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FINAL DRAFT

JAIBB: Laws and Practice of General Banking (LPGB)

Module A: Financial Institutions Related Laws

Bangladesh Bank Order,1972

Preambles

On 7 April 1972, after the Independence War and the eventual independence of Bangladesh, the Government of Bangladesh passed the Bangladesh Bank Order, 1972 (P.O. No. 127 of 1972), reorganizing the Dhaka branch of the State Bank of Pakistan as Bangladesh Bank, the country's central bank and apex regulatory body for the country's monetary and financial system.

There are six chapters and eighty-four sections in this order. Bankers and the readers are strongly advised to follow the original law in this regard.

Objectives

To establish a central bank in Bangladesh to manage the monetary and credit system of Bangladesh with a view to stabilizing domestic monetary value and maintaining a competitive external par value of the Bangladesh Taka towards fostering growth and development of country's productive resources in the best national interest.

The main functions of the Bank as per this order shall be as under:

- (a) To formulate and implement monetary policy;
- (b) To formulate and implement intervention policies in the foreign exchange market;
- (c) To give advice to the Government on the interaction of monetary policy with fiscal and exchange rate policy
- (d) To hold and manage the official foreign reserves of Bangladesh;
- (e) To promote, regulate and ensure a secure and efficient payment system, including the issue of bank notes;
- (f) To regulate and supervise banking companies and financial institutions.

Establishment & Incorporation of Bangladesh Bank and Capital of the Bank has been detailed in chapter II. Whereas, the main functions of the Bank, Power of Government to give instructions to the Bank, appointment of Governors and Deputy Governors and their principles, Disqualification of Directors etc. are have been described in chapter III.

Business which bank may transact, business which the bank may not transact, Bank Rate, Sole right to issue Bank Notes, Legal Tender, Issue Department, Denomination and form of Bank Notes, Reissue, Lost, Stolen notes, Assets of the Issue Department, the liabilities of the Issue Department, Cash Reserve of Scheduled Banks, Scheduled Banks etc. are also discussed in this chapter.

In chapter IV collection and furnishing of credit information, and some general issues are described in chapter VI (chapter V omitted from this order). Among general issues, Power of Government to supersede the Board, Maintain Secrecy, Delegation of Authority, Deputation of Bank Employee, Responsibility of the Bank during the period of anticipated economic disturbances, Power to make Regulation are notable.

The Board may make regulations consistent with the Order to provide for all matters for which provision is necessary or convenient for the purpose of giving effect to the provisions of this Order:

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

Incorporation of Bangladesh Bank

Bangladesh Bank – a body corporate having perpetual succession and common seal to carry on the business of central banking – was deemed to have taken effect on the day of liberation, *i.e.*, December 16, 1971. Bangladesh Bank, however, took full shape with its Head Office at Dhaka about ten months later under the Bangladesh Bank Order 1972 (President’s Order no. 127 of 1972).

Composition and Mandate of the Board of Directors

Article 9 of the BB Order is a fairly comprehensive section dealing with the policy structure of the Bank. Article 9(2) says: “The general superintendence and direction of the affairs and

business of the Bank shall be entrusted to a Board of Directors which may exercise all the powers and do all acts and things that may be exercised or done by the Bank.”

Article 9(3) says that the Board shall consist of –

- (a) The Governor;
- (b) A Deputy Governor to be nominated by the Bank;
- (c) Four Directors who will not be Government officials to be nominated by the Government from amongst persons who, in the opinion of the Government, have had experience and shown capacity in the field of banking, trade, commerce, industry or agriculture;
- (d) Three Government officials to be nominated by the Government.

Coordination Council

Article 9A (1) says as follows: “There shall be a Council for the coordination of fiscal, monetary and exchange rate policies, hereinafter called the Coordination Council, consisting of –

- (i) Minister for Finance (*Chairman*)
- (ii) Minister for Commerce (*Member*)
- (iii) Governor, Bangladesh Bank (*Member*)
- (iv) Secretary, Finance Division (*Member*)
- (v) Secretary, Internal Resources Division (*Member*)
- (vi) Member (Programming), Planning Commission (*Member*).”

