating of loans and advances;

- the receiving of all kinds of bonds or other valuables on deposit or for safe custody or otherwise;
- providing vaults for the safety of the deposits;
- the collecting and transmitting of money against securities;
- acting as agents for the Government, local authorities or any other person;
- 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;
- contracting for public and private loans and negotiating and issuing the same;
- 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;
- the carrying on and transacting of every kind of guarantee and indemnity business;
- 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-
  - repurchase by the seller, or
  - selling in the way called purchase on rent, or
  - repayment of outstanding rates, or
  - leases, or
  - sharing out of revenues, or
  - financing in any other way;
- 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;
- 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;
- undertaking and executing trusts;
- undertaking the administration of movable and immovable property as executor, trustee or otherwise;
- for the benefit of employees or ex-employees of the banking company or the dependents and connections of such persons-

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

granting pensions and allowances;

making payments toward insurance;

subscribing to any exhibition or any object generally useful;

guaranteeing money for all these purposes.

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

- 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;

Therefore, no banking company shall engage in any form of business other than those referred to in subsection

### **1.2. Use of the Word "Bank" or any of its derivatives.**

As per section 8 of Bank Company Act, 1991, 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 -

- any subsidiary company of a banking company formed for one or more of the purposes mentioned in subsection (1) of section 26 of Bank Companies Act 1991.;
- any association of banks formed for the protection of their mutual interest and registered under section 26 of the Company Act.

Furthermore, the Government may, by notification in the official Gazette 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.

### **1.3. Prohibition of certain forms of trading by banking companies**

In accordance to section 9 of Bank Company Act, 1991, no banking company shall directly or indirectly deal in the buying, selling or bartering of goods, except in connection with the realization of security given to or held by it, or engage in any trade or buy, sell or barter goods for others otherwise than in connection with bills of exchange received for collection or negotiation or with such of its business as is approved under section 7.



#### **1.4. Disposal of non-banking assets**

Section 10 of Bank Company Act, 1991, 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. In this case, section 7 will not be work as reference. However, the Bangladesh Bank may extend the period 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.

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.

#### **1.5. Prohibition of employment of managing agents and restrictions on certain forms of employment.**

As per Section 11 of Bank Company Act, 1991,

No banking company shall employ or be managed by a managing agent; or shall employ or continue the employment of any person:

- who is insolvent or at any time has been declared insolvent or has suspended payment, or has compounded with his creditors or has been convicted by a criminal court of an offence out of moral turpitude.
- anyone who receives his remuneration or part of his remuneration on commission basis or as a share in the profits of the company. However, nothing referred to, in this sub-clause shall apply to the payment of bonus by a bank company in view of a settlement or award decided or made under any law with reference to industrial disputes; or any commission to any broker on a contract otherwise than as a regular member of the staff of the company.
- whose remuneration is excessive in the view of the Bangladesh Bank. 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 fulfillment of one's duties.
- Moreover, no banking company shall be managed by any person
- 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 Companies Act, except with the previous approval of the Bangladesh Bank; or
  - who is engaged in any other business or vocation; or
  - who had a contract with the company for a period exceeding five years at any one time:

- If a person holding the office of chairman or director or manager or chief executive officer has been adjudicated by any court to have infringed the provisions of any law and the Bangladesh Bank is of the opinion that the infringement is of the nature that the association of such person is or harmful to the interests of the bank company.
- Under sub-section (2) it may be provided in an order that the said person shall not without prior permission of the Bangladesh bank in any way directly or indirectly be involved with or take part in the management of the said bank company or any other bank company to a period not exceeding 5 years as referred to, in the said order.
- 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.

However, any decision or order of the Bangladesh Bank made under this section shall be final.

#### **1.6. Restrictions on removal of records and documents (Sec 12).**

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 (electronically or otherwise preserved ledger, day-book, cash book, account book and all other books) or documents (electronically or otherwise preserved voucher, cheque, bill, pay order, security for an advance and any other document supporting entries) relating to its business to a place outside Bangladesh, without the prior permission in writing of the Bangladesh Bank

#### **1.7. Minimum paid up capital and reserves.**

As per section 13 of Bank Company Act, all operating bank Companies in Bangladesh, from time to time, shall be preserved the capital in specific amount, rates and ways by the Bangladesh Bank.

BRPD Circular Letter No. 11 dated 14 August, 2008 stated that with a view to strengthen financial sustainability of banking companies working in Bangladesh, empowered by the proviso under section 13(2) of the Banking Companies Act, 1991, in consultation with the government, Bangladesh Bank through the notification no. BRPD(R-1)717/2008-511 dated 12 August 2008 has re-fixed that the minimum Paid-up Capital and Reserve Fund of banking companies shall be Taka to 400 crores, of which the Paid-up Capital shall be not less than Taka 200 crore.

To raise Paid-up Capital and Reserve Fund, as mentioned in the notification, banks shall have to follow the instructions as stated below:

- Banks shall have to fulfill the required Paid-up Capital and Reserve Fund of Taka 400 crore within 3 years from the notification date i.e. within 11 August 2011 and the paid-up capital will be not less than Taka 200 crore.
- To maintain required capital Banks may raise the Reserve by keeping profit after tax by issuing right shares or IPO, if applicable.

- Any Bank having shortfall of required capital and reserve will not pay or declare cash dividend.
- Foreign Banks will have to meet the capital shortfall by not repatriating the profit or by bringing in additional/Capital from abroad within the stipulated.
- In terms raising the capital, bank-company shall take necessary measures to amend their Memorandum and Articles of Association.
- Feasibility of merging with other banks and financial institutions may be considered to ensure the required capital and reserve within stipulated time limit.

Sub-section 3 of section 13 states that in case of Bank Company registered outside Bangladesh, if that bank company does not deposit in Bangladesh Bank in cash or through approved securities without liability or partly in cash and partly through such approved securities or through any such asset fixed by the Bangladesh Bank to be kept in Bangladesh Bank as per sub-section (2), that bank company shall not be deemed to comply provisions of that sub-section.

When the total value of paid up capital and reserve fund is not equal to the amount referred to in this section-

- No bank company in existence since the commencement of this Act, shall after the expiry of two years carry on business in Bangladesh, and;
- No other bank company other than those referred to, in clause (a) shall after the commencement of this Act, start its business.

However, Bangladesh bank may if it deems fit in any special case extend the period referred to, in this sub-section to the extent not exceeding one year. If Bangladesh Bank is of the opinion that any bank company is in default to maintain the minimum paid up capital and reserve in compliance with the provision of this section, it shall be liable to pay the fine prescribed by law.

***Interactive Question 1:***

The draft audited financial statements for the year ended 31st December 2017 of CD Bank Ltd. (a schedule commercial bank) has been placed in the board meeting for authorization to issue. The financial results depict that as per BSEL-III, the total capital of the bank stood at BDT 7130 million (Paid up-capital BDT 4,000 million, Statutory Reserve BDT 1,830 million, Retained Earnings BDT 825 million, 1% Provision of Loans & Advances BDT 475 million). The Risk Weighted Assets (RWA) of Bank as per BASEL-III stood at Taka BDT 69,200 million and as per BRPD circular ref: 18 dated 21/12/2014, the minimum required Capital Adequacy Ratio is 10% and as such the Risk Based Capital requirement is BDT 6,920 million. In a confidential note, the Risk Management Division (RMD) of the bank has informed to the Managing Director that some of big client's rating may be downgraded in the next year due to Middle East Crisis and RMD has forecasted that RWA may rise to BDT 73,500 in the next quarter. Face value of share is BDT 10 per share. The majority of the members in the board opined 20% cash dividend while a few including chairman opined to keep the limit to 10% cash and 10% bonus as dividend.

- As a CFO of the Bank, chairman is seeking your professional advice as to how to resolve the dividend decision as per Bank Companies Act 1991 considering the capital maintenance issue of the bank.
- Assume that, the RWA is 73,500 i.e. required capital maintenance increased to BDT 7,350 million. You are required to brief the board on dividend issue, Capital Reservation and future legal consequences with reference to section-13 & 22 of Bank Companies Act 1991.
- In another agenda, the Treasury Department has the following proposals for board approval:
  - to enhance the existing investment limit of BDT 900 million to 1800 million in capital market. The existing limit has dried up and treasury had good performance in the capital market in the last two years and Management has full confidence on Treasury Head.
  - The entire budget (enhancement) would like to invest in the securities of CSD Ltd. It is mentioned here that that paid up capital of CSD Ltd. is BDT 5000 million.

As a CFO, you are also required to suggest the maximum amount of investment limit for the capital market and the amount to be invested in CSD Ltd. in line with the provisions 26KA of Bank Companies Act 1991.

*(Hints: As per BASEL-III, total capital means = Shareholders Equity + 1% General Reserve on Loans & Advance + 50% Revaluation Reserve)*

### **1.8. Regulation of paid-up capital, subscribed capital and authorized capital and voting rights of share-holders.**

Section 14(1) of the Bank Companies Act states that no bank company other than a new bank or a specialized Bank incorporated in Bangladesh shall commence business in Bangladesh unless it satisfies the following conditions:

- Subscribed capital of the company shall not be less than one-half of the authorized capital.
- Paid-up capital of the company shall not be less than one-half of the subscribed capital.
- The conditions referred to under clause (a) and (b) shall be complied with within the period not exceeding two years as the Bangladesh Bank may direct if the capital of the company is increased.
- The capital of the company consists of ordinary share only.

- Subject to the provisions referred to, in clause (f), the voting rights of any one share holder are strictly proportionate to the contribution made by him to the paid up capital of the company.
- Voting rights of any one share-holder, except those of the Government, do not exceed five percent of the total voting rights of all the shareholders.

According to sub-section (2), every Chairman, Managing Director or Chief Executive Officer by whatever name called of a bank company, shall supply to the Bangladesh Bank through that bank company returns of full particulars to the extent and value of his holding of shares, whether directly or indirectly in the bank company of any change to the extent of such holding or any variations in the rights related there and such other information relating to those shares as the Bangladesh Bank may, by order, require and in such form and at a such time as may be specified in the order.

### **1.9. Reserve Fund**

According to section 24, every banking company incorporated in Bangladesh shall create a reserve fund. 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.

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

### **1.10. Cash Reserve.**

In accordance with section 25 of Bank Company Act 1991, 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. For the purpose, 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. However, 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.

If any bank fails so to do, shall be punishable by the Bangladesh Bank with a fine of no more than 2500 Takas for every day.

Subsection (3) also mention that 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 preceding 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 percent 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 preceding 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.

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.

#### **1.11. Election of new directors**

Section 15 lays down the rules regarding the election of new directors:

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

#### **1.12. Term of office of directors, etc. (Sec. 15 AA)**

The highest tenure of the position of Director of Bank Company shall be for 3 years from the date of effectiveness. However, no other Director except the Managing Director or the Chief Executive Officer of a Bank Company, by whatever named called, shall hold the position of Director in a Bank Company for more than 3 consecutive terms.

No person having hold an office for a period of nine years without cessation according to subsection 2. He/she shall be again eligible as director until elapse of 3 years from the date of conclusion of the 3<sup>rd</sup> term. three years have passed since the end of the said period.

**1.13. Vacancy of the office of a director**

As per section 17, the office of a director will be vacant, if any director of a banking company fails to:

- pay advances or loans accepted by him or instalments or interests on that advances/ loans, or
- pay the money he is bound to for any security, or
- accomplish any duty or to be accomplished by him and the responsibility for which he has taken on in writing,

Moreover, 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.

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

***Interactive Question 2:***

Mr. X is a director of CB Bank Ltd., a private scheduled bank listed in DSE and CSE. He fails to pay Tk.50 million due from him on account of a guarantee given by him against a loan of Tk.75 million extended to his friend Mr. Y by JB Bank Ltd., a state owned bank. What could be the consequences with regard to his directorship of CB Bank Ltd. and his due amount to JB Bank Ltd.? Discuss.

**1.14. Restrictions on commission of sale of shares, brokerage, discount etc. (Sec 19)**

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.

**1.15. Prohibition of charge on unpaid capital.**

According to section 20 of Bank Company Act, 1991, no banking company shall create any charge upon any unpaid capital of the company. Any such charge, if created, shall be invalid.

**1.16. Prohibition of floating charge on assets. (Sec. 21)**

- Notwithstanding anything contained in section 7, no banking company shall create a floating charge on the undertaking or any property of the company or any part thereof, unless the creation of such a floating charge is certified in writing by the Bangladesh Bank and not being detrimental to the interests of the depositors of the banking company.
- Any charge mentioned in subsection (1) shall, without the certificate of the Bangladesh Bank, be invalid.

- 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.

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.

### **1.17. Restrictions on the payment of dividends.**

Section 22 of Bank Company Act, 1991, lays down the rules regarding the payment of dividend:

- No banking company except new and special banks 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, or
  - it manages to preserve constantly six per cent of its temporary and demand deposits as discharged and reserved capital.
- 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:
  - in any case where the depreciation of its investments in approved securities has not actually been capitalized or otherwise accounted for as a loss,
  - 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,
  - in any case where adequate provision for bad debts has been made to the satisfaction of the auditor of the banking company.

#### ***Interactive Question 3:***

State the restrictions as to payment of dividend by a banking company other than a new bank or a specialized bank.

### **1.18. Restrictions on the employment of common directors (Sec. 23)**

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

- 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:
- either resign his office as a director of the banking company, or
- 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.

***Interactive Question 4:***

Mr. 'X' is a director of ABC Bank Limited, MNO Company Limited, a non-banking financial institution and other two insurance companies. All are incorporated in Bangladesh; Describe the consequences or legal provisions for this.

**1.19. Restrictions on loans and advances.**

The primary function of a bank is to collect money from one group of people in the form of deposit and to grant advance and loans to other groups of people. However, there are certain restrictions on granting loans and advances. According to section 27(1) no bank company shall pay any loans or advances against the security of its own share, or sanction unsecured loans or advances to, or make loans and advances on the guarantee of following persons or organizations:

- Any of its directors
- Any of the family members of its directors.
- 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;
- 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.

According to sub-section (2), no bank company shall pay loans or advance without the approval of the majority of the directors of that bank company excluding the director concerned:

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

Sub-section (4) states that the Managing Director of every bank company before the end of the month succeeding that to which the return relates submit to the Bangladesh Bank a return in the prescribed form and manner showing the particulars of:

- all loans and advances sanctioned by it to companies private as well as public in which it or any of its directors is concerned as a director and
- all loans and advances sanctioned by it to public companies in which it or any of its directors is concerned as managing agent or guarantor.

If on verification of any return submitted under sub-section (4) it appears to the Bangladesh Bank that any loans or advances referred to in that sub-section have been sanctioned adversely to the interest of the depositors of the bank company, the Bangladesh Bank may by order in writing prohibit the bank company from sanctioning any such further loans or advances on the grant there of as it thinks fit and may be like order direct the bank to secure the payment in advance of any such loans or advances within such time as may be specified in the order [section 27(5)].

***Interactive Question 5:***

A company namely Asian Holdings Limited has approached the BD Bank Limited to avail a term loan facility. Asian Holdings Limited has currently 4 credit facilities with 4 separate banks and now is reported as defaulter by one of the lending banks where its overdue is 7 months.

Can BD Bank Limited in terms of the Bank Companies Act provide loan to the Asian Holdings Limited?

**1.20. Restrictions on the respite of loans (Sec. 28)**

- 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, -
  - any of its directors, and his family members;
  - a commercial institution or company in which any director of the banking company is interested as landowner, co-director, managing agent; and
  - any such person in which any director of the banking company is interested as partner or landowner.
- 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.

**1.21. Power of the Bangladesh Bank to control the giving of advances.**

Section 29 of the Bank Companies Act provides the following powers to Bangladesh Bank for regulating the advances of the bank companies:

- Whenever the Bangladesh Bank is satisfied that it is necessary in the interest of the public to do so it may formulate the policy related to advances to be adopted by the bank companies in general or by any bank company in particular and when the policy has been so

determined, all bank companies or their bank company conceded as the case may be- shall be bound to follow the policy as so determined.

- Without prejudice of the power in general conferred by sub-section. (1), the Bangladesh Bank may direct the bank companies either in general or any specialized bank - or special class of bank companies in the following matters:
  - the credit ceilings to be followed.
  - the minimum ratio of petty loans or other loans to the total advances to be followed:
  - the motive for which advances may or may not be made;
  - the maximum limit of advances which may be given to any bank company or special group of bank companies or a person or community of persons.
  - secured advance and ceiling of interest on advance.
  - the rates of interest to be fixed on advances.
- If any bank company is in default in complying with the direction referred in clause (a) and (b) of sub-section (2), the bank company shall by order of the Bangladesh Bank be held to be liable to deposit such amount as may be determined by it and the bank company shall subject to the condition specified by that bank under compulsion to comply with the direction. However, the Bangladesh Bank shall not direct the said Bank Company to deposit an amount not higher than the amount of which the default has taken place.
- The amount deposited with the Bangladesh Bank under sub-section (3) or any part thereof may be remitted by it to the -bank company conditionally or unconditionally by order in black and white.

#### **1.22. Jurisdiction of Courts regarding interest rates. (Sec. 30)**

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.

#### **1.23. Subsidiary Companies**

According to section 26(1), a bank company shall not form any subsidiary company except a subsidiary company for the purpose referred to below:

- The undertaking and executing of trusts;
- To take the responsibility of the administration of estates as executor, trustee or otherwise;
- Ensuring the arrangement of safe deposit vaults;
- Carrying on banking business according to the principles of sharia;
- With the prior permission in writing of the Bangladesh Bank. –

- The carrying on the banking business exclusively outside Bangladesh;
- The carrying on the banking business based on the transfer of deposits in foreign currency acquired from non-residents;
- Taking initiatives for those businesses which are according to Bangladesh Bank helpful for expansion and development of bank-business in Bangladesh or necessary for public interest or deems to be helpful in any other way.

Sub-section (2) states that except as provided in sub-section (1) no bank company shall hold shares in any company whether as pledge or mortgage or exclusive owner of an amount exceeding such as:

- Thirty percent of its paid up share capital and reserves or
- Thirty percent of the paid up capital of that company. Provided that, any bank company which on the date of introduction of this Act holding any shares in contravention of the provisions of this sub-sections shall not be liable to any penalty there for if that bank companies-

Informs the Bangladesh Bank of the matter without delay and

Lessens its holding of shares in accordance with the approved limits of this sub-section within the period not exceeding two years as the Bangladesh Bank may fix for this purpose.

Provided further that no bank company shall hold shares in aggregate exceeding 10% of its total liabilities.

According to sub-section 3, notwithstanding anything contained in sub-section (2) if any Managing Director of a Bank Company remains involved in operation of a company or if there is any interest in that case after expiry of one year from the commencement of the Act, concerned Managing Director or Manager of that company shall not hold any share in that company.

#### **1.24. Licensing of banking companies.**

Section 31 states that –

- Except the circumstances laid down in this section, no Bank company shall carry on banking business in Bangladesh without banking license issued in that behalf by the Bangladesh Bank.

However, nothing shall be deemed to prohibit Bank Company already in existence on the commencement of this Act from carrying on banking business if:

- its application is under consideration for sanctioning a license; or,
- it is not intimated by the Bangladesh Bank by notice that a license shall not be sanctioned to it.

Moreover, the Bangladesh Bank shall not give a notice referred to above to a bank company already in existence on the commencement of this Act prior to the expiry of two years in the case of bank companies registered in Bangladesh and of six months in the case of bank companies incorporated outside Bangladesh confined to in sub-section (1) of section 13 or of such further period as the Bangladesh Bank may under the provision to that sub-section think fit to sanction.

- While issuing a license under sub-section (1) the Bangladesh Bank may impose any condition as it may think fit and proper.
- Every bank company already existing on the commencement of this Act prior to the expiry of six months from such commencement and any other bank company prior to commencing banking business in Bangladesh shall apply in black and white to the Bangladesh Bank for a license under this section.
- Prior to granting any license under this section, the Bangladesh Bank is to be satisfied by an inspection of the books of the bank companies or otherwise that all or any of the following conditions are complied with; namely-
  - that the company is to be in a position to meet the claims of the present or future depositors.
  - that the activities of the company are not being or are not likely to be conducted detrimental to the interest of its present or future depositors.
  - that in the case of bank company incorporated outside Bangladesh, the government or law of the country where it is registered provides the same facilities to bank companies registered in Bangladesh as the Government or law of Bangladesh sanctions to bank companies incorporated outside Bangladesh and the company complies with all the provisions of this Act applicable to bank companies incorporated outside Bangladesh.

#### **1.25. Cancellation of License of Bank Company**

According to section 31(5), The Bangladesh Bank may cancel license granted to Bank Company:

- if the company stops to carry on banking business in Bangladesh; or,
- if the company on any occasion fails to comply with any condition referred to under sub-section (2) of section 31; or
- if the company on any occasion fails to comply with any of the conditions referred to under sub-section (4) of section 31.

Provided that prior to cancelling a license under clause (b) or clause (c) of this sub-section if the Bangladesh Bank is satisfied that the delay will not be prejudicial to the interest of its depositors, shall sanction to the company on such terms it may specify an opportunity of taking the necessary steps for complying with such condition.

According to sub – section (6), any banking company dissatisfied by the decision of the Bangladesh Bank in canceling a license under this section may within thirty days since the date of communication of such decision to it may prefer appeal to the Government.

**1.26. Restrictions on opening of new, and transfer of existing places of business. (Sec. 32)**

1. Without the previous permission in writing of the Bangladesh Bank
  - 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
  - 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.
  - 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, meals, 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.
  - 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.

**1.27. Maintenance of liquid assets**

Section 33 sets the following provisions relating to holding of liquid assets:

Every bank company shall preserve in Bangladesh in cash, gold or unencumbered approved securities (unencumbered approved securities of bank company shall include its approved securities lodged with another institution for an advance or any other credit arrangement to the extent to which such securities have not been drawn against or availed of) the value of which shall not at the end of any business be less than such percent of the total time and demand liabilities in Bangladesh as the Bangladesh Bank determine from time to time.

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

The manner of maintaining assets and liabilities and the ratio of class wise maintainable assets shall be fixed by the Bangladesh Bank.

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 information's, namely:

- its assets maintained in accordance with this section; and
- 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.

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.

#### **1.28. Assets in Bangladesh (Sec 34)**

- 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.
- 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 obtain the following particulars, namely: -
  - its assets maintained in accordance with this section;
  - 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.

For the purpose of this section

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

#### **1.29. Half-yearly report etc.**

As per section 36 of Bank Company Act, 1991, 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.

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 information etc. relating to the banking business including other forms of business the banking company may be engaged in.

However, 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.

**1.30. Power to publish information. (Sec 37)**

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.

**1.31. Accounts and balance sheet.**

As per section 38, 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.

The balance sheet, profit and loss account and financial report of any banking company:

- 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;
- 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.

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.

The Bangladesh Bank may amend the forms set out in the First Schedule. However, no less than three months before such amendment, it gives notice in the official Gazette of its intention so to do.

**1.32. Audit.**

Section 39 states that the financial statements 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.

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.



Sub-section (3) of section 39 of Bank Companies Act states that in addition to the affairs which are under the Companies Act, the auditor of a Bank Company is required to state the following in his report:

- whether or not the financial statement shows a true picture of profit and loss for the period concerned.
- whether or not the financial statement has been prepared accurately in accordance with the general accounting procedure.
- whether or not the financial statement has been prepared according to the provisions of relevant existing laws or rules and the instructions issued by the Bangladesh Bank relating to accounts.
- whether or not sufficient provisions have been made for realization of doubtful advance or doubtful assets.
- whether or not the limit or repayment of advance or loan fixed by the Bangladesh Bank from time to time is satisfactory or not.
- whether or not the financial statement has been prepared in accordance with the statement issued by the Bangladesh Bank in consultation with the professional accountants of Bangladesh.
- whether or not the bank company has properly maintained and consolidated all records and accounts received from its branches.
- whether or not the information and explanations asked by the auditor have been found to be satisfactory.
- any other matter which the auditor considers essential to be brought to the notice of the shareholders of the Bank company.

Section 39(4) states that if an auditor in the course of the performance of his duties as an auditor of any bank company is satisfied that-

- there has been serious violation of this Act or serious irregularities have taken place in the observance of it;
- out of fraud or dishonesty a criminal offence has been committed;
- due to loss the capital of the bank company has fallen below 50%.
- serious irregularities have taken place comprising the irregularities jeopardizing the security of the creditors in payment of debts or;
- there is doubt whether the assets of the company is sufficient to meet the claims of the creditors.

If so happens, Banks shall without delay report the matter to the Bangladesh Bank informing the same.

**1.33. Submission of reports (Sec. 39)**

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 months of the close of the period to which those accounts, balance sheets and reports relate. However, the Bangladesh Bank may extend the period for submitting the reports by a further period not exceeding three months.

**1.34. 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 copies submitted under that section.

**1.35. Display of audited balance sheets by banking companies incorporated outside Bangladesh.**

According to section 42, every banking company incorporated outside Bangladesh shall also 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.

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.

**1.36. Inspection. (Sec 44)**

- 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.
- 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.

- 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 information relating to it within such time as the inspector or examiner may specify.
- 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.
- 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,
  - prohibit the banking company from taking fresh deposits; and
  - 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.

- 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.
- 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 information on any of the following subjects, namely:
  - such reserve fund as has not been shown in the balance sheet; or
  - unrealizable credits or credits the realization 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.

### **1.37. Power of the Bangladesh Bank to give directions**

According to section 45, 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 where the Bangladesh Bank is satisfied that:

- in the public interest, or
- to provide for the improvement of the monetary policy or banking policy, or
- 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
- to secure the proper management of any banking company,

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.

### **1.38. Power of the Bangladesh Bank to remove a director etc. of a banking company**

According to section 46 (1) in a case where the Bangladesh Bank is satisfied that it is inevitable to remove the chairman, director, or chief executive by whatever name called of a bank company in the interest of the public or to prevent the affairs of a bank company detrimental to the interest of its depositors or to ensure the proper management of the bank company, the Bangladesh Bank may for reasons to be recorded in black and white by order remove from office such chairman or director or the Chief Executive of the bank company.

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

However, according to sub – section (2), before an order is given, the concerned person or persons shall be given a reasonable opportunity for explanation against the proposed order. But if according to the opinion of the Bangladesh Bank any delay would be prejudicial to the public interest or the interest of the bank company or its depositors, the Bangladesh Bank may direct that– the aforesaid chairman or director or chief executive shall not with effect from the date of the order, act as such chairman or director or chief executive of the bank company or in any way shall not be concerned with the management of the bank company. Any person appointed by the Bangladesh Bank in this behalf shall act as such chairman or director or chief executive of the bank company.

Sub-section (4) states that any person appointed as chairman or director or chief executive under sub-section (2) shall– hold office during the pleasure of the Bangladesh Bank subject to such conditions as may be specified in the order of his appointment and for such period, not exceeding one year as the Bangladesh Bank may specify; and shall not incur any obligation nor liability for anything which is done in his capacity in the course of discharge of his duties.

Nothing in this Act shall be applicable to a Chairman, Director, Chief Executive in whatever name is called nominated by the government (sub-section 6).

### **1.39. Power of the Bangladesh Bank to dismiss the Board of Directors of a banking company**

Section 47 lays down the following rules relating to dissolution of board of directors of a bank:

1. Where the Bangladesh Bank is satisfied that-
  - the activities of the board of directors, by whatever name called, of a bank company is or is likely to be detrimental to the interest of the bank company or its depositors or otherwise undesirable; or
  - for all or any of the reasons mentioned in sub-section (1), of section 46, it is necessary to do so, the Bangladesh Bank may, for reasons to be recorded in writing by order, dissolve the Board of directors of a bank company with effect from such date and for such period as may be specified in the order.
  - The period of dissolution specified in and order under subsection (1) may from time to time be extended by the Bangladesh bank so, however, that the total period of suppression does not exceed two years.
  - All powers and duties of the Board of directors shall during the period of dissolution, be exercised and performed by such person as the Bangladesh Bank may from time to time appoint in this behalf.
  - The provisions of sub-section (2), (3), (4) and (5) of section 46 shall, with the necessary modifications, apply to an order made under this section.

#### ***Interactive Question 6:***

Narrate the circumstances under which the Bangladesh Bank can dissolve the board of Directors of banking company

### **1.40. Further powers and function of the Bangladesh bank**

According to section 49 (1), the Bangladesh Bank may-

- make caution or prohibit bank companies generally, or any bank company in particular, against entering into any particular transaction or class of transactions;
- require bank companies generally, or any bank company in particular, to refrain from taking such actions as it may specify in relation of any matter relating to the business of such bank company or companies, or to take such action in relation thereto as the Bangladesh Bank thinks fit;
- on a request from the bank companies concerned and subject to the provisions of section 76, assist as intermediary or otherwise, in proposals for the amalgamation of such bank companies;
- during the course, after the completion, of any inspection of a bank company under section 44, by order in writing and on such terms and conditions as may be specified therein require the bank company to call a meeting of its directors for the purpose of considering any

matter or may direct any officer of it to discuss such matter with an officer of the Bangladesh Bank,

- depute its officer to observe the proceedings at any meeting of the Board of directors of the bank company or of any committee or of any other body constituted by it and require the bank company to give an opportunity to the officer so deputed to be heard at such meetings and also require such officer to send a report of such proceedings to the Bangladesh Bank,
- require the Board of Directors of the bank company or any committee or any other body constituted by it to give in writing to any officer specified by the Bangladesh Bank in this behalf to his usual address all notice of, meeting of the board, committee or other body constituted by it;
- appoint its officer to observe the manner in which the affairs or the bank company or its branches are being conducted,
- require the bank company to make within such time as may be specified in the order, such changes in the management as the Bangladesh Bank may consider necessary in consequence of the state of affairs disclosed during or by the inspection.

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

### **Illegal banking of companies etc.**

#### **2.1. Power to call for certain information etc.**

As per section 51 of Bank Company Act, where the Bangladesh Bank thinks 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:

- 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 information, documents or records within their knowledge, possession, responsibility or charge, which are related to the abovementioned business;
- 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.
- 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;

- 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.

## **2.2. Power to make public announcements. (sec 52)**

Where the Bangladesh Bank thinks it reasonable to believe that any banking company or any person referred to in section 51 is violating in the course of carrying through a banking business the provision of subsection (1) of section 32, it may make a public announcement to this effect. However, before making such announcement, that company or person shall be given opportunity to present arguments against the announcement proposed.

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.

## **2.3. Disposal of Cash deposits and assets**

According to section 54, 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.

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.

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.

Whoever is indebted to a company or person referred to in an announcement under subsection 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.

#### **2.4. Submission of a report on assets and liabilities to the Bangladesh Bank.**

According to section 55, where a public announcement 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, bank shall within three days after the publication of the announcement submit a report to it on all the assets of that company or person under their custody. However, extended period is allowed if it is approved by the Bangladesh Bank.

#### **Prohibition of certain activities in relation to banking companies**

##### **3.1. Punishments for certain activities in relation to banking companies**

According to section 57 of Bank Company Act, 1991, whoever violates following activities 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;

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

#### **Suspension of business and winding up of banking companies.**

##### **4.1. Suspension.**

According to section 64 (1) of Bank Company Act 1991, 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.

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:

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.



#### **4.2. Winding up by High Court (Sec. 65)**

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

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

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. The Bangladesh Bank may make an application under this section for the winding up of a banking company,

if the banking company:

- has failed to comply with the requirements specified under section 13; or
- has by reasons of the provisions of section 31 become disentitled to carry on banking business in Bangladesh;
- has been inhibited from receiving fresh deposits
- 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;
- 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
- if in the opinion of the Bangladesh Bank
- a compromise or arrangement sanctioned by a Court in respect of the banking company cannot be worked satisfactorily with or without modifications; or
- 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
- the continuance of the banking company is prejudicial to the interests of its depositors.
- 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:
  - it has refused to meet any lawful demand made at any of its offices or branches within two working days; or
  - such demand is made elsewhere and the Bangladesh Bank certifies that the banking company is unable to pay its debts; or
  - the Bangladesh Bank certifies in writing that the banking company is unable to pay its debts.

#### **4.3. Court liquidator**

In accordance with section 66 of Bank Company Act 1991, 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.

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. If there is existing official liquidator, on commencement of appointing court liquidator the office of official liquidator be deemed to have vacated and the vacancy shall be deemed to be filled up by the appointment of the court liquidator as the official liquidator:

However, 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.

#### **4.4. Appointment of the Bangladesh Bank etc. as liquidator (Sec 67)**

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

#### **4.5. Submission of a preliminary report by the official liquidator.**

As per section 70 of Bank Company Act 1991, the official liquidator shall submit a preliminary report to the High Court Division within two months 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:

- the information required by the Companies Act so far as it is available to him;
- the amount of assets in cash which are in his custody or under his control on the date of the report;
- the amount which is likely to be collected in cash before the expiry of that period of two months:

However, 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.

**4.6. Notice to preferential claimants etc. (Sec. 71)**

- 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.
- 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.
- 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.
- If a claimant or creditor fails to comply with the direction in the notice sent to him under subsection (1), then
  - 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;
  - in the case of a creditor, the official liquidator shall himself value the security and such valuation shall be binding on the creditor.

**4.7. Preferential payment to depositors (Sec. 74)**

- 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.
- In the case of preferential payments in accordance with the provision of subsection (1), the procedure shall be as follows, namely: -

- 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;
- 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.

- 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.
- 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).
- 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 the secured creditors may be redeemed by the official liquidator
  - 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
  - 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.

- 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.
- 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: -

- payments to preferential claimants under section 230 of the Companies Act;
- payments under clause a) of subsection (2) to the depositors in the savings bank account;
- payments under clause b) of subsection (2) to the other depositors;
- payments to the general creditors;
- payments to the depositors in addition to those specified in clause a) and clause b) of subsection (2).

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.

#### **4.8. Restriction on voluntary winding up**

As per section 75 of Bank Company Act, no banking company which holds a license granted under section 31 may be go for voluntarily wound up unless the Bangladesh Bank certifies in writing that the company is able to pay in full its debts to its creditors.

#### **4.9. Restriction on compromise or arrangement between banking companies and creditors.**

In accordance with section 76 of Bank Company Act 1991, 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, 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.

#### **Speedy disposal of winding up proceedings**

##### **5.1. Documents of banking company to be evidence.**

For speedy disposal of win dining up proceedings, as per section 83, following evidence shall be kept:

- 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.
- 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.
- 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.

**5.2. Examination of directors and audit of accounts. (Sec. 84)**

- 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.
- 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.
- 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.
- 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.
- 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.
- 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.
- 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:
  - may be used in evidence against him in any proceeding, civil or criminal;
  - shall be open to the inspection or copying of any creditor or contributory at all reasonable times.
- 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 person who has been a director of the banking company is not fit to be a director of a company;
- 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:
  - be a director of any company; or
  - in any way, directly or indirectly, be concerned or take part in the management of any company; or
  - act as an auditor of any company, or be partner of a firm acting as such auditor.

### **5.3. Special provisions for delinquent directors etc.**

As per section 85 of Bank Company Act, 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. 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.

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, direct the attachment of such property or of such portion thereof as the said Division may think fit

### **5.4. Duty of directors and officers of banking companies to assist in the realization of property etc.**

In accordance with 86 of Bank Company Act, every director or officer of a banking company shall give such assistance to the official liquidator as he may require in connection with the realization and distribution of the property of the wound up banking company.

### **5.5. Appeals. (Sec. 90)**

- 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.
- 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.

- 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.

**5.6. Power to inspect. (Sec. 93)**

- 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.
- 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.
- 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.
- 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.

**5.7. Power to call for returns and information (Sec. 94)**

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.

**5.8. Choice for the payment of deposited money (Sec. 103)**

- 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.
- 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.
  - 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.

- 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

**5.9. Giving back of articles deposited in lockers. (Sec. 107)**

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

## **Miscellaneous**

### **6.1. Punishments.**

As per section 109 of the Bank Company Act, 1991, following punishment will be made for noncompliance of said Act:

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

- 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.

**6.2. Chairmen, directors etc. of a banking company to be public servants (Sec. 110)**

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).

**6.3. Bangladesh Bank to take punitive measures (Sec. 112)**

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.

**6.4. Restriction on acceptance of deposits withdrawable by cheque**

As per section 115, 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. However, nothing contained in this section shall apply to any savings bank scheme run by the Government.

**6.5. Restriction on the change of name by a banking company**

In accordance with Section 116 of Bank Company Act, 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.

**6.6. Alteration of memorandum of a banking company.**

According to section 117, notwithstanding anything contained in the Companies Act, no application for the alteration of the memorandum of articles of a bank company shall be maintainable unless the Bangladesh Bank certifies that there is no objection to such alteration.

***Interactive Question 7:***

A bank company starts its business only after getting license from Bangladesh Bank and operates under Bank Companies Act, 1991, though it was initially registered as a Company with the Joint Stock Registrar of Companies and Firms under Companies Act 1994. A Bank Company has to follow Companies Act, 1994 as well as Banking Companies Act, 1991. If a bank company requires to alter its memorandum, which of the acts is to be followed and why?

### **6.7. Exchange of information (Sec. 119)**

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

### **6.8. Protection of action taken in good faith.**

As per section 122 of Bank Company Act 1991, 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.

## **Important circulars for Bank Companies:**

### **7.1. BRPD Circular No. 14: Master Circular on Loan Classification and Provisioning:**

Bangladesh Bank has, over the last several years, positioned the banks on a path towards higher regulatory capital ratios and a more precise calculation of each individual bank's need for capital, through a gradual implementation of internationally recognized capital standards. The enforcement of a stricter regulatory capital regime also requires measures to improve the accuracy of financial data which are used internally, stated in the audited financial statements and reported to Bangladesh Bank as per rules. For both the bank's managerial and Bangladesh Bank's supervisory purposes, as well as for accurate valuation of a bank's capital in all of its financial reports are necessary.

An accurate valuation of capital relies, in turn, on an accurate valuation of assets. Loan-loss provisioning – the recognition that some or all of the required payments on a loan may never be made – is the single most important aspect of asset valuation to bankers and bank supervisors. It is important because loans typically make up 50% or more of the total assets of the bank. Basel II and Basel III devote a great deal of attention to the distinction between “expected losses” and “unexpected losses” on the bank's loan portfolio. The purpose of provisioning is to take into account expected losses. Expected losses can be assigned to loans based on a loan classification system, which has been utilized in Bangladesh for many years and is being updated with this circular.

Bangladesh Bank also wishes to stress that it is the responsibility of bank management to adopt and implement proper accounting and reporting, and that correct classification and provisioning is a part of that responsibility. Loan classification and provisioning must be a key component of a regular internal loan review process that looks at the current likelihood that the borrower will repay. The value of the formed allowance that results from the provisioning process should reflect all expected losses resulting from credit exposures.

Bangladesh Bank has established requirements for general loan loss provisions, in certain percentages, for certain categories of loans that are unclassified or in the Special Mention Account. As the name suggests, general provisions are assigned to take into account the expected losses on pools of loans that are thought to have similar characteristics. The characteristics of each individual loan are not analyzed. Put differently, it is not known or even assumed which loan or loans in the pool are going to result in loan losses; it is simply taken as given that in such large pools, even those currently unclassified, there

will undoubtedly be individual loans that in the future will not be repaid. Ideally, the percentages of provision that are applied to each pool are determined based on historical loss experience of similar loan pools. Banks are encouraged to calculate these historical loss experiences on the loan pools for which Bangladesh Bank has indicated general provision percentages, and use these data if they result in higher provisions than are required in this circular. Because general provisions are not formed based on expectations of loss on any individual loan, they are allowed to be included in the calculation of Tier 2 capital, subject to some restrictions. In contrast, specific provisions (established on loans that are classified as Sub-standard, Doubtful or Bad/Loss) are set up on a loan-by-loan basis after careful analysis of each individual loan's probability of repayment. For loans placed into any of these classification categories, weaknesses have been identified that cast doubt on the borrower's ability or intent to make all contractual payments in a timely manner. For this reason, specific provisions are not allowed to be included in the calculation of Tier 2 capital.

#### **7.1.1. Categories of Loans and Advances:**

All loans and advances will be grouped into four (4) categories for the purpose of classification, namely-

- Continuous Loan (b) Demand Loan (c) Fixed Term Loan and (d) Short-term Agricultural & Micro-Credit.
- **Continuous Loan:** The loan accounts in which transactions may be made within certain limit and have an expiry date for full adjustment will be treated as Continuous Loan. Examples are: Cash Credit, Overdraft, etc.
- **Demand Loan:** The loans that become repayable on demand by the bank will be treated as Demand Loan. If any contingent or any other liabilities are turned to forced loan (i.e. without any prior approval as regular loan) those too will be treated as Demand Loan. Such as: Forced Loan against Imported Merchandise, Payment against Document, Foreign Bill Purchased, and Inland Bill Purchased, etc.
- **Fixed Term Loan:** The loans, which are repayable within a specific time period under a specific repayment schedule, will be treated as Fixed Term Loan.
- **Short-term Agricultural & Micro-Credit:** Short-term Agricultural Credit will include the short-term credits as listed under the Annual Credit Program issued by the Agricultural Credit and Financial Inclusion Department (ACFID) of Bangladesh Bank. Credits in the agricultural sector repayable within 12 (twelve) months will also be included herein. Short-term Micro- Credit will include any micro-credits not exceeding an amount determined by the ACFID of Bangladesh Bank from time to time and repayable within 12 (twelve) months, be those termed in any names such as Non-agricultural credit, Self-reliant Credit, Weaver's Credit or Bank's individual project credit.

### **7.1.2. Basis for Loan Classification:**

#### **Objective Criteria:**

##### Past Due/Over Due:

- Any Continuous Loan if not repaid/renewed within the fixed expiry date for repayment or after the demand by the bank will be treated as past due/overdue from the following day of the expiry date.
- Any Demand Loan if not repaid within the fixed expiry date for repayment or after the demand by the bank will be treated as past due/overdue from the following day of the expiry date.
- In case of any installment(s) or part of installment(s) of a Fixed Term Loan is not repaid within the fixed expiry date, the amount of unpaid installment(s) will be treated as past due/overdue from the following day of the expiry date.
- The Short-term Agricultural and Micro-Credit if not repaid within the fixed expiry date for repayment will be considered past due/overdue after six months of the expiry date.
- All unclassified loans other than Special Mention Account (SMA) will be treated as Standard.
- A Continuous loan, Demand loan or a Term Loan which will remain overdue for a period of 02 (two) months or more, will be put into the "Special Mention Account(SMA)". This will help banks to look at accounts with potential problems in a focused manner and it will capture early warning signals for accounts showing first sign of weakness. Loans in the "Special Mention Account (SMA)" will have to be reported to the Credit Information Bureau (CIB) of Bangladesh Bank.
- Loans except Short-term Agricultural & Micro-Credit in the "Special Mention Account" and "Sub-Standard" will not be treated as defaulted loan for the purpose of section 27KaKa(3) [read with section 5(GaGa)] of the Banking Companies Act, 1991.
- Any continuous loan will be classified as:
  - '*Sub-standard*' if it is past due/overdue for 03 (three) months or beyond but less than 06 (six) months.
  - '*Doubtful*' if it is past due/overdue for 06 (six) months or beyond but less than 09 (nine) months
  - '*Bad/Loss*' if it is past due/overdue for 09 (nine) months or beyond.
- Any Demand Loan will be classified as:
  - '*Sub-standard*' if it remains past due/overdue for 03 (three) months or beyond but not over 06 (six) months from the date of expiry or claim by the bank or from the date of creation of forced loan.

- *'Doubtful'* if it remains past due/overdue for 06 (six) months or beyond but not over 09 (nine) months from the date of expiry or claim by the bank or from the date of creation of forced loan.
- *'Bad/Loss'* if it remains past due/overdue for 09 (nine) months or beyond from the date of expiry or claim by the bank or from the date of creation of forced loan.
- In case of any installment(s) or part of installment(s) of a Fixed Term Loan is not repaid within the due date, the amount of unpaid installment(s) will be termed as 'past due or overdue installment'. In case of Fixed Term Loans: -
  - If the amount of past due installment is equal to or more than the amount of installment(s) due within 03 (three) months, the entire loan will be classified as "Sub-standard".
  - If the amount of past due installment is equal to or more than the amount of installment(s) due within 06 (six) months, the entire loan will be classified as "Doubtful".
  - If the amount of 'past due installment is equal to or more than the amount of installment(s) due within 09 (nine) months, the entire loan will be classified as "Bad/Loss".

**Explanation:** If any Fixed Term Loan is repayable on monthly installment basis, the amount of installment(s) due within 06 (six) months will be equal to the sum of 06 monthly installments. Similarly, if the loan is repayable on quarterly installment basis, the amount of installment(s) due within 06 (six) months will be equal to the sum of 2 quarterly installments.

- The Short-term Agricultural and Micro-Credit will be considered irregular if not repaid within the due date as stipulated in the loan agreement. If the said irregular status continues, the credit will be classified as 'Substandard ' after a period of 12 months, as 'Doubtful' after a period of 36 months and as 'Bad/Loss' after a period of 60 months from the stipulated due date as per the loan agreement.

**Qualitative Judgement:**

If any uncertainty or doubt arises in respect of recovery of any Continuous Loan, Demand Loan or Fixed Term Loan, the same will have to be classified on the basis of qualitative judgement be it classifiable or not on the basis of objective criteria. If any situational changes occur in the stipulations in terms of which the loan was extended or if the capital of the borrower is impaired due to adverse conditions or if the value of the collateral decreases or if the recovery of the loan becomes uncertain due to any other unfavorable situation, the loan will have to be classified on the basis of qualitative judgement.

Despite the probability of any loan being affected due to the reasons stated above or for any other reasons, if there is any hope for change of the existing condition by resorting to proper steps, the loan, on the basis of qualitative judgement, will be classified as 'Sub-standard '. But even after resorting to proper steps, there exists no certainty of total recovery of the loan, it will be classified as ' Doubtful ' and even after exerting the all-out efforts, there exists no chance of recovery, it will be classified as ' Bad/Loss ' on the basis of qualitative judgement.

For incorporating qualitative judgment, banks must focus on the likelihood that the borrower will repay all amounts due in a timely manner, using their own judgment and the following assessment factors:

**Special Mention**

- Assets must be classified no higher than Special Mention if any of the following deficiencies of bank management is present: the loan was not made in compliance with the bank's internal policies; failure to maintain adequate and enforceable documentation; or poor control over collateral.
- Assets must be classified no higher than Special Mention if any of the following deficiencies of the obligor is present: occasional overdrawn within the past year, below-average or declining profitability; barely acceptable liquidity; problems in strategic planning.

**Sub-standard**

- Assets must be classified no higher than Sub-standard if any of the following deficiencies of the obligor are present: recurrent overdrawn, low account turnover, competitive difficulties, location in a volatile industry with an acute drop in demand; very low profitability that is also declining; inadequate liquidity; cash flow less than repayment of principal and interest; weak management; doubts about integrity of management; conflict in corporate governance; unjustifiable lack of external audit; pending litigation of a significant nature.
- Assets must be classified no higher than Sub-standard if the primary sources of repayment is insufficient to service the debt and the bank must look to secondary sources of repayment, including collateral.
- Assets must be classified no higher than Sub-standard if the banking organization has acquired the asset without the types of adequate documentation of the obligor's net worth, profitability, liquidity, and cash flow that are required in the banking organization's lending policy, or there are doubts about the validity of that documentation.

**Doubtful**

Assets must be classified no higher than Doubtful if any of the following deficiencies of the obligor is present: permanent overdrawn; location in an industry with poor aggregate earnings or loss of markets; serious competitive problems; failure of key products; operational losses; illiquidity, including the necessity to sell assets to meet operating expenses; cash flow less than required interest payments; very poor management; non-cooperative or hostile management; serious doubts of the integrity of management; doubts about true ownership; complete absence of faith in financial statements.

**Bad/Loss**

Assets must be classified no higher than Bad/Loss if any of the following deficiencies of the obligor are present: the obligor seeks new loans to finance operational losses; location in an industry that is disappearing; location in the bottom quartile of its industry in terms of profitability; technological obsolescence; very high losses; asset sales at a loss to meet operational expenses; cash flow less than



production costs; no repayment source except liquidation; presence of money laundering, fraud, embezzlement, or other criminal activity; no further support by owners.

**Improvement in Classification:**

From time to time, in the judgment of the bank, the condition of a loan may improve and it may be justified to move it to a more favorable classification category. The decision to move a loan to a more favorable classification category must be accompanied by analysis showing that there has been improvement in the payment performance of the loan and/or in the financial condition of the borrower. The decision to move a loan from Bad/Loss to Doubtful or Substandard, or from Doubtful to Substandard, may, with appropriate justification, be taken by the Chief Credit Officer, with the concurrence of the Chief Financial Officer. The decision to move a loan from Substandard, Doubtful, or Bad/Loss to Special Mention Account or to declassify it completely must be taken by the Board of Directors, with appropriate justification presented by the branch manager who originated the loan in question and the Managing Director.

A bank may request the concerned Department of Banking Inspection of Bangladesh Bank to review the classification of any loan for which there is a disagreement on classification that is not resolved during the on-site inspection. Bangladesh Bank will respond to the bank within 15 days of receiving such request. However, in any case where there is a lingering disagreement between the classification determined by bank management and the classification determined by Bangladesh Bank, the judgment of Bangladesh Bank will prevail. Any loan classified during Bangladesh Bank's on-site inspection on the basis of qualitative judgement cannot be declassified without the consent of Bangladesh Bank.

**7.1.3. Accounting of the Interest of Classified Loans:**

If any loan or advance is classified as 'Sub-standard' and 'Doubtful', interest accrued on such loan will be credited to Interest Suspense Account, instead of crediting the same to Income Account. In case of rescheduled loans, the unrealized interest, if any, will be credited to Interest Suspense Account, instead of crediting the same to Income Account.

As soon as any loan or advance is classified as 'Bad/Loss', charging of interest in the same account will cease. In case of filing a law-suit for recovery of such loan, interest for the period till filing of the suit can be charged in the loan account in order to file the same for the amount of principal plus interest. But interest thus charged in the loan account has to be preserved in the 'Interest Suspense' account. If any interest is charged on any 'Bad/Loss' account for any other special reason, the same will be preserved in the 'Interest Suspense' account. If classified loan or part of it is recovered i.e., real deposit is effected in the loan account, first the interest charged and accrued but not charged is to be recovered from the said deposit and the principal to be adjusted afterwards.

#### **8.1.4. Maintenance of Provision:**

**General Provision:** Banks will be required to maintain General Provision in the following way:

- @ 0.25% against all unclassified loans of Small and Medium Enterprise (SME) as defined by the SME & Special Programs Department of Bangladesh Bank from time to time and @ 1% against all unclassified loans (other than loans under Consumer Financing, Loans to Brokerage House, Merchant Banks, Stock dealers etc., Special Mention Account as well as SME Financing.)
- @ 5% on the unclassified amount for Consumer Financing whereas it has to be maintained @ 2% on the unclassified amount for (i) Housing Finance and (ii) Loans for Professionals to set up business under Consumer Financing Scheme.
- @ 2% on the unclassified amount for Loans to Brokerage House, Merchant Banks, Stock dealers, etc.
- @ 5% on the outstanding amount of loans kept in the 'Special Mention Account'.
- @1% on the off-balance sheet exposures. (Provision will be on the total exposure and amount of cash margin or value of eligible collateral will not be deducted while computing Off-balance sheet exposure.)

**Specific Provision:** Banks will maintain provision at the following rates in respect of classified Continuous, Demand and Fixed Term Loans:

Sub-standard:20%

Doubtful:50%

Bad/Loss: 100%

#### **Provision for Short-term Agricultural and Micro-Credits:**

- All credits except 'Bad/Loss' (i.e. 'Doubtful', 'Sub-standard', irregular and regular credit accounts): 5%
- 'Bad/Loss': 100%

#### **7.1.5. Base for Provision:**

For eligible collaterals of the following types, provision will be maintained at the stated rates in Para 4 on the outstanding balance of the classified loans less the amount of Interest Suspense and the value of eligible collateral:

- Deposit with the same bank under lien against the loan,
- Government bond/savings certificate under lien,
- Guarantee given by Government or Bangladesh Bank.

For all other eligible collaterals, the provision will be maintained at the stated rates in Para 4 on the balance calculated as the greater of the following two amounts:

- outstanding balance of the classified loan less the amount of Interest Suspense and the value of eligible collateral; and
- 15% of the outstanding balance of the loan.

However, the base for provision shall be further reviewed towards closer convergence with international best practice standards.

#### **7.1.6. Eligible Collateral:**

In the definition of 'Eligible Collateral' as mentioned in the above paragraph the following collateral will be included as eligible collateral in determining base for provision:

- 100% of deposit under lien against the loan
- 100% of the value of government bond/savings certificate under lien
- 100% of the value of guarantee given by Government or Bangladesh Bank
- 100% of the market value of gold or gold ornaments pledged with the bank.
- 50% of the market value of easily marketable commodities kept under control of the bank

Maximum 50% of the market value of land and building mortgaged with the bank

50% of the average market value for last 06 months or 50% of the face value, whichever is less, of the shares traded in stock exchange

#### **Determination of Market Value of Eligible Collateral:**

In determining market value of easily marketable commodities, land and building, banks are advised to follow the instructions mentioned below:

- Easily marketable goods will mean pledged, easily encashable/ saleable goods that remain under full control of the bank. However, while the concerned bank branch official will conduct periodic inspection to verify as to whether requirements have been met such as the suitability of goods for use, expiry period, appropriateness of documentary evidences, and up to date insurance cover, the same will have to be assessed by the professional assessor from time to time.
- For land and building, banks will have to ensure whether title documents are in order and concerned land and building will have to be valued by the professional valuation firm along with completion of proper documentation in favor of the bank. In the absence of a professional valuation firm, a certificate in favor of such valuation will have to be collected from a specialized engineer. Nevertheless, temporary houses including tin-shed structure shall not be shown as building.

- In order to facilitate the on-site inspection by Bangladesh Bank's Department of Banking Inspection, banks are also advised to maintain a complete statement of eligible collateral on a separate sheet in the concerned loan file. Information such as a description of eligible collateral, their assessment by a recognized firm, marketability of the commodity, control of the bank, and reasons for considering eligible collateral etc. will have to be included in that sheet.

## **7.2. BRPD Circular No. 15 incorporating changes by BRPD Circular No. 06: Loan Rescheduling:**

Bangladesh Bank recognizes that in some cases, a legitimate banking practice may allow for the renewal of a continuous loan or line of credit. Occasionally, even a term loan is renewed or extended under unfortunate circumstances that are beyond the control of the borrower and do not signify that the borrower's willingness or ability to repay has deteriorated the loan. However, Bangladesh Bank is concerned that rescheduling (also known as "prolongation" or ever greening") may sometimes result in an overstatement of capital, when loans that have a low probability of repayment are carried at full value on banks' balance sheets. Bangladesh Bank is hereby issuing this circular in order to communicate its policy stance that rescheduling should be done only in limited circumstances and under restrictions.

### **7.2.1. Guidelines for considering application for loan rescheduling:**

Banks shall comply with the following instructions while considering application for loan rescheduling of non-performing loan (loans classified as Sub-standard, Doubtful and Bad/Loss):

- The bank must have a policy approved by its Board of Directors in place that defines the circumstances and conditions under which a loan may be rescheduled, consistent with this circular. These conditions may be stricter than those contained in this circular and cannot be lenient in any case. The policy must include controls to avoid the routine rescheduling and repeat rescheduling of loans in those cases where borrowers are experiencing financial difficulty or there is doubt that the full amount of the loan will be recovered. In particular, the policy should place strict limits, or even prohibit, rescheduling of loans to business enterprises in unproductive sectors, or unprofitable business enterprises in productive sectors. If exceptions are made for certain sectors/business enterprises that do not meet the above guidelines, those sectors/business enterprises should be identified in the policy and a justification for rescheduling should be given.
- When a borrower asks for rescheduling of loan, the bank shall meticulously examine the causes as to why the loan has become non-performing. If it is detected from such review that the borrower has diverted funds elsewhere or the borrower is a habitual loan defaulter, the bank shall not consider the application for loan rescheduling and shall take/continue all legal steps for recovery of the loans.
- If a borrower while applying for rescheduling, pays the required down payment in cash at a time, the bank must address the application within 03 (three) months upon receipt. If the borrower gives any cheque, pay order or any other instrument against down payment, the

bank must ensure encashment of such instrument before processing of the rescheduling case. Any previous payment from time to time shall not be treated as a down payment.

- Banks while considering loan rescheduling, must consider overall repayment capability of the borrower taking into account the borrower's liability position with other banks and financial institutions.
- Banks shall review the borrower's cash flow statement, audited balance sheet, income statement and other financial statements in order to ensure whether the borrower would be able to repay the rescheduled installments/existing liability or not.
- If required, bank officers shall conduct spot inspections of the borrower's company/business place to ensure that the concerned company/business enterprise would be able to generate a surplus to repay the liability of rescheduling. Banks shall preserve such reports in their branches for Bangladesh Bank's inspection.
- If a bank is satisfied after due diligence as mentioned above that the borrower will be able to repay, the loan may be rescheduled. Otherwise, bank shall take all legal steps to realize the loan and make necessary provision.
- Rescheduling of any loan must be justified in written statement by the bank's Credit Committee. The statement must give reasons why the rescheduling is beneficial to the long run profitability and capital adequacy of the bank, including the factors that cause the Credit Committee to believe that the loan will ultimately be repaid in full. The statement must also explain the impact of this rescheduling on the bank's liquidity position and the needs of other customers.

#### **7.2.2. Time limit for rescheduling:**

The rescheduling shall be for a minimum reasonable period of time. Time limit for rescheduling of different categories of loans will be as follows:

(Note: These time limits are absolute maximums only, and banks are encouraged to establish shorter time limits in their internal policies. Each loan that is being considered for rescheduling should be evaluated on its own merits and not automatically rescheduled for the maximum time period or rescheduled for the maximum number of three (03) times.)

- **Time limit for rescheduling Continuous Loan:** The loan account in which transactions may be made within certain limit and have an expiry date for full adjustment will be treated as Continuous Loan:

| Frequency           | Classified as Sub-standard                                 | Classified as Doubtful                                   | Classified as Bad/Loss                                   |
|---------------------|--|--|--|
| First Rescheduling  | Maximum 18 (eighteen) months from the date of rescheduling | Maximum 12 (twelve) months from the date of rescheduling | Maximum 12 (twelve) months from the date of rescheduling |
| Second Rescheduling | Maximum 12 (twelve) months from the date of rescheduling   | Maximum 09 (nine) months from the date of rescheduling   | Maximum 09 (nine) months from the date of rescheduling   |
| Third Rescheduling  | Maximum 06 (six) months from the date of rescheduling      | Maximum 06 (six) months from the date of rescheduling    | Maximum 06 (six) months from the date of rescheduling    |

Conditions: During the rescheduled period all required principal and interest payments must be made. Rescheduled amount should be repaid in monthly installments. If the amount of defaulted installments is equal to the amount of 3(monthly) installments, the loan will be classified as Bad/Loss.

- **Time limit for rescheduling Demand Loan:** The loan which becomes repayable on demand by the bank is treated as Demand Loan. If any contingent or any other liabilities are turned to forced loan (i.e. without any prior approval as regular loan) those too will be treated as Demand Loans

| Frequency           | Classified as Sub-standard                               | Classified as Doubtful                                 | Classified as Bad/Loss                                 |
|---------------------|--|--|--|
| First Rescheduling  | Maximum 12 (twelve) months from the date of rescheduling | Maximum 09 (nine) months from the date of rescheduling | Maximum 09 (nine) months from the date of rescheduling |
| Second Rescheduling | Maximum 09 (nine) months from the date of rescheduling   | Maximum 06 (six) months from the date of rescheduling  | Maximum 06 (six) months from the date of rescheduling  |
| Third Rescheduling  | Maximum 06 (six) months from the date of rescheduling    | Maximum 06 (six) months from the date of rescheduling  | Maximum 06 (six) months from the date of rescheduling  |

Conditions: During the rescheduled period all required principal and interest payments must be made. Rescheduled amount should be repaid in monthly installments. If the amount of defaulted installments is equal to the amount of 3(monthly) installments, the loan will be classified as Bad/Loss.

- **Time limit for rescheduling Fixed Term Loan:** The loan which is repayable within a specified time period under a prescribed repayment schedule is treated as Term Loan

| Frequency           | Classified as Sub-standard      | Classified as Doubtful          | Classified as Bad/Loss          |
|---------------------|---------------------------------|---------------------------------|---------------------------------|
| First Rescheduling  | Maximum 36 (thirty six) months  | Maximum 24 (twenty four) months | Maximum 24 (twenty four) months |
| Second Rescheduling | Maximum 24 (twenty four) months | Maximum 18 (eighteen) months    | Maximum 18 (eighteen) months    |
| Third Rescheduling  | Maximum 12 (twelve) months      | Maximum 12 (twelve) months      | Maximum 12 (twelve) months      |

**Conditions:** During the rescheduled period all required principal and interest payments must be made. Rescheduled amount should be repaid in monthly/quarterly installments. If the amount of defaulted installments is equal to the amount of 6 monthly or 2 quarterly installments, the loan will be classified as Bad/Loss.”

**Time limit for rescheduling for Short-term Agricultural and Micro-Credit**

|                     |   |
|---------------------|---|
| First Rescheduling  | Repayment time limit for rescheduling should not exceed 2 (two) years from the date of rescheduling |
| Second Rescheduling | Maximum 1(one) year from the date of rescheduling.  |
| Third Rescheduling  | Maximum 6(six) months from the date of rescheduling.  |

- If the loan becomes default after third rescheduling, the borrower will be treated as a habitual loan defaulter and the bank shall not consider for further loan rescheduling.
- Approval of loan rescheduling cannot be made below the level at which it was originally sanctioned. A detailed appraisal report including implications of such loan rescheduling on the income and other areas of the bank must be placed to the approving authority at the time of placing the rescheduling proposal.

**7.2.3. Down payment of term loans:**

- Application for first time rescheduling will be taken into consideration upon receiving cash payment of at least 15% of the overdue installments or 10% of the total outstanding amount of loan, whichever is less;
- Application for second time rescheduling will be considered upon receiving cash payment of minimum 30% of the overdue installments or 20% of the total outstanding amount of loan, whichever is less.
- Application for rescheduling third time will be considered upon receiving cash payment of minimum 50% of the overdue installments or 30% of the total outstanding amount of loan, whichever is less.
- The rate of down payments for Short-term Agricultural and Micro-Credit will be same as above.

Explanation: If any loan is rescheduled for one time before issuance of this circular, the conditions set forth in this circular for second time rescheduling of such loans shall be applicable. Likewise, the terms for third time rescheduling as per this circular for rescheduling of any loan, which has already been rescheduled twice or more shall be applicable

**7.2.4. Down payment of demand and continuous loan:**

- If a Demand or Continuous Loan is converted into a Term loan, first rescheduling may take place against down payment on the basis of loan amount in the following manner.

| <b>Amount of Overdue Loan</b>                           | <b>Rate of Down payment</b>             |
|---|---|
| Up to Tk.1.00 (one) crore                               | 15%                                     |
| Above Tk.1.00(one) crore and up to Tk.5.00 (five) crore | 10%<br>(but not less than Tk.15.00 lac) |
| Above Tk. 5.00(five) crore                              | 5%<br>(but not less than Tk.50.00 lac)  |

Application for rescheduling will be taken into consideration only after the amount for the down payment is paid in cash as narrated in 01(c).

- If any Continuous or Demand Loan is rescheduled for the second time (first time after being converted partly or wholly into Term Loan) and the repayment installments are fixed, the application for rescheduling of such loans shall be considered upon receiving cash payment of minimum 30% of the overdue installments or 20% of the total outstanding amount of loan, whichever is less. Similarly, for third rescheduling (second time after being converted partly or wholly into Term Loan) minimum 50% of the overdue installments or 30% of the total outstanding amount of loan, whichever is less, shall have to be repaid in cash.

**7.2.5. Classification and interest suspense of rescheduled loans:**

Rescheduled loans may be put into any category of classification by the bank considering the existing financial soundness and repayment capacity of the borrower, subject to the accumulated amount in interest suspense account not being taken into income account, unless actually realized. Upon classification, applicable provisions have to be maintained, according to the Master Circular: Loan Classification and Provisioning (BRPD Circular No. 14/2012). These classifications will be reviewed by Bangladesh Bank inspectors. However, regardless of the classification category into which the loan is placed by the bank, a rescheduled loan will not be considered a "defaulted loan," and the borrower will not be considered a "defaulted borrower" as these terms are understood in the context of section 27KaKa(3) [read with section 5(GaGa)] of the Banking Companies Act, 1991, unless such loan has not been repaid after reaching the maximum number of allowable rescheduling. Interest accrued on rescheduled loans will be subject to the accounting treatment that is appropriate for the classification category of the loan, in line with the Master Circular: Loan Classification and Provisioning (BRPD Circular No. 14/2012) just as if the loan had not been rescheduled.



**7.2.6. New loan facility after rescheduling:**

- The borrower whose credit facility has been rescheduled may avail a new loan facility or enhance existing credit facility subject to fulfillment of the following conditions: -
- The borrower must pay at least 15% of the “Outstanding Balance” (outstanding amount after excluding the down payment on rescheduling) to avail any further credit facility from the rescheduling bank. ii. In case of borrowing from other banks, the same rule will be applicable, i.e. the borrower must pay at least 15% of the “Outstanding Balance” (outstanding amount after excluding the down payment on rescheduling), then, will be allowed to take regular facility from other banks subject to the submission of No Objection Certificate (NOC) from the rescheduling bank or financial institution.
- Exporters may be granted further credit facility (after being identified as not-a-willful defaulter), if required, subject to settling at least 7.5% of the “Outstanding Balance” (outstanding amount after excluding the down payment on rescheduling). They will be allowed to take the regular facility from other Banks subject to the submission of a NOC from the rescheduling bank or financial institution.
- Prior approval of Bangladesh Bank shall have to be obtained if the loan is related to the director of any bank.
- Information on such rescheduled loan accounts shall be reported to the Credit Information Bureau (CIB) of Bangladesh Bank.
- While reporting to the CIB, the rescheduled loans/advances should be shown as RS-1 for first time rescheduling, RS-2 for second time rescheduling and RS-3 for third time rescheduling. If rescheduling facility is availed through interest waiver, reporting should be RSIW-1 for first time rescheduling, RSIW-2 for second time rescheduling and RSIW-3 for third time rescheduling.
- Number of rescheduling should be mentioned in the sanction letter as well as in the date column of sanction/last renewal/rescheduling in the basic CL form as RS-1/RS-2/RS3 or RSIW-1/RSIW-2/RSIW-3.

**7.2.7. Special conditions for loan rescheduling**

- If a loan account of an export-oriented garments industry or knit garments factory becomes adversely classified due to stock lot, the loan may be rescheduled without the required down payment. However, the sales/export proceeds from the stock lot must be used to repay the loan. If any such loan account remains unadjusted even after repaying the loan with sales/export proceeds of the stock lot, the loan may be rescheduled without the required down payment based on recovery probability and banker-customer relationship. The above mentioned facilities will not be applicable to forced loan, project loan or term loan in this sector. Only such forced loans, which are backed up with stock lot may avail such facilities. After rescheduling, new loan facility or loan expansion application will be considered only after paying at least 7.5% of the “Outstanding Balance”. New loan facility

from other banks is subject to the obtaining of NOC from the rescheduling bank. b) If a loan account of fertilizer importers becomes adversely classified due to delay in government subsidy receipts and payment of subsidy bill, the loan may be rescheduled without the required down payment. However, the receivable government subsidy must be used to repay the loan. If any such loan account remained unadjusted even after repaying the loan with a government subsidy, the loan may be rescheduled without the required down payment on the basis of recovery probability and banker-customer relationship.

- For rescheduling as above no prior approval of Bangladesh Bank will be required; unless there is a requirement from Bangladesh Bank in the context of large loan or related to the director of the bank.

#### **7.2.8. Restriction on extending the term to maturity of a term loan:**

The term to maturity of a term loan may be extended subject to the following conditions and restrictions:

- The loan must be performing (Unclassified: Standard or SMA)
- The decision should be made at the level where the loan was originally sanctioned
- The maturity date may be extended by a period of time not exceeding 25% of the current remaining time to maturity

### **7.3 DOS Circular No.-01 dated Date:19/01/2014: Cash Reserve Ratio (CRR) and Statutory Liquidity Ratio (SLR)**

All scheduled banks in Bangladesh have to maintain Cash Reserve Ratio (CRR) and Statutory Liquidity Ratio (SLR) in Compliance with the instructions given in clause (1) of Article 36 of Bangladesh Bank Order, 1972 (as amended 2003) and clause (1) of section 33 of Bank Company Act, 1991 (Amended 2013) respectively. Pursuant to the recent amendment of section 33 of ' Bank Company Act, 1991, and in order to facilitate the maintenance of CRR and SLR by the scheduled banks, and to clarify some related topics the following instructions are being issued.

#### **7.3.1. (a) Cash Reserve Ratio (CRR):**

Every scheduled bank has to maintain a balance in cash with BB the amount of which shall not be less than such portion of its total demand and time liabilities as prescribed by BB from time to time, by notification in the official Gazette.

- may also prescribe the procedure of maintenance of cash reserve pursuant to its monetary policy objectives.

At present, the required CRR is 5.5 % on bi-weekly average basis of the average total demand and time liabilities (ATDTL) with a provision of minimum 5% on daily basis of the same ATDTL. Banks are advised to follow the circular issued by Monetary Policy Department of BB in this regard.

**(b) Components of Cash Reserve:**

At present, banks are allowed to maintain cash reserve with local currency (Taka) only. The day end balances of the Taka current accounts maintained with different offices of BB will be aggregated to compute the maintained cash reserve of the day.

The balance so maintained shall be un-encumbered in all aspect. The encumbered (lien against discounting facility, etc. and capital lien in case of foreign banks) portion of the balance will be deducted while computing both the maintained amount and excess of cash reserve.

**7.3.2. (a) Statutory Liquidity Ratio (SLR):**

Every scheduled bank has to maintain assets in cash or gold or in the form of un-encumbered approved securities the market value of which shall not be less than such portion of its total demand and time liabilities as prescribed by BB from time to time.

may also prescribe the procedure of determination of assets and liabilities and percentages of maintainable assets in different classes.

At present, the required SLR is 18.5% daily for conventional banks and 10.5% daily for Islamic Shariah based banks and Islamic Shariah based banking of conventional banks of their average total demand and time liabilities. Banks are advised to follow the circular issued by Monetary Policy Department of BB from time to time in this regard.

**(b) (i) Components eligible for calculation of Statutory Liquidity Reserve:**

The eligible components for maintaining Statutory Liquidity Reserve are cash in tills (both local and foreign currency), gold, daily excess reserve (excess of Cash Reserve) maintained with BB, balance maintained with the agent bank of BB and un-encumbered approved securities as defined in section 5 clause 'ka' of Bank Company Act, 1991 (Amended 2013), credit balance in Foreign Currency Clearing Account maintained with BB.

Daily excess of Cash Reserve (if any) will be calculated using the following formula:

Daily excess of Cash Reserve = (Day-end balance of un-encumbered cash maintained in Taka current accounts with BB – Required cash reserve on Bi-weekly average basis).