The Coordination Council shall –

- (a) Coordinate macroeconomic framework including fiscal, monetary and exchange rate strategies and policies;
- (b) Ensure consistency among macroeconomic targets of growth, inflation and fiscal, monetary and external accounts;
- (c) Meet for the above purposes before finalization of the budget to determine the extent of public sector borrowing taking into account credit requirements of the private sector, monetary expansion based on projected growth, price inflation and net foreign assets of the banking system;

- (d) Meet at least on a quarterly basis to review the consistency of macroeconomic policies and to revise limits and targets set at the time of the formulation of the budget, keeping in view the latest developments in the economy;
- (e) Consider limits of the Government borrowing as revised from time to time in the meetings to be held before and after passage of the annual budget.

Bangladesh Bank shall place before the Coordination Council –

- (a) Relevant data relating to monetary expansion and Government borrowing from the banking system; and
- (b) The assessment of the Bangladesh Bank regarding the impact of economic policies of the Government on monetary aggregates and the balance of payments.

The Ministry of Finance shall, from time to time, bring to the notice of the Coordination Council the impact of tax, budget and debt management policies on the overall macroeconomic situation.

The Ministry of Commerce shall, from time to time, bring to the notice of the Coordination Council the impact of trade and tariff policies on the overall macroeconomic situation.

Some of the other provisions contained in the Bangladesh Bank Order of 1972, as amended by the Bangladesh Bank (Amendment) Act 2003, are highlighted below:

- The Bank shall undertake to accept monies for account of the Government and to make payments up to the amount standing to the credit of their accounts and to carry out its exchange, remittance and other banking operations, including management of the public debt.

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

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

- The Bank shall sell to or buy from any authorized dealer in Bangladesh approved foreign exchange at such rates of exchange and on such conditions as it may determine pursuant to its monetary and exchange rate policy.

- The Bank shall have the sole right to issue Bank Notes made payable to bearer on demand in Bangladesh.

- The issue of Bank Notes shall be conducted by the Bank in an Issue Department which shall be separated and kept wholly distinct from the Banking Department.

- Every scheduled bank shall maintain with the Bank a balance the amount of which shall not be less than such portion of its total demand and time liabilities as may be prescribed by the Bank, pursuant to the monetary policy objectives of the Bank.

- The Governor shall at least once a year or at any other instance, if so summoned, appear before the Parliamentary Committee on Finance to report on the monetary policy and of other activities of the Bank and to answer questions.

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

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

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

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

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

The Board may make regulations consistent with this Order to provide for all matters for which provision is necessary or convenient for the purpose of giving effect to the provisions of this Order.

Model Questions:

1. State the main functions of Central Bank as per Bangladesh Bank Order, 1972.
2. What should be the Composition and Mandate of the Board of Directors under Bangladesh Bank Order, 1972?

Bank Company Act, 1991

Preambles

This Act came into force in 14 February, 1991. There was an amendment in the Bank Company Act, 2013 which was effective from 22 July 2013.

The Bank Company Act, 1991 deals with the provisions for regulating and bringing discipline in the banking sector of the country.

Objective

The objective of the Act was to provide a legal framework for regulating and supervising the banking companies in Bangladesh. Defining the business of a banking company and lays down the manner in which such business is to be transacted. Vests Bangladesh Bank (BB) with

powers to grant license, conduct inspection, regulate and supervise the activities of banking companies including the branches of foreign banks.

Provisions of Bank company Act are applicable to Banking Companies, in addition to and not in derogation of the Companies Act. In the event of any conflict, Bank Company Act being a special Act for banking business, prevails over the provisions of Companies Act, and other legislations.

The banks registered with the RJSC which get license to operate under Bank Company Act, 1991 are termed as Scheduled Banks.

Punitive actions can be initiated against the concerned banks as per Bank Company Act 1991 (amended up to 2013) for continuous failure in performing risk management related activities such as determination of risk appetite, risk identification, measurement, control or mitigation and for non-compliance to Bangladesh Bank instructions in this regard.

Different Parts and Sections of the Bank Company Act,1991.

- Preliminary (Part I): Section 1-6
- Business of Banking Companies (Part II): Section 7-50
- Illegal banking transactions by companies (Part III): Section 51-56
- Prohibitions of certain activities relating to banking business (Part IV): Section 57
- Acquisition of the undertaking banking companies (Part V): Section 58-63
- Suspension of business and winding up of banking companies (Part VI): Section 64-77
- Speedy disposal of winding up proceedings (Part VII): Section 78-100
- Miscellaneous provisions (Part VIII): Section 101-123

Bankers and the readers are strongly advised to follow the original law in this regard.

Discussion on some Notable Provisions of the Act

Section – 5: Definition

- Banking Company: Which transacts the business of banking. “Bank Company” means any company which serves financial transactions (Banking Business in Bangladesh) including all new banks and specialized banks.
- “Banking business” means accepting, in order to lend or invest, of deposits of money from the public which will be paid on demand or otherwise and will be withdrawal by cheque, draft, order or otherwise.
- New Bank: As defined in the Bangladesh Banks (Nationalization) Order, 1972.

Section – 7: Form of business in which banking company may engage

- The borrowing, collecting or taking up of money
- The lending or advancing of money either against security or without security
- drawing, accepting, making, buying, selling, collecting and dealing with in bills of exchange, Promissory notes, debentures etc.
- To grant and issue of letter of credit, traveler's cheques, credit card and circular notes
- No bank company shall engage in any other business form except those referred in above.

Section – 8:

Use of the word “Bank” or any of its derivatives. Every banking companies carrying banking business in Bangladesh shall use the word ‘Bank’ or any of its derivatives as part of its name.

Section -10:

Disposal of non-banking assets: No banking company shall hold any immovable property however acquired, except such as is required for its own use, for any period exceeding seven years from the acquisition thereof.

Section-11:

Prohibition on employment of managing agents and restrictions on certain forms of employment.

- a) No banking company shall employ Managing Agent for managing its management;

No bank shall appoint any person who was once insolvent, convicted etc.

Section -12: Restriction on removal of records and documents

- No banking company shall remove from BD to a place outside BD any of its records and documents relating to its business in the HO or at its branches, whether they are functioning or not, without the prior permission in writing of the BB.
- Records- ledgers, day book, cash book, a/c books etc. done through IT or electronically.
- Documents- vouchers, cheques, bills, P.O etc. or any other records maintained through IT.

Section – 13: Maintenance of Capital

All the banking companies working and having business in Bangladesh will have to maintain their required capital from time to time as determined by the Bangladesh Bank- the amount, the percentage and the ways mentioned therein.

Provided that, the Government in consultation with the Bangladesh Bank, may allow waiver from maintaining this provision in case of Specialized banks.

Explanations: For the purpose of fulfilling the objectives ‘Capital’ will mean and include the components of capital as will be determined by Bangladesh bank from time to time in their principles of maintaining of capital.

Capital adequacy focuses on the total position of bank capital and protects the depositors from the potential shocks of losses that a bank might incur. It helps

absorbing major financial risks (like credit risk, market risk, foreign exchange risk, interest rate risk and risk involved in off-balance sheet operations). Banks in Bangladesh have to maintain a minimum Capital Adequacy Ratio (CAR) of not less than 10.0 percent of their risk-weighted assets.

Instructions regarding Minimum Capital Requirement (MCR), Adequate Capital and Disclosure requirement as stated in the ‘Guidelines on Risk Based Capital Adequacy (RBCA) for banks’ are to be followed by all scheduled banks for the purpose of statutory compliance and also the circulars issued by BB in this regard. In order to calculate Capital to Risk-weighted Asset Ratio (CRAR), banks are required to calculate their Risk Weighted Assets (RWA) on the basis of credit, market, and operational risks. Total RWA will be determined by multiplying the amount of capital charge for market risk and operational risk by the reciprocal of the minimum CRAR and adding the resulting figures to the sum of risk weighted assets for credit risk. The methodologies to calculate RWA for each of these risk categories can be seen in detail in relevant chapters in the ‘Guidelines on Risk Based Capital Adequacy (RBCA) for banks’, 2014 of Bangladesh Bank.