**Guidelines for use of Foreign Currency from Foreign Currency Clearing Account for SLR purpose:**

Banks may use foreign currency from Foreign Currency Clearing Account maintained with BB for SLR purpose as long as there is credit balance in the account. However, no interest will be paid on the used portion of foreign currency. Forex Reserve and Treasury Management Department (FRTMD) of BB will credit interest on the balance held in the account as usual. After getting the certification from Department of Off-site supervision (DOS) regarding the actual amount of foreign currency used for SLR purpose, FRTMD will adjust (if required) the interest amount.

Banks should take utmost care while reporting the use of foreign currency in DB-5fc statement as any misreporting regarding the amount of foreign currency used for SLR purpose will attract a penalty two

times of the amount of interest already credited for the misreported amount along with reversal of the interest credited.

### **7.3.3. Computation of Demand and Time Liabilities:**

For the purpose of maintenance of CRR and SLR, demand and time liabilities should include all on-balance sheet liabilities excluding the items listed below:

- Paid up capital and reserves;
- Loans taken from BB;
- Credit Balance in Profit and Loss account;
- Inter-bank items;
- Repo, Special Repo and any kind of Liquidity Support taken from BB.

A list of components, (which are not limited to) is attached with this circular (Annex-1). Banks are advised to approach BB for any doubt in reckoning a particular liability as demand or time liability for CRR and SLR computation.

### **7.3.4. Submission of Reports regarding maintenance of CRR and SLR:**

Banks shall submit hard copies of the monthly statements of "Maintenance of CRR", DB-4(C), DB-4(I), DB-5(C) and DB-5(I) along with the soft copies of others regarding monthly position of maintenance of CRR and SLR in the newly prescribed formats (attached) to Department of Off-site Supervision (DOS) within the 10th of the following month. The Reporting Formats attached with DOS Circular Letter No.05/2008 has been amended and the new formats will be effective from February 01, 2014. The soft copies of the formats are available for collection from DOS.

### **7.3.5. Penalties:**

- Penal Interest (Bank Rate plus 5%) and Penalty will be charged according to the instructions of Bangladesh Bank Order, 1972 and DOS Circular No. 03/2010 for CRR related issues.
- Penalty will be charged at the prevailing Special Repo Rate on the amount by which the SLR falls short daily.
- Delay submission of statement regarding maintenance of CRR and all other statements regarding maintenance of SLR will attract daily penalty as stated in clause (6) of Article 36 of Bangladesh Bank Order, 1972 and clause (11) of section 109 of Bank Company Act, 1991 (Amended 2013) respectively.

**Self-test question:**

1. Discuss the powers of the Bangladesh Bank to control advances by Banking Companies
2. Make a checklist identifying special points in presentation financial statements of banking company in line with BRPD circular and in compliance to international Accounting Standards.
3. Discuss the various bars imposed by Section 23 of the Bank Companies Act, 1991 on common director.
4. Discuss the powers of the Bangladesh Bank for giving directions to other Banking Companies as provided in Section 45 of the Bank Companies Act, 1991.
5. REA Bank Limited re-valued its properties on 31 December 2017 by a professional valuation company. Land and buildings of the bank has been re-valued to Tk. 300 million from Tk. 10 million, historical cost of the land & building. The bank accounted for the revaluation surplus in 'Other Reserve Account'. The bank now wanted to issue bonus share against the other reserve. Board of Directors of the company approved the financial statements and approved 25% bonus share to be issued for 2017. State the legal provisions for declaring dividend of a banking company with reference to the Company Act 1994 and Bank Companies Act 1991.
6. What additional information is to be incorporated in the auditor's report of a banking company under section 39 of the Bank Companies Act, 1991, in addition to the requirements of the Companies Act, 1994?
7. Mention the circumstances when a bank company shall be deemed unable to pay its debts under section 65(4) of the Bank Companies Act, 1991
8. Describe the circumstances under which Bangladesh Bank may apply for winding up of a bank. Narrate the circumstances under which the Bangladesh Bank can dissolve the Board of Directors of a banking company.
9. Mr. Q is the Managing Director of ABC Bank Limited and his position will be vacated on 01.08.2017 due to expiration of his contract as well as attaining at 65 years old. The Board of Directors of the Bank has long cherished desires to appoint Mr. R- the existing Deputy Managing Director of the Bank- as the next Managing Director of the Bank. Mr. R has been working as Deputy Managing Director for the last 1 and a half years whereas as per Bangladesh Banks requirements (BRPD Circular letter No: 17 dated: 27 October 2013 on the subject matter of Rules and Regulations regarding appointment of Chief Executive Officer of a Bank), he needs to continue in the position of immediate next to Managing Director, for a minimum period of 2 years i.e. Mr. R has to continue as a Deputy Managing Director for minimum 2 years and accordingly he will complete his 2 years service as Deputy Managing Director on 31.12.2017 and will be eligible to act as a Managing Director **w.e.f.** 1.1.2018. To fill the gap, the Board of Directors in its 254th meeting held on 25.07.2017 unanimously decided to appoint Mr. T—who is the most senior Deputy Managing Director under contract

service in ABC Bank Ltd, shall act as the Managing Director of Current Charge by adopting the following resolution:

“RESOLVED THAT, the Board of Directors have unanimously decided to appoint Mr. T, Deputy Managing Director, as the Managing Director (Current Charge) of ABC Bank Ltd. w.e.f. 1.8.2017 till 31.12.2017.”

In practice, searching of a Managing Director is a really difficult job. This requires time and proper plan to find a suitable Managing Director for a Commercial Bank. It is mentioned here that due to mindsets of the Board of Directors about Mr. R, the Bank neither searched for anyone as the next Managing Director nor made any search committee. Chairman of the bank in a television interview said that “Currently there are a few potential Managing Directors in the market for commercial banks but we are really happy and proud to announce that our bank is in the process to appoint a young and highly performing Managing Director who had joined this bank as Probationary Officer and currently working as Deputy Managing Director. Our Board of Directors unofficially agreed to retain Mr. R and accordingly we are going to appoint him for the next 5 years as the Managing Director and CEO of the bank i.e. w.e.f. 01.01.2018 to 31.12.2022.”

**Required:**

Comment and analyze the followings skeptically:

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Resolutions of the 254th meeting of the Board of Directors of ABC Bank Ltd.

Whether Mr. T, the Managing Director-Current Charge will be eligible to sanction loan within the approved financial discretionary power of a Managing Director or not?

Media statements of the Chairman.

A bank company starts its business only after getting license from Bangladesh Bank and operates under Bank Companies Act, 1991, though it was initially registered as a Company with the Joint Stock Registrar of Companies and Firms under Companies Act 1994. A Bank Company has to follow Companies Act, 1994 as well as Banking Companies Act, 1991. If a bank company requires to alter its memorandum, which of the acts is to be followed and why?

**Answer to Self-test:**

**Answer to self-test 1:**

Section 29 of the Bank Companies Act provides the following powers to Bangladesh Bank for regulating the advances of the bank companies:

- Whenever the Bangladesh Bank is satisfied that it is necessary in the interest of the public to do so it may formulate the policy related to advances to be adopted by the bank companies in general or by any bank company in particular and when the policy has been so determined, all bank companies or their bank company conceded as the case may be- shall be bound to follow the policy as so determined.
- Without prejudice of the power in general conferred by sub-section. (1), the Bangladesh Bank may direct the bank companies either in general or any specialized bank - or special class of bank companies in the following matters:
  - the credit ceilings to be followed'
  - the minimum ratio of petty loans or other loans to the total advances to be followed:
  - the motive for which advances may or may not be made;
  - the maximum limit of advances which may be given to any bank company or special group of bank companies or a Person or community of persons
  - secured advance and ceiling of interest on advance'
  - the rates of interest to be fixed on advances'
- If any bank company is in default in complying with the direction referred in clause (a) and (b) of sub-section (2), the bank company shall by order of the Bangladesh Bank be held to be liable to deposit such amount as ma), be determined by it and the bank company shall subject to the condition specified by that bank under compulsion to comply with the direction. However, the Bangladesh Bank shall not direct the said Bank Company to deposit an amount not higher than the amount of which the default has taken place'
- The amount deposited with the Bangladesh Bank under sub-section (3) or any Part thereof may be remitted by it to the bank company conditionally or unconditionally by order in black and white.

**Answer to self-test 2:**

The following detailed qualitative and quantitative disclosures are required in accordance with Bangladesh Bank rules and regulations on capital adequacy under Basel II issued through BRPD Circular 24, 03 August,2010 {BRPD Circular No. 24: Risk Based Capital Adequacy (RBCA) for Banks [Aug 03, 2010]}. The purposes of these requirements are to complement the Capital Adequacy requirements and the Pillar II- Supervisory review process. These disclosures are intendment for market participants to assess Key information about the Banks' exposure to various risks and to provide a consistent and

understandable disclosure framework as per regulatory requirement The checklist identifying special points in presentation financial statements of banking company in line with BRPD circular and in compliance to international Accounting Standards are as followings: -

- To maintain capital Adequacy ratio (CAR) at a minimum of 10% of Risk Weighted Assets;
- To adopt the standardized approach for credit risk for implementing Basel II, using national direction for:
  - adopting the credit rating agencies as external credit assessment institution (ECAI) for claims on sovereigns and banks;
  - adopting simple/comprehensive approach for Credit Risk Mitigation (CRM);
  - all unrated corporate exposures are risk weighted by assigning 125% of risk weight;
- To adopt standardized approach for market risk and basic indicator approach for operational risk;
- Capital adequacy returns must be submitted to Bangladesh Bank on a quarterly basis;
- Performance and Rating of Banks:

Performance of the banking sector under CAMELS framework, which involves analysis, and evaluation of the six crucial dimensions of banking operations, has been discussed in this chapter. The six indicators used in the rating system are (i) Capital adequacy, (ii) Asset quality,

- Management soundness, (iv) Earnings, (v) Liquidity and (vi) Sensitivity to market risk.

Basel II Implementation in Bangladesh:

To make the banks in Bangladesh more shock absorbent as well as to cope with international best practices for risk management and, a sound and robust banking industry, Bangladesh Bank (BB), being regulatory & supervisory authority, is moving to implement Basel II from early of 2009. In this regard BB is pursuing consultative approach to implement Basel II in Bangladesh. Thus a National Steering Committee, a Coordination Committee and Basel II Implementation Cell are carrying out the required activities. In the meantime, an Action-plan/ Roadmap has been published via BRPD circular no. 14/2007 on 30 December 2007.

Under standardized approach, Basel II implementation requires the recognition of External Credit Assessment Institutions (ECAIs). For this, a guideline on the same has been prepared. Two credit rating agencies are operating in Bangladesh. They are registered with Securities and Exchange Commission and required to be recognized by BB for Basel II purpose. Recognition process of the rating agencies is under process. Preparation of the guideline on revised risk based capital regulation in line with Basel II is in progress.



**Corporate Governance in Banks and Financial Institutions:**

Corporate Governance is the system of internal controls and procedures used to define and protect the rights and responsibilities of various stakeholders. In recent year, with the increase of failure of large corporations due to poor corporate governance the issue comes to front and many organizations pronounce the guidelines those are intended to protect the rights of various stakeholders and reduce the conflict of interests among them. Banks and Financial Institutions (FIs) are "special" as they do not only accept and deploy large amount of uncollateralized public funds in fiduciary capacity, but also leverage such funds through credit creation. The depositors, particularly retail depositors, cannot effectively protect themselves as they do not have adequate information, nor are they in a position to coordinate with each other. It is believed that there could be a contagion effect resulting from the instability of one bank, which would affect a class of banks or even the entire financial system and the economy. As one bank becomes unstable, there may be a heightened perception of risk among depositors for the entire class of such banks, resulting in a run on the deposits and putting the entire financial system in jeopardy. The crisis of an individual bank may cause to create problem for entire financial system as well as the monetary management of the country. So, there should have clear and defined duties and responsibilities for the Management and the Board that act as the fiduciary for shareholders and the depositors. In view of the above, Bangladesh Bank is deploying continuous effort by inserting appropriate provisions in the Banking Companies Act, 1991 and Financial Institutions Act, 1993, supplemented by prudential regulations/guidelines in line with international best practices. The existing legal framework and significant current practices in particular cover the following aspects:

**The Board of Directors:**

Composition, Terms, Qualification etc.: The maximum number of the Directors of the Board of banks and Financial Institutions (FIs) would be 13 and 11 respectively. Tenure of a Director of a bank would be 3 years extendable to another one term i.e. a Director can continue his/her office for six years at a stretch. A recess of one term is required after completion of six years as a Director. For FIs the tenure of a Director is 3 years and is renewable. Not more than 10 percent of the shares of a bank will be held by the members of a family. Not more than two member of a family will become Director of a bank in case of holding of more than 5 percent share of the Bank by that family and one member in case of holding of up to 5 percent share. Maximum voting right of any shareholder is restricted to 5 percent of total voting rights of all shareholders of the bank. On the other hand, maximum limit of holding shares of an FI by a single person/family/institution is 20 percent for domestic shareholders and 25 percent for joint venture. To be appointed a Director of a Bank or FI one requires to pass the 'fit and proper test' criteria: s/he has to hold qualifying amount of shares and not to be a minor or undercharged insolvent or mentally unsound with no record of criminal conviction or adverse judicial comment in any civil or criminal proceeding, no record of penalization by any authority for regulatory breach and, no loan default. In addition, the Director of a Bank requires having at least ten years of business or professional experience. No employee/executive, except CEO, would be appointed as the Director of any Bank/FI.

**Appointment of Directors from Depositors:**

For ensuring good governance in Banks, Banks are required to appoint 2 Directors from the depositors who will be in addition to 13 (thirteen) directors mentioned in the sub-clause 15(6) of Banking Companies Act, 1991. "Fit and proper test" criteria stated above, are applicable for appointing Directors from depositors. In addition, such Director should be a depositor of the bank company must at least have a bachelor degree from any recognized university, shall not be a director, officer/staff or advisor of any bank company, financial institution, insurance company or stock exchange, he, including his family members shall not hold more than 1% shares of the paid up capital of the bank, shall not be a salaried staff of the bank, shall not be involved with any political party, shall not be a loan/tax/bill defaulter.

**Removal of Directors and Vacation of Office:** A Bank/FI by extra ordinary resolution can remove any Director. Failure to attend in the three consecutive Board meetings without approval of leave of absence, become default of loan of any bank or FI and failure to repay the entire defaulted loan within two months of receiving the notice, submission of false declaration at the time of appointment and loss of qualification will cause to vacate the office of a Director.

**Responsibilities and Authorities of the Board of Directors:**

**Work-planning and Strategic Management:** The Board shall determine the objectives and goals and to this end shall chalk out strategies and work-plans on annual basis. The Board shall have its analytical review incorporated in the Annual Report as regard the success/failure in achieving the business and other targets as set out in its annual work-plan and shall apprise the shareholders of its opinions/recommendations on future plans and strategies. It shall set the Key Performance Indicators (KPIs) for the CEO and other senior executives and have it evaluated at times.

**Lending and Risk Management:** The policies, strategies, procedures etc. in respect of appraisal of loan/investment proposal, sanctioning, disbursement, recovery, rescheduling and writing-off thereof shall be made with the Board's approval under the purview of the existing laws, rules and regulations. The Board shall specifically distribute the power of sanction of loan/investment and such distribution should desirably be made among the CEO and his subordinate executives as much as possible. No Director, however, shall interfere, directly or indirectly, into the process of loan approval. The Board shall frame policies for risk management and get them complied with and shall monitor the compliance thereof quarterly.

**Internal Control Management:** The Board shall be vigilant on the internal control system of the bank and Financial Institutions in order to attain and maintain satisfactory qualitative standard of its loan/investment portfolio. It shall review the reports submitted by its audit committee regarding compliance of recommendations made in internal and external audit reports and the Bangladesh Bank inspection reports.

**Human Resources Management and Development:** Policies relating to recruitment, promotion, transfer, disciplinary and punitive measures, human resources development etc. and service rules shall be framed and approved by the Board. The Chairman or the Directors shall in no way involve themselves or interfere into or influence over any administrative affairs including recruitment, promotion, transfer and disciplinary measures as executed under the set service rules. No member of the Board of Directors

shall be included in the selection committees for recruitment and promotion to different levels. Recruitment and promotion to the immediate two tiers below the CEO shall, however, rest upon the Board. Such recruitment and promotion shall have to be carried out complying with the service rules i.e., policies for recruitment and promotion.

**Financial Management:** The annual budget and the statutory financial statements shall finally be prepared with the approval of the Board. It shall quarterly review/monitor the positions in respect of bank's income, expenditure, liquidity, non-performing asset, capital base and adequacy, maintenance of loan loss provision and steps taken for recovery of defaulted loans including legal measures. The Board shall frame the policies and procedures for bank's purchase and procurement activities and shall accordingly approve the distribution of power for making such expenditures. The maximum possible delegation of such power shall rest on the CEO and his subordinates. Decisions on matters relating to infrastructure development and purchase of land, building, vehicles etc. for the purpose of bank's business shall, however, be adopted with the approval of the Board.

**Formation of Supporting Committees:** For decision on urgent matters an Executive Committee, whatever name called, may be formed with the Directors. There shall be no committee or sub-committee of the Board other than the Executive Committee and the audit committee. No Alternate Director shall be included in these committees.

**Appointment of CEO:** The Board shall appoint a competent CEO, whatever name called, for the Bank/FI with the approval of the Bangladesh Bank. The CEO for banking companies should be appointed for tenure of at least 3 years.

**Responsibilities of the Chairman of the Board of Directors:** As the Chairman of the Board of Directors (or Chairman of any Committee formed by the Board or any Director) does not personally possess the jurisdiction to apply policymaking or executive authority, he shall not participate in or interfere into the administrative or operational and routine affairs of the bank. The Chairman may conduct on-site inspection of any bank-branch or financing activities under the purview of the oversight responsibilities of the Board. He may call for any information relating to bank's operation or ask for investigation into any such affairs; he may submit such information or investigation report to the meeting of the Board or the Executive Committee and if deemed necessary, with the approval of the Board, s/he shall effect necessary action thereon in accordance with the set rules through the CEO. However, any complaint against the CEO shall have to be apprised to Bangladesh Bank through the Board along with the statement of the CEO.

**Role of the Audit Committee:** The Audit Committee of Board of Directors will assist the Board in fulfilling its oversight responsibilities including implementation of the objectives, strategies and overall business plans set by the Board for effective functioning of the bank. The Committee will review the financial reporting process, the system of internal control and management of financial risks, the audit process, and the bank's process for monitoring compliance with laws and regulations and its own code of business conduct.

### **The Chief Executive Officer (CEO)**

**Appointment:** To be appointed as chief executive of a banking company, an individual must possess at least 15 years of banking experience with at least 2 years in the level next below the chief executive and must meet the other stipulations mentioned above for Directors, except qualifying shares. The minimum experience of the CEO in the case of FI is 12 years and experience of 2 years in the post of next below the CEO is not required. Maximum age limit of CEO of Banks is 65 years.

**Responsibilities:** The CEO of the bank shall discharge the responsibilities and hold the authorities as follows:

- In terms of the financial, business and administrative authorities vested upon him by the Board, the CEO shall discharge his own responsibilities. S/he shall remain accountable for achievement of financial and other business targets by means of business plan, efficient implementation thereof and prudent administrative and financial management.
- (b) The CEO shall ensure compliance of the Banking Companies Act, 1991 or Financial Institutions Act, 1993 as the case may be and/or other relevant laws and regulations in discharge of routine functions of the bank.
- The recruitment and promotion of all staff of the bank/FI except those in the two tiers below him shall rest on the CEO. S/he shall act in such cases in accordance with the approved service rules on the basis of the human resources policy and sanctioned strength of employees as approved by the Board. The authority relating to transfer of and disciplinary measures against the staff, shall rest on him, which S/he shall apply in accordance with the approved service rules. Besides, under the purview of the human resources policy as approved by the Board, he shall nominate officers for training etc.

### **Disclosure Requirements:**

Banks/FIs are required to prepare their financial statements comprising of balance sheet, profit and loss account, cash flow statement, statement of changes in equity, liquidity statement and other explanatory notes in accordance with International Accounting Standard (IAS). Copies of financial statements should be preserved in each of the bank branches, so that the customers of the bank may readily use those on request. Besides, balance sheet should be affixed in a visible place of each bank branch. The financial statements should be published in widely circulated one Bangla and one English daily newspaper within one week of submission of the statements to Bangladesh Bank so that the stakeholders of the bank including its depositors, shareholders and regulatory bodies can get information about the bank easily. These should also be disclosed in the bank's website.

### **Other Issues:**

Lending to the Director of own bank/FI is restricted up to 50 percent of the paid-up capital of such Director. Banks are not allowed to appoint Consultants for routine works that can be performed by the regular staff. The Consultants should have specific terms of references (ToR). No past Chairman, Director, Adviser, Chief Executive would be appointed as the Consultant of the same bank. No Consultant or Advisor shall participate in decision making process or exercise power regarding the

financial, administrative or operational and routine affairs of the bank. With the view to save the interest of the Depositors, Banks are to appoint two Directors from the depositors who will be in addition to 13 Directors from the shareholders. Issuance of comprehensive guideline on maintenance of risk based capital in accordance with the Basel II is under process which would strengthen long term sustainability of banks.

**Answer to self-test 3:**

Bar on common directors [Section 23]: As contained in section 23 of the Bank Companies Act, 1991, unless anything is contained in any memorandum or articles of association of a company with the permission of the Bangladesh Bank, no banking company, other than a new bank or specialized bank, incorporated in Bangladesh shall have as a director any person who is:

- A director of any other banking company or financial institution not engaged in banking business:
  - a director of insurance company
  - an external director, a legal adviser or adviser or otherwise engaged in any responsibility of profit of the banking company
  - an adviser of any other banking company.
- A director of companies which are entitled to exercise voting rights in excess of twenty percent of the total voting rights of all the shareholders of the banking company. The above provision shall however, not apply in the case of a director appointed by the government.
- If a person, who is not entitled to be a director as per law, becomes director in any way, the Bangladesh Bank may remove such person from the post of director. Such director shall however, be given an opportunity to show cause before removal. All action against the said director shall be completed by the Bangladesh Bank within a period not exceeding three months from the date when the fact first came to the knowledge of the bank.
- If immediately before the commencement of this act anyone holding office as director of banking company which among others are entitled to exercise voting rights in excess of twenty percent of total voting rights of all the shareholders of banking company shall:
  - either, resign his office as director of the banking company, or
  - choose such number of companies among themselves are not entitled of exercising voting rights in excess of twenty percent of the total voting rights of all the shareholders.

**Answer to self-test 4:**

Powers of Bangladesh Bank to give Directions [Section 45]:

- Where the Bangladesh Bank is satisfied that-
- in the public interest; or
- in furtherance of monetary and banking policy; or
- to prevent the affairs of any banking company being conducted detrimental to the interest to the depositors or prejudicial to the interest of the banking company; or
- To ensure the proper management of any banking company generally -

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

- The Bangladesh bank may on representation cause to it or of its own motion may cancel or modify any decision taken under this section.

**Answer to self-test 5:**

Articles 96- 103 of 1994 deals dividend and reserve. According to Section 98 of the Schedule I Regulations of the Companies Act no dividend shall be paid otherwise than out of profits of the year or any other undistributed profits. In the above case REA Bank re-valued its building and land by a professional valuation company and accounted for revaluation surplus in other Reserve Account. According to the Companies Act 1994 and the Bank Companies Act 1991 the Board of Directors of REA Bank Ltd cannot issue bonus share from the revaluation surplus. On the other hand, the re-valuation done at the end of December 2017 and the decision to issue 25% bonus share to be issued before the revaluation which is arbitrary in all cases.

**Answer to self-test 6:**

**Incorporation of additional information in auditor's report:**

In addition to the matters which under the aforesaid Act the auditor is required to state in his report, he shall also state the following information:

- whether or not the financial statement shows a true picture of profit and loss for the period covered by such audit;
- whether or not the financial statement has been prepared accurately in accordance with general accounting procedures;
- whether or not the financial statement has been prepared in accordance with the provisions of relevant existing laws or rules and the instructions issued by the Bangladesh Bank in respect of acco

- whether or not adequate provision have been made for realization of doubtful advances or other doubtful accounts; whether or not the limit of repayment of advance or loan fixed by the Bangladesh Bank from time to time is satisfactory or not;
- whether or not financial statement has been prepared according to the standard prescribed by Bangladesh Bank in consultation with the professional accountants of Bangladesh;
- whether or not the banking company has properly maintained and-consolidated all records and accounts received from its branches;
- whether or not the information and explanations asked by the auditor has been found to be satisfactory;
- any other matter which the auditor considers should be brought to the notice of the shareholders of the banking company.

**Answer to self-test 7:**

**Banking: company shall be deemed to be unable pay debts:**

According-to section 65(4) of the-Bank Companies ct, 1991, without prejudice to the provisions of section 242 of the Companies Act, 1994, a banking company shall be deemed to be unable to pay its debts if:

1. it has refused to meet any lawful demand made at any of its offices or branches with in, two working days; or
2. such demand is made at a place where there is an office and if Bangladesh Bank certifies that the banking company is unable to pay its debts; or
3. Bangladesh Bank certifies in writing that the banking company is unable to pay its debts.

**Answer to self-test 8:**

Application of Bangladesh Bank for winding u to Banking Company (Section 65) Bangladesh Bank may apply for the winding up of a bank company under the following circumstances:

- a. As the banking company-
  - has failed to comply with the requirements of maintaining minimum capital reserve fund under section 13 of Banking Companies Act, 1991; or
  - has failed to comply the condition of issuance of license of section 31of Banking Companies Act, 1991 become disentitled to carry on banking business in Bangladesh, under section 31 of Banking Companies Act, 1991 or
  - has been prohibited by the Bangladesh Bank from receiving fresh deposits; or
  - has failed to comply with any requirement of Banking Companies Act, 1991 other than the requirement laid down in section 13, and has continued such failure, after notice in writing of such failure has been conveyed to it; or

- has continued any contravention of any provision of Banking Companies Act, 1991 after Bangladesh Bank conveys the bank company issuing a written notice of such contravention; or
- b. if the Bangladesh Bank is in such opinion-
  - compromise or arrangement approved by a court relating to bank company cannot be implemented satisfactorily with or without modifications; or
  - returns, statements or information that are furnished to Bangladesh Bank disclose that the bank company is unable to pay its debts; or
  - the continuance of the bank company is prejudicial to the interest of its depositors. Power of Bangladesh Bank to dissolve the Board of Directors (section 47): The Bangladesh Bank may dissolve / supersede the Board of Directors of a banking company under the following circumstances:
- c. Where the Bangladesh Bank is satisfied that-
  - The activities of the board of directors, by whatever name called, of a banking company is or is likely to be detrimental to the interest of the banking company or its depositors or otherwise undesirable;
  - If the benefit of public or preventing the affairs of a bank company detrimental to the benefit of its depositors or ensuing the proper management of the bank company it has become necessary to dissolve the Board of Directors.

**Answer to self-test 9:**

- According to the sub-section 1 of section 15A of Banking Companies 1991, the office of the chief executive officer of any banking company shall not remain vacant for more than three months successively. According to the sub-section 2, if the office of the chief executive officer of a banking company has not been filled within 3 months, the Bangladesh Bank may appoint an administrator for discharging the functions of the chief executive officer of the said company and the said company shall bear the expenditures caused through his wages and other conveniences.

Here, the Board of Directors of ABC Ltd. has done a contravention of the section 15A of Banking Companies Act 1991. They have to cancel the Board resolution by taking another resolution where Mr. T shall be acting as Managing Director Current Charge till 30.10.2017 and by this time a suitable Managing Director to be mandatorily appointed w.e.f. 1.11.2017. Otherwise Bangladesh Bank shall appoint an administrator.

- According to the sub-section 1 of section 15A of Banking Companies 1991, notwithstanding anything contained in this Act or any other law in force, the person temporarily discharging the functions of the vacant office of the chief executive officer, whatever be the name of the office, of any banking company shall be responsible for the discharge of the general



functions of the chief executive officer of the banking company concerned. So, the Managing Director (Current Charge) can continue the operation as usual and is eligible to sanction loans and advances within the financial discretionary power of a Managing Director.

- According to the para 5 of BRPD Circular Letter No: 17 dated: 27 October 2013 on the subject matter of Rules and Regulations regarding appointment of Chief Executive Officer of a Bank, a Managing Director shall be appointed for a term maximum 3 years only subject to re-appointment for an another term of 3 years. So Mr. R cannot be appointed for 5 years in one term. Moreover, the bank is in a situation that it has to mandatorily appoint a Managing Director on or before 1.11.2017 being Mr. T hardly can continue as a Managing Director till 30.10.2017 and Mr. R is disqualified falling in a time gap restriction for a period of 2 months on that day. This is complex situation for the bank. However, Board may go to hard side and allow the Bangladesh Bank to take action by appointing administrator for the bank and later on may appeal to Bangladesh Bank for shaping things up. But, obviously, this is too risky for the bank.

**Answer to self-test 10:**

Both the Acts will be applicable. Section 12 of Companies Act 1991 and section 117 of Banking Companies Act will be applied in case of alteration of Memorandum of a bank company. Before altering the articles of association, written permission from Bangladesh Bank is mandatory. According to section 117 of Banking Companies Act 1991, notwithstanding anything contained in the Companies Act, no application for the alteration of the Memorandum of a bank shall be maintainable unless Bangladesh Bank certifies that there is no objection to such alteration.

**Answer to Interactive Question**

**Answer to Interactive Question 1:**

As per section 13 of the Bank Companies Act 1991 together with BRPD circular, the minimum capital requirement of a Bank is BDT 4,000 million or 10% Risk Weighted Asset, whichever is higher. Here we found the following statement regarding capital of CD Bank Ltd;

|  | <b>Figure in BDT million</b> |
|--|------------------------------|
| Capital Maintained   | 7,130                        |
| Total requirement of Capital based on 10% Risk Weighted Assets | 6,920                        |
|  | -----                        |
| Therefore, Capital Excess                                      | 210                          |

I have found that the bank would be able to release up-to BDT 210 million only from its total capital beyond which it cannot go. Cash dividend will reduce the capital whereas bonus dividend will have no impact in the total capital structure. So, I would suggest the board to allow 5% i.e. BD 200 million cash dividend and 15% stock dividend. After execution, the capital of the bank will be revised as:

|                   | <b>Figure in BDT million</b> |
|-------------------|------------------------------|
| Paid up-capital   | 4600                         |
| Statutory Reserve | 1830                         |

## *Corporate Laws and Practices*

|                                  |        |
|----------------------------------|--------|
| Retained Earnings                | 25     |
| 1% Provision of Loans & Advances | 475    |
|                                  | -----  |
| Revised total capital            | 6930   |
| Required Capital (10% RWA)       | (6920) |
|                                  | -----  |
| Excess Capital                   | 10     |

As per section 13 of Bank Companies Act 1991 together with BRPD circular, the minimum capital requirement of a Bank is BDT 4000 million or 10% Risk Weighted Asset, whichever is higher. Here I have found the following statement regarding capital of CD Bank Ltd;

|   |                           |
|---|---------------------------|
|   | <b>Fig in BDT million</b> |
| Total requirement of Capital based on 10% | 7,350                     |
| Risk Weighted Assets Capital Maintained   | 7,130                     |
|   | -----                     |
| Therefore, Capital Shortfall              | 220                       |

As per section 22 of Bank Companies Act 1991, no bank companies except specialized banks are entitled to pay dividend on their shares if the company failed to reserve the capital as per section 13 as mentioned above. So, CD Bank Ltd. has a capital shortfall of BDT 220 million. So it cannot declare any dividend.

As per sub-section (7) of sec-13, if Bangladesh Bank is of such a decision, that any bank has failed to reserve capital as per the required sum, rate or procedure stipulated in sub-section (1), then it may direct orders to the concerned bank company intimating to minimize the gap within maximum one year

and in the event of continuation of such offence after the expiration of such a prescribed deadline, it may take any or all of the punishable measures of the following against the bank companies.

- Proscription to collect deposits within the particular term or before the realization of such deficit; BDT (1663.75-900) million  
= 763.75 million.
- Proscription to collect new credit and advance within the particular term or until the minimization of the parallel deficit.
- For the failure aforesaid, imposition of fine from minimum twenty lac taka to maximum one crore taka and in the event such an infringement is continued, imposition of maximum fifty thousand taka for every day after the first day of infringement aforesaid; and
- Implication of other punishment or preventive measures under bank Companies Act 1991.
- As per section 26 KA of Bank Companies Act 1991, a bank is eligible to invest in the capital market equivalent to 25% of its total shareholders' equity. Total shareholders' equity shall include paid up capital, statutory reserve, share premium & retained earnings.

Therefore, total shareholders' equity of CD bank limited is

|                   | <b>Fig in BDT million</b> |
|-------------------|---------------------------|
| Paid up-capital   | 4,000                     |
| Statutory Reserve | 1,830                     |
| Share Premium     | 0                         |
| Retained Earnings | 825                       |
|                   | -----                     |
| Total capital     | 6,655                     |

So, maximum investment limit = BDT 6,655 x 25% = BDT 1,663.75 million.

Current investment = BDT 900 million

Therefore, maximum additional investment amount

As per sub-section (Kha) of sec (26), a bank has the maximum limit to invest/hold in any shares & securities of a company equivalent to its 10% of collected capital. Here, the paid up capital of CSD Ltd. is BDT 500 million. So, CD Bank Ltd. can hardly investment in the shares & securities of CSD Ltd up-to BDT 500 million (BDT 5000 x10%) only.

**Answer to Interactive Question 2:**

According to Section 17(1) of the Bank Company Act, 1991, the office of director Mr. X (director of CB Bank Ltd.) will stand vacated since he has failed to pay the amount due from him on account of the guarantee given by him to JB Bank Ltd.

As per Section 17(5) to (8) of the Bank Company Act, 1991 where the post of director falls vacant under Section 17 as above, the amount due to the concerned banking company or the financial institution shall be realized by adjusting the share value of the director of the post fallen vacant and the amount which still remains due after such adjustment shall be deemed to be public demand and be recoverable under the Public Demands (Ben. Act III of 1913) Recovery Act.

Where the post of a director of a banking company or financial institution falls vacant under Section 17 as above, the person who was the director against the vacant post shall not be eligible to be director of the said banking company or financial institution or any other banking company or financial institution within a period of one year from the date of full payment of the dues to the concerned banking company or financial institution.

If the director of any bank company under Section 17 (1) of the BCA 1991 receives any notice, he will not be entitled to transfer all the shares holding on his possession by the name in the bank he/she used-to serve save as otherwise entire dues of the concerned banks and financial institutions are paid.

No questions can be raised in any other courts other than courts having jurisdiction under Section 3 of the Companies Act, (Act 18 of 1994) regarding any proceedings, order or decision under Section 17 of the BCA 1991.

**Answer to Interactive Question 3:**

PAYMENT OF DIVIDEND BY BANK COMPANIES  
(BRPD Circular Letter No. 18 dated October 20, 2002.)

In terms of the provisions incorporated in Bank Companies Act, 1991, banks can declare their dividend without prior approval of Bangladesh Bank subject to compliance of the following conditions: -

- No dividend in cash or in bonus share (keeping in consideration the order issued on 11.09.2001 by the Securities and Exchange Commission in respect of issuance of bonus share) can be declared with short-fall in capital of the bank.
- Banks shall have to comply with the following conditions in respect of maintenance of provision:
  - Provision against adversely classified loans shall have to be maintained at the rate(s) specified by Bangladesh Bank;
  - General provision @ 1% against unclassified loans shall have to be maintained;
  - Provision against 'Investment' and 'Other Assets' shall have to be maintained at the rate(s) specified by Bangladesh Bank.
- Prior to declaration of dividend, the concerned bank shall have to obtain specifically a certificate from the external auditor to this effect that provisions have been properly maintained having followed/ complied with the rules, regulations and norms issued by Bangladesh Bank and there is no short-fall in respect of maintenance of capital adequacy and provision.
- In case of declaring dividend in cash at higher rate i.e., beyond 20% , a sum equal to the amount of dividend in excess of 20% shall have to be kept deposited in the Dividend Equalization Account which shall be treated as 'Core Capital' of the bank.
- If any post-facto review during on-sight inspection by Bangladesh Bank reveals any deviation in compliance of the above conditions in declaring dividend of any year, prior permission from Bangladesh Bank shall have to be obtained before declaration of dividend for the next year.

**Answer to Interactive Question 4:**

Section 23(1)(a) of The Bank Companies Act, 1991 states that:

Notwithstanding anything contained in any other law for the time being in force or in the memorandum or articles of association of any company no person being a director of a bank company can at the same time remain as director of any other bank company or financial institution. However, he may remain director of any insurance company for two terms. Therefore, Mr. X needs to resign from MNO Company Limited, a non-banking financial institution and one insurance company.

**Answer to Interactive Question 5:**

As per provisions of Banking Companies no banking company or financial institution shall grant any kind of loan facility in favor of any defaulting borrower. The definition 'defaulting borrower' includes those whose principal or interest of the loan has become overdue for a period exceeding 06 months. In light of the same, since Asian Holdings Limited is a defaulter and its overdue is more than 06 months with one of the banks, BD Bank Limited cannot grant loan to Asian Holdings Limited.

**Answer to Interactive Question 6:**

**Power of Bangladesh Bank to dissolve the Board of Directors (section 47):**

As per section 47 of Bank Companies Act, 1991, the Bangladesh Bank may dissolve/supersede the Board of Directors of a banking company under the following circumstances:

- Where the Bangladesh Bank is satisfied that-
- the activities of the board of directors, by whatever name called, of a banking company is or is likely to be detrimental to the interest of the banking company or its depositors or otherwise undesirable;
  - for all or any of the reasons mentioned in sub-section 1 of section 46, it is necessary to do \$ may be specified in the order the Bangladesh bank may, for reasons to be recorded in writing by order, supersede the Board of Directors of a banking company with effect from such date and Jar such period as may be specified in the order.

The period of suspension specified in an order under sub- section (1) may from time to time be extended by the Bangladesh Bank, however, that the total period of suppression does not exceed two years;

All powers and duties of the Board of Directors shall during this period of suppression, be exercised and performed such persons as the Bangladesh Bank may from time to time appoint on this behalf.

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

**Answer to Interactive Question 7:**

Both the Acts will be applicable. Section 12 of Companies Act 1991 and section 117 of Banking Companies Act will be applied in case of alteration of Memorandum of a bank company. Before altering the articles of association, written permission from Bangladesh Bank is mandatory. According to section 117 of Banking Companies Act 1991, notwithstanding anything contained in the Companies Act, no application for the alteration of the Memorandum of a bank shall be maintainable unless Bangladesh Bank certifies that there is no objection to such alteration.





## Chapter 4

### **The Financial Institutions Act, 1993**

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*Licensing of financial institutions*

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*Maintenance of minimum liquid assets*

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*Submission of statement of accounts and audit of accounts*

*Moratorium in respect of financial institutions, reconstruction etc.*

*Offences and punishments*

*Miscellaneous*

*Answers to Interactive questions*

**Exam requirements**

*Financial Institution Act 1993 is an integral part of the syllabus. Typically, ten to fifteen percent of the questions come from the part of Financial Institution Act 1993. Understanding the basic precepts relating to this act is vital.*

*You are likely to be presented with scenarios and may have to conclude whether the formation of a financing business is valid, the procedures of dividend, asset management have been followed effectively, how the deposits are receipt and credit facilities are provided. They will not be examined directly but illustrate points of law that could be.*

*In the assessment, candidates may be tested in following areas:*

- Licensing of financial institutions
- Reserve fund, dividends, balance-sheet
- Business rules
- Maintenance of minimum liquid assets
- Inspection
- Submission of statement of accounts and audit of accounts
- Moratorium in respect of financial institutions, reconstruction etc.
- Offences and punishments

**2. Definitions:**

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

- "financing business" means the business carried on by any financial institution;
- "financial institution" means such non-banking financial institutions, which-
  - I. make loans and advances for industries, commerce, agriculture or building construction; or
  - II. 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
  - III. carry out instalment transactions including the lease of machinery and equipment; or
  - IV. finance venture capital; and shall include merchant banks, investment companies, mutual associations, mutual companies, leasing companies or building societies;
- "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;
- "creditor" means any person entitled to have returned money deposited by him or any other person;
- "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;
- "company" means any company registered under the Companies Act, 1913 (VII of 1913);
  - "Companies Act" means the Companies Act, 1913 (VII of 1913);
  - "auditor" means any person who, subject to the provisions of this Act, has been appointed to audit the accounts and transactions of financial institutions;
  - "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;
  - "regulation" means any regulation made under this Act;
  - "Bangladesh Bank" means the Bangladesh Bank established under the Bangladesh Bank Order, 1972 (PO No.126 of 1972);
  - "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;
  - "building society" means a society which collects savings and grants loans for the construction of buildings and the buying of properties;
  - "person" means any company, institution or organization;
  - "banking company" means any banking company established under the Banking Companies Act, 1991 (Act No.14 of 1991);
  - "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;
  - "mutual association" means a savings association which does not issue capital, stocks and the depositors and borrowers of which are its owners and controllers;
  - "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;
  - "leasing company" means a company which leases machines and implements as its business or part of its business or finances such leasing.

### **Licensing of financial institutions**

#### **4. Licensing of financial institutions:**

- No person shall carry on any financial business without a license to run a financial institution issued by the Bangladesh Bank.

- 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-
  - its application under this section is under consideration, or
  - it has not, by a notice, been informed by the Bangladesh Bank that a license cannot be granted to it.
- 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:
  - the financial situation;
  - the characteristics of the management;
  - the sufficiency of the capital structure and the earning capacity;
  - the purposes mentioned in the memorandum;
  - the public interest;
- The Bangladesh Bank may impose on any license to run a financial institution such conditions as it thinks fit;
- 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.

**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,

- 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;
- 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.

**Minimum Capital:**

The Bangladesh Bank shall prescribe the minimum capital of every financial institution.

- 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.

**Restrictions on the opening of branches:**

- 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.

- 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.

**Cancellation of a license:**

- The Bangladesh Bank may cancel the license of a financial institution granted under this Act on account of the following reasons, namely:
  - if it does not carry on the business for which it had been established;
  - if the financial institution goes into liquidation or if its business is closed;
  - if it furnishes false or misleading information or documents in order to receive a license;
  - if it carries on its business in a manner detrimental to the interests of the depositors;
  - if its assets are not sufficient to pay the claims of its depositors;
  - if it carries on business maintaining an amount of paid-up capital which is less than the amount of the minimum capital;
  - if the conditions of the license are contravened;
  - if the financial institution or any of its directors is convicted for an offence under this Act.
- 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.
- 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.
- 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.
- 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.

**Reserve fund, dividends, balance-sheet**

**9. Reserve Fund:**

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

**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.

**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.

**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.

**C. Business rules**

**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.

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

No financial institution shall-

- accept any such deposit as is repayable on demand through cheque, draft or order of the depositor;
- deal in gold or any foreign coins;
- 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;
- 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;
- 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;
- 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.
- "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.

- 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.
- 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.

**Restrictions regarding the business of financial institutions:**

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

**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.

**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.

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

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

- the highest rate of interest to be paid by financial institutions on various kinds of deposits,
- the highest amount of credit to be taken by financial institutions from any person,
- the last date for repayment of credits granted by financial institutions,
- 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,

- the upper limit of credits granted by financial institutions in favor of any person,
- the reserves to be maintained by financial institutions at the Bangladesh Bank,
- other matters to be regulated in the public interest or for the development of monetary policy.

**Maintenance of minimum liquid assets**

**Maintenance of liquid assets:**

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

**Inspection:**

- 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.
- 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.
- 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 210 of the Companies Act.
- 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.

**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.

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

- 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.
- 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.
- 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.
- 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.
- 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.

**Submission of statement of accounts and audit of accounts**

**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.

**Appointment of an auditor and duties of the auditor:**

- Notwithstanding anything contained in the Companies Act, every financial institution shall annually, subject to the consent of the Bangladesh Bank, appoint one auditor.
- 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.
- 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.
- 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.
- 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.
- 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 eighty-five 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.

**Managing Directors etc. not being qualified:**

- 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.
- 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.
- 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.



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

- 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.
- Before issuing a direction under sub-section (1), the person affected shall be given reasonable opportunity to make a representation.

**Moratorium in respect of financial institutions, reconstruction etc.**

**Moratorium, reconstruction and amalgamation:**

- 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.

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.

- 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-
- in respect of their interests or rights in or against the financial institution before its reconstruction or amalgamation; or
- 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-
- in respect of their interest in shares in the financial institution before its reconstruction or amalgamation; or
- 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-
- 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;
- 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.
- 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.
  - 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 (4).
  - 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.

- 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:-
  - the financial institution, the transferee institution and any other financial institution concerned with the amalgamation;
  - the members, depositors and other creditors of the financial institution concerned;
  - the said financial institution and the employees of the transferee institution;
  - 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.
- 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.

- 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.
- 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.

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.

- 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.

**Amalgamation of financial institutions:**

- 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.
- 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.

**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-

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

**Offences and punishments**

**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.

**Punishment for not cooperating in an investigation under section 5.-**

- 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.

- 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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

**Punishment for adding anything untrue in account books etc. of financial institution:**

- 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.
- 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).

**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.

**Power of the Bangladesh Bank to impose fines:**

- 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.
- 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.

## **Miscellaneous**

### **Cognizance of offence:**

- No court other than a sessions court shall try any offence under this Act.
- 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.

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

- 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.
- 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.

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

- 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.
- 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.

### **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.

### **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.

### **Power to make rules:**

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

**Interactive Question 1:**

Akij Bangla Limited is one of the largest local family businesses operating in all corners of the country. As present, the company has following three business wings:

- FMCG
- Construction Materials
- Agricultural Products

In last decade, the company has experienced significant business growth and accumulated huge amount of cash awaiting to be reinvested. Managing Director of the company has come up with an idea of opening a fourth business wing which will make loans and advances for industries, commerce, agriculture or building construction. As the country is going through an economic transition, there is extensive demand for finance out there in the market. Therefore, Managing Director is keen to start this financing business quickly within the existing business set up of the company. He is in the view that as the company already has a registration under Companies Act, it can simply introduce financing products making necessary modification to its MOA.

Before going to detail investment plan, the company has approached to you for advice on preliminary feasibility of the above business plan. Advise.

*Summary and Self-test*

- Explain the term 'financial institution' as defined in the Financial Institution Act, 1993. Narrate the circumstances under which the license of a financial institution may be cancelled?
- Explain the restrictions regarding credit facilities of a financial institution.
- ABC Financing limited is operating in the financing industry since 1980s. By virtue of the financing business, the company has gained significant know how of different types of wholesale and retail business. As a diversification plan, the company is considering if it can start a side business of wholesale goods in addition to the financing business.

Explain the restrictions regarding the business of financial institutions.



## Answers to Self-test

**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 instalment transactions including the lease of machinery and equipment; or
- finance venture capital; and shall include merchant banks, investment companies, mutual associations, mutual companies, leasing companies or building societies;

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

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

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.

## 2. Restrictions regarding credit facilities

No financial institution shall-

- accept any such deposit as is repayable on demand through cheque, draft or order of the depositor;
- deal in gold or any foreign coins;
- 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;

- 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;
- 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;
- 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.

**Restrictions regarding the business of financial institutions:**

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

**Answers to Interactive questions**

No person shall carry on any financial business without a license to run a financial institution issued by the Bangladesh Bank.

**Question** ABC Company Limited, a non-banking financial institution, listed in both the stock exchanges in Bangladesh has authorized share capital of BDT 2.50 billion divided into 250.00 million ordinary shares of BDT 10.00 each. Currently, paid up capital of the Company is 1.75 billion. The management proposes to increase the paid up capital of the Company through issuance of Right Shares in the ratio of 1:1 at a price of BDT 15.00 per share. The next Board meeting of the Company will be held on December 30, 2016 where the proposal of issuance of Right Shares will be placed. The management of the Company requested to advise them regarding the procedures to be followed for successful completion of the Right Issue. In this regard you are requested to give your advices on the formalities/compliance to be completed with regard to the provisions of:

The Companies Act, 1994;

The rules and regulations of Bangladesh Securities and Exchange Commission; and

The Financial Institutions Act, 1993.

**Answer** Recommendation of the Board of Directors of ABC Company Limited for issuance of Right Shares is Price Sensitive information. If the management proposal is approved, the information must be disseminated to Bangladesh Securities and Exchange Commission and the Stock Exchanges within half an hour of taking the decision by the Board. Moreover, the information shall be published in at least in two national daily newspapers, one in Bengali and another in English. The same shall also be published in one online newspaper and be made available in the website of ABC Company Limited. Price Sensitive information shall include the followings:

Ratio of Right Shares recommended. In the mentioned case it is 1:1;

Date of the Extra-Ordinary General Meeting of the Company;

Record date for the purpose of Extra-Ordinary General Meeting (complying with the regulations of BSEC); and

Venue of the Extra-Ordinary General Meeting. However, the venue may be declared at a later date.

The Company needs to increase its Authorized Share Capital minimum up to such amount so that after issuance of the Right Shares total paid up capital of the Company remains below the increased Authorized Share Capital of the Company. Increase of Authorized Share Capital is also Price Sensitive information and shall be disseminated to Bangladesh Securities and Exchange Commission and the Stock Exchanges accordingly.

Both increase of Authorized Share Capital and issuance of Right Shares in the ratio of 1:1 must be approved by the shareholders in the General Meeting of the Company. For this purpose, notice shall be served by the Company at least 21 days before the date of the General Meeting where the proposed resolution shall be mentioned.

For the purpose of increasing the Authorized Share Capital of the Company necessary changes need to be made in the capital clause of the Memorandum of Association and Articles of Association of the Company. As per provisions of The Financial Institutions Act, 1993 “No Objection” from Bangladesh Bank shall be taken to make the necessary changes in the Memorandum of Association and Articles of Association of the Company. After obtaining NOC from Bangladesh Bank, revised Memorandum of Association and Articles of Association of the Company shall be submitted to the Registrar of Joint Stock Companies for its approval and certified copy of the same shall be obtained.

For the purpose of issuance of the Right Shares the financial statements of the Company need to be audited by a firm of Chartered Accountants. The issuer Company must ensure that its CIB report is clean with Bangladesh Bank. If it is not updated that must be updated before submission of application to Bangladesh Securities and Exchange Commission.

Manager to the issue, Underwriter, Bankers to the issue shall be appointed. Application will be submitted to Bangladesh Securities and Exchange Commission along with the required documents as prescribed. The company needs to complete its credit rating by a credit rating company, since the offer is at a premium. The financial statements of the Company need to be audited for that period based on which the right offer will be exercised.

After approval of the Right Issue by Bangladesh Securities and Exchange Commission the information shall be disclosed as Price Sensitive Information and another Record Date shall be fixed for the purpose of entitlement of the right shares.

Subscription opening date & closing date shall be declared and subscription shall be collected accordingly. All post subscription issues/matters including complain of the shareholders, if any, shall be addressed as per regulations of BSEC.

Periodic reports relating to the Right Issue shall be submitted to BSEC. Share allotment will be uploaded in the CDBL data base. Return of Allotment will be submitted to RJSC and certified copy of the same to be obtained.



## Chapter 5

### **The Bangladesh Labour Act, 2006 (Amended in 2013) and Bangladesh Labour Rules, 2015**

#### **Topic List**

- Statutory definitions from the Bangladesh Labour Act 2006 (as amended in 2013)
- Employment and conditions of service
- Maternity benefits
- Welfare measures
- Working hours and leave
- Wages and payment
- Compensation for injury by accident
- Workers' participation in company's profit
- Provident Fund and other terminal benefits
- Misconduct, Punishment and Disciplinary Proceedings

**1. Statutory definitions from the Bangladesh Labour Act 2006 (Amended in 2013)**

- a. **'Collective Bargaining Agent (CBA)'** in relation to an establishment or group of establishments, means the trade union of workers or federation of trade group of establishments in the matter of collective bargaining;
- b. **'Retirement'** means the normal termination of employment of a worker on attaining the particular age under section 28 of this Act, provided that voluntary retirement by a worker from service on completion of 25 years of service in any establishment shall also be deemed to be retirement;
- c. **'Working hour'** means the time during which the workers employed are at the disposal of the employer excluding any interval allowed for rest and meals;
- d. **'Discharge'** means the termination of services of a worker by the employer for reasons of physical or mental incapacity or continued ill-health of a worker;
- e. **'Dismissal'** means the termination of services of a worker by the employer for misconduct;
- f. **'Gratuity'** means wages payable on termination to a worker on the basis of his latest basic salary for a completed year of service or for service for a period exceeding 6 months, salary of minimum 30 days, or salary of 45 days for a continuous service for more than 10 years, it shall be in addition to any payment of compensation or payment of any wage or allowance in lieu of notice due to termination of services of a worker on different grounds under this Act;
- g. **'Settlement'** means a settlement arrived at in the course of a conciliation proceeding, and includes an agreement between an employer and worker arrived at otherwise than conciliation proceedings, where such agreement is in writing and signed by both parties and a copy thereof is sent to the Director of Labour and the Conciliator;
- h. **'Strike'** means cessation of work or refusal to work jointly by a group of workers employed in any establishment or refusal to accept work or continue to work unanimously by a body of workers employed therein;
- i. **'Maternity benefit'** means the sum of money payable under the provisions of chapter IV to a woman worker with leave;
- j. **'Wages'** means all remuneration, expressed in terms of money or capable of being so expressed, which would, if the terms of employment, expressed or implied, were fulfilled, be payable to a worker in respect of his employment or of work done in such employment, and includes any other additional remuneration of the nature aforesaid which would be so payable, but does not include-

- I. the value of any house accommodation, supply of light, water medical attendance or other amenity or of any service excluded by general or special order of the government,
  - II. any contribution paid by the employer to any pension fund provident fund,
  - III. any traveling allowance on the value of any traveling concession,
  - IV. any sum paid to the worker to defray special expenses entitled on him by the nature of his employment;
- k. **'Week'** means a period of seven days beginning at 6.00 pm on Friday or such other night as may be fixed by the government in relation to an establishment in any area;
- l. **'Worker'** 'worker' means any person including an apprentice employed in any establishment or industry, either directly or through a contractor or whatever names it may be called, to do any skilled, unskilled, manual, technical, trade promotional or clerical work for hire or reward, whether the terms of employment be expressed or implied, but does not include a person employed mainly in a managerial or administrative monitoring officer capacity.

## **2. Employment and conditions of service**

### **2.1. Condition of employment (Sec 3)**

1. In every establishment employment of workers and other matters incidental thereto shall be regulated in accordance with the provisions of this chapter;

Provided that any establishment may have its own rules regulating employment of workers, but no such rules shall be less favourable to any worker than the provisions of this chapter;

Further provided that the establishments where this Act is not applicable shall not make any Policy, Rule, House-Policy giving less favourable facilities compare to this Act.

2. The service rules in any establishment as mentioned in the proviso to sub-section (1) shall be submitted for approval by the employer of such establishment to the chief inspector who shall, within ninety days of the receipt thereof make such order therein as he deems fit.
3. No service rules as mentioned in sub-section (2) shall be put into effect except with the approval of the Chief Inspector.
4. Any person aggrieved by the order of the chief Inspector may, within thirty days of the receipt of the order, may prefer appeal to the Government and the Government shall resolve that appeal within 45 (forty five) days from its receipt and the order of the Government on such appeal shall be final.
5. Nothing provided in sub-section (2) shall apply to an establishment which is owned by or under management or control the Government.

**2.2. Classification of workers and probation period (Sec 4)**

1. Workers employed in any establishment shall be classified in any of the following classes according to the nature and condition of work; namely
  - (a) apprentice,
  - (b) substitute/ badli,
  - (c) casual,
  - (d) temporary,
  - (e) Apprentice;
  - (f) Permanent; and
  - (g) Seasonal worker;
2. A worker shall be called an apprentice if he is employed in an establishment as a trainee and is paid an allowance during the period of his training.
3. A worker shall be called a substitute/ badli if he is employed in an establishment in the post of a permanent worker or of a probationer during the period who is temporarily absent.
4. A worker shall be called a casual worker if he is appointed in an establishment temporarily for a work casual in nature.
5. A worker shall be called a temporary worker if he is employed in an establishment for work which is essentially of temporary nature, and is likely to be finished within a limited period.
6. A worker shall be called a probationer if he is provisionally employed in an establishment to fill a permanent vacancy in a post and has not completed the period of his probation in the establishment.
7. A worker shall be called a permanent worker if he is employed in an establishment on a permanent basis or if he has satisfactorily completed the period of his probation in the establishment.
8. The period of probation for a worker whose function is of clerical nature shall be six months and for other workers such period shall be three month: Provided that in the case of a skilled worker, the period of probation may be extended by an additional period of three months if, for any circumstances, it has not been possible to determine the quality of his work within the first three months' period of his probation, Further provided that after completion of the three months or extended period of probation, the concerned workers shall be treated as permanent under sub- section (7) even if he is not issued any letter of confirmation;
9. If any worker, whose service has been terminated during his probationary period, including the extended period, is again appointed by the same employer within a period of three years, he shall, unless appointed on a permanent basis, be deemed to a probationer and the period or periods of his earlier probation shall be counted for determining his total period of probation.



10. If a permanent worker is employed as a probationer in a new post, he may at any time during the probationary period, be reverted to his old permanent post.
11. A worker shall be called a seasonal worker if he is employed in an establishment for a seasonal work and remains in the work for the season.
12. In appointing workers in any industry like suger mills, chatal, etc and seasonal factories, worker employed therein in the previous years shall be given preference.

### **2.3. Compensation for death (Sec 19)**

If a worker dies while in service after a continuous service of not less than two years, his nominee or in the absence of any nominee, his dependent shall be paid a by the employer a compensation at the rate of thirty days' wages for a normal death and of forty five days for an accidental death while working in the establishment or on duty for every completed year of service or for any part thereof in excess of six months, or gratuity whichever is higher, and the amount will be in addition to any other benefit to which the deceased worker would have been entitled to had he retired from the service.

#### ***Interactive Question 1***

*Mr. Kamran worked in a company, named 'ABC Shipping Company Limited'. He joined the company on 1<sup>st</sup> February 2017 after passing the requirement test. As per agreement, he then posted to Mongla, Bagerhat for his duty. Accidentally, he died on 21<sup>st</sup> June of the same year. After investigation, the shipping company identified that it was an unusual case and due to the technological issues, Mr. Kamran died.*

#### ***Requirement:***

*Did Mr. Kamran entitle for any compensation from the company?*

### **2.4. Discharge from service (Sec 22)**

1. A worker may be discharged from service for reasons of physical or mental incapacity **or** continued ill-health certified by a registered medical practitioner.
2. If a discharged worker completes not less than one year of continuous service he shall be paid by the employer, as compensation, 30 (thirty) days' wages for his every year of service, or gratuity, if payable, whichever is higher.

### **2.5. Special provisions relating to fine (Sec 25)**

1. No fine exceeding (1/10) (one-tenth) of the wages payable to a worker in a wage-period shall be imposed on any worker.
2. No fine shall be imposed on a worker who is under the age of 15 (fifteen) years.
3. No fine imposed on any worker shall be recovered from him by instalments or after the expiry of 60 (sixty) days from the date on which it was imposed.

4. Every fine shall be deemed to have been imposed on the day of the commission of the offence in respect of which it was imposed.
5. All fines and all realisations thereof shall be recorded by the employer in a register prescribed by rules and all fines realised shall be spent only for the welfare of the workers employed in the establishment.

**2.6. Termination of employment of worker by an employer otherwise than by dismissal (Sec 26)**

1. The employment of a permanent worker may be terminated by an employer, otherwise than in the manner provided elsewhere in this Chapter, by giving him a notice in writing, of—
  - a) 120 (one hundred and twenty) days, if he is a monthly rated worker;
  - b) 60 (sixty) days, in case of other workers.
2. The employment of a temporary worker may be terminated by an employer, otherwise than in the manner provided elsewhere in this Chapter, and if it is not due to the completion, cessation, abolition or discontinuance of the temporary work for which he was appointed, by giving him a notice in writing, of –
  - a) 30 (thirty) days, if he is a monthly rated worker;
  - b) 14 (fourteen) days, in case of other worker.
3. Where an employer intends to terminate the employment of a worker without any notice, he may do so by paying the worker wages for the period of notice, in lieu of the notice, under sub-section (1) or (2).
4. Where the employment of a permanent worker is terminated under this section, he shall be paid by the employer compensation at the rate of 30 (thirty) days wages for his every completed year of service or gratuity, if payable, whichever is higher, and this compensation shall be in addition to any other benefit which is payable to such worker under this Act.

**2.7. Retirement of worker (Sec 28)**

1. Notwithstanding anything contained elsewhere in this Chapter, a worker employed in any establishment shall, ipso facto, retire from employment on the completion of 1[60 (sixty)] years of his age.
2. For the purpose of counting age of a worker under this section, the date of birth recoded in the service book of that worker shall be the conclusive proof.
3. Every retiring worker shall be paid the dues receivable by him under the provisions of section 26(4) or under the service rules of the establishment.
4. Any authority may, if it thinks fit, employ later on a retiring worker under contract.

*28(a). Employers-Workers relations due to any disaster beyond control or damage thereby. -* Notwithstanding whatever in this Chapter, if any industry ceased to be transferred or production of an industrial establishment comes to a halt permanently due to any sudden natural disaster or any disaster or emergency reason beyond control, in that case, the owners-workers relations may be determined by the Government under the prescribed procedures set out by the Rule. Worker concerned, the gravity of the misconduct, and any other that may exist.

## **2.8. Payment of provident fund (Sec 29)**

If a worker is a member of any Provident Fund and is entitled to any benefit from such Fund including the employer's contribution under the rules of the Fund, he shall not be deprived of such benefit due to retrenchment, discharge, dismissal, retirement, removal or termination of service.

## **2.9. Time for final payment of dues of worker (Sec 30)**

Where the employment of a worker ceases due to retirement, discharge, retrenchment, dismissal, termination or any other reason, all amounts due to him shall be paid by the appointing authority within a maximum period of 30 (thirty) working days following the date of cessation of his employment.

## **2.10. Certificate of service (Sec 31)**

Every worker, other than a casual or substitute worker, shall be entitled to get a certificate relating to service from his employer at the time of his retrenchment, discharge, dismissal, removal, retirement or termination of service.

## **2.11. Procedure of making complaint (Sec 33)**

1. Any worker including a worker who has been laid-off, retrenched, discharged, dismissed, removed, or otherwise terminated from employment, who has any complaint in respect of anything under this Chapter, and intends to get redress thereof under this section, shall 3[send] his complaint in writing to his employer, by registered post within 30 (thirty) days of being informed of the cause of such complaint:

Provided that if the appointing authority accepts the complaint directly and acknowledges the receipt thereof in writing, such complaint shall not be required to be sent by registered post.

2. The employer shall within 4[30 (thirty)] days of receipt of the complaint, make enquiry into the complaint and shall after giving the concerned worker an opportunity of being heard, communicate him in writing his decision thereon.
3. If the employer fails to give any decision under sub-section (2), or if the concerned worker is dissatisfied with such decision, he may submit a complaint in writing, to the Labour Court within 30 (thirty) days from the date of expiry of the period mentioned in sub-section (2) or, as the case may be, within 30 (thirty) days from the date of the decision of the employer.

4. The Labour Court shall, on receipt of the complaint, give notice to both the parties and hear their statement on the complaint, and considering the circumstances of the case shall pass such order as it may deem just.
5. The Labour Court, may, by an order passed under sub-section (4), amongst other reliefs, direct for reinstatement of the complainant in service, with or without arrear wages and convert the order of dismissal, removal or discharge to any minor punishment specified in section 23(2).
6. Any person aggrieved by an order of the Labour Court, may, within thirty days of the order, prefer an appeal to the Tribunal, and the decision of the Tribunal on such appeal shall be final.
7. No Court-fee shall be payable for making any complaint or preferring an appeal under this section.
8. No complaint under this section shall amount to a criminal prosecution under this Act.
9. Notwithstanding anything contained in this section, no complaint shall lie against an order of termination of employment under section 26, unless such order is alleged to have been made for his trade union activities or passed with an ill motive or unless the worker concerned has been deprived of the benefits specified in that section.

### **3. Maternity benefit**

#### **3.1. Prohibition of engagement of women worker in work in certain cases (Sec 45)**

1. No employer shall knowingly engage a woman in his establishment during the 8 (eight) weeks immediately following the day of her delivery.
2. No woman shall work in any establishment during the 8 (eight) weeks immediately following the day of her delivery.
3. No employer shall employ any woman for doing any work which is of an arduous nature or which involves long hours of standing or which is likely to adversely affect her health, if –
  - a. he has reason to believe or if the woman has informed him that she is likely to deliver a child within 10 (ten) weeks;
  - b. to the knowledge of the employer the woman has delivered a child within the preceding 10 (ten) weeks:

Provided that in the case of tea plantation worker, a woman worker may do work of a light nature if and for so long as the medical practitioner of the concerned tea estate certifies that she is physically fit to do so; and, for the days that she does such work, she shall be paid for such work wages at the rate prescribed under the existing law, and such wages shall be payable in addition to the maternity benefit.

**3.2. Right to maternity benefits and liability for its payment (Sec 46)**

1. Every woman worker shall be entitled to maternity benefit from her employer for the period of 8 (eight) weeks<sup>1</sup> preceding the expected day of her delivery and 8 (eight) weeks immediately following the day of her delivery, and her employer shall be bound to give her this benefit:

Provided that a woman shall not be entitled to such benefit unless she has worked under her employer for a period of not less than 6 (six) months immediately preceding the day of her delivery.

2. No such benefit shall be payable to a woman if at the time of her delivery she has 2 (two) or more surviving children, but in that case she may enjoy any leave which is due to her.

**3.3. Procedure of payment of maternity benefits (Sec 47)**

1. If a pregnant woman is entitled to maternity benefit under this Act, she shall, on any day, give notice either orally or in writing to her employer that she expects to be confined within 8 (eight) weeks next following and the name of the person who shall receive the payment of the benefit in case of her death shall also be included in the notice.
2. If a woman has not given any such notice, she shall inform her employer about her giving birth to a child by giving such notice within 7 (seven) days of her giving birth to child.
3. After receipt of a notice under sub-section (1) or (2), the employer shall permit the concerned woman to absent herself from work, -
  - a. in the case of a notice under sub-section (1), from the day following the date of notice;
  - b. in the case of a notice under sub-section (2), from the day of delivery until 8 (eight) weeks after the day of delivery.
4. An employer shall pay maternity benefit to a woman in any of the following ways as that woman may desire, namely: -
  - a. where a certificate from a registered medical practitioner is produced stating that the woman is expected to be confined within 8 (eight) weeks the maternity benefit payable for 8 (eight) weeks preceding delivery shall be paid within 3 (three) working days following the production of the certificate, and such benefit payable for the remaining period shall be paid within 3 (three) working days of the production of proof that she has given birth to a child; or
  - b. maternity benefit payable for 8 (eight) weeks preceding and including the date of delivery shall be paid within 3 (three) working days following the production of proof to the employer that she has given birth to a child, and such benefit payable for the remaining period shall be paid within 8 (eight) weeks following the production of such proof; or
  - c. maternity benefit payable for the whole of such period shall be paid within three working days following the production of proof that she has given birth to a child:

Provided that a woman shall not be entitled to any maternity benefit or any part thereof, the payment of which is dependent upon the production of proof under this sub-section that she has given birth to a child, unless such proof is produced within 3 (three) months of the day of her delivery.

5. The proof which is required to be produced under sub-section (4) shall be either an attested extract from a birth register maintained under the Births and Deaths Registration Act, 2004 (Act No. XXIX of 2004) or a certificate given by a registered medical practitioner or such other proof as may be acceptable to the employer.

### **3.4. Amount of maternity benefits (Sec 48)**

1. The maternity benefit which is payable under this Act shall be paid at the rate of daily, weekly or monthly average wages, as the case may be, calculated in the manner laid down in sub-section (2), and such payment shall be made wholly in cash.
2. For the purpose of sub-section (1), the daily, weekly or monthly average wages shall be calculated by dividing the total wages earned by the concerned woman during 3 (three) months immediately preceding the date on which she gives notice under this Chapter by the number of days she actually worked during that period.

### **Interactive Question 2**

*Mrs. Nadia Sultana, brand manager of XYZ Bangladesh Limited, joined the company on 23<sup>rd</sup> June 2016. After one month of joining, she married Mr. Akmal Hasan who was her colleague and worked at the same office in Gulshan 2.*

*On December 2017, she took the maternity leave from the office as she was pregnant at that time. As per Labour Act, she was entitled for getting the maternity benefit. The company calculated the amount of maternity benefit for her amounted to BDT 3,50,000.*

#### **Requirement:**

*In which form the company should give her the benefit i.e. bank or cash?*

### **3.5. Payment of maternity benefits in case of death of a woman (Sec 49)**

1. If a woman entitled to maternity benefit under this Chapter dies at the time of her delivery or during 8 (eight) weeks following thereof, the employer shall pay the amount of maternity benefit, if the newly born child survives, to the person who takes care of the child, and if the child does not survive to the person nominated by her under this Chapter, or if there is no such nominee, to her legal representative.
2. If a woman dies during the period for which she is entitled to maternity benefit but before giving birth to a child, the employer shall be liable to pay such benefit for the period preceding and including the day of her death, provided that if any such benefit already paid to her exceeds the amount of such benefit now payable shall not be recoverable, and if any amount in this regard is due to the employer till the time of death of the woman, he shall pay it to the nominee of the woman under this Chapter, or if there is no nominee, to her legal representative.

**3.6. Restrictions on termination of employment of a woman in certain cases (Sec 50)**

If any notice or order of discharge, dismissal, removal or otherwise termination of employment is given by the employer to a woman worker within a period of 6 (six) months before and 8 (eight) weeks after her delivery and such notice or order is given without sufficient cause, she shall not be deprived of any maternity benefit to which she would be entitled under this Chapter if such notice or order has not been given.

**4. Welfare measure**

**4.1. First aid appliances (Sec 89)**

1. In every establishment the first-aid box or cupboard equipped with the contents prescribed by rules shall be provided to be readily accessible during all working hours.
2. The number of such box or cupboard shall not be less than one for every 150 (one hundred and fifty) workers ordinarily employed in the establishment
3. Every first-aid box or cupboard shall be kept in charge of such a responsible person who is trained in first-aid treatment, and who shall be available during all working hours of the establishment.
4. A notice shall be affixed in every work-room stating the name of such person and such person shall wear a badge so as to facilitate his identification.
5. In every establishment, where 300 (three hundred) or more workers are ordinarily employed, a sick room with a dispensary of a size and containing equipment or other facilities prescribed by rules shall be provided and such room shall be in the charge of such medical practitioner and nursing staff as may be prescribed by rules.
6. In any establishment or establishments where 5000 (five thousand) or more workers are employed, the employer or employers of that establishment or those establishments, as the case may be, shall arrange for running a permanent medical centre in such manner as may be prescribed by rules.
7. The treatment of a worker or an employee suffered from professional disease or work-time accident shall be continued by a competent or specialist medical practitioner at the expense and responsibility of the employer until such worker or employee is fully cured of such disease, hurt or sickness.
8. In every establishment where 500 (five hundred) or more workers are employed, the employer of such establishment shall appoint a welfare officer in the manner proscribed by rules.