At present the minimum capital requirement for a new bank is five hundred crore and for the existing banks is five hundred crore or ten percent of risk weighted assets whichever is higher.

All banks are required to submit the CRAR report quarterly (according to the prescribed formats of Department of Off-site Supervision (DOS) under EDW) on consolidated as well as on solo basis by the end of the month following the end of each quarter to DOS of BB.

Each bank must submit its Internal Capital Adequacy Assessment Process (ICAAP) report to Banking Regulation and Policy Department (BRPD) of BB in both hard and soft format within May 31 of every year based on the latest audited financial report. The banks that close their account at the end of June, they should submit its ICAAP report to Banking Regulation and Policy Department (BRPD) of BB in both hard and soft format within November 30 of every year based on the latest audited financial report. The ICAAP reporting must be approved by the Board of Directors

of the banks before submitting to BB. $CRAR = \text{Total Eligible Capital Credit RWA} + \text{Market RWA} + \text{Operational RWA}$.

BB may impose restrictions on Bank's business as well as impose penalty and/or punishment as per Section 13(7) of the Bank Company Act 1991 (revised up to 2013), if a bank fails to meet minimum capital or CRAR within the stipulated period. If a bank's employee willfully/knowingly furnishes false information in reporting to BB, such an offense is punishable under section 109(2) of the Bank Company Act 1991 (revised up to 2013). BB may impose penalty as per Section 109(7) of the Bank Company Act 1991 (revised up to 2013), if a bank fails to submit the RBCA report within stipulated time without any acceptable/satisfactory reason.

For the purpose of calculating capital under capital adequacy framework, the capital of banks shall be classified into two tiers. The total regulatory capital will consist of sum of the following categories:

- 1) Tier 1 Capital (going-concern capital) Going-concern capital is the capital which can absorb losses without triggering bankruptcy of the bank.
 - a) Common Equity Tier 1)
 - b) Additional Tier 1
- 2) 2) Tier 2 Capital (gone-concern capital Common Equity Tier 1 Capital) Gone-concern capital is the capital which will absorb losses only in a situation of liquidation of the bank.

For the local banks, Common Equity Tier 1 (CET1) capital shall consist of sum of the following items: a) Paid up capital b) non-repayable share premium account c) Statutory reserve d) General reserve e) Retained earnings f) Dividend equalization reserve

g) Minority interest in subsidiaries

For the foreign banks operating in Bangladesh, Common Equity Tier 1 (CET1) capital shall consist of sum of the following items: i. Funds from Head Office for the purpose of meeting the capital adequacy; ii. Statutory reserves kept in books in Bangladesh; iii. Retained earnings; iv. Actuarial gain/loss kept in books in Bangladesh v. non-repatriable interest-free funds from Head Office for the purpose

of acquisition of property and held in a separate account and have the ability to absorb losses regardless of their source; Less: Regulatory adjustments applicable on CET1.

For the local banks, Additional Tier 1 (AT1) capital shall consist of the following items: a) Instruments issued by the banks that meet the qualifying criteria for AT1 as specified at Annex4. b) Minority Interest i.e., AT1 issued by consolidated subsidiaries to third parties (for consolidated reporting only);

For the foreign banks operating in Bangladesh, Additional Tier 1 (AT1) capital shall consist of the following items: i. Head Office borrowings in foreign currency by foreign banks operating in Bangladesh for inclusion in Additional Tier 1 capital which comply with the regulatory requirements as specified in Annex4; ii. Any other item specifically allowed by BB from time to time for inclusion in Additional Tier 1 capital; Less: Regulatory adjustments regulatory adjustments applicable on AT1 Capital.

Tier 2 Capital Tier 2 capital, also called ‘gone-concern capital’, represents other elements which fall short of some of the characteristics of the core capital but contribute to the overall strength of a bank.