**4.2. Washing facilities (Sec 91)**

1. In every establishment:
  - a. sufficient number of suitable bathrooms and washing facilities with provisions of their maintenance shall be provided for the use of the workers employed therein;
  - b. such facilities shall be provided separately for male and female workers, and they shall be properly screened;

- c. such facilities shall be kept clean at all times and easily accessible.
2. The Government may, by rules, prescribe the standard of such facilities in respect of any establishment.

#### **4.3. Rest rooms (Sec 93)**

1. In every establishment where more than 50 (fifty) workers are ordinarily employed, adequate and suitable number of rest rooms shall be provided and maintained for use of the workers, and a suitable lunch room with arrangement for drinking water, shall also be
2. provided and maintained in that establishment so that the workers may eat their meals that they may have brought with them:

*Provided that any canteen maintained in accordance with the provisions of section 92 shall be deemed to be a part of the requirements of this sub-section:*

*Provided further that in an establishment where any lunch room exists, the workers shall not eat any food in his work room.*

3. The said rest rooms and lunch rooms shall be sufficiently lighted and ventilated and shall be maintained in a clean and tolerable temperature condition.
4. In the establishments where more than 25 (twenty five) female workers are employed, separate rest room shall be provided for male and female workers and in establishments where less than 25 (twenty five) female workers are employed, separate screened spaces shall be provided in the rest room for female workers.

#### **4.4. Rooms for children (Sec 94)**

1. In every establishment, where 40 (forty) or more female workers are ordinarily employed, one or more suitable rooms shall be provided and maintained for the use of their children who are under the age of 6 (six) years.
2. The said room shall be provided with adequate accommodation, light and ventilation and shall be maintained in clean and sanitary condition, and shall be under the charge of an experienced or trained woman for the care of children.
3. The said rooms shall be easily accessible to the mothers of the children, and, so far as is reasonably practicable, they shall not be situated adjacent to or near any part of the establishment where obnoxious fumes, dust or odors are given off, or where excessively noisy works are carried on.
4. The said rooms shall be strongly constructed, and all walls and roofs thereof shall be of suitable heat resisting materials, and shall be water-proof.
5. The height of such rooms shall not be less than 360 (three hundred and sixty) centimetres from the floor to the lowest part of the roof, and the floor area for each child staying therein shall be not less than 600 (six hundred) sq. centimetres.
6. Suitable and effective provisions shall be made in every part of each such rooms for sufficient light, air and ventilation of fresh air.
7. The said rooms shall be adequately furnished and in particular, 1 (one) cot or cradle with bed shall be kept therefore each child, and there shall be at least one chair or any similar



seat for the use of each mother while she is feeding or attending to her child, and adequate and suitable toys shall be supplied for the comparatively older children.

8. A suitably fenced shady open air play-ground shall be provided for the comparatively older children:

*Provided that the Chief Inspector may, by order in writing, exempt any establishment from the provisions of this sub-section, if he is satisfied that the establishment has no sufficient space for such playground.*

**94A. Residential Facility for Physically Challenged Workers:** If there are residential facilities for workers in factories, during allocation of those, the physically challenged workers shall get preferences. employer may lodge a complaint to the Labour court

### **Interactive Question 3**

*In reference to Interactive Question 2, Mrs. Nadia Sultana gave birth to a baby boy named Shihab Anwar. Recently, XYZ Bangladesh Limited has decided that it would provide rest room facilities for the children of the workers.*

#### **Requirement:**

*Is there any requirement in Labour Act 2006, regarding the rest room facilities?*

### **4.5. Introduction of compulsory group insurance (Sec 99)**

1. The Employer shall introduce group insurance in under the existing Insurance Act, in the establishments wherein 100 permanent workers are employed.
2. The amount claimed as insurance shall be in addition to other dues payable to a worker under this Act. Provided that in case of death of a worker the responsibility will be of the employer to recover the insured money and the employer shall pay the amount, received from the insurance claim, directly to the dependents. Further provided that notwithstanding whatever difference in any other law, if an insurance claim is raised under this Section, this has to be resolved by the joint initiative of the insurance company and employer within hundred twenty days.

## **5. Working hours and leave**

### **5.1. Daily working hour (Sec 100)**

No adult worker shall ordinarily work or be required to work in an establishment for more than 8 (eight) hours in a day:

Provided that subject to the provisions of section 108, any such worker may work in an establishment upto 10 (ten) hours also in a day.

### **5.2. Weekly working hours (102)**

1. No adult worker shall ordinarily work or be required to work in an establishment for more than 48 (forty-eight) hours in a week.
2. Subject to the provisions of section 108, an adult worker may work for more than 48 (forty-eight) hours also in a week:

*Provided that the total working hours of such worker shall not exceed 60 (sixty) hours in a week, and on the average 56 (fifty-six) hours per week in a year:*

*Provided further that the total additional working hours of a worker employed in a road transport establishment shall not exceed 150 (one hundred and fifty) hours in a year:*

*Provided further that the Government may, in the cases of some particular industries, under conditions imposed by order in writing, relax the provisions of this section or exempt from the provisions of this section at a time for a period of not exceeding 6 (six) months, if it is satisfied that in the public interest or in the interest of economic development such relaxation or exemption is necessary.*

### **5.3. Weekly holidays (Sec 103)**

Every worker employed in an establishment:

- a. shall be entitled (one and a half) day holiday in a week in the case of a shop or commercial establishment or an industrial, establishment and 1 (one) day in a week in the case of a factory and establishment:
- b. shall be entitled to one day of twenty four consecutive hours holiday in a week in the case of road transport establishment, and no deduction shall be made from his wages on account of such holidays:
- c. no deduction shall be made from the wages of a worker for any holiday under the aforesaid clauses (a) and (b)

### **5.4. Compensatory week holiday (Sec 104)**

Where, as a result of the passing of an order or making of a rule under the provisions of this Act exempting an establishment or the workers employed therein from the provisions of section 103, a worker is deprived of any of the weekly holidays provided for in that section, he shall be allowed, as soon as circumstances permit, compensatory holidays of equal number to the holidays so deprived of.

### **5.5. Extra allowances for overtime (Sec 108)**

1. Where a worker works for more hours than the hours fixed under this Act in an establishment on any day or in a week he shall, for overtime work, be entitled to allowance at the rate of twice his ordinary rate of basic wage and dearness allowance and ad-hoc or interim wage, if any.
2. Where any worker in an establishment are paid on a contract-rate (piece rate) basis the employer, in consultation with the representatives of the workers, may, for the purposes of this section, fix time rates as nearly as possible equivalent to the average rates of earnings of those workers, and the rates so fixed shall be deemed to be the ordinary rates of wages of those workers. Provided in such case the provisions of Sub-Section (1) shall not be applicable.
3. For ensuring compliance with the provisions of this section, the Government may, by rules, prescribe the register to be maintained by an establishment.

**5.6. Casual leave (Sec 115)**

Every worker shall be entitled to casual leave for 10 (ten) days with full wages in a calendar year, and if such leave is not availed for any reason, it shall not be accumulated and the leave of any year shall not be availed in the succeeding year:

Provided that nothing in this section shall apply to a worker employed in a tea plantation.

**5.7. Sick leave (Sec 116)**

1. Except a newspaper worker, every worker shall be entitled to sick leave with full wages for 14 (fourteen) days in a calendar year.
2. Every newspaper worker shall be entitled to sick leave with half wages for not less than one-eighteenth of the period of his service.
3. No such leave shall be granted unless a registered medical practitioner appointed by the employer or, in the absence of such medical practitioner, any other registered medical practitioner, after examination, certifies that the worker is ill and requires leave for treatment or cure for such period as is mentioned in the certificate.
4. Such leave shall not be accumulated and carried forward to the succeeding years.

**5.8. Annual leave with wages (Sec 117)**

1. Every adult worker who has completed 1 (one) year of continuous service in an establishment shall be allowed during the following period of 12 (twelve) months' leave with wages for days calculated on the basis of the works of the preceding 12 (twelve) months at the following rate, namely:
  - a. 1 (one) day for every 18 (eighteen) days of work, in the case of a shop or commercial or industrial establishment or factory or road transport establishment;
  - b. 1 (one) day for every 22 (twenty two) days of work, in the case of tea plantation;
  - c. 1 (one) day for every 11 (eleven) days of work, in the case of a newspaper worker.
2. Every adolescent worker who has completed 1 (one) year of continuous service in an establishment shall be allowed during the subsequent period of 12 (twelve) months' leave with wages for a number of days calculated for the works of previous 12 (twelve) months at the following rate, namely:
  - a. 1 (one) day for every 15 (fifteen) days of work, in the case of a factory;
  - b. 1 (one) day for every 18 (eighteen) days of work, in the case of a tea plantation;
  - c. 1 (one) day for every 14 (fourteen) days of work, in the case of a shop or commercial or industrial establishment.
3. If any holiday occurs into the leave granted under this section shall be included in such leave.
4. If a worker does not, in any period of 12 (twelve) months, take the leave either in whole or in part, to which he is entitled under sub-sections (1) or (2), such leave shall be added to the leave which he is entitled to in the succeeding period of 12 (twelve) months.

5. Notwithstanding anything contained in sub-section (4), an adult worker shall cease to earn any leave under this section, when the earned leave due to him amounts to:
  - a. 40 (forty) days in the case of a factory or road transport establishment;
  - b. 60 (sixty) days in the case of a tea plantation or shop or commercial or industrial establishment.
6. Notwithstanding anything contained in sub-section (4), an adolescent worker shall cease to earn any leave under this section when the earned leave due to him amounts to:
  - a. 60 (sixty) days in the case of a factory or tea plantation;
  - b. 80 (eighty) days in the case of a shop or commercial or industrial establishment.
7. If a worker applies for earned leave and is refused by the employer for any reason, such refused leave shall be added to the credit of such worker beyond the limit mentioned in sub-section (5) or (6).
8. For the purposes of this section, a worker shall be deemed to have completed a period of continuous service in an establishment notwithstanding any interruption in service during that period occurred due to:
  - a. any holiday;
  - b. any leave with wages;
  - c. any leave with or without wages due to sickness or accident;
  - d. any maternity leave not exceeding 16 (sixteen) weeks;
  - e. any period of lay-off;
  - f. any legal strike or any illegal lock-out.

**5.9. Festival holidays (Sec 118)**

1. Every worker shall be allowed in a calendar year 11 (eleven) days of festival holiday with wages.
2. The employer shall fix the day and dates of such leave in such manner as may be prescribed by rules.
3. A worker may be required to work on any festival holiday, but 2 (two) days compensatory holidays with wages and a substitute holiday shall be provided for him in accordance with the provisions of section 103

## 6. Wages and payment

### 6.1. Responsibility for payment of wages (Sec 121)

Every employer shall be liable to pay to workers employed by him all wages required to be paid under this Act:

*Provided that in the case of all other workers, except any worker employed by a contractor, the Chief Executive Officer, the manager or any other person responsible to the employer for the supervision and control of an establishment shall also be liable for such payment:*

*Provided further that if the wages of a worker employed by the contractor is not paid by the contractor, the wages of such worker shall be paid by the employer of the establishment, and the same shall be adjusted from the contractor.*

### 6.2. Time of payment of wages (Sec 123)

1. The wages of a worker shall be paid before the expiry of the seventh working day following the last day of the wage period in respect of which the wages is payable.
2. Where the employment of any worker is called an end to the job by the worker or by retirement or by the employer, whether by way of retrenchment, discharge, removal, dismissal or otherwise, the wages payable to him shall be paid before the expiry of the thirtieth working day from the day on which his employment is so terminated.
3. All wages shall be paid on the working day.

### 6.3. Deductions which may be made from wages (Sec 125)

1. Except the cases for deduction authorized by this Act, no deduction shall be made from the wages of a worker.
2. Deductions from the basic wages of workers shall be made only in accordance with the provisions of this Act, and may be of the following kinds only, namely-
  - a. fines imposed under section 25;
  - b. deductions for unauthorized absence from duty;
  - c. deductions for damage to or loss of any goods given under the custody of a worker or for loss of money for which he is liable to account, where such damage or loss is directly attributable to his neglect or default;
  - d. deductions for house-accommodation provided by the employer;
  - e. deductions for facilities and service approved by the Government and provided by the employer, other than the raw materials and equipments used for the requirement of employment;
  - f. deductions for recovery of advances or loans or adjustment of overpayments of wages;
  - g. deductions of income-tax payable by the worker;

- h. deductions by order of a Court or deduction by order of any authority competent to make such order of deduction;
- i. deductions for subscriptions to and for payment of advances from any provident fund to which the Provident Funds Act, 1925 (Act No. XIX of 1925) applies or any recognized provident fund as defined in the Income-tax Ordinance, 1984 (Ordinance No. XXXVI of 1984) or any other provident fund approved by the Government;
- j. deductions for payment to any co-operative society approved by the Government or to an insurance scheme maintained by the Bangladesh Postal Department or any Government Insurance Company;
- k. deductions made with the written consent of the workers for the contribution to any fund or scheme constituted or framed by the employer with the approval of the Government for the welfare of the workers or the members of their families; and
- l. deduction of subscription for the CBA Union through check-off system.

#### **6.4. Deductions from wages for absence from duty (Sec 126)**

1. Deductions from wages of a worker for absence from the place of worker under section 125(2) (b) may be made only, when he, by the terms of his employment, is required to work, but he is absent for the whole or any part thereof.
2. The amount of such deduction shall, in no case, be more than the amount of wages payable to him for the period of absence  
*Provided that, subject to any rules made in this behalf by the Government, if ten or more workers in a body absent themselves from work without notice and reasonable cause, wages of not exceeding eight days may also be added to the deduction from wages from every such worker which is payable to the employer in lieu of notice by the terms of his employment.*

**Explanation:** *For the purposes of this section, a worker shall be deemed to be absent from the place of work if he, being present in such place, refuses to work in pursuance of a stay-in-strike or for any other unreasonable cause. It shall also be applicable to an officer of the trade union.*

#### **6.5. Payment of unpaid wages of the dead workers (Sec 131)**

1. Subject to other provisions of this Chapter, all sums payable to a worker as wages shall, if not possible to be paid due to his death or on account of his whereabouts not being known:
  - a. be paid to the person nominated by the concerned worker in this behalf in accordance with the rules;
  - b. if there is no such nominee or if, for any reason, not possible to be paid to the nominee, be deposited with the Labour Court, and the Court shall take measures in this behalf in accordance with the rules.
2. Where, under the provisions of sub-section (1), all sums payable to a worker as wages have been paid by the employer to the person nominated by the concerned worker or have been deposited with the Labour Court, the employer shall be discharged of his liability in respect of payment of such wages.

**6.6. Establishment of minimum wage board (Sec 138)**

1. The Government shall establish a Board to be called the Minimum Wages Board.
2. The Minimum Wages Board, hereinafter referred to in this Chapter as the Wage Board, shall consist of the following members, namely:
  - a. Chairman;
  - b. 1 (one) independent member;
  - c. 1 (one) member representing the employers; and
  - d. 1 (one) member representing the workers
3. For the purpose of discharging the functions mentioned in section 139, the following members shall also be included in the Wage Board, namely:
  - a. 1 (one) member representing the employers of the industry concerned;
  - b. 1 (one) member representing the workers employed in the industry concerned.
4. The Chairman and the other members of the Wage Board shall be appointed by the Government.
5. The Chairman and the independent member of the Wage Board shall be appointed from among such persons who have adequate knowledge of industrial labour and economic conditions of the country, and who are not connected with any industry or associated with any trade union of workers or employers.
6. The member representing the employers and the member representing the workers under sub-section (2) or (3) shall be appointed after considering nominations, if any, of such organizations as the Government considers to be representative organizations of such employers and workers:

*Provided that if no nomination is received from the representatives of the employers or workers in spite of more than one effort, the Government may, in its own opinion, appoint such persons whom it considers to be fit to be representative of employers or workers.*

**7. Compensation for injury by accident**

**7.1. Liability of employer to pay compensation (Sec 150)**

1. If a worker is bodily injured by an accident arising out of the course of his employment, his employer shall be liable to pay him compensation in accordance with the provisions of this Chapter.
2. An employer shall not be liable to pay such compensation, if:
  - a. a worker does not lose the ability to work, in whole or in part, for a period exceeding three days due to injury;

- b. the cause of injury to a worker, not resulting in death, by the accident directly attributed to;
    - c. the worker having been at that time under the influence of drink or drugs;
    - d. the wilful disobedience by the worker of a clear order or to rules made for the purpose of securing the safety of workers;
    - e. the wilful removal or disregard by the worker of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of workers.
3. If-
  - a. any worker, employed in any employment specified in "Part-A" of the Third Schedule, is attacked with any disease specified therein as an occupational disease peculiar to that of employment; or
  - b. a worker, while in the service of an employer for a continuous period of not less than 6 (six) months in any employment specified in Part-B of the Third Schedule, is attacked by any disease specified therein as an occupational disease peculiar to that employment, being attacked of such disease shall be deemed to be an injury by accident within the meaning of this section, and, unless the employer proves the contrary, such accident shall be deemed to have arisen out of the course of his employment.
4. The Government may, by notification in the official Gazette, add any description of employment to the employments specified in the Third Schedule, and in that case, shall specifically mention what shall be the occupational disease peculiar to that employment, and there after the provisions of sub-section (3) shall be so applied as if such disease were declared as occupational disease peculiar to that employment under this Chapter.
5. Save as provided by sub-sections (3) and (4), no compensation shall be payable to a worker in respect of any disease unless the disease is directly attributable to an injury by accident arising out of the course of his employment.
6. Nothing herein contained shall be deemed to confer any right to compensation on a worker in respect of any injury if he has instituted a suit for damages for such injury in a civil Court against the employer or any other person.
7. No suit for damages, in respect of any injury, shall be instituted by a worker in any Court, if-
  - a. he submits an application claiming compensation in respect of such injury before a Labour Court; or
  - b. there is an agreement between him and his employer providing for the payment of compensation in respect of such injury in accordance with the provisions of this Chapter.
8. For the purposes of this Chapter, "worker" means any person employed by the employer directly or through contractors, who is-
  - a. a railway servant as defined in section 3 of the Railways Act, 1890 (Act No. IX of 1890) (who is not employed in any permanent post of any administrative, district or upazilla



office of the railway, and also not employed in any post specified in the Fourth Schedule); or

- b. employed in any post specified in the Fourth Schedule; whether the contract of his employment is oral or in writing, expressed or implied, and any reference to an injured worker shall, if he dies, include his dependents or any of them.

## **7.2. Distribution of compensation (Sec 155)**

1. No compensation payable in respect of a worker died from injury and no lump sum amount payable as compensation to a person under a legal disability, shall be paid otherwise than by making deposit with the Labour Court.
2. If any compensation mentioned in sub-section (1) is paid directly by an employer, it shall not be deemed to be a payment of compensation, unless the concerned worker, during the period of his employment, has nominated in the manner prescribed by rules any of his heirs to receive the compensation in the event of an injury resulting in his death and the compensation is paid to that nominated heir.
3. Notwithstanding anything contained in sub-section (1), in the case of a deceased worker, the employer may make advance payment as compensation to any of his dependents, and the Labour Court shall, deducting such advance from the compensation payable to such dependent, refund it to the employer

*Provided that where, in the case of a deceased worker, any amount is paid for his burial or treatment or carrying of dead body, it shall not be deducted from any amount paid in advance by the employer or from the compensation payable to the dependents through the Labour Court.*

4. Any other sum payable as compensation may be deposited with the Labour Court on behalf of the person entitled thereto.
5. A receipt given by the Labour Court shall be a sufficient discharge in respect of any compensation deposited with it.
6. On the deposit of any money as compensation in respect of a deceased worker under sub-section (1), the Labour Court may, if necessary, by a notice published, or served on each dependent, in such manner as it thinks fit, call upon the dependents to appear before it on such date as it may fix for determining the distribution of the compensation.
7. If the Labour Court is satisfied after any enquiry, which it may deem necessary, that there exists no dependent, the Court shall, after not less than 2 (two) years following the date of deposit, transfer the undistributed money deposited with it for the welfare of workers to such fund which the Government may, by notification in the official Gazette, specify or establish.
8. The Labour Court shall, on an application by the employer, furnish him a statement showing in detail all disbursements made by it.

9. Any compensation deposited in respect of a deceased worker shall, subject to any deduction made under the provisions of sub-section (3), be apportioned among the dependents of the deceased worker or among any of them in such proportion as the Labour Court thinks fit, or the Labour Court may, in its discretion, allot it to any one dependent.
10. Where any compensation deposited with the Labour Court is payable to any person, the Labour Court shall, if the person to whom the compensation is payable is not under any legal disability, pay to him, and in other cases, may pay to the person entitled thereto.
11. Where any lump sum deposited with the Labour Court is payable to a person who is under a legal disability, such sum may be invested or applied for the benefit of such person during his disability in such manner as the Labour Court may direct.
12. Where a half monthly compensation is payable to any person who is under a legal disability, the Labour Court may, on its own or on an application, give order to pay such compensation during his disability to any dependent of the concerned worker or to any other person whom the Labour Court thinks fit to provide for the welfare of such worker.
13. Where on an application or otherwise the Labour Court is satisfied that due to negligence of a parent to heir her children, or due to changes of the circumstances of any dependent, or for any other sufficient reason, any order of the Labour Court as to the distribution of any sum paid as compensation or any order of such Court as to the investment or application of any compensation payable to any such dependent is to be varied, the Labour Court may make such order for the variation of its former order as it thinks fit in the circumstances of the case:

*Provided that if such order is prejudicial to any person, such order shall not be made, unless such person has been given an opportunity of showing cause against such order, or in any case in which it is necessary to make repayment by the dependent of any sum already paid to him as compensation.*

14. Where the Labour Court varies any order under sub-section (13) on the ground that the payment of compensation to any person has been obtained by fraud, impersonation or any other improper means, any compensation so paid may be recovered from him under the provisions of section 329.

### **7.3. Prohibition to assign, attach or charge compensation (Sec 156)**

Save as provided in this Chapter, any lump sum or monthly compensation payable under this Chapter shall not be assigned, attached or charged, or shall not be transferred to any person other than the worker by operation of any law, or shall not be set off any claim against the same.

### **7.4. Power to require from employer statement regarding fatal accident (Sec 158)**

1. Where a Labour Court receives information from any source that a worker has died as a result of an accident arising out of, and in the course of, his employment, it shall send, by registered post, a notice to the worker's employer requiring him to submit, within 30 (thirty) days of the service of the notice, a statement, in the form prescribed by rules, giving the reasons and circumstances attending the death of the worker, and indicating whether, in

the opinion of the employer, he is or is not liable to deposit compensation on account of the death.

2. If the employer is of the opinion that he is liable to deposit compensation, he shall make the deposit within 30 (thirty) days of the service of the notice.
3. If the employer is of the opinion that he is not liable to deposit compensation, he shall, in his statement, state the grounds of it.
4. Where the employer disclaims his liability as mentioned above, the Labour Court may, after such enquiry as it may think fit, inform any of the dependents of the deceased worker that it is open to the dependents to prefer a claim for compensation, and may provide them such other information, as the Court thinks fit.

#### **7.5. Medical examination (Sec 160)**

1. Where a worker gives notice of an accident, the employer shall, within 3 (three) days of service of such notice, cause the worker to be examined 1[at the expense of the employer] by a registered medical practitioner and the worker shall submit himself for such examination.

*Provided that if the accident or illness of the worker is of grave nature, the employer shall cause him to be examined at the place where the worker is staying.*

2. If any worker continues to receive monthly compensation under this Chapter, he shall, if so required, submit himself for such examination from time to time.
3. Where a worker is not examined as aforesaid, he may get himself examined by a registered medical practitioner and the employer shall be liable to pay him the expenses for such examination.
4. No worker shall be ordered to present himself for medical examination under sub-section (1) or (2) otherwise than in accordance with rules made under this Chapter or on any day other than the day prescribed by rules.
5. If a worker being ordered by the employer under sub-section (1) or (2) or by the Labour Court at any time, refuses to present himself to the registered medical practitioner for medical examination or in any other way obstructs the same, his right to compensation shall remain suspended during the continuance of such refusal or obstruction, unless, in the case of refusal, he was prevented by sufficient cause from so presenting himself.
6. If a worker, before the expiry of the period within which he is supposed to present himself for medical examination under sub-section (1) or (2), voluntarily leaves, without having been so examined, the vicinity of his place of employment, his right to compensation shall remain suspended until he returns or offers himself for such examination.
7. If a worker, whose right to compensation is suspended under sub-sections (5) and (6) dies without having present himself for medical examination as required under any of the

- foregoing sub-sections, the Labour Court may, if it thinks fit, direct for the payment of compensation to the dependents of the deceased worker.
8. Where under sub-section (5) or (6) the right to any compensation is suspended, no compensation shall be payable in respect of the period of suspension and if the period of suspension commences before the expiry of the waiting period referred to in section 151(1)(b), the waiting period shall be increased by the duration of suspension.
  9. Where an injured worker, being offered by the employer of medical treatment by a medical practitioner free of charge, refuses to accept it, or having accepted such offer deliberately disregards the instructions of such medical practitioner, and if it is proved that the worker has not thereafter been regularly attended by a registered medical practitioner or having been so attended has deliberately failed to follow medical practitioner's instructions and such refusal, disregard or failure was unreasonable in the circumstances of the case and the injury is aggravated thereby, the injury and the disablement evident from it shall be deemed to be of the same nature and duration as they might have reasonably been expected to be if the worker had been regularly attended by a registered medical practitioner and had followed his instructions, and the compensation, if any, shall be payable accordingly.
  10. Where any employer or the injured worker is not satisfied with the report of the medical examination by a registered medical practitioner, he may refer the case for re-examination by a medical specialist of at least the rank of an Associate Professor of a Medical College, and the expenses incurred for such examination shall be borne by the employer or the worker, as the case may be.
  11. Where in any establishment at least 10 (ten) workers are working, the employer of such establishment may introduce and implement an insurance scheme against accident under group insurance programme for the workers, and the benefits or money received from such accident insurance scheme shall be spent for the treatment of the workers.

## **8. Workers' participation in company's profit**

### **8.1. Application of workers' participation in company's profit (Sec 232)**

1. This Chapter shall apply to a company or establishment which fulfils any one of the following conditions, namely:-
  - a. the amount of its paid up capital on the last day of an accounting year is not less than taka 1 (one) crore;
  - b. the value of its permanent assets on the last day of an accounting year is not less than taka 2 (two) crore.
2. The Government may, by notification in the official Gazette, also apply this Chapter to any other company or establishment specified therein.
3. Notwithstanding anything contained in sub-sections (1) and (2), the Government shall, in the cases of hundred percent export oriented industrial sectors or hundred percent foreign exchange investing sectors, make, by rules, the provisions for constitution of a fund,

constitution of the fund management board, determination of the amount of grant and manner of its collection and utilization of the fund and the necessary provisions for other ancillary matters, centrally in each such sector, consisting of the buyers and employers, for the beneficiaries working in the respective sectors:

*Provided that such board may, subject to the prior approval of the Government, make regulations for carrying out the proposes of this section.*

### **8.2. Establishment of Participation fund and welfare fund (Sec 234)**

1. Every company to which this Chapter applies shall-
  - a. establish a Workers Participation Fund and a Workers Welfare Fund in accordance with the provisions of this Chapter within 1 (one) month of the date on which this Chapter becomes applicable to it; and
  - b. pay, within 9 (nine) months of the close of every year, five percent (5%) of the net profit of the previous year at the proportion of 80:10:10 to respectively the Participatory Fund, Welfare Fund and Workers Welfare Foundation Fund established under section 14 of the Bangladesh Workers Welfare Foundation Act, 2006:

*Provided that if an employer deposited one percent (1%) of the net profit of the company to the Welfare Fund immediately before this provision takes effect, the Trustee Board shall be required to deposit fifty percent (50%) of the money so deposited to the Welfare Fund to the above-mentioned Workers Welfare Foundation Fund.*

2. The amount paid to the said 2[Funds] under sub-section (1) (b) in relation to a year shall be deemed to have been allocated to those 3[ Funds] on the first day of the next succeeding year.

### **8.3. Management of the funds (Sec 235)**

1. As soon as may be, after the establishment of the Participation Fund and the Welfare Fund, there shall be constituted a Board of Trustees consisting of the following members, namely:-
  - a. two members nominated by the collective bargaining agent of the company and if there is no collective bargaining agent, 2 (two) members elected by the workers of the company from amongst themselves; and
  - b. two members nominated by the management of the company, of whom at least one shall be a person from the accounts section of the company.
2. The members of the Board of Trustees shall elect for every year a person to be the Chairman of the Board alternatively from amongst the members under sub-section (1) (a) and (1) (b), but the first Chairman shall be from amongst the members under sub-section (1) (b).
3. The Board of Trustees shall manage and administer the Funds in accordance with the provisions of this Chapter and any rules made in this behalf.

4. The Board of Trustees shall, in exercise of its powers and performance of its functions, be subject to such directions as may be given by the Government from time to time.
5. If the Government is of opinion that the Board of Trustees or a member thereof is persistently failing in the performance of its or his functions or is generally acting in a manner inconsistent with the objects and interests of the Funds, the Government may, after giving the Board or such member an opportunity of showing cause by order:
  - a. dissolve the Board for such period as may be specified therein or remove such member from his office; and
  - b. direct that until the Board of Trustees is reconstituted or until a new member is nominated or elected to the office of such member, the powers and functions of the Board or such member shall be exercised and performed by a person specified in the order.
6. Upon the dissolution of the Board of Trustees under sub-section (5), the members of the Board shall cease to hold office and any reference to the Board of trustees in this Chapter or any rules shall be construed as reference to the person specified in the order made under the sub-section.
7. Before the expiry of the period of dissolution, the Board of Trustees shall be re-constituted in accordance with the provisions of this Chapter so as to enable it to take over its charge upon the expiry of such period.
8. If any Board of Trustee is dissolved, or the Chairman or any member thereof is removed, by the Government under clause (a) of sub-section (5), the members of such Board or the Chairman or the member concerned thereof shall not be re-elected or nominated to the Board of Trustee.

**8.4. Fine, recovery of money, etc. (Sec 236)**

1. Where any company or Trustee Board fails to comply with the provisions of section 234, the Government may, by order, direct it to do acts in accordance with the provisions within such time as may be specified in that order.
2. If any company or Board of Trustee fails to do any act within the time specified in the order issued under sub-section (1), the Government may, by order, impose on every director, manager or officer of that company who is directly or indirectly responsible for the management of the affairs of the company or, as the case may be, the Chairman, member or a person or persons of the Board of Trustee concerned who is responsible for the management of the affairs of that Board a fine of taka not exceeding 1 (one) lac and, in the
3. case of continuous failure, a further amount of taka 5 (five) thousands for every day from the first day of such failure and direct to pay the total amount of fine within the next 30 (thirty) days:

*Provided that if any person contravenes the aforesaid provisions again or fails to comply therewith, twice the amount of fine specified above shall be imposed on him.*

4. If any amount payable under section 234 remains unpaid and any fine imposed under this section is not paid within the time specified in the relevant order, such unpaid amount and fine shall be deemed to be public demand and be recoverable in accordance with the provisions of the Public Demands Recovery Act, 1913 (Act No. IX of 1913).
5. Any person aggrieved by an order issued under sub-sections (1) and (2) may, within 30 (thirty) days of making such order, apply to the Government for review thereof and the Government shall, on receipt of such application, within not exceeding 45 (forty-five) days, review the matter and make appropriate order and inform the person, company or Board of Trustee concerned accordingly.
6. An order made by the Government under sub-section (4) shall be final.

**8.5. Investment of participation fund (Sec 240)**

1. The amount allocated or deposited in the Participation Fund shall be available to the company for its business operation.
2. The company may request the Board of Trustees to utilize the amount of the Participation Fund for investment under sub-section (11), and the Board may decide for such investment.
3. The company shall pay interest on the amount of the Participation Fund which is used for its business at the rate of two and a half percent above the bank rate or 75% (seventy five percent) of the rate at which dividend is declared on its ordinary shares, whichever is higher.
4. In case there is more than one class of ordinary shares of any company, on which different rates of dividend are declared then, for the purpose of determining the rate of interest payable under sub-section (3), the weight average of the different rates of dividend shall be taken into consideration.
5. The interest to the Participation Fund, so payable, shall be deposited to the Fund on and from the first day of the year next succeeding the year in which the Fund has been used by the company.
6. Where any company does not want to utilize any amount of the Participation Fund in its business under sub-section (1), there shall also be payable the aforesaid rate of interest by the company on the said amount of the Fund for the period between the date of allocation of any amount to the said Fund and the date of its investment under sub-section (11).
7. If, at any time after the establishment of the Participation Fund, the company raises any additional capital, otherwise than through the issue of bonus or bonus shares, the Participation Fund shall have the first option to convert any amount available to the company under sub-section (1), or any asset of the Participation Fund into ordinary equity capital; provided that it, shall not, after such conversion, be more than twenty five percent of the paid-up capital of the company or of 50% (fifty percent) of the additional capital, whichever is less.

8. For the purpose of exercising the right of conversion under sub-section (7), the Board of Trustees shall be given sufficient time to sell assets of the Participation Fund to realize the amount needed for participation in the additional capital of the company.
9. The shares acquired in the manner set out in sub-section (7) shall participate in future bonus and right-issues in the same manner as of other shares.
10. The shares acquired in the manner set out in sub-section (7) shall have voting rights in the same manner as of other shares and such voting rights shall be exercised by the Board of Trustee on behalf of the Participation Fund.
11. The money of the Participatory Fund may be invested in any Government-owned sector which is eligible for investment.

**8.6. Utilisation of participation fund (Sec 242)**

1. Two-thirds of the total amount deposited in the Participation Fund in every year shall be distributed in equal proportion to all [beneficiaries] in cash, and the remaining one-third shall be invested in accordance with the provisions of section 240(11), whose profit shall also be distributed in equal proportion to all [beneficiaries.]
2. If a [beneficiary] voluntarily leaves the service of a company he shall be entitled to benefits of both the Funds, if any, admissible to him under this Chapter.
3. If the service of a [beneficiary] is terminated, otherwise than by dismissal, he shall be as per with a [beneficiary] who retires from the service of a company.
4. If any [beneficiary] is dismissed from service, his share in the Funds shall be forfeited.
5. In the event of transfer of a [beneficiary] from one office or unit of a company to another office or unit of that company, the benefits of the Funds accrued to the beneficiaries shall be transferred to the Funds of the office or unit to which he is so transferred, and his service in the previous office or unit shall be counted towards his entitlement to the benefits of the Funds of the office or unit to which he is so transferred.
6. In the event of retirement of a [beneficiary, the beneficiary himself], or in the event of his death during employment in a company, his nominee, shall receive full benefits under this Chapter.

**8.7. Utilisation of welfare fund (Sec 243)**

Subject to the compliance of the provisions of this Chapter, the amount deposited in the Welfare Fund may be utilized for such purposes and in such manner as the Board of Trustee may decide, and the Board shall inform the Government relating thereto.