For the local banks, Tier 2 capital shall consist of the following items: a) General Provisions; b) Subordinated debt / Instruments issued by the banks that meet the qualifying criteria for Tier 2 capital c) Minority Interest i.e., Tier-2 issued by consolidated subsidiaries to third parties. For the foreign banks operating in Bangladesh, Tier 2 capital shall consist of the following items: i. General Provisions; ii. Head Office (HO) borrowings in foreign currency received that meet the criteria of Tier 2 debt capital; Less: Regulatory adjustments applicable on Tier-2 capital as mentioned at paragraph 3.4. of the BB guidelines.

All banks will be required to maintain the following ratios on an ongoing basis:

- i. Common Equity Tier 1 of at least 4.5% of the total RWA.
- ii. Tier-1 capital will be at least 6.0% of the total RWA.
- iii. Minimum CRAR of 10% of the total RWA.
- iv. Additional Tier 1 capital can be admitted maximum up to 1.5% of the total RWA or 33.33% of CET1, whichever is higher.

- v. Tier 2 capital can be admitted maximum up to 4.0% of the total RWA or 88.89% of CET1, whichever is higher.
- vi. In addition to minimum CRAR, Capital Conservation Buffer (CCB) of 2.5% of the total RWA is being introduced which will be maintained in the form of CET1.

Banks are required to maintain a capital conservation buffer of 2.5%, comprised of Common Equity Tier 1 capital, above the regulatory minimum capital requirement of 10%. Banks should not distribute capital (i.e., pay dividends or bonuses in any form) in case capital level falls within this range. However, they will be able to conduct business as normal when their capital levels fall into the conservation range as they experience losses.

Section 14-Ka: Restrictions on buying of shares etc. and Section 14-Kha:

Holding of notable shares

- The shares of a bank shall not be concentrated among the members of one and the same family and the members of a family shall not, individually, jointly or both, buy more than ten percent of the shares of a bank.
- Whoever buys shares of a bank shall at the time of the purchase submit an affidavit to the effect that he does not buy the shares as the agent of another person or under another's name and that he didn't buy previously any shares under another's name.
- Submission of oath or declaration in this regard will be required
- If the declaration is false then all the shares of the person shall be forfeited to the BB.
- No person or institution or company directly or indirectly, singly or jointly will become the holder of notable shares of any bank company without the prior permission of BB.
- Notable share means more than 5% shares of a company.

Section -15 Kha: Role of the Board of Directors

- Board of Directors will hold responsible for the formulation of policies and

Implementation of the bank company, Risk management, Internal control, Internal audit and its review.

- Every Bank company will have to form an Audit committee comprising of the members of Board of directors who are not the members of the executive committee of the Board of directors.
- Every Bank company will have to form a Risk management committee comprising of the members of Board of directors.

Section – 22: Restriction as to payment of dividend

- No bank company will be allowed to declare dividend without written off all capitalized expenses including preliminary expenses, organizational expenses, commission of selling shares and brokerage, losses and other expenses thereto.
- Any Bank having shortfall of required capital and reserve will not pay or declare cash dividend.
- No bank company will be allowed to declare dividend if there is provision shortfall.

Section – 24: Reserve fund

- At least 20% profit before tax to be transferred to the reserve fund until RF + Premium=Paid up capital.
- Reporting to the BB within 21 days for appropriation from reserve fund or share premium account.
- BB may extend the period

Section – 25: Cash Reserve Fund

It is mandatory for all banking companies to maintain certain percentage of cash reserve with Bangladesh Bank. The percentage of cash reserve changes from time to time through Bangladesh Bank's notification.

CRR is maintained in cash form with Bangladesh Bank. In banking system, CRR is a proportion of cash determined by the central bank from time to time against a

bank's total demand and time liabilities (TDTL). CRR ensures flow of money to the economy. Cash Reserve Requirement Ratio was set as 4.0 % in April 2021.