**9. Provident Fund and other terminal benefits**

**9.1. Provident fund in private sector establishments (Sec 264)**

1. Any establishment in the private sector may constitute a provident fund for the benefits of its workers.
2. The said provident fund shall be constituted by an establishment in such manner as may be prescribed by rules made in this behalf under sub-section (3).
3. Notwithstanding anything contained in sub-section (2), the Government may make rules for constitution of the provident fund for workers employed in establishments in private sector, and where such rules are made the establishment to which those rules apply, shall be required to comply with the provisions of such rules.
4. The said provident fund shall be administered by a Board of Trustees.
5. Such Board of Trustees shall consist of equal number of representatives of the employer and workers employed in the establishment concerned; and a person nominated by the Government shall be its Chairman.
6. The representatives of the employer shall be nominated by the employer and the representatives of the workers shall be nominated by the collective bargaining agent.
7. Where there is no collective bargaining agent in an establishment, the representatives of the workers shall be elected by the workers of that establishment under the supervision of the Director of Labour.
8. All members of the Board of Trustees shall hold office for a period of 2 (two) years:  
*Provided that they shall continue to hold office until their successors enter upon office.*
9. Every permanent worker shall, after completion of 1 (one) year of his service in the establishment, where the provident fund is constituted, subscribe to the provident fund, unless otherwise agreed upon, in every month a sum, not less than seven percent and not more than eight per cent of his monthly basic wages; and the employer shall contribute to it an equal amount.
10. Notwithstanding anything contained in this section, an establishment in the private sector shall be required to constitute a provident fund for the benefit of its workers, if at least three-fourths of the total number of workers employed therein so demand to the employer by an application in writing.
11. Where a demand for constitution of a provident fund is made under subsection (10), the employer of the establishment shall, within 6 (six) months of the receipt of application make necessary provisions for its constitution under subsection (3) and the provident fund shall start operation before the expiry of that period.

12. At least half of the total accumulations in such provident fund shall be invested for any of the following purposes, namely:-
  - a. I.C.B, Mutual Fund Certificate;
  - b. I.C.B, Unit Certificate; and
  - c. any government securities including defence and postal saving certificate.
13. The cost of maintenance of the provident fund shall be borne by the employer.
14. The accounts of income and expenditure of the provident fund shall be audited every year at the cost of the establishment in the same manner as the accounts of income and expenditure of the establishment are audited:

*Provided that the Government may appoint an independent auditor for any special audit of the income and expenditure of such fund at its own cost.*

15. A statement of accounts of income and expenditure of the provident fund, together with the audit report relating thereto, shall be forwarded to the Director of Labour within 1 (one) month of the submission of audit report.
16. Where the Government is satisfied that a provident fund constituted in an establishment in the private sector is working satisfactorily and the workers have no complaint against it, the Government may, on application by the employer of that establishment, by order in writing, exempt that establishment from the operation of this section.
17. An establishment constituting a provident fund under the provisions of this section shall be deemed to be a government establishment for the purposes of the Provident Funds Act, 1925 (Act No.XIX of 1925).
18. In this section, an establishment in private sector shall mean such an establishment which is not owned or managed directly by the Government or by any local authority or to which any provident fund rules made by the Government or by any local authority does not apply.

#### **9.2. Cost of administration of fund (Sec 267)**

1. The Board of Trustees may levy an administrative charge on the basis of subscription.
2. The Government shall, in consultation with the Board, fix such percentage of the total contributions of employers and workers as shall be the cost of administration.
3. The employers shall, within 15 (fifteen) days of the close of every month, pay the administrative charge so fixed to the Provident fund by separate bank draft or cheque.
4. When the payment of the administrative charge is made by a cheque, the collection charge, if any, shall be included in the amount for which the cheque is drawn in respect of the administrative charge.

**9.3. Subscription to provident fund (Sec 268)**

1. Every employer of a tea plantation, which is in operation for more than 3 (three) years, shall, in respect of every worker, other than an apprentice, employed in his tea plantation for more than 1 (one) year, pay to the provident fund a subscription at the rate of seven and a half per cent of the basic wages for the time being payable to that worker.
2. Every worker mentioned in sub-section (1) shall pay to the provident fund a subscription equal to the subscription payable by the employer in respect of him.
3. Where the amount of any subscription payable under this section involves a fraction of taka, such fraction shall be rounded off to the nearest taka.
4. If, in any case, the subscription made at the time of coming into force of this Act to an existing provident fund is higher than that provided in this section, then that higher rate of subscription shall continue to be made as if this Act had not come into force.
5. The total accumulations in the provident fund shall, in such manner as may be prescribed by rules, be held in deposit and be invested.

**10. Misconduct, punishment and disciplinary proceedings**

**10.1. Punishment for misconduct and conviction (Sec 23)**

1. Notwithstanding anything contained as to lay-off, retrenchment, discharge and termination of service elsewhere in this Act, a worker may be dismissed without a notice or without wages in lieu of a notice if he is:
  - a. convicted of any criminal offence; or
  - b. found guilty of misconduct under section 24.
2. A worker found guilty of misconduct may, instead of being dismissed under sub-section (1), under any extenuating circumstances, be awarded any of the following punishments, namely:-
  - a. removal;
  - b. reduction to a lower post, grade or scale of pay for a period not exceeding 1 (one) year;
  - c. stoppage of promotion for a period not exceeding 1 (one) year;
  - d. withholding of increment for a period not exceeding 1 (one) year;
  - e. fine;
  - f. suspension without wages or without subsistence allowance for a period not exceeding 7 (seven) days;
  - g. censure and warning.
3. A worker who is dismissed under sub-section (2)(a) shall, if the period of his continuous service is not less than 1 (one) year, be paid by the employer as compensation 15 (fifteen) days wages for every completed year of his service:

*Provided that no worker shall be entitled to any compensation if he is dismissed for misconduct under sub-section (4)(b) and (g); but in such case, the worker concerned shall get other lawful dues as usual.*

4. The following acts shall be treated as misconduct, namely:-
  - a. willful disobedience, whether alone or in combination with others to any lawful or reasonable order of a superior;
  - b. theft,[misappropriation,] fraud or dishonesty in connection with business or property of the employer;
  - c. taking or giving bribe in connection with his or any other worker's employment under the employer;
  - d. habitual absence without leave of absence for more than 10 (ten) days at a time without obtaining leave;
  - e. habitual late attendance;
  - f. habitual breach of any law or rule or regulation applicable to the establishment;
  - g. disorderliness, riot, arson or breakage in the establishment;
  - h. habitual negligence in work;
  - i. habitual breach of any rule relating to employment, including discipline or conduct, approved by the Chief Inspector;
  - j. altering, forging, wrongfully changing, damaging or causing lose to employer's official records.
  
5. If a worker dismissed under sub-section (1) (a), is acquitted on an appeal, he shall be reinstated to his original post or shall be appointed to a suitable new post; and if any of them is not possible, he shall be paid compensation at a rate equal to the rate of compensation payable to a discharged worker, deducting the amount of compensation already paid to him for his dismissal.

#### **10.2. Procedure of punishment (Sec 24)**

1. No order of punishment under section 23 shall be made against a worker unless-
  - a. the allegation against him is recorded in writing;
  - b. he is given a copy of the allegation and a period of at least 7 (seven) days is given to explain;
  - c. he is given an opportunity of being heard;
  - d. he is found guilty after an enquiry made by the enquiry committee consisting of equal number of representatives of the employer and the worker:

*Provided that such enquiry shall be concluded within 60 (sixty) days.*

- e. the employer or the manager approves the order of dismissal.
  
2. A worker charged for misconduct may be suspended pending enquiry into the charge and, unless the matter is pending before any Court, the period of such suspension shall not exceed 60 (sixty) days:

Provided that during the period of such suspension, a worker shall be paid by his employer subsistence allowance and he shall get other allowances in full.

3. An order of suspension shall be in writing and shall take effect immediately on delivery to the worker.
4. In an enquiry, the accused worker may be 3[assisted] by any person employed in his establishment and nominated by him.
5. If in an enquiry, any oral evidence is given by any party, the person against whom such evidence is given may cross examine the witness.
6. If, on enquiry, a worker is found guilty and is punished under section 23 (1), he shall not be entitled to his wages for the period of suspension, but he shall be entitled to the subsistence allowance for such period.
7. If, on enquiry the charge against the worker is not proved, he shall be deemed to have been on duty in the period of suspension and shall be paid his wages for such period with adjustment of the subsistence allowance already paid.
8. In case of awarding punishment, a copy of the order of punishment shall be supplied to the worker concerned.
9. If a worker refuses to accept any notice, letter, statement of allegation, order or any other papers sent to him by the employer, it shall be understood to have been delivered to him, if a copy thereof is exhibited on the notice board and another copy is sent by registered post to the address of the worker obtained from the records of the employer.
10. In awarding any punishment the employer shall take into account the previous record of the worker concerned, the [importance of the offence, credit and contribution during service] and existing any other special circumstances.

### **10.3. Special provisions relating to fine (Sec 25)**

1. No fine exceeding (one-tenth) of the wages payable to a worker in a wage-period shall be imposed on any worker.
2. No fine shall be imposed on a worker who is under the age of 15 (fifteen) years.
3. No fine imposed on any worker shall be recovered from him by instalments or after the expiry of 60 (sixty) days from the date on which it was imposed.
4. Every fine shall be deemed to have been imposed on the day of the commission of the offence in respect of which it was imposed.
5. All fines and all realizations thereof shall be recorded by the employer in a register prescribed by rules and all fines realized shall be spent only for the welfare of the workers employed in the establishment.

**Self-tests**

1. What is the daily working hour for a worker?
2. Describe rules regarding compensation for death of worker.
3. Write a short note about restriction on employment of children and adolescents.
4. What are the provision of floors, stairs and passages in every establishment?
5. Briefly describe the disqualification for being an officer or a member of a trade union.
6. What are the provision regarding precautionary measures against fire?
7. Describe rules regarding establishment of participation fund and welfare fund.
8. Write a short not regarding the provision of group insurance.
9. Describe the provisions relating to maternity benefit of women workers.
10. Short notes:
  - a. Wages
  - b. Strike
  - c. Retirement
11. Who is a CBA?
12. Distinguish between discharge and dismissal.

**Answers to Self-tests**

**Answer to question no. 1**

As per section 100 of Bangladesh Labour Act 2006, no adult worker shall ordinarily work or be required to work in an establishment for more than 8 (eight) hours in a day:

Provided that subject to the provisions of section 108, any such worker may work in an establishment up to 10 (ten) hours also in a day.

**Answer to question no. 2**

If a worker dies while in service after a continuous service of not less than two years, his nominee or in the absence of any nominee, his dependent shall be paid a by the employer a compensation at the rate of thirty days' wages for a normal death and of forty five days for an accidental death while working in the establishment or on duty for every completed year of service or for any part thereof in excess of six months, or gratuity whichever is higher, and the amount will be in addition to any other benefit to which the deceased worker would have been entitled to had he retired from the service. (*Section 19*)

**Answer to question no. 3**

Restrictions on employment of children and adolescents are given in the following (*sec 34*):

1. No child shall be employed or permitted to work in any occupation or establishment.
2. No adolescent shall be employed or permitted to work in any occupation or establishment, unless:
  - a. a certificate of fitness in the form prescribed by rules, and granted to him by a registered medical practitioner is in the custody of the employer ; and
  - b. he carries, while at work, a token containing a reference to such certificate.
3. Nothing of sub-section (2) shall apply to the employment of any adolescent in any occupation or establishment either as an apprentice or for receiving vocational training.
4. The Government may, if it thinks that an emergency exists and it is necessary in the public interest, by notification in the official Gazette, suspend the application of sub-section (2) for such period as may be specified therein.

**Answer to question no. 4**

According to section 72 of Bangladesh Labour Act 2006, in every establishment:

- a. all floors, stairs, passages shall be of sound construction and properly maintained and where necessary strong railing shall be provided to ensure their safety, and the passages and stairs shall be kept opened for easy movement during continuance of work.

- b. there shall, in so far as reasonably practicable, be provided with safe means of access to every place where any person is, at any time, required to work
- c. passages and stairways shall be clean, wide and clear of all Obstructions and
- d. an employer may, for overall safety of the factory and workers, bring the passages of movements, stairs, gates, godowns and common utility area of the place of work under close circuit camera.

**Answer to question no. 5**

Notwithstanding anything contained in the constitution of a trade union, a person shall be disqualified for election as, or for being, an officer or a member of a trade union who:

- a. has been convicted of a criminal offence involving moral turpitude or of an offence under section 196 (2) (d) or section 298 and unless a period of 2 (two) years has elapsed since his release;
- b. is not employed or working in the establishment in which the trade union is formed

*Provided that in the case of the nationalized industrial sector, the members of a union may, if they desire, elect 10% (ten percent) of the total officials of the executive committee of that union from amongst the persons who are not working in the concerned establishment.*

Nothing in sub-section (1) (b) shall apply to any federation of trade unions.

**Answer to question no. 6**

As per section 62 of Bangladesh Labour Act 2006, provisions regarding precautionary measures against fire are given in the following:

1. Every establishment shall be provided with such means of exit including at least one alternative staircase connecting with every floor at the time of fire and requisite number of firefighting equipment [in every floor] as may be prescribed by rules.
2. If it appears to an Inspector that no means of exit has been provided according to the rules mentioned in sub-section (1) 4[or no requisite number of fire fighting equipments have been placed according to the licence given by the Fire Service Department], he may, by serving an order in writing upon the employer, inform him of the measures which in his opinion are required to be taken within the time specified in that order.
3. In every establishment the door affording exit from any room shall not be locked or fastened so that the person working in the room may easily and immediately open it from inside and all such doors, unless they are of the sliding type, shall be constructed to open



outwards, or where the door is between two rooms, in the direction of the nearest exit from the building and no such door shall be locked or obstructed while work is being carried on in the room.

4. In every establishment, except the exit for ordinary use, every window, door or other exit affording means of escape in case of fire shall be distinctively marked in Bangla letters by red colour or marked by other clearly understood sign.
5. In every establishment, the clearly audible whistle shall be provided to alarm every worker employed therein in case of fire or danger.
6. A free passage-way giving access to each way of exit in case of fire shall be provided for the use of the workers in every room of the establishment.
7. In every establishment where 10 (ten) or more workers are ordinarily employed in any place above the ground floor, or explosive or highly inflammable materials are used, or stored, effective measures shall be taken to ensure that all workers may be familiar with the means of escape in case of fire and are adequately trained in the routine work to be followed in such cases.
8. In factories and establishments wherein 50 (fifty) or more workers/employees are employed, at least once in every 2[6 (six) months] a mock firefighting shall be arranged and a book of records in this regards shall be maintained in the prescribed manner by the employer.

**Answer to question no. 7**

According to section 234 rules regarding establishment of participation fund and welfare fund are given below:

1. every company to which this Chapter applies shall-
  - a. establish a Workers Participation Fund and a Workers Welfare Fund in accordance with the provisions of this Chapter within 1 (one) month of the date on which this Chapter becomes applicable to it; and
  - b. pay, within 9 (nine) months of the close of every year, five percent (5%) of the net profit of the previous year at the proportion of 80:10:10 to respectively the Participatory Fund, Welfare Fund and Workers Welfare Foundation Fund established under section 14 of the Bangladesh Workers Welfare Foundation Act, 2006:

## ***Corporate Laws and Practices***

*Provided that if an employer deposited one percent (1%) of the net profit of the company to the Welfare Fund immediately before this provision takes effect, the Trustee Board shall be required to deposit fifty percent (50%) of the money so deposited to the Welfare Fund to the above-mentioned Workers Welfare Foundation Fund.*

2. The amount paid to the said 2[Funds] under sub-section (1) (b) in relation to a year shall be deemed to have been allocated to those 3[ Funds] on the first day of the next succeeding year.

### **Answer to question no. 8**

The provisions regarding group insurance are given in the following:

1. The Employer shall introduce group insurance in under the existing Insurance Act, in the establishments wherein 100 permanent workers are employed.
2. The amount claimed as insurance shall be in addition to other dues payable to a worker under this Act. Provided that in case of death of a worker the responsibility will be of the employer to recover the insured money and the employer shall pay the amount, received from the insurance claim, directly to the dependents. Further provided that notwithstanding whatever difference in any other law, if an insurance claim is raised under this Section, this has to be resolved by the joint initiative of the insurance company and employer within hundred twenty days.

### **Answer to question no. 9**

Please see *section 3* of this chapter for answer.

### **Answer to question no. 10**

- a. **'Wages'** means all remuneration, expressed in terms of money or capable of being so expressed, which would, if the terms of employment, expressed or implied, were fulfilled, be payable to a worker in respect of his employment or of work done in such employment, and includes any other additional remuneration of the nature aforesaid which would be so payable, but does not include-
  - I. the value of any house accommodation, supply of light, water medical attendance or other amenity or of any service excluded by general or special order of the government,
  - II. any contribution paid by the employer to any pension fund provident fund,
  - III. any traveling allowance on the value of any traveling concession,
  - IV. any sum paid to the worker to defray special expenses entitled on him by the nature of his employment;

- b. **'strike'** means cessation of work or refusal to work jointly by a group of workers employed in any establishment or refusal to accept work or continue to work unanimously by a body of workers employed therein.
- c. **'Retirement'** Means normal termination of employment of a worker on attaining certain age under section 28 of the Act. Provided that retirement shall also include voluntary retirement from service on completion of 25.

**Answer to question no. 11**

According to the Bangladesh Labour Act 2006, *'Collective Bargaining Agent (CBA)'* means in relation to an establishment or group of establishments, means the trade union of workers or federation of trade group of establishments in the matter of collective bargaining

**Answer to question no. 12**

The basic distinction between discharge and dismissal is given below:

**'Discharge'** means the termination of services of a worker by the employer for reasons of physical or mental incapacity or continued ill-health of a worker.

**'Dismissal'** means the termination of services of a worker by the employer for misconduct.

**Answer to interactive Questions**

- 1. According to the Labour Act 2006, section 19, Mr. Kamran's nominee was entitled for a compensation of 45 days wages for the accidental death. As he was at work
- 2. The company should pay the maternity benefit to Mrs. Nadia Sultana by cash as per section 48 of Labour Act, 2006.
- 3. Yes, Labour Act 2006 sets out the provisions regarding the rest room facilities for the children. The provisions are given below:
  - a. In every establishment, where 40 (forty) or more female workers are ordinarily employed, one or more suitable rooms shall be provided and maintained for the use of their children who are under the age of 6 (six) years.
  - b. The said room shall be provided with adequate accommodation, light and ventilation and shall be maintained in clean and sanitary condition, and shall be under the charge of an experienced or trained woman for the care of children.
  - c. The said rooms shall be easily accessible to the mothers of the children, and, so far as is reasonably practicable, they shall not be situated adjacent to or near any part of the

establishment where obnoxious fumes, dust or odors are given off, or where excessively noisy works are carried on.

- d. The said rooms shall be strongly constructed, and all walls and roofs thereof shall be of suitable heat resisting materials, and shall be water-proof.
- e. The height of such rooms shall not be less than 360 (three hundred and sixty) centimetres from the floor to the lowest part of the roof, and the floor area for each child staying therein shall be not less than 600 (six hundred) sq. centimetres.
- f. Suitable and effective provisions shall be made in every part of each such rooms for sufficient light, air and ventilation of fresh air.
- g. The said rooms shall be adequately furnished and in particular, 1 (one) cot or cradle with bed shall be kept therefore each child, and there shall be at least one chair or any similar seat for the use of each mother while she is feeding or attending to her child, and adequate and suitable toys shall be supplied for the comparatively older children.
- h. A suitably fenced shady open air play-ground shall be provided for the comparatively older children.



## Chapter 6

### The Insurance Act, 2010

#### **Contents**

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## Introduction

### Learning objectives

Tick off

- Define, apply and advise on Insurance Act, 2010
- Explain the insurance business and registration, paid up capital and deposits
- Explain the premium requirement, nomination and assignment
- State the solvency margin, restrictions on loan, advance and financial benefits
- Explain accounts, actuary report, audit and inspection of Insurance Company
- State the restriction on commission expense, allowance of rebate
- Explain the restriction on administrative expenses of insurance business

### Practical significance

Practically whenever people want to start insurance business whether life insurance or non-life insurance, they need to know the formation procedures as per regulatory requirements. The Insurance Act, 2010 will help to inspect and supervise Insurance companies regularly and ensure the system running properly. The provisions of Insurance Act, 2010 shall be useful to start and run a company complying with the rules and regulations of the Govt.

### Stop and think

What things can you think of that are essential for the formation and running of an Insurance Company? Have you stopped to think about how this affects the operations of an Insurance Company whether life insurance or non-life insurance?

### Working context

You might need to understand the implications of the requirement of Insurance Companies Act to carry out business or auditing work.

### Syllabus links

### Examination context

### Exam requirements

Insurance Act is an important part of the syllabus. Typically, ten percent of the questions come from the part of Insurance Act. Understanding the basic precepts relating to this act is vital. Other than Insurance Act, you may also expect questions from general concepts of insurance, reinsurance and double insurance.

You are likely to be presented with scenarios and may have to conclude whether the formation of Insurance companies is valid, business of Insurance company whether life or non-life insurance company is in compliance with law, appointment and removal of directors and chief executive officer has done properly, Commission, rebate and management costs are in accordance with the provision of this Act. Candidates should be able to demonstrate their knowledge of the main provisions of the Insurance Act, 2010.

## 1. Preliminary on Insurance Act, 2010

This Act may be called the Insurance Act, 2010. It shall come into force immediately. An act to repeal Insurance Act, 1938 & to re-enact and consolidated the laws relating to the business of insurance. It provides the provisions applicable to insurer, insured, punishment for violation of the law. On the other hand, it provides provision for Islamic Insurance also.

### 1.1 Definitions (Section-2)

- **"Approved Auditor"** means the auditor appointed by the authority according to the provisions of this Act.;
- **"Approved Investments"** means such investments as the Government may, by notification in the official Gazette, specify as approved investments for the purposes of this Act;
- **"Approved securities"** means Government securities, and any other security charged on the revenues of the Government, or guaranteed fully as regards principal and interest by the Government; and any debenture or other security for money issued under the authority of any Act of Parliament and specified as an approved security for the purposes of this Act fixed by the Government by notification in the official Gazette;
- **"Participatory policy"** means the contract by which the insurance policy holder attains the right to get interest of the insurer of life insurance or the right of participation to the extra distribution but the benefit given under the policy, if it is not determined according to the conditions of the contract & the optional power of the policy holder is not applicable for that, then such benefit will not include with interest or extra distribution identified this clause except the contract of investment relating to the life insurance & the contract relating to the health, or the collective life insurance contract or the health contract.
- **"Financial Institution"** means the financial institution as defined under section 2(b) of the Financial Institution Act, 1993;
- **"Electronic media"** means any electronic media used for telecasting or airing including the internet, mobile, radio- tele-vision tape recorder, cassettes, computer disk & CD ROM etc.;
- **"Islami insurance business"** means the insurance business carried on according to the Islamic Shariah;
- **"Actuary"** means an actuary is possessing such qualification as may be prescribed;
- **"Employer of agents"** means a person certified under this A who procures insurance business for a life insurer whether or wholly or in part by employing or causing to be employed insurance agents on behalf of the insurer;
- **"Authority"** means the insurance controlling authority constituted under the Insurance Development & Control Authority Act, 2010;
- **"Company"** means the Company defined according to section. 2(1) of the Companies Act, 1994;

- **"Companies Act"** means the Companies Act, 1994 (Act No, XVIII of 1994);
- **"Continuous incapable contract"** means such contract by which on happening of the following incident, benefit shall be give, such: —
  - if the life insured person dies for the reason mentioned to the insurance contract;
  - if the insured person become injured of incapable for illness or accident;
  - if the insured person becomes sick & takes treatment for that disease mentioned in the insurance contract;
- **"Schedule"** means the schedule of this Act;
- **"Scheduled Bank"** means the scheduled bank defined under section 2, clause (j) of the Bangladesh Bank Order 1972 (P. O. 127 of 1972);
- **"Liability"** means the mortgage, fixed or floating charge hypothecation, pledge, giving title or bailment or any other transfer of the immovable or movable property by which ownership reduces either legally or beneficially;
- **"Registration"** means the registration under section 9 of this Act;
- **"Family"** means husband or wife, father, mother, son, daughter, brother & sister & includes every person depend on the concern people;
- **"Policy"** means the insurance contract;
- **"Re-insurance"** means such contract by which the insurer limits his liabilities by transferring extra risk of his insurance to One or more insurer or re-insurer;
- **"Restoration insurance"** means such contract by which the re-insurer restores few liabilities to the other insurer;
- **"Certified"** in relation to any copy or translation of a document required to be furnished by or on behalf of an insurer or a provident society as defined in chapter 111 means certified by a principal officer of such insurer or provident society to be a true copy or a correct translation, as the case may be;
- **"Provision"** means the provisions of this Act;
- **"Rules"** means rules of this Act;
- **"Insurer"** means any individual or corporate body of individuals or body corporate incorporated under the law of any country or state outside Bangladesh which-
  - carries on insurance business in Bangladesh;
  - for the purpose of insurance business, employs a representative or maintain a place of business in Bangladesh;
- **"Insurance policy holder or policy holder"** includes a person to whom the policy is issued, in case of life insurance, a person to when to whole interest of the policy is vested forever;



- **"Liabilities of the insurance policy-holder"** means—
  - the liabilities arising out from policy; or
  - the liability arising out of happening the incident prescribed in the policy concerning the life insurance;
- **"Insurance"** means the policy & contract or the business on the condition of taking premium anybody promises to give money on happening of any incident mentioned in the contract to the injured for such happening. Insurance also include contract of life insurance, re-insurance, restoration insurance;
- **"Insurance agent"** means any person licensed under this Act to continue, to renew & collect the insurance policy, by taking or agreeing to take the commission or any other wages;
- **"Insurance surveyor"** means a person certified under this Act who gives opinion impartially by examining the goods, properly or any interests issued under a policy of general insurance to ascertain the cause, extent & location of any loss & to determine the amount of such loss & the amount which is payable to the issued by the insurer or insurers or any person liable in respect of such loss;
- **"Manager"** means a manager defined under clause (p) of section 2(1) of the Companies Act, 1994;
- **"Person"** includes any person. any institution, any company, any partnership business, firm or any other institutions;
- **"Broker"** means any person licensed under this Act, who is the mediator between any bank & other financial institutions or insurance mediator, who with object of getting commission or fee from the insurer or re-insurer and works on behalf of the offeror of insurer or re-insurer;
- **"Managing Agent"** means a person. firm or company entitled to the management of the whole affairs of any company, virtue of an agreement with the company. and under control & directions of the directors except to the extent, if any. Otherwise provided for in the agreement and includes any person, firm or company occupying such position by whatever name called;
- **"Government Securities"** means the Government Securities defined under clause (a) of section 2(a) of the Securities Act, 1920 (Act No. X of 1920);
- **"Co-operative Societies Act"** means the Co-operative Societies Act, 2001 (Act No 47 of 2001);
- **"Solvency Margin"** means the fixed reserve asset determined according to provisions by the insurer;
- **"Subsidiary or Subsidiary Company"** means the subsidiary company defined under section 2(2) of the Companies Act, 1994;
- **"Auditor"** means any person qualified to perform the duties of an Auditor as determined under section 212 of the Companies Act, 1994;

- The word or expression which has not been defined in this Act shall contain the same meaning as used under the Companies Act, 1994

### **Classification of Insurance business**

As per Section 5 of the Insurance Act, 2010 insurance business could be explained:

- For the purpose of this Act there shall be two types of insurance business named as life insurance & non-life insurance.
- Under this section life insurance means the insurance contract relating to human life which can be, by rules, classified in various sub-class according to the provisions of sub-section (4) & (5).
- Under this section non-life insurance means all classes of insurance contract other than the human life insurance contract which for carrying on the non-life insurance business effectively, by rules, can be classified in various sub-class according to the provisions of sub-section (4) & (5).
- If the main purpose of any contract under this Act is to carry on the life insurance business & there is any subject regarding the non-life insurance & any other insurance business in that contract, then it would be deemed that the contract executed to carry on the life insurance business.
- If any contract is executed for the period of not more than one year having the conditions or terms to compensate the accidental death or accident not causing death or sufferer for disease or any disability & that contract has been made by the insurer registered as to carry on the non-life insurance business, that contract shall be termed as non-life insurance business.
- Notwithstanding anything contained in this section, any insurer runs his life and general insurance business under Insurance Act, 1938 and Insurance Corporation Act, 1973 shall be deemed as life insurance and non-life insurance for the purpose of this Act.

### **Registration of Insurance business**

#### **3.1 Registration of Insurance company (section-8)**

- No person shall begin to carry on any class of insurance in Bangladesh, unless he has obtained a certificate of registration for the particular class of insurance business from the insurance Controlling Authority. However, the Jiban Bima Corporation and the Sadharan Bima Corporation established under the Insurance Corporation Act, 1973 shall be considered to be having been registered under the Act for the Purpose of carrying on their business.
- Every person willing to carry on any life insurance or Non-life insurance business in Bangladesh has to apply in the prescribed form and procedure to the Authority for obtaining a registration certificate.
- In the case of an insurer incorporated under the Insurance Act, 1938, who was carrying on any class of insurance business in Bangladesh at the commencement of this Act, and is willing to continue the same that insurer has to apply to the Authority

in writing for obtaining a registration certificate within 6 (six) months from the commencement of this Act.

- An applicant applying for registration under this section for thereof has to make payment of prescribed fee.
- Every application for registration shall be accompanied by the following papers, documents and information:
  - Where the applicant is a company, a certified copy of its memorandum and articles of association, the name, address and occupation of its directors and their Tax Identification Numbers, if any.
  - Where the applicant is an insurance company incorporated under the Insurance Act, 1938, the full address of its Principal office in Bangladesh, the names and Tax identification Numbers, if any of its directors and manager and their contact address.
  - In the case of an insurer having its Principal place of business or domicile outside Bangladesh, the documents specified in clause (a) of section 114.
  - Where the applicant is a Co-operative society, the names, addresses and Tax Identification Numbers, if any, of its members and address of its principal office.
  - A statement of the class or classes of insurance business done or to be done and a statement that the amount required to be deposited section 23 or by section 119 before application for registration is made, has been deposited together a certificate from the Bangladesh Bank showing the amount so deposited.
  - Where the provisions of section 21 or section 118 apply, a statement duly certified by an auditor showing the total paid up capital or the total working capital of the insurer and a declaration verified by an affidavit made by the Principal Officer of the insurer authorized in that behalf that provisions of those sections as to paid up capital or working capital as the case may be has been complied with.
  - A certified copy of the published prospectus, if any, and the standard policy forms of the insurer and statement of premium rates, advantages, terms and conditions to be offered in connection with insurance policies together with a certificate in connection with life insurance business by an actuary that such rates, advantages, terms and conditions are workable and sound.
  - The receipt showing payment in the prescribed manner of the fee as prescribed for any class or sub class of insurance business under this Act.
  - Any other documents, paper or information as prescribed under this Act.
- Every application made under this section shall be accompanied by a declaration signed by the applicant and verified by an affidavit stating that all statements as supplied with the application are true and correct & true;

- After getting the application under sub-section-3 of this section of this Act, the authority shall make necessary inquiry and investigation regarding the documents/submitted with the application to be clear the same.

### **3.2 Certificate of Registration certificate awarding (Section-9)**

- Subject to the provisions of sub-section (2) & (3), the authority may, after receiving the application for registration under section 8, if they have satisfied with the following matter, provide the registration certificate for commencing the life insurance or non-life insurance; such as:
  - The applicant is registered under the laws of Bangladesh or any other states;
  - The applicant has fulfilled the provisions regarding the minimum paid up share capital under this Act;
  - The applicant has fulfilled the provisions regarding minimum constituted deposit under this Act;
  - The characteristics of Management of the applicant is good & economical condition is strong;
  - The applicant has fulfilled the provisions of taking initiative regarding the re-insurer under this Act;
  - There is the possibility of having sufficient income for paying the debt liability arising out of the applicant's planned business;
  - If they have the circumstances to appoint an actuary and competent other officers & staffs for continuing the life insurance business under the authority of the applicant;
  - If the application of the applicant is not considered as proper by the authority, the authority may, by giving reasonable opportunity for hearing to the applicant, refuse the application in proper way and proper time and inform the decision to the applicant mentioning the reason for such decision in written.
  - The aggrieved person, for the refusal of the application under sub-section (2), may apply to the authority for reconsideration within 30 days of knowing such refusal.
  - If the applicant has not paid the fees which prescribed by the provisions of this Act for every class or sub-class insurance business & if the receipt for the same has not been attached with the application, then the authority shall refuse the application for registration certificate.

### **3.3 Withholding or cancellation of registration (Section-10)**

- The Authority shall withhold or cancel the registration of any insurer either wholly or so far as it relates to a particular class of insurance business as the case may be for one or more of the following grounds.

If the insurer:

- fails to comply with the provisions of section 23 or section 119 as to deposits;

- does not commence business within one year of its registration; by proposing to enter into arrangement with its creditor has made such arrangement or has amalgamated his business with the business of any other insurer or the insurer has gone into liquidation or is adjudged an insolvent;
  - carries on any insurance business against the interest of the policy holders or against development of business or one which is injurious for national interest;
  - becomes unable to discharge his duties and responsibilities;
  - fails to keep deposited the prescribe solvency margin under the provisions of this Act;
  - if the insurer makes default in complying with or acts in contravention of, any requirement of this Act or any rule or order made there under;
  - if he is found engaged in any immoral or irregular activities in managing his business;
  - if any claim upon the insurer, arising in Bangladesh under any policy of insurance remains unpaid for three months after final judgment in regular course of law.
- The Authority shall withhold registration of an insurance company for a maximum period of three months by giving thirty days' notice if the insurer is found to have not complied with one or more of the activities mentioned under clause (I) above. Until the order of withholding is withdrawn the insurer shall not enter into any new contract of insurance, but all rights and liabilities in respect of contracts of insurance entered into by him before such withholding takes effect, shall continue.
  - The authority may take the following initiatives after receiving the response of the notice sent under sub-section (2) such as:
    - if the authority is satisfied by the reasons given by the insurer, then it may remove the stay order as early as possible;
    - if the authority is not satisfied by such reasons given by the insurer. Then it may extend the stay-order or further not more than 2 months or may cancel the registration.
    - If the authority decides to extend the period of stay-order according to sub-section 3(b), the authority shall inform the following matter to the insurer, such as:
      - the period for the extension of stay-order; and
      - the reason for such extension & what initiative should be taken by the insurer for terminating the reason & the limitation period for the same.
  - If the authority is not satisfied for the initiatives taken by the insurer under sub-section 4(b), it shall cancel the registration certificate as early as possible & if satisfied then remove the stay-order.

- If any decision for the cancellation of the registration certificate has been taken, then the same should be informed through written notice to insurer & such decision shall be effective from the date mentioned in the notice.
- The applicant may, against any system or decision made by the Authority under sections 9, 10, 11 make appeal to the government within 90 days from the informed day of such decision.
- If any registration certificate has been cancelled under this Act, the insurer may not make any insurance contract from the date of the effectiveness of such Act:

Provided that, the cancellation of certificate before issued, the responsibility and liability of such policy, subject to the sub-section (11), shall have the same effect that if the registration certificate would have been cancelled.

- If the certificate is cancelled according to the provision of sub-section (1) of this section, the authority may restore the certificate from the own consideration if they satisfy for the followings:

If the Insurer-

- deposit necessary amount according to sections 23 and 119;
  - restore his permanent contract;
  - maintain the obligations of which violation or non-performance the certificate has cancelled according to clause (g) of sub-section (1) of this section;
  - has not remained unpaid any demand according to clause (j) of sub-section (1) of this section; or
  - obeys all direction given by the Authority.
- Where the certificate of an Insurance Company has been cancelled, the Authority may apply before the Court for the order of winding up of the Insurance Company or any classes of insurance business within six months from its effectiveness:

Provided that, the insurance certificate has not yet been restoring or applied for restore before the Court according to sub-section 9 of this section.

- The Court may proceed by taking the application under sub-section (10) of this section as the application filed according to section-103 & 109.

### **3.4 Renewal of registration (Section 11)**

- A registration certificate issued under section 9 is renewable and shall be renewed annually for each year.
- An insurer shall submit an application for the renewal for any year to the Authority before the 30th day of November of the preceding year and shall be accompanied by evidence of payment of prescribed fee for the renewal.
- The Authority, upon receipt of the application and the prescribed fee, shall renew the registration and grant a certificate of renewal of registration.