Section - 27: Restrictions on Loans & Advances

- Approve any loans, advances, guarantee or any other financing facilities against the security of its own shares
- Grant unsecured loans to any of its directors/ family members
- To any of its directors or individuals, firms or companies in which it or any of its directors is interested as partner, director without the approval of the majority of the directors excluding the director concerned.

Section – 27KaKa: List of defaulting borrowers etc.

- Every Bank company or Financial Institution will send the list of their defaulters to the Bangladesh Bank from time to time.
- Bangladesh bank will send the list of those defaulters to all the Banks and Financial Institutions of the country.
- No bank company or financial Institutions will grant any loan facilities in favor of any loan defaulter.
- For the time being enforced, what has been mentioned in any other law, loan providing bank or the financial Institution as the case may be, will sue against the defaulted borrower under the existing law.

Section – 28: Restrictions on the respite of loans.

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 the above 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.

Section-29: Power of BB to control Advances by Bank

- BB may determine the lending policy to be followed by the Banking companies
- BB may give directions to banking companies in the following matters:
 - Credit ceilings to be maintained
 - The minimum ratio of small loans to the total advances
 - The purpose of loan
 - The rate of interest to be charged on advances
 - The limit up to which advances may be given to any bank/group of banks/group of persons

Section -31: License of Banking Companies

- No banking company shall carry out banking business in Bangladesh without obtaining a license from Bangladesh Bank.

Section -32: Open a branch in a new place of business

- No banking company shall open a new branch in a new place or change the location of an existing branch without obtaining prior permission of Bangladesh Bank.

Section -33(2): Maintenance of Liquid Assets (SLR)

As per the Bank Company Act, 1991 and the amendment made in 2013 under section 33(2), it has been decided that (a) conventional banks will have to maintain at least 13% of total demand and time liabilities as Statutory liquidity ratio (SLR) over and above the CRR in cash and as deposit within Bangladesh

in easily exchangeable asset on daily basis it will not be less than 13% of total demand and time liabilities and (b) in case of Islami Shariah based Banking it will be at least 5.5%.

Section-35: Unclaimed deposits and valuable articles

- All unclaimed deposits & valuable articles for 10(ten) years must be sent to Bangladesh Bank. If there is no transaction for last 10 years or being no trace of the customer in spite of repeated reminders and upon serving 3 months prior notice amount in the account concerned may be transferred to BB.

Section -37: Power to publish information

- The Bangladesh Bank has the power to publish information of banking companies regarding overdue loans & advances of banking companies.

Section -38: Accounts and balance sheet

- At the end of each year, every banking company shall prepare a balance sheet and profit and loss account as on the last working day of the year.

103. Choice for the payment of deposited money. -

(1) Where an individual has, or several persons have jointly deposited money with a banking company in his or in their name, that individual depositor may separately or, as the case may be, the group of depositors may jointly, in the way prescribed, choose a person to which, in the case of the death of the individual depositor or of all of the joint depositors, the deposited money shall be given: Provided that the said individual depositor or the said group of depositors may at any time cancel their choice and choose, in the way prescribed, another person.

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

death of the individual depositors or of the joint depositors, receive the money during the period of minority of the chosen person.

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

(4) Where a banking company has made payments in accordance with this section, all its obligations in respect of the deposit concerned shall be deemed fulfilled: Provided that no right or claim that any person may have or make against the person to whom the deposited money has been paid under this section shall be prejudicial to the provision of this subsection.

Model Questions:

1. State in brief about the provisions/restrictions to be maintained as per the Banking companies Act, 1991 of the following:
 - a) Restriction on removal of records and documents.
 - b) Maintenance of Capital, CRR and SLR.
 - c) Restrictions on buying of shares, loans and advances, Respite of loans and as to payment of dividends.

Financial Institutions Act, 1993

Preliminary and Objective

Short title and commencement. -(1) This Act may be called the Financial Institutions Act, 1993. (2) It shall be deemed to have come into force on first Bhadra, 1400/ 6th August, 1993, respectively.