- The Authority shall maintain a register where all information regarding certificate of registration and its renewal, withholding and cancellation be recorded.

**3.5. Provision of restrictions for registering the same insurer for life and non-life insurance business (Section-13)**

No person shall be registered as an insurer:

- for any life insurance business if he is registered for any class of non-life insurance business; or
- for any non-life insurance business if he is registered for any class of life insurance business.

**6 Licenses on establishment of branches (Section-14)**

- After the commencement of this Act no insurer shall establish any new branch or office or continue business dealing unless & otherwise it has the license from the authority.
- For getting proper license according to sub-section (1), the insurer shall submit application accompanied with fees determined by the rules, all of which shall be made in the form determined by the provisions.
- After getting the application under this section the authority will consider the application & issue the license to the insurer in the prescribed form.
- If the application of the applicant is not considered proper by the authority, the authority shall not grant the application by giving proper chance to the insurer and authority shall inform mentioning the reason for such refusal to the applicant within six weeks of such grant or refusal.
- If the application has not been granted under sub-section (4), the aggrieved person shall make appeal to the government within 30 days & the order given by the government for such application shall be deemed as final.
- When such appeal to the government is pending, the insurer shall not establish branch or office, continue business dealing or re-apply for license.
- If the application for license for establishing new branch or office or business dealing or the appeal (where applicable) has been refused, the same insurer may not apply for license of establishing new branch or office or business dealings in the same place before one year of such refusal.

**4. Determination of premium for life and non-life Insurance business**

**4.1 Appropriateness of premiums in life insurance (Section-16)**

- If when considering an application for registration under section 8 or at anytime it appears to the authority that the premium rates, advantages, terms and conditions offered in connection with life insurance is not adequate the authority may within the time specified order the modification of such rates, advantages, terms and conditions as they think necessary.

- No insurer can issue any life insurance policy if the premium rates, advantages, terms and conditions laid in the policy of actuary employed by the insurer is not certified.
- Any insurer who is holding a life insurance business wants to open a new insurance scheme then he shall submit to the authority before which shall not less than 30 days along with certification of actuary and according to the direction of the authority a prospectus containing full description and sample of policy scheme.
- If any insurer fails to comply with the provisions of sub-section (2) and sub-section (3) then the authority can impose fine for each failure a sum not more than five lac taka.
- The certificate given by actuary shall be according to the regulation and in prescribed form.
- The authority can prescribe highest interest rate used for premium rate and commission rate.
- If it appears to the authority that the scheme of life insurance is not adequate then he shall according to sub-section (3) take the following action within 30 days, such as-
  - It may forbid distraint among people the life insurance scheme from the insurer; or
  - It may order the insurer to change or amend the insurance scheme according to the specified manner.
- The authority may order insurer to provide the information regarding mortality table of subscribers of insurance policy, investment rate of profit, rate of management expenditure and commission rate and the insurer shall be bound by the order.
- No insurer shall, if any prospectus has been submitted to the authority under clause (h) of section 8 or it has been submitted or he shall offer any other contract of policy except the life insurance policy of amended by specific prospectus made under section 12 and if the insurer does not submit to the authority under this section the rates, advantages, terms and conditions for policy.
- In every ten years, the authority may prepare a death index of policy holders.

#### **4.2 Determination of rate of premium of non-life insurance business (Section-17)**

- In order to achieve the objectives of this law the Authority may form a Central Rating Committee (C R C) and in consultation with this committee the Authority shall determine the rate of premium for non-life insurance business which the insurers shall be bound to comply with.
- The Chairman of the Authority shall be the chairman of the central rating committee and the number of its members, functions and its management shall be determined by the Act.
- If necessary, the government may dissolve the central rating committee at any time.



**Interactive Question 1:**

- Enumerate the provisions of The Insurance Act, 2010 relating to:
  - determination of premium and
  - collection of premium.

**Accounts, Audit, Actuary report and Statements**

**5.1 Audit (Section-28)**

- The balance sheet, profit and loss account, and revenue account of every insurer in respect of the insurance business transacted by him in Bangladesh shall, unless they are subject to audit under the Companies Act, be audited annually by one or auditors in accordance with the provisions of this Act.
- An auditor employed under the provision of this section shall have authority to exercise such powers and functions as is given to an auditor under section 213 of the Companies Act.

**5.2 Special audit (Section-29)**

- Whatever may exist in other provisions of this law, the Authority may from time to time order auditing of all insurance business related transactions, records, documents of any or all insurance companies doing insurance business in Bangladesh under the provisions of this Act.

It may be mentioned here that an auditor appointed under this section shall not be the same person appointed as auditors under section 28.

- An auditor appointed under this section shall have a right of access to all such books of account, registers, vouchers, correspondence and other documents of the insurer and shall be entitled to require from the directors and officers of the insurer such information and explanation as may be necessary for the performance of his functions and duties under this section.
- An auditor appointed under this section shall prepare an audit report within a maximum period of four months of its appointment and shall submit the audit report to the Authority in four copies.
- An auditor appointed under this section shall be paid by the insurer such fee as may be prescribed by the Authority.

**5.3 Actuary report and briefings (Section-30)**

- Every insurer carrying on life insurance business shall once at least in every one year cause an investigation to be made by an actuary for valuation of his liabilities according to the prescribed rules and regulation including the financial condition of the life insurance business and shall cause an abstract of the report of such actuary to be made in accordance with the chart and procedure prescribed in the provisions for investigation.

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Provided that, subject to the special condition of the insurer the authority may at any date within two years of completion of previous investigation give permission for investigation under this section.

- The provisions of sub-section (1) regarding the making of an abstract shall apply whenever at any other time an investigation into the financial condition of the insurer is made with a view to the distribution of profits or an investigation is made of which the results are made public.
- There shall be appended to every such abstract as is referred under this section a certificate signed by the principal officer of the insurer that full and accurate particulars of every policy under which there is a liability either actual or contingent have been furnished to the actuary for the purpose of the investigation.
- There shall be appended to every such abstract a statement in accordance with the regulations of the life insurance business in force at the date on which the accounts of the insurer are made up for the purposes of such abstract:

Provided that, if the investigation, referred to in sub-sections (1) and (2) is made annually by any insurer, the statement need not be appended every year but shall be appended at least once in every three years.

- Where an investigation regarding the financial condition of an insurer is made as at a date other than the expiration of the year of account, the accounts for the period since the expiration of the last year of account and the balance-sheet as at the date at which the investigation is made shall be prepared and audited in the manner provided by this Act.
- The provisions of this section relating to life insurance business shall apply also to accident and health insurance.

Provided also that if the authority is satisfied that, the number and amount of the transactions carried out by an insurer in health insurance business is so small as to render periodical valuation unnecessary, he may exempt that insurer from the operation of this sub-section in respect of that health insurance.

The valuation of liabilities under sub-section (1) shall be carried out in such a manner and on such basis that the actuarial reserves calculated in that manner and on that basis are not less than the actuarial reserves calculated in the manner and on the basis prescribed by the provision.

***Interactive Question 2:***

Name the accounting statement that needs to be prepared at year end by an insurer. In case of company incorporated under the Companies Act who will sign these accounts?

**5.4 Exemption from some provisions of Companies Act (Section-33)**

Unless contrary with any other Act, the Companies Act or any other Act kept under Companies Act the insurer in any year furnishes his balance sheets and accounts in accordance with the provision of section 15, may at the same time send to the registrar of companies copies of such balance sheet and accounts, where such companies are so sent it shall not be necessary for the company to file copies of the balance sheet and accounts and such copies so sent shall be chargeable with the same fees and shall be dealt with in all respects as if they were filed in accordance with that section.

**5.5 Preservations and inspection of documents and supply of copies (Section-36)**

- Every return furnished to the Authority or a certified copy thereof shall be kept by the Authority and shall be open to inspection; and any person may procure a copy of any such return, or of any part thereof, on payment of a fee prescribed by the authority.
- A printed or certified copy of the accounts, statements and abstract furnished in accordance with the provisions of section 32 shall, on the application of any shareholder or policy-holder made at any time within two years from the date on which the document was so furnished, be supplied to him by the insurer within fourteen days when the insurer is constituted, incorporated or domiciled in Bangladesh and in any other case within one month of such application.
- A copy of the memorandum and Articles of Association of the insurer, if a company, shall on the application of any policy-holder, be supplied to him within fifteen days by the insurer on payment of fees prescribed by the authority.

**5.6 Powers of the authority regarding returns (Section-37)**

- If it appears to the Authority that any return furnished to it under the provisions of this Act is inaccurate or defective in any respect, the Authority may:
  - require from the insurer such further information, certified if the authority so directs by an auditor or actuary, as it may consider necessary to correct or supplement such return;
  - call upon the insurer to submit for its examination at the principal place of business of the insurer in Bangladesh any book of account, register or other document or to supply any statement which it may specify in a notice served on the insurer for the purpose;
  - examine any officer of the insurer in oath in relation to the return;
  - decline to accept any such return unless the inaccuracy has been corrected or the deficiency has been supplied before the expiry of one month from the date on which requisition asking for correction of the inaccuracy or supply of deficiency was delivered to insurer.
- If the Authority declines to accept any such return, the insurer shall be deemed to have failed to comply with the provisions of section 32 relating to the furnishing of returns.

**5.7 Power of the authority to order revaluation (Section-38)**

- If it appears to the Authority that an investigation or valuation to which section 30 refers does not properly indicate the condition of the affairs of the insurer by reason of faulty basis adopted in the valuation, it may after giving notice to the insurer and giving him an opportunity to be heard, cause an investigation and valuation as such date as the Authority may specify to be made at the expense of the insurer by an actuary appointed by the insurer for this purpose and approved by the Authority and the insurer shall place at the disposal of the actuary so appointed and approved all the material required by the actuary for the purpose of the investigation and valuation with in such period not being less than three months, as the Authority may specify.

- The provisions of sub-section (l) and (3) of section 30 and sub-section (1) and (2) section 32 shall apply in relation to an investigation and valuation under this section. It may be mentioned here that the abstract and statement prepared as the result of the investigation and valuation shall be furnished by such date as the Authority may specify.

#### **5.8 Subsidiary company (Section-42)**

- The authority shall permit to any insurer if it deems to fit establish one or more subsidiary company for regulating insurance business for the development and improvement or in public interest of insurance business in Bangladesh.
- In spite of sub-section (1), any insurer may hold an amount of any companies share according to prescribed manner.

#### **Solvency Margin, Loan and Management of Insurance business**

##### **6.1 Conditions to be fulfilled regarding solvency margin (Section-43)**

'Solvency Margin' refers to a certain amount of reserve fund maintained by an insurer as determined by the Act. Conditions to be fulfilled for solvency margin are as follows:

- Every insurer shall maintain solvency margin for its insurance business to an amount and in the manner as provided by in the Act.
- If an insurer at anytime fails to maintain solvency margin as Per sub-section (l) above that insurer shall submit a work plan to the Authority for making good the shortfall within the maximum period of three months of the issuance of the order of the Authority in this regard.
- The insurer shall only implement the work plan approved by the Authority and one that is found in adequate by the authority should be revised by the insurer for approval.

For the purpose of examining or determining whether the solvency margin as determined by the Authority has been fulfilled or not, the Authority shall have the right to inspect and verify the assets and liabilities of an insurer and collect other necessary information and the insurer shall be bound to comply with the orders issued in this regard by the Authority. If he fails to do so within two months from the receipt of the order shall be deemed to have made default in preserving solvency margin and in that case necessary action shall be taken under section 95 of this Act.

assets and liabilities of an insurer and collect other necessary information and the insurer shall be bound to comply with the orders issued in this regard by the Authority. If he fails to do so within two months from the receipt of the order shall be deemed to have made default in preserving solvency margin and in that case necessary action shall be taken under section 95 of this Act.

- Every insurer transacting life insurance business shall submit, a statement attested by an actuary, showing the specific solvency margin maintenance related information of a life insurer in the manner prescribed by the Authority.
- For transacting non-life insurance business, every insurer shall submit a statement attested by an authorized auditor showing the specific solvency margin maintenance related information of a nonlife insurer in the manner prescribed by the Authority.

**6.2 Restrictions in granting loan, advance and financial benefits (Section-44)**

- No insurer shall grant any loan, advance or other financial benefits against the security of its own share.
- No insurer shall grant to or any member of the family of any director, manager, actuary, auditor or officer of the insurer any loan or temporary advance except a loan on life policy issued by the insurer within the surrender value.
- Except with the prior approval of the Board of Directors and consent of the Authority no insurer shall grant any loan or temporary advance to any firm or company in which any director, manager, actuary, auditor or officer of the insurer or member of the family of such director, manager, actuary, auditor or officer has interest as proprietor, partner, director, manger or managing agent.
- The concern director shall not vote at or otherwise participate in the proceedings of the meeting of the Board considering the grant of any such loan or advance.
- The restrictions as mentioned under sub-section (1) and (2) above shall not be applicable or advances granted by an insurer to a banking company or to a subsidiary company insurer or to any insurer which is a subsidiary company.
- No restrictions as mentioned in sub-section (1) shall apply to any stipend paid to any insurance agent, broker or employer of agents while he is undergoing a course of training approved by the Authority.
- No insurer shall grant to any employee, insurance agent or employer of agents any loan or temporary advances except-
  - loans on life policies issued by him to an employee, insurance agent or broker or employer of agents with in their surrender value;
  - loans on mortgage of immovable property
  - loans for the purchase of conveyance to an employee, insurance agent or employer of agents provided that the concerned employee or agent has served the company continually for such period as may be decided by the Board of Directors and the conveyance purchased is mortgaged to the insurer.
  - temporary advances to an employee, insurance agent or employer of agents not exceeding four months' salary in case of employees; in case of insurance agents, the renewal commission earned by him during two years immediately preceding the date of application for the advance or a sum not exceeding the fixed determined amount if he has not earned renewal commission.

**Interactive Question 3:**

What do you mean by the 'Surrender value' of life insurance policies?

Suppose that Mr. X takes out an endowment policy for 15 years for Taka 15,000 and the premium payable is Taka 1,200 per annum. He pays premium for three years and then stops. The premium paid is Taka 1,200 x 3 = Taka 3,600. The premium payable is Taka 1,200 x 15 = Taka 18,000. Calculate the surrender value of the above policy.

**Investigation and Inspection of information**

**7.1 Investigation of the functions of an insurer (Section-48)**

- the authority may investigate either fully or partly any insurer registered under this act, if it appears-
  - the insurer is incapable or it is possible to be incapable to repay his liability;
  - the insurer has failed to comply with the provisions of this Act, regarding insurance fund;
  - if the insurer does not submit within one month of having prior notice under section 49 necessary information accurately and satisfied;
  - the insurer has failed to comply with the provisions of section 27,30,41,43 and 44;
  - if the profits of insurance premium are more comparing to the insurer's expenses of insurance business or the collections reserve or expenditure of regulating business.
  - Non-maintaining the procedure regarding distribution of expenses or special class of expenses of insurer's insurance fund and other fund;
  - The requirement of investigation regarding any information of the authority.
- Before starting an investigation under this act the authority shall give a notice to the insurer stating that the insurer may not transfer any assets in any condition before the completion of the investigation under this Act, except without a written permission from the authority.

**Explanation:** The asset import in this section shall include the following assets, but shall not limited in it-

- Immovable property, ex: any land, building and a thing attached to it;
- Movable property, ex: any furniture, equipments, book, magazine and any transferable thing, any motor-cycle, boat, launch, aeroplane and other sizes transportation;
- Investment, ex: any securities of state government or local government or any permissible securities by the government or authority;
- Other investments, ex: any incremental stock in the stock exchange, share, bond, debenture, mutual fund or any no-incremental investments;
- Cash, ex: deposited cash in any organization or agency, an amount of countable cash of bank or loan
- Other assets, ex: any remained premium, commission and paid or payable loan, advance, securities, deposit and in favour of insurer or contractual or receivable ownership.

- The authority may itself investigate or order an investigation appointed under sub-section (4) to file a report to him within seven days after such investigation.
- The authority may appoint an auditor, actuary or any other eligible person under this section, except an auditor who audits the accounts and balance sheet and other particulars of the insurer under section 27, for the investigation and expenses of such investigation shall be paid by the insurer.
- For regulating investigation under this Act the authority or investigator may-
  - a. The insurer or any person appointed on behalf of the insurer;
  - b. The existing director of the insurer or was a director at anytime or any person, actuary, auditor, officer, employee or agent who has fulfil the duties of the director; or
  - c. Any previous or present partner of the insurer, shall direct to present or use or full or partly copy of any book, accounts and other documents concerning investigation including the documents which proves the ownership of the insurer in Bangladesh or outside Bangladesh:

Provided that, the provisions of this section shall applicable only to the insurer holding business in Bangladesh and also shall applicable to the insurer concerning such business which proves the ownership of document.

- The authority or investigator may order to present before him the person or person describe under sub-section (5), for investigation under this section and may examine or ask statement regarding business insurer.
- If the authority deemed it if after receiving report under this Act and after giving an opportunity to the insurer to file application regarding report-
  - Order the insurer to take necessary steps regarding any subject of report; or
  - Cancel the registration of the insurer; or
  - Order any person to apply to the court for the winding up of the insurer, whether the registration of the insurer has been cancelled under clause (b) or not.
- If the authority deems it necessary after giving prior notice to the insurer, may publish the report of the investigation under this Act.
- No order made under this section other than an order made under clause (b) of sub-section (3) shall be called in question in any court.
- If any person after being ordered under sub-section (5) or sub-section (6) failed to present any document kept under his control or present before the authority or investigator or declared or failed to examine by them, then the authority or investigator may certify such declare in written form by a court; and afterward the court may investigate the subject and after hearing evidence in favour of or in favour of accused person and after hearing in favour of accused person may punish the culprit person for the contempt of Court and Same.

## **7.2 Power of the authority to inspect and ask for information etc. (Section-49)**

- The Authority may from time to time inspect books, account and transactions of an insurer or his branch office.
- In order to complete the above inspection the insurer will show his books, account and documents to the inspector and also deliver necessary information and facilities.
- For the purpose of fulfilling the objectives of this law, the Authority may if they deem it necessary ask any director or office or nominee of an in insurer to
  - Provide any information; or
  - Order for appearing before him for supplying information regarding his business in Bangladesh or outside Bangladesh and if necessary by written notice in the manner provided in the Act in the place and time mentioned in the notice:
- Anybody not willing to allow (a) conducting of this inspection or (b) violating any provisions of this sub-section or (c) failing in complying with any necessary requirement of the Authority shall to be treated as defaulter and the maximum penalty for this is taka 5 lacs and in case of continuous default addition penalty is taka five thousand per day of default.

### ***Interactive Question 4:***

Discuss the power of the Insurance Development and Regulatory Authority (IDRA) to inspect and ask for information etc. under the Insurance Act, 2010.

## **7.3 Power of authority to direct the insurer (Section-50)**

- The authority may, issue such directions as he may deem to any of the insurer if he is satisfied that it is necessary to do so in the public interest, or to prevent the affairs of any insurer being conducted in any manner detrimental to the interests of the policy-holders of the insurer can direct to take the following affairs, example:
- To take necessary action or appoint manpower in the management for regulating insurer's insurance business according to the provisions of this Act;
- If there is reason to believe, the authority may, after giving chance to surrender remove from the posts any person as the chairman, any director, advisor, principal officer or in any name called and by holding such post there has been violation of provisions of this Act, and the violation is of such kind that, it shall be detrimental for the interest of the policy holder or insurer if being associated with them or otherwise undesirable.

Provided that, if it appears to the authority that the delay shall be detrimental for the insurer or policy holder of such insurer, then in time of giving an opportunity to surrender or any time afterward if there is applied for surrender, the authority shall in time of considering order that, such director or principal officer from such date of the order-

- such director or principal officer shall cease to hold such office;
- shall not be in the connection or take part in them an agreement of the insurer's either directly or indirectly.
- shall not take action regarding dismissal or re-salving in the assets in the assets of insurer;



- the authority shall salvage any cash from the insurer if it appears to the authority that cash has been paid-up by unlawfully; or
- Shall restrain from declaring policy or renewal of policy regarding such class of insurance business prescribed in the order.

#### **7.4 Power to order calling of meeting of directors of the insurer (Section-51)**

- The Authority may, during the course, or after the completion of special audit or investigation by order in writing require the insurer:
  - to call a meeting of its directors for the purpose of considering
  - any matter relating to or arising out of the affair of the insurer;
  - the principal officer of the insurer to discuss any matter with him or any of his officers;
  - to allow any officer deputed for the purpose to watch the proceedings of, and to speak at any meeting of Board of Directors of the insurer or of any committee or other body constituted by the insurer and to furnish such officer with a copy of the proceedings of the meeting;
  - to allow any officer appointed or deputed for the purpose to observe for specified period which may be extended from time to time, the manner in which the affairs of the insurer or of any of his officers or branches are being conducted;
  - to make with in such time as may be specified in the order such changes in the management as the Authority may consider necessary to Put the affairs of the insurer in order.

### **8. Transfer of the title of policy and nomination**

#### **8.1 Nomination by the insurance policy holders (Section-57)**

- The holder of a policy of life insurance on his own life, may, when effecting the policy or at any time before the policy matures for payment, nominate the person or persons to whom the money secured by the policy shall be paid in the event of his death:

Provided that where any nominee is a minor, it shall be lawful for the policy-holder to appoint in the prescribed manner any person to receive the money secured by the policy in the event of his death during the minority of the nominee.

- Any such nomination in order to be effectual shall, unless it is incorporated in the text of the policy itself, be made by an endorsement on the policy communicated to the insurer and registered by him in the records relating to the policy and any such nomination may at any time before the policy matures for payment be cancelled or changed by an endorsement or a further endorsement or a will, as the case may be, but unless notice in writing of any such cancellation or change has been delivered to the insurer, the insurer shall not be liable for any payment under the policy made bona fide by him to a nominee mentioned in the text of the policy or registered in records of the insurer.
- The insurer shall furnish to the policy-holder a written acknowledgement of having registered a nomination or a cancellation or change thereof, and may charge a fee not exceeding one Taka for registering such cancellation or change.

- A transfer or assignment of a policy made in accordance with section 38 shall automatically cancel a nomination:

Provided that the assignment of a policy to the insurer who bears the risk on the policy at the time of the assignment, in consideration of a loan granted by that insurer on the security of the policy within its surrender value, or its re-assignment on repayment of the loan shall not cancel a nomination, but shall affect the rights of the nominee only to the extent of the insurer's interest in the policy.

- Where the policy matures for payment during the lifetime of the person whose life is insured or where the nominee or, if there are more nominees, than one, all the nominees die before the policy matures for payment, the amount secured by the policy shall be payable to the policy-holder or his heirs or legal representatives or the holder of a succession certificate, as the case may be.
- Where the nominee or, if there are more nominees than one, a nominee or nominees survive the person whose life is insured, the amount secured by the policy shall be payable to such survivor or survivors.
- The provisions of this section shall not apply to any policy of life insurance to which section 6 of the Married Women's Property Act, 1874, applies or has at any time applied:

Provided that where a nomination made whether before or after the commencement of this Act, in favour of the wife of the person who has insured his life or of his wife and children or any of them is expressed, whether or not on the face of the policy, as being made under this section, the said sub-section 6 shall be deemed not to apply or not to have applied to the policy.

***Interactive Question 5:***

What is meant by Assignment and Nomination of Life Insurance Policies? Mention the various rules regarding assignment of life policies.

**Commission, Rebate and Management cost**

**9.1. Prohibition of payment by way of commission or otherwise for procuring business (Section 58)**

- No person shall pay or contract to pay any remuneration or reward whether by way of commission or otherwise for soliciting or procuring insurance business in Bangladesh to any person except an insurance agent or employer of agent or broker.
- No person shall pay or no insurance agent shall receive any renewal commission in respect of a life insurance business after the expiry of license during the validity of which such business was procured by the insurance agent unless such license has been renewed under sub-section (l) of section 124.
- No insurance agent shall be paid or contract to be paid by way of commission or as remuneration in any form an amount exceeding in the case life insurance business as –
  - 35% of the first year's premium
  - 10% of the second year's renewal premium
  - 5% of the of the subsequent years' renewal Premium

Provided that, an insurer in respect of life insurance business may pay, during the first ten years of their business to the insurance agent commission as follows:

- 45% of the first year's premium
- 12% of the second year's renewal premium
- 6% of the subsequent year's renewal Premium
- For the purpose of sub-section (2) all the life insurance business to the credit of an insurance agent shall be deemed to have been procured by the insurance agent while holding the license valid.
- No insurance agent shall be paid or contract to be paid by way of commission or as remuneration in any form any amount in respect of any policy not effected through him.

## **9.2 Limits on commission expense (Section 59)**

- No person shall pay or contract to pay an insurance agent and no insurance agent shall receive or contract to receive, by way of commission not exceeding the prescribed one or remuneration in any form, in respect of any policy of life insurance issued in Bangladesh by an insurer.

Provided that, this percentage shall not exceed the rate prescribed in clause (a) of sub-section 3 of section 58.

- No person shall pay or contract to pay to an insurance agent and no employer of insurance agent shall receive or contract to receive by way of commission not exceeding the prescribed percentage rate or remuneration in any form in respect of life insurance policy effected through an insurance agent.
- No person shall pay or contract to pay to an insurance agent by way of commission not exceeding the prescribed percentage rate or remuneration in any form in respect of non-life insurance policy effected through an insurance agent in Bangladesh.
- No person shall pay or contract to pay to a broker by way of commission not exceeding the prescribed percentage rate or any overriding commission or remuneration in any form in respect of non-life insurance policy effected through an insurance agent in Bangladesh.
- No person shall pay or contract to pay to any outside Bangladesh by way of commission in respect of conducting insurance business in Bangladesh.
- If any insurer, insurance agent, employer of insurance agent and broker contravenes any of the provisions of sub-section (1), (2), (3), (4) and (5) shall be punishable with fine not exceeding one lac taka for such violation.
- An insurer incorporated outside Bangladesh who receives or contract to receive any commission in respect to any business transacted in Bangladesh and reinsured abroad shall not be deemed to have contravened the provision of sub-section (5) if all amounts received by him outside Bangladesh in respect of have been fully credited according to the prescribed provision of the government.

### **9.3 Restrictions On Allowing Rebate (Section-60)**

- No person shall allow or offer to allow, either directly or indirectly, as an inducement to any person to take out or renew or continue an insurance in respect of any kind of risk relating to lives or property in Bangladesh any rebate of the whole or part of the commission payable or rebate of the premium shown on the policy, nor shall any person talking out or renewing or continuing a policy, nor shall any person taking out or renewing or continuing a policy accept any rebate, except such rebate as may be allowed in accordance with the published prospectus or table of the insurer.

Provided that, the acceptance by an insurance agent of commission in connection with a policy of life insurance taken out by himself on his own life shall not be deemed to be acceptance of a rebate of premium within the meaning of this sub-section if at a time of such acceptance the insurance agent satisfies the prescribed conditions establishing that he is a bonafide insurance agent employed by the insurer.

- Any person making default in complying with this section shall be punishable with fine in accordance with the prescribed provision.

### **9.4 Limitation of expenses of Management in life insurance business (Section-62)**

- No insurer shall, in respect of life insurance business transacted by him in Bangladesh spend as expenses of management in any calendar year an amount in excess of the prescribed limit and in prescribing any such limits regard shall be had to the size and age of the insurer and the provision generally made for expenses of management in premium rates of insurers.

It may however, be mentioned here that the Authority may on an application made to him in this behalf, condone the contravention of this sub-section by an insurer who has, on reasonable ground, has spent management expenses in excess of such limit.

- Every insurer transacting life insurance business in Bangladesh shall incorporate in the revenue account a certificate signed by the chairman and two directors and by the principal officer of the insurer, and an auditor's certificate, certifying that all expenses of management in respect of life insurance business transacted by the insurer in Bangladesh have been fully debited in the revenue account as expenses.

Explanation: "Expense of Management" - in this section means all charges wherever incurred whether directly or indirectly, and includes the following:

- commission payment of all kinds;
- a proper share of expenses capitalized; and
- in the case of insurer having its principal place of business outside Bangladesh a proper share of head office expenses which shall not exceed such percentage of total net premiums as prescribed but shall not include any share of head office expenses in respect of life insurance business transacted by him outside Bangladesh.

**9.5 Limitation of expenses of management in non-life insurance business (Section-63)**

- No insurer shall in respect of any class of non-life insurance business transacted by him in Bangladesh spend in any calendar year as expenses of management, an amount in excess of the prescribed limits and in prescribing any such limits, regards shall be had to the size and age of the insurer.

It may however, be mentioned here that the Authority may on an application made to him in this behalf condone the contravention of this sub-section by an insurer who has, on reasonable ground, spent management expenses in excess of such limit.

- Every insurer as aforesaid shall incorporate in the revenue account a certificate signed by the chairman, two directors and the principal officer of the insurer, and an auditor's certificate certifying that all expenses of management wherever incurred whether directly or indirectly in respect of the business referred to in this section have been fully debited in the revenue account as expenses.

**Self-test question:**

1. Distinguish between reinsurance and double insurance. Discuss about the rules applicable in double insurance.
2. What is reinsurance? What are the rights of a reinsurer?
3. Discuss rules regarding paid up capital requirements of insurance company as per provision of the Insurance Act, 2010.
4. Discuss some grounds under which loan of Insurance Company are prohibited.
5. Discuss the prohibition on giving and accepting any rebate of premium, as enacted in the Insurance Act, 2010.
6. What is solvency margin? Mention the conditions to be fulfilled by an insurer for maintenance of Solvency Margin.
7. What is the amount of minimum deposit is required for an insurance company?
8. Where and how the assets of life and general insurers are to be invested?
9. Under what grounds an insurance company can be wound up by the Court?

**Answer to Self-test:**

**Answer to self-test 1:**

**Double Insurance vs. Re-insurance**

- If the same risk and the same subject are insured by the policy-holder with more than one insurer, it is called double insurance. Re-insurance means the transfer of the part of the risk by the insurer.
- If there are double insurances of properties, the loss will be shared by all the insurers. In the case of life insurance all the insurers are liable. In re-insurance, the re-insurer is entitled to get a proportionate part of the premium, and will be liable for a proportion of part of the loss.
- The re-insurer is liable only to the first insurer. In double insurance each insurer is liable directly to the policy-holder.
- Double insurance is a method of assuring the benefit of insurance. In the case of life insurance, the insured may have any number of policies and for any amount. Re-insurance is a method of reducing of the risk of the insurer.

**The following rules apply in the case of double insurance:**

- Life: no limit. In the case of life insurance there may be any number of policies for any amounts. A man is entitled to place any value he likes upon his life and therefore upon death, all the policies are payable whatever the total amount may be.
- Property: not more than actual loss. A person is free to insure his property with any number of insurers. But in case of loss occurring, he will not be allowed to recover more than the actual loss from all the insurers together. This amount will be shared between the insurers in proportion to the value of each insurer's policy. If any one of the several insurers pays the whole loss, he is entitled to contribution from the other insurers.

**Answer to self-test 2:**

**Re-insurance:**

Reinsurance means the transfer of a part of the risk by the insurer. Suppose, that a ship has been insured for Tk. 10 lakhs. The insurer may feel that the risk is too heavy to be borne by him alone. If so, he can transfer a part of the risk to another insurer. So, reinsurance takes place between two insurance companies.

**Rights of Re-insurer:**

- Re-insurer is entitled to get a proportionate part of the premium.
- Re-insurer gets the benefits of the conditions and terms of the original policy.
- Re-insurer is entitled to subrogation.
- If for any reason the original policy lapses, the re-insurance comes to an end.

**Answer to self-test 3:**

As per section 21 of the Insurance Act, 2010 Insurance company of different natures are required minimum paid up capital as follows:

**a. For life insurance business:**

**i. For companies incorporated in Bangladesh:**

Minimum 30 (thirty) crore taka of which 60% (sixty) shall be subscribed by the sponsors and the balance 40% (forty) shall be open for public subscription.

**ii. For companies incorporated outside Bangladesh:**

Minimum 30 (thirty) crore taka which shall be Brought to Bangladesh through remittance from abroad and be kept deposited into Bank

**b. For non-life insurance business:**

**i. For companies incorporated in Bangladesh:**

Minimum 40 (forty) crore taka of which 60% (sixty) shall be subscribed by the sponsors and the balance 40% (forty) shall be open for public subscription.

**ii. For companies incorporated outside Bangladesh:**

Minimum 40 (forty) crore taka which shall be Brought to Bangladesh through remittance from abroad and be kept deposited into bank.

**Answer to self-test 4:**

As per section 44 of the Insurance Act, 2010 the following grounds under which loan of insurance company are prohibited.

- No insurer shall grant to any loan, advance or financial advantages on his personal deposited shares.
- No insurer shall grant to or to any member of the family of, any director, manager, actuary, auditor or officer of the insurer any loan or temporary advance, either on hypothecation or properly or on personal security or otherwise, except a loan on life insurance policy issued by the insurer within the surrender value.
- Except with the prior approval of the Board of Directors and the authority, no insurer shall grant any loan or temporary advance to any firm or company in which any director, manager, actuary, auditor or officer of the insurer, or the member of the family of such director, manager, actuary, auditor or officer, has any interest as proprietor, partner, director, manager or managing agent.
- The Director concerned shall not vote at or otherwise participate in the proceedings of the meeting of the Board considering the grant of any such loan or advance as is referred to in sub-section (2).



- Where any event occurs giving rise to circumstance the existing of which at the time of the grant of any subsisting loan or temporary advance would have made such grant a contravention of sub-section (1) or sub-section (2), such loan shall notwithstanding any contract to the contrary, be repaid within three months from the occurrence of such event and, in case of default, the director, the manager, actuary, auditor or officer concerned shall, without prejudice to any other penalty to which he may be liable, cease to hold office with the insurer granting the loan or advance on the expiry of the said three months.
- Nothing in sub-section (1) or sub-section (2) shall apply to loans or advances granted by an insurer to a banking company or to a subsidiary company being an insurer or to any insurer to which the insurer granting the loan or advance is a subsidiary company.
- Nothing in sub-section (1) shall apply any stipend paid to any insurer agent, broker or employer of agents while he is undergoing a course of training approved by the authority.
- The provisions of Companies Act shall not apply to a loan granted a director of an insurer being a company, if the loan is one granted on the security of a policy on which the insurer bears the risk and the policy was issued to the director on his own life and the loan is within the surrender value of the policy.
- Subject to the provision of sub-section (1) no insurer shall grant to any employee, insurance agent, broker or employer of agent any loan or temporary advance except-
  - loans on life policies issued him to employee, insurance agent or broker or employer of agents within their surrender value;
  - loans on mortgage of immovable property provided-
    - the authority certified that the insurer, if he transacts life insurance business has complied with the provisions of this section:
    - the value of the property is at least twice the amount of the loan;
    - the property is situated in such town as may be notified in this behalf;
    - the loan is made in such installments as may be decided by the Board of directors of the insurer, if the purpose of the loan is to continue a house;
    - the loan is repayable within a period of fifteen years, or
    - the loan is of such amount that the installment of capital and interest does not exceed one-fourth of the basic salary of the employee or one-fourth of the renewal commission or overriding commission of an agent, broker or employer of agents, as the case may be, during a year;
  - loans for the purchase of a conveyance to an employee insurance agent or employer of agents, provided-

- the employee, insurance agent or employer of agents has served the insurer continually for such period as may be decided by the Board of Directors of the insurer;
- the conveyance purchased is mortgaged to the insurer;
- the loan does not exceed such amount, and is subject to such conditions as the time allowed for its payment as may be decided by the Board of Directors of the insurer;

Provided that, the total loan regarding non-life insurance referred to in sub-clause (b)(iv) and (c) shall exceed ten percent of the non-profit of the preceding year of the insurer after payment of income tax; Further provided that, the amount 10 percent of loan of first percentage shall or more than 20 percent of paid-up capital of the insurer;

- In case of temporary advance to an employee, insurance agent or employer of agents-
  - in the case of employee and manager an equal amount of salary not more than four months;
  - in the case of an insurance agent, the renewal commission earned by him during two years immediately preceding the date of the application for the advance and if he has not earned renewal commission, the amount not exceeding the prescribed amount;
- in the case of an employer of agents, the renewal commission and the overriding renewal commission earned by him during the year immediately preceding the date of application for the advance, and if he has not earned any renewal commission or over-riding renewal commission an amount not less than the prescribed amount;

Provided that, in respect of the life insurance business of an insurer, the total temporary advances referred to in this clause shall not exceed the amount prescribed in percentage rate and in other cases also shall not exceed the amount fixed.