Financial Institutions Act,1993 (Act No.27 of 1993) made to provide for the granting of licenses to financial institutions, their control and to make other incidental provisions relating thereto.

"Financial institution" under this Act 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;

Different Chapters and Sections of the Financial Institutions Act,1993.

- Preliminary (Chapter I): Section 1-3
- Licensing of financial institutions, minimum capital, restrictions on the opening of branches, cancellation of license etc. (Chapter II): Section 4-8
- Reserve fund, dividends, balance-sheet (Chapter III): Section 9-12
- Business rules, Restrictions regarding credit facilities, and Power of the Bangladesh Bank to regulate certain matters etc. (Chapter IV): Section 13-18
- Maintenance of minimum liquid asset (Chapter V): Section 19
- Inspection, Measures to be taken by the Bangladesh Bank in the case of failures of a financial institution (Chapter VI): Section 20-22
- Submission of statement of accounts and audit of accounts, managing directors etc. not being qualified, Removal of a chairman, principal executive officer, board of directors or of any director etc. (chapter VII): Section 21-26
- Moratorium in respect of financial institutions, reconstruction, winding up of financial institutions by the High Court Division, Offences and punishments,

Power of the Bangladesh Bank to impose fines, Power to make rules etc. (Chapter VIII): Section 27-43

- Miscellaneous- Cognizance of offence, Publication of list of financial institutions, Alteration of memorandum of a financial institution, Actions taken in good faith, Power to exempt in certain cases etc. (Chapter VIII): Section 44 - 51.

Bankers and the readers are strongly advised to follow the original law in this regard.

1. Short title and commencement. - (1) This Act may be called the Financial Institutions Act, 1993.

(2) It shall be deemed to have come into force on first Bhadra, 1400/ 6th August, 1993, respectively.

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

a) "financing business" means the business carried on by any financial institution;

b) "financial institution" means such non-banking financial institutions, which-

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;

c) "credit" means any financial loan on the basis of interest or any loan repayable at a premium, but shall not include loans granted under the condition to issue a debenture or other security to a company or other statutory organization;

d) "creditor" means any person entitled to have returned money deposited by him or any other person;

e) "credit facilities" means-

- i) the promise of a financial institution to grant advances and other facilities or to bear liabilities on behalf of a borrower;
- ii) the bearing, on behalf of a borrower, of his other liabilities by a financial institution;
- f) "company" means any company registered under the Companies Act, 1913 (VII of 1913);
- g) "Companies Act" means the Companies Act, 1913 (VII of 1913);
- h) "auditor" means any person who, subject to the provisions of this Act, has been appointed to audit the accounts and transactions of financial institutions;
- i) "director" shall also include such persons as perform by order or direction any duty of a director of a financial institution and shall also include alternate and deputy directors;
- j) "regulation" means any regulation made under this Act;
- k) "Bangladesh Bank" means the Bangladesh Bank established under the Bangladesh Bank Order, 1972 (PO No.126 of 1972);
- l) "investment company" means a company primarily or wholly engaged in the buying and selling of securities of other companies, and shall include companies which have at any time invested eighty per cent of its paid-up capital in other companies, but shall not include any banking or insurance company or organization which is a member of the stock exchange;
- m) "building society" means a society which collects savings and grants loans for the construction of buildings and the buying of properties;
- n) "person" means any company, institution or organization;
- o) "banking company" means any banking company established under the Banking Companies Act, 1991 (Act No.14 of 1991);
- p) "merchant bank" means a bank which assumes the responsibility for the securities of other organizations or companies and gives advice on the amalgamation, or other commercial enterprises, of such customers;
- qu) "mutual association" means a savings association which does not issue capital, stocks and the depositors and borrowers of which are its owners and controllers;
- r) "mutual company" means an organization which is devoid of capital and the net profit of which is distributed among the owners and borrowers in proportion to the business activities;

s) "leasing company" means a company which leases machines and implements as its business or part of its business or finances such leasing.

3. Act to override other laws. - Notwithstanding anything contained in any other law for the time being in force, the provisions of this Act shall have effect.