**Answer to self-test 5:**

According to Section 60 of the Insurance Act 2010, no person shall allow or offer to allow, either directly or indirectly, as an Inducement to any person to take out or renew or continue an insurance in respect of any kind of risk relating to lives or property in Bangladesh any rebate of the whole or part of the commission payable or rebate of the premium shown on the policy, nor shall any person taking out or renewing or continuing a policy accept any rebate, except such rebate as may be allowed in accordance with the published prospectus or tapes of the insurer;

Provided that the acceptance by an insurance agent of commission in connection with a policy of life insurance taken out by himself on his own life shall not be deemed to be acceptance of a rebate of premium within the meaning of this sub-section if at a time of such acceptance the insurance agent satisfies the prescribed conditions establishing that he is a bonafide insurance agent employed by the insurer. Any person making default in complying with the provisions of this section shall be punishable with fine in accordance with the prescribed provision.

**Answer to self-test 6:**

**Solvency margin:**

Solvency Margin refers to a certain amount of reserve fund maintained by an insurer as determined by the Act.

**Conditions to be fulfilled by an insurer for maintenance of Solvency Margin:**

As per Section 43 of the Insurance Act, 2010 below mentioned conditions to be fulfilled for solvency margin:

- Every insurer shall maintain solvency margin for its' insurance business to an amount and in the manner as provided by in the Act.
- If an insurer at any time fails to maintain solvency margin as per sub-section (I) above that insurer shall submit a work plan for the Authority for making good the shortfall within the maximum period of three months of the issuance of the order of the Authority in this regard.
- The insurer shall only implement the work plan approved by the Authority and one that is found in adequate by the authority should be revised by the insurer, for approval.
- The purpose of examining or determining whether the solvency margin as determined by the Authority has been fulfilled or not, the Authority shall have the right to inspect and verify the assets and liabilities of an insurer and collect other necessary information and the insurer shall be bound to comply with the orders issued in this regard by the Authority.
- Every insurer transacting life insurance business shall 'submit, a statement attested by an actuary, showing the specific solvency margin maintenance related information of a life insurer in the manner prescribed by the Authority.
- For transacting non-life insurance business, every insurer shall submit a statement attested by an authorized auditor showing the specific solvency margin maintenance related information of a non-life insurer in the manner prescribed by the Authority.

**Answer to self-test 7:**

As per Section 23 of the Insurance Act, 2010 insurance business require deposit to be maintained as follows:

**i. For life insurance business:**

1(one) crore and 50 (fifty) lac taka. In case of a company incorporated before the commencement of this Act, such deposit shall be made within three years of giving effect of this law.

**ii. For of non-life insurance business:**

2 (two) crore 50 (fifty) lac taka. In case of a company incorporated before the commencement of this Act, such deposit shall be made within three years of giving effect of this law.

**Answer to self-test 8:**

As per Section 41 of the Insurance Act, 2010

- Every insurer shall invest and at all times keep invested his assets in the manner and place provided by the Act and the Authority shall have the power to control those investments.

It may be mentioned that, no investment shall be permissible in the first issue of capital by a company, firm or other business concern in which any of the directors of the insurer or any member of the family of such director has any interest as proprietor, Partner, director, manager or managing agent.

- Every insurer shall submit to the authority the returns of investment according to the manner prescribed in sub-section (1).

**Answer to self-test 9:**

An insurance company can be wound up by the Court under the same grounds for which a company can be wound up under the Companies Act. In addition to the ground on which such an order may be based, the Section 103 of Insurance Act, 2010 states Court may order the winding up of an insurance company under the following circumstances:

- if a petition is presented by shareholders representing not less than one-tenth of the whole body of shareholders and holding not less than one tenth of the whole share capital or by not less than five hundred (500) policy holders holding policies of life insurance that have been in force for not less than three years and are of the total value of not less than the value as may be prescribed under this Act.
- if the company has failed to deposit or to keep deposited with the Bangladesh Bank the required amounts under section 23 and 19 of the Act.
- if the company having failed to comply with any requirement of this Act has continued such failure or having contravened any provision of this Act has continued such contravention for a period of three months after notice of such failure or contravention has been conveyed to the company by the Authority.
- if it appears from the returns furnished under the provisions of this Act or from the results of any investigation made there under that the company has failed to maintain the required solvency margin.
- if the continuance of the company is prejudicial to the interest of the policy-holders.

**Answer to Interactive Question**

**Answer to Interactive Question 1:**

**i. Determination of rate of premium for non-life insurance business (Section 17)**

- The Authority shall form a Central Rating Committee (CRC) and in consultation with this committee shall determine the rate of premium for non-life insurance business which the insurers shall be bound to comply with.
- The Chairman of the Authority shall be the chairman of the CRC and the number of its members, Power, functions and management shall be determined by the regulation.
- The government may if required dissolve the CRC at any time.

**Provision relating to collection of premium (Section 18)**

- Every insurer shall declare to the Authority the total amount of premium outstanding including agent balance, if any, in respect of fire, marine and miscellaneous insurance business within 30 days from the commencement of this Act and shall recover the same within such time as may be allowed by the Authority.
- No insurer shall write off any outstanding premium in respect of non-life insurance business without prior approval of the Authority.
- No insurer shall assume in Bangladesh any risk in respect of non-life insurance business unless and until the premium payable or such part thereof has been received or guaranteed to be paid.

**Answer to Interactive Question 2:**

As per Section 27 of Insurance Act 2010, every insurer in respect of all insurance business transacted by him in Bangladesh shall at the expiration of each calendar year prepare with reference to that year the following statements:

- balance sheet, in the form and procedures set forth in the Act;
- profit and loss account in the form set forth in the Act;
- in respect of an insurer who is required under this law to keep a separate account of receipts and payments, a revenue account in the form set forth under the provisions of this Act; and
- a statement containing the names and descriptions of the persons in charge of management of the business during the year and a report on the affairs of the business

If the insurer is a company under the Companies Act, the balance sheet, profit and loss account, revenue account and the report under sub-section (I) shall be signed by the Chairman, two directors and the principal officer of the company, or in the case of a cooperative society under the Co-operative Societies Act shall be signed by two members.

Every insurer shall maintain fund related account of his shareholders and policy holders separately in accordance with the provisions of the Act.

**Answer to Interactive Question 3:**

**Surrender Value:**

Prior to the passing of the Insurance Act 1938 nonpayment of premium at any time involved cancellation of the contract of insurance and forfeiture of the premium paid. As this involved considerable hardships, section 88 of the Insurance Act 2010 provides that a life insurance policy will not lapse for nonpayment of premiums if certain conditions are fulfilled. Section 88(1) provides that surrender value will be acquired if premiums have been paid for at least two years. After premiums have been paid for the requisite period the policy acquires what is called Surrender Value. The surrender value is obtained by multiplying the sum assured by a fraction. The premium actually paid is the numerator of the fraction and the premium payable is the denominator. The surrender value of bonuses, declared before default, are to be added.

- Surrender Value = (Premium paid/premium payable) \* sum insured

The ratio between the two is Tk. 3,600 / Tk. 18,000= 1/5. The surrender value of the policy is 1/5 x Tk. 15,000= Tk. 3,000

**Answer to Interactive Question 4:**

**Power of IDRA to inspect and ask for information etc. (Section 49).**

- The IDRA may from time to time inspect any books, accounts and transactions of the insurer or of its branch office.
- For the purpose of investigation to the insurer shall show their books, accounts and documents to the investigator and also provide necessary information.
- The IDRA may in written notice require any director of the insurer, officer, agent to deliver any information regarding business or order him to be present before him at the time and place as prescribed in the notice.
- If any person disagrees regarding inspection or violates any provisions or failed in fulfilling any requirements he shall be accused guilty for this and be confined a penalty for Tk. 5 Lac and if the offence continues additional penalty Tk. 5 Thousand per day.

**Answer to Interactive Question 5:**

**Nomination by the policy holder (Section 57):**

The holder of policy of life insurance on his own life may, when effecting the policy or at any time before the policy matures for payment. Nominate the person or persons to whom the money secured by the policy shall be paid in the event of his death. This is known as nomination by the policy holder. The person named is called the nominee.

**Assignment of life policies (Section 56):**

It has been long before that life insurance policies are marketable commodities which can be validly assigned with or without consideration, to persons who have no interest in the life insured. The principle namely, the assignability of the life insurance policies is accepted in modern times and permitted by law.

**Rules regarding assignment of life policies (Section 56):**

The Insurance Act, 2010 contains the following rules regarding assignment of life policies:

**1. Procedure**

A transfer or assignment of life policies whether with or without consideration may be made only by an endorsement upon the policy itself or by a separate instrument, signed in either case by the transferor or by the assignor or his duly authorized agent and attested by at least one witness.

**2. Notice**

The transfer or assignment shall be binding upon the insurer after a notice in writing and endorsement on the instrument or a certified copy thereof is delivered to him.

**3. Priority**

In case of more than one assignment the priority of the claims of the assignees shall be governed by the order in which the notice to the insurer is delivered.

**4. Written acknowledgement**

Upon receipt of the notice, the insurer is bound to give a written acknowledgement of the receipt of the notice if the person giving the notice or the assignee demands such acknowledgement and pays a fee as prescribed by the rules.

**5. Recognition**

From the date of notice the insurer shall recognize the assignee named in the notice as the only person entitled to benefit under the policy. The assignee can, if necessary, sue without the consent of the assignor.

**6. Conditional assignment**

There may be assignment in favor of a person subject to condition that it shall be inoperative or that the interest shall pass to some other person on the happening of a specified event during the life time of the person whose life is insured.

**7. Survivorships**

There may be an assignment in favor of the survivors of a number of persons.







## Chapter 7

# Financial Reporting Act, 2015

### Contents

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## *Corporate Laws and Practices*

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### **Summary and Self-test**

### **Answers to Self-test**

### **Answers to Interactive questions**

**Introduction**

*Learning objectives*

*Tick off*

- *Define, apply and advise on FRA 2015*
- *Establishment, structure and separation of members of the Council (FRC)*
- *General objectives, powers and functions of the Council*
- *Incapacity of Executive Directors and Chairman of the Council*
- *Working divisions, their responsibilities and functions*
- *Application for enlistment of auditors, cancellation, etc.*
- *Audit practices, unapproved audit practices, reports and opinion, etc.*
- *Independence of auditors while carrying out responsibilities*
- *Standard setting and publication, etc.*
- *Auditing practice monitoring of the auditors of Public Interest entities*
- *Obligations to follow financial reporting and auditing standards*
- *Investigation of the complaints*
- *Appeal authority, etc.*
- *Power of issuing rules*

### **Practical significance**

Practically whenever people want to start public practice after getting the certificate from the professional institutions, they need to know the audit procedures and all other relevant legal and regulatory framework including the Financial Reporting Act 2015. The Financial Reporting Act 2015 will help to know the details regulatory aspects and also the guidelines of reporting and auditing framework. This act will help the professionals in maintaining high standards of financial reporting as per the globally accepted reporting framework as well as performing auditing maintaining globally accepted standards of auditing, i.e. ISA.

### **Stop and think**

What things can you think of that are essential for financial reporting and auditing the financial statements? What are the impact of this regulatory act? Have you stopped to think about how this affects the practice of a professional?

### **Working context**

You might need to understand the impact of financial reporting and auditing to the stakeholders of Public Interest Entities and also this Act on the practice of the professionals.

### **Syllabus links**

Financial Reporting Act, 2015 of Bangladesh.

### **Examination context**

#### **Exam requirements**

Financial Reporting Act 2015 is an important part of the syllabus. Typically, fifteen percent of the questions come from the part of Financial Reporting Act. Understanding the basic precepts relating to this act is vital. Other than Financial Reporting Act, you may also expect questions from ICAB Bye-Laws relating to public practice.

You are likely to be presented with scenarios and may have to conclude on establishment, structure and separation of members of the Council (FRC), general objectives, powers and functions of the Council, incapacity of Executive Directors and Chairman of the Council, working divisions, their responsibilities and functions, application for enlistment of auditors, cancellation, etc., audit practices, unapproved audit practices, reports and opinion, etc., independence of auditors while carrying out responsibilities, standard setting and publication, etc., auditing practice monitoring of the auditors of Public Interest entities, obligations to follow financial reporting and auditing standards, investigation of the complaints, appeal authority, etc., power of issuing rules.

### **Definitions (Sec 1)**

**“Financial year”** means the time period, whether it is a full year or not, for which the profit or loss account of a public interest entity will be submitted in its AGM. **(Sec 2(2))**

**“Financial statements”** interim or final statement of financial position, statement of profit or loss or income statement, statement of changes in equity, statement of cash flows and notes to the financial statements and their explanations. **(Sec 2(3))**

**“Council”** means the Financial Reporting Council made under sec 3 of this Act. **(Sec 2(6))**

**“Public Interest Entity”** means –

i. The entity which will satisfy anyone of the following determinants:

- Bank Companies established under sec 5 (Na) of the Banking Companies Act 1991;
- Organization which has issued Securities and has the obligation to submit report to the Bangladesh Securities & Exchange Commission under Sec 15 of the Bangladesh Securities & Exchange Commission Act 1993;
- Financial Institution as defined in Sec 2 (Kha) of the Financial Institution Act 1993;
- Microcredit Organization as defined in Sec 2(21) of Microcredit Regulatory Authority Act 2006;
- Insurer as defined in Sec 2 (25) of the Insurance Act 2010;
- Any organization yearly revenue of which has crossed the limit of last year revenue as notified by the council through Govt. Gazette;
- Any organization which has fulfilled any two of the following conditions at the end of last year:
  - It has recruited the minimum number of persons by regulation;
  - Total asset of this crossed the limit fixed by the Council in the official Gazette;
  - Total liabilities excluding shareholders’ equity has crossed the limit fixed by the

The following organizations fulfilling the conditions as set out in sub-section d(i):

- Company or commercial organizations under the ownership of Government;
- Statutory authorities;
- Non-Govt. organizations directed by individuals; and
- Other such organizations. **(Sec 2(8))**

**“Scheduled auditor”** means any auditor for the purpose of auditing the public interest entities as per the provision of Chapter 5 of this Act. **(Sec 2(9))**

**“Auditor”** means any person or the owner, partner or employee of any audit firm related with providing the audit services who is registered with any professional accountancy body.

**(Sec 2(13))**

**Audit firm”** means any firm or organization directed by any persons or partners in order to provide audit services whether registered or not. **(Sec 2(15))**

**“Professional accountant”** means the members of the organizations as per sec 2 (19) of this Act. In order to fulfil the function, the members of the Institute of Chartered Accountants of Bangladesh under the Bangladesh Chartered Accountants Order, 1973 and the members of the Institute of Cost and

Management Accountants of Bangladesh under the Institute of Cost and Management Accountants Ordinance, 1977 will be directed. **(Sec 2(18))**

**“Professional Accountancy Organizations”** means the institute of Chartered Accountants of Bangladesh under Bangladesh Chartered Accountants Order, 1973 (P.O. No. 2 of 1973) and the Institute of Cost and Management Accountants of Bangladesh under the (Cost and Management Accountants Ordinance, 1977 (Ordinance No. LIII of 1977)). **(Sec 2(19))**

**“Financial Reporting Standards”** means the financial reporting standards as outlined in sec 40 of this Act. **(Sec 2(21))**

**“Annual Report”** means the evidence which contains the financial statements of the public interest entities, the audit report thereon and the statements provided by the directors of those entities along with the operational reflection. **(Sec 2(22))**

### **Establishment of the Council**

Government, after the enactment of this act, shall establish a Council through notification in the Government Gazette which shall be named as the Financial Reporting Council. **(Sec 3(1))**

Council shall be a statutory organization and it shall have permanent continuity and general seal, and as per the provisions of this Act, it shall have the power to acquire both immovable and moveable assets, keep in its position or transfer and it shall use its own name to sue a case and a case can be sued against its name. **(Sec 3(1))**

### **Structure of the Council**

The council shall be composed of the following members **(Sec 5 (1))**:

- One Chairman as appointed by the Government;
- One Additional Secretary from any division of the Ministry of Finance as nominated by the Government;
- One Additional Secretary as nominated by the Ministry of Commerce;
- One Deputy C&AG as nominated by C&AG of Bangladesh;
- One Deputy Governor as nominated by the Governor of Bangladesh Bank;
- One member of NBR as nominated by the Chairman of the Board;
- One Commissioner of BSEC as nominated by the Chairman of the Commission;
- President of the Institute of Chartered Accountants of Bangladesh (ICAB);
- President of the Institute of Cost & Management Accountants of Bangladesh (ICMAB);
- One professor of the Accounting Department from Public Universities as nominated by the Government (For specific tenure)
- President of the Federation of Bangladesh Chamber of Commerce & Industries (FBCCI); and

- One Executive Director as nominated by the Chairman of the Council who will act as the member-secretary.
- Chairman will be the Chief Executive of this Council. **(Sec 5 (2))**

#### **Procedures for separation of any members of the Council**

- The members as referred to in Sec 5 (ka, Ja, Jha, Ta, Tha) can be separated if he/she **(Sec 6(1))**-
- Is unable to carry out the duty due to physical or mental incapacity or disclaim to carry out the duty;
- Is unable to carry out the duty or disclaim to carry out the duty for the period of 3 months without valid reason;
- Become ineligible to be member as per the provision of Sec 11;
- Performs any work which is harmful for the Council;
- Shows such behaviour or use his/her positions in such a way that hampers the objective of this law or the public interest;
- Government will formulate the investigation committee in order to justify the reasons as per Sec 6(1) and the working procedures, scope, deadline for submission of report, the required subject matters to be included in investigation report, recommendation for removal and related matters shall be determined by rules. **(Sec 6 (2))**
- Any removed member shall be ineligible to be the member of this Council or reappointed for any position of the Council. (Sec 6 (3))

#### **General objectives of the Council**

- General objectives of the Council shall be the followings **(Sec 7)**:
- Determination of financial reporting and auditing professional standards, ethical standards, etc.;
- Qualitative standard development of accounting and auditing services;
- Development of accounting and auditing profession;
- Confirmation of highest standards of the financial reporting and auditing works of the scheduled auditors;
- Enhancement of the credibility financial statements;
- Ensuring the morality, transparency of professional works of financial reporting and auditing and cooperation in capacity building; and
- Encouraging Public Interest entities to produce high quality report of financial and non-financial information.

### **Powers and functions of the Council**

- The Council, for carrying out the functions of the Council fairly, can perform all necessary powers and perform the functions, subject to the provisions of this Act. **(Sec8(1))**
- The council may exert power on the following matters and also perform its functions without prejudicing the spirit of subsection 1 above **(Sec 8(2))**:
- Considering the socio-economic situation of Bangladesh, formulating and implementing standards keeping consistency with the International Financial Reporting Standards and Auditing Standards **(Sec 8(2Ka))**;
- Ensuring international standards adopted and quality standards complied by the Institute of Chartered Accountants of Bangladesh (ICAB), International Auditing and Assurance Standards Board (IAASB) and other international organizations **(Sec 8(2Kha))**;
- Ensuring effective enforcement, monitoring and enforcement of financial reporting and auditing standards made by the Council **(Sec 8(2Ga))**;
- Ensuring the necessary rules, regulations, standards guidelines, codes, formulation and implementation of the financial report, accounting and quality certification **(Sec 8(2Gha))**;
- Monitoring practices and practice monitoring of auditors to maintain high standards of professional behaviour **(Sec 8(2Uma))**;
- Advising on accounting and related activities and providing information services as central information respiratory **(Sec 8(2Ca))**;
- Listing of auditors and recording and publishing of the related information **(Sec 8(2Cha))**;
- Ensuring compliance with the reporting requirements determined under any other laws **(Sec 8(2Ja))**;
- Providing recommendations and cooperation in the development and promotion of education, training, internship, article-writing and research activities in the promotion of education certificates, courses and professional standards run by professional accountancy institutions **(Sec 8(2Jha))**;
- Monitoring of professional development activities conducted by the professional accounting institution for the purpose of this Act **(Sec 8(2io))**;
- Encouraging research on any topic that can be applied efficiently and, as the case may be, financing financial reporting, accounting, audit, and corporate governance systems to be more effective by the Council, Professional Accounting Institution or any related organization **(Sec 8(2ta))**;
- Formulating the necessary rules or regulations in order to properly directing accounting and audit activities **(Sec 8(2tho))**;
- Conducting enquiries and activities related to this act **(Sec 8(2da))**;



- Accepting and implementing the appropriate method or scheme for directing the Council's objectives and activities **(Sec 8(2dha))**;
- Engaging with or, in the applicable case, the Memorandum of Understanding and the Agreement with the initiatives taken by any organization whether local or international which will be related to the functioning and the objective of the Council **(Sec 8(2na))**;
- Determining the charges and fees for the service provided by the Council **(Sec 8(2ta))**;
- Imposing fines under this Act and rules made thereunder **Sec 8(2tha))**;
- Providing recommendation or suggestion to the government regarding financial reports, non-financial reports, financial statements, annual reports, accounts and audit or related matters **Sec 8(2da))**; and
- For carrying out the purposes of this Act, other functions which the Council may consider necessary for the purpose of implementing the Council's general purpose and functions **Sec 8(2dha))**.

#### **Incapacity of Executive Directors and Chairman**

No person shall be eligible to be appointed or keep staying as Chairman or Executive Director of the Council (Sec 13), if he-

- is not a citizen of Bangladesh; or
- is declared as bankrupt by the Competent Court; or
- is declared to be a defaulter of loan by any bank or financial institution; or
- is convicted of any criminal offense, the court gets sentenced to no less than 3 (three) years' imprisonment; or
- is unable to perform duties due to physical or mental illness; or
- receives any financial benefits directly or indirectly from any matter under the jurisdictions of Council; or
- is involved in the accounting or audit functions as a professional accountant or as legal counsel in his own name or in the name of other person directly or indirectly in exchange of anything or without anything after being appointed; or
- completes his 65 years of age; or
- has been punished by a professional institution; or
- has been punished for tax evasion.

### **Functional divisions of the Council**

The functional division of the Council shall be composed of the following divisions in order to fulfil the objective of this act (Sec 22(1)):

- Standards Setting Division;
- Financial Reporting Monitoring Division;
- Audit Practice Review Division; and
- Enforcement division.

There shall be an executive director in each division referred to in sub-section (1) and he shall be the head of that division (Sec 22(2)).

### **Responsibilities of Standard Setting Division**

The functions of the Standard Setting Division shall be preparation of appropriate proposal for formulation, renewal, development and acquisition of financial reporting, valuation, actuarial standards, auditing standards, and to present it for the approval of the Council following the provisions of this act (Sec 23(1)).

Without prejudicing the spirit of sub-section 1 of this act, in order to fulfil the objectives of this Act, the Council may, by the previous sanction of the Government, make rules and procedures for discharging the duties of the division of judges by making regulations, by notification in the official Gazette (Sec 23(2)).

### **Responsibilities of Financial Reporting Monitoring Division**

The responsibilities of the Financial Reporting Monitoring Division shall be Monitoring, analyzing and identifying whether financial reporting and auditing standards, codes or guidelines made under this Act or any other law are being followed by the public interest entities (Sec 24(1)).

In order to fulfil the objective of this Act, the Council shall, with the pre-approval of the Government, by notification in the official gazette, determine regulations carrying out the responsibilities in the field of Financial Reporting Monitoring Division (Sec 24(2)).

In order to carry out functions under this Act, this division shall inform in writing to the relevant public interest entities or any other organization that if there is any objection to any action taken by the Division, the company or organization can directly submit it to the Financial Reporting Monitoring Division (Sec 24(3)).

While performing the functions under this Act, it appears to the Financial Reporting Monitoring Division that if any financial reporting and auditing standards, codes or guideline is not followed by the public interest entity, then the Division will take its opinion and recommendation in relation to it in consideration in order to take action (Sec 24(4)).

The Financial Reporting Monitoring Division shall perform its function in its own method in compliance with this Act and the related provisions of this Act (Sec 24(5)).

### **Responsibilities of Audit Practice Review Division**

1. The responsibilities of Audit Practice Review Division shall be as follows (Sec 25):
  - Monitoring activities related to the audit practice of the professional accountancy organization;
  - For the purposes of this Act, revision of audit practice of any organization which assists the scheduled auditor, audit firm or auditor on the basis of randomization;
  - Determining the non-compliance with the audit practice code under this act and auditing standards by any organization which assists the scheduled auditor, audit firm or auditor;
  - Once every 3 (three) years -
    - Review the regulatory measures of the organization concerned;
    - Review whether it has taken necessary steps for the development of an accountancy profession by maintaining professional standards;
    - Review whether it is carrying out the responsibility of protecting the public interest by implementing the purpose of the other public interest described in its charter;
  - For the purpose of this Act, the Council may, by the prior approval of the Government, by notification in the official Gazette, make rules and procedures for the discharge of duties of the audit practice by making regulations.
  - The Audit Practice Review Division will inform the concerned person or organization in writing about the review report prepared by them, and if the person or organization has any objection to the matter, then it may directly submit it to that Division.
  - If any failure is found during the performance of this Act, the Audit Practice Review Division will inform the department concerned for opinion and recommendations about the matter and take appropriate action on the basis of opinion and recommendations received by the division.
  - Subject to the provisions of this Act and the rules made thereunder, the Audit Practice Review Division shall perform its review in accordance with the procedure prescribed by it.

### **Functions of Enforcement Division**

- The main responsibility of the Enforcement Division shall be to consider any matter referred to the Council directly by any other organization about any failure or violation of the standards, recommendations or violations followed by other Divisions of the Council and the rules made under any other law, and according to the investigation, if necessary, under this Act, Possible punishment for violation or failure And make recommendations to the parties concerned to inform it of taking actions (Sec 26(1)).
- For the purpose of this Act, the Council may, by the pre-approval of the Government, by notification in the official Gazette, make rules and procedures for discharging the functions of the department, by making regulations (Sec 26(2)).

- The Division, subject to this Act, shall not make any recommendation regarding taking disciplinary action without providing the opportunity for reasonable hearing to the concerned person or organization for the alleged violation or failure (Sec 26(3)).

#### **Enlistment of Auditors**

- Notwithstanding anything contained in any other law for the time being in force, after the enactment of this Act, no auditor or any audit firm shall be eligible to be appointed as auditor of any public interest company or not providing any services related to the audit without enrolling with the Council (Sec 31(1)).
- If any enlisted auditor or any partner of any audit firm resigns or joins that firm, this shall be notified to the Council in writing for the resignation or joining within 15 (fifteen) days (Sec 31(2)).

#### **Application for enlistment of auditors**

- For the purpose of enlistment under this Act, an auditor shall apply to the Council in terms and conditions prescribed by rules (Sec 32(1)).
- The Council shall provide an enlistment certificate to the listed auditor under this Act, in which the rules and regulations, guidelines, standards, or instructions made thereunder, shall be mentioned in the rules applicable to the list (Sec 32(2)).
- Under this section, scrutiny of the applications for registration, fees, submissions, decision to cancel or not, preserve printed and electronic copy of enrolment certificates, registration of necessary information in general or in the e-register, deadline, informing the applicant, auditor or audit firm name or any information included in the register or any other related matters shall be governed by rules (Sec 32(3)).

#### **Suspension or cancellation of enlistment certificate**

- If any listed auditor is punished under section 48, the Council will discuss this matter in the meeting as necessary and take one or more measures as follows (Sec 33 (1)):
- Issue of warning notice to the enlisted auditor; or
- By issuing one or more conditions, ordering to submit the report regularly; or
- Suspension of its activities as a listed auditor for a term which shall not exceed two (two) years; or
- The listed auditor will be given a reasonable opportunity to show reasons and to cancel the enrolment by written order; or
- The professional accountancy organization will be sent to take disciplinary action in accordance with the relevant law against the listed auditor and which will inform the Council about the arrangements made within the stipulated time; or
- The professional accountancy organization will take the relevant procedures for the cancellation of the registration of the listed auditor under relevant law and inform the Council about the arrangements taken within the stipulated time.

- At any stage of running the functions under this Act, if it appears to the Chairman or Executive Director of the Council or any other officer of the Council, that any auditor has committed an offense under sub-section (1), then it shall be presented in writing in the immediate subsequent meeting of the Council (Sec 33(2)).
- If the council thinks necessary for taking action under this section, then accordingly, it may take further investigation, written or personal hearing, etc. in the prescribed manner (Sec 33(3)).
- It will regularly update the website of the Council regarding the suspension or cancellation of the enlistment certificate under this section (Sec 33(4)).

#### **Unapproved audit practice**

- Public interest entity shall not engage any person in the audit work, whose enlistment has been postponed by the Council or cancelled the enlistment by the Council, or the action taken by the Council on the recommendation of the Council, is pending by the professional accounting institution (Sec 34(1)).
- Without informing the Council about the following topics, an enlisted auditor may not conduct audit in the name of any audit firm, namely (Sec 34(2)):
  - In case of partnership, the name of the firm's partners and the signatory's signature;
  - To use the letter head of the audit firm, a copy thereof; and
- If the name of the audit firm is similar to that of a regional or international network, or the firm includes any regional or international network, or the letter head of the firm or any other document indicates that the firm is part of any regional or international network, then that regional or international network Detailed descriptions with the documentary evidence of the relationship;
- Any enlisted auditor shall not sign any account, statement, report or any document executed by any other auditor, unless he is satisfied with it and takes full responsibility for the work done (Sec 34(3)).

#### **Auditors' report and opinion**

- In relation to the preparation of audit report on financial statements of any public interest entity, the auditor shall give affidavit in the prescribed form by the regulation on the basis that the report has been prepared in accordance with the applicable auditing standards and the relevant provisions of this Act and any other law (Sec 35(1)).
- Without following the auditing standards made by the Council under section 40, no enlisted auditor will express any opinion in his report (Sec 35(2)).
- In the annual report of an organization, the directors of the concerned company or the empowered officer expressed that the report has been prepared in compliance with the corporate governance code or any other regulatory, systematic arrangements, in which the auditor will specify whether it has made the report consistent with the conditions of that code or regulatory arrangements (Sec 35(3)).

### **Serious Misconduct**

- When conducting audit in public interest entity, if the listed auditor is satisfied with this or there is reasonable ground to believe that serious irregularities have been committed in that company, then he will, immediately (Sec 36(1)):
  - Inform the details descriptions of the irregularities in writing to the members of the Board of directors of Public Interest Entity and its officers; and
  - Every person referred to in clause (ka) shall request the concerned Public Interest Entity for taking appropriate action, in relation to such irregularities, singly or jointly.
- If the concerned Public Interest Entity does not take any action in respect of such irregularities informed in writing under sub-section (1), then the enlisted auditor may, by the way, consider the matter as appropriate, and inform the Council, the Professional Accounting Institution, the Controlling Agencies and so on and any other statutory body or parliament established under the law or rules as per the requirement (Sec 36(2)).

### **Independence of auditors while carrying out responsibilities**

- An enlisted auditor will perform his duties independently and he will not do any work contrary to the audit practice code made by the Council or will not be involved in any such activity as the enlisted auditor (Sec 37(1)).
- The Council may review the specific procedures for providing necessary assistance and information about the audit practices by the auditor enlisted by regulation (Sec 37(2)).

### **Standards setting, etc.**

- Council, to provide professional accounting services for public interest organizations (Sec 40(1))-
- Financial Reporting Standards keeping consistency with the International Accounting Standard issued by the International Accounting Standards Board IASB); and
- Will set and issue auditing standards keeping consistency with international auditing standards and assurance and ethics declaration issued by the International Auditing and Assurance Standards Board.
- The Council will issue the necessary guideline for successful implementation of the Auditing Standards (Sec 40(2)).
- Every enlisted auditor shall follow the rules, regulations, codes or guidelines prescribed under this Act, including the minimum conditions specified in the auditing standards by the Council in respect of its professional duties (Sec 40(3)).
- Notwithstanding anything contained in sub-section (1), the Council may make adjustments to international good practice and make separate simplified financial reporting structures and standards for small and medium enterprises (Sec 40(4)).

### **Auditing practice monitoring of the auditors of Public Interest entities**

The Council or any officer authorized in writing by it, may review the audit practice of an enlisted auditor and, in this regard (Sec 46)-

- Inspect, examine and collect all records, documents, annual balance sheet, cash or cash deposited in the bank, deposit, repository or other property, etc. under the control or possession of the concerned auditor or his partner, employee or any other person; and
- Seek or interrogate information or explanation from any partner, employee or associate person.

### **Obligations to follow financial reporting and auditing standards**

- If it appears to the Council that any Public Interest Entity has failed to follow any financial reporting and auditing standards, code or guidelines made under this Act, or has severely distorted the financial statements of the Public Interest Entity, then the Council may warn the Public Interest Entity in this regard or in accordance with those standards, its financial statements immediately for a change or correction may direct (Sec 47(1)).
- If any Public Interest Entity is instructed under sub-section (1), within 30 (thirty) days of receiving that order, the Public Interest Entity will amend or alter its financial statement and repatriate the financial statements prepared in the revised or modified form to the concerned Government Department or authority (Sec 47(2)).

### **Investigation of the complaints**

- If an enlisted auditor declines or fails to comply with any order or order of the Council given under this Act, then the Council may impose the said auditor in the manner prescribed by the rules and amounts as administrative fine (Sec 50(1)).
- Penalties imposed under sub-section (1) shall be recoverable as Public Demands under Public Demands Recovery Act, 1913 (Act No. III of 1913) (Sec 50(2)).

### **Appeal against the decision of the Council**

- Subject to the other provisions of this Act, if any party is aggrieved against any decision made by the Council, within 30 (thirty) days of being informed about the decision, the aggrieved may appeal to the appeal Authority and other matters related to it may be submitted to the Appeal authority (Sec 53(1)).
- The decision of the appeal authority shall be final in the appeal filed under sub-section (1) (Sec 53(2)).

**Appeal authority**

- For the hearing of an appeal under this Act, the government may, by notification in the official gazette, establish an appeal authority and it shall be called the Accounting and Audit Appeal Authority (Sec 54(1)).
- The appeal authority referred to in sub-section (1) shall be formed as follows, namely (Sec 54(2))-
- Any person or a retired secretary who has its working experience of minimum 20 (twenty) year, including graduate (Honors) degree in Management, Business Administration, Accounting, Law, Finance and Banking, Management or Commerce or Financial Management, who will also be its Chairman;
- A law expert with a minimum of 15 (fifteen) years of experience in law, profession or law, including a degree (honors) in law; and
- A minimum of 15 (fifteen) years of practical experience along with degree (honours) in Economics, Business Administration, Accounting, Law, Finance and Banking, Management or Commerce or Financial Management or professional degrees in accounting.
- The appeal authority will determine its procedures.
- The appeal authority may prescribe or amend, alter or cancel any decision of the Council, or postpone the interim order for suspension of the effectiveness of the decision.
- Decisions will be taken based on the opinion of the majority of the appeal authority.
- If the decision is made against the appellant under the provisions of this section, the appeal authority may make the decision to the appellant to bear all the costs related to the appeal.
- All expenses of the appeal authority shall be executed in the manner prescribed by rules and from the Council's fund.

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