Chapter II

Licensing of financial institutions

4. Licensing of financial institutions. - (1) No person shall carry on any financial business without a licence to run a financial institution issued by the Bangladesh Bank.

(2) Every financial institution in existence on the commencement of this Act shall, before the expiry of six months from such commencement, apply in writing to the Bangladesh Bank for a licence under this section:

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

a) its application under this section is under consideration, or
b) it has not, by a notice, been informed by the Bangladesh Bank that a license cannot be granted to it.

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

- a) the financial situation;
- b) the characteristics of the management;
- c) the sufficiency of the capital structure and the earning capacity;
- d) the purposes mentioned in the memorandum;
- e) the public interest;

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

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

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

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

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

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

(2) No financial institution shall be granted a licence 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.

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

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

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

a) if it does not carry on the business for which it had been established;

b) if the financial institution goes into liquidation or if its business is closed;

c) if it furnishes false or misleading information or documents in order to receive a licence;

d) if it carries on its business in a manner detrimental to the interests of the depositors;

e) if its assets are not sufficient to pay the claims of its depositors;

f) if it carries on business maintaining an amount of paid-up capital which is less than the amount of the minimum capital;

g) if the conditions of the licence are contravened;

h) if the financial institution or any of its directors is convicted for an offence under this Act.

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

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

(4) Beginning from the date on which a notice under sub-section (3) has been published, the financial institution concerned shall cease to carry out any financial transaction except, subject to the consent of the Bangladesh Bank, such measures as may be required to conveniently suspend its business.

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

Chapter III

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.

Chapter IV

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-

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

b) deal in gold or any foreign coins;

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

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

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

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

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

(2) "Unsecured advance", "unsecured credit" or "unsecured credit facilities" as mentioned in sub-section (1) (e) mean any advance, credit or credit facilities granted without security

or surety, and shall include, in the case of advances, credits or credit facilities granted against securities or sureties, that part of the credit which exceeds the market value of the securities or sureties and, in the case that, in the opinion of the Bangladesh Bank, securities or sureties have no market value, the amount settled by the said Bank.

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

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

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

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

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

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

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: -

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

Chapter V

Maintenance of minimum liquid assets

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

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

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

Chapter VI

Inspection

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

(2) The Bangladesh Bank may at any time, if it has reason to believe that any financial institution is engaged in such business as is detrimental to the interests of its depositors and

debtors, or that its assets are not sufficient to pay the claims of the public, or that it is involved in any activities incompatible with the provisions of this Act, carry out, by one or more of its officers, an examination, not being prejudicial to the provision of sub-section (1), of the ledgers, account-books and other documents of such financial institution.

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

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

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

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.

22. Measures to be taken by the Bangladesh Bank in the case of failures of a financial institution.- (1) If any financial institution informs the Bangladesh Bank about its inability to meet its demands in accordance with the provisions of section 21 or if the Bangladesh Bank has, on an inspection under section 20, reason to believe that a financial institution carries on its business in a manner which is detrimental to the interests of its depositors, or that it has become financially insolvent or that a financial institution is in a situation to be almost unable to pay its dues, or that a financial institution has contravened, or failed to comply with, the conditions of a licence 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:-

- a) it may direct the actions to be done or not to be done in connection with its financing business;
 - b) it may direct the appointment, at its expense, of any person for the proper management of its business;
 - c) it may assume the responsibility for the control and management of its business or direct any other person therefore.
- (2) The Bangladesh Bank may, by itself or in view of an application, alter or withdraw any measure taken under sub-section (1) and may impose such conditions on such alteration or withdrawal as may be required.
- (3) Notwithstanding anything contained in this section, the Bangladesh Bank may apply to the High Court Division for the winding-up of any financial institution for the reasons mentioned in this section.
- (4) Where the Bangladesh Bank assumes the responsibility for the control of a financial institution, it shall control it so long as it is not satisfied that it is no longer necessary to control its business in order to protect the interests of its depositors, and such institution shall be bound to grant the Bangladesh Bank every facility required in order to facilitate such control or general management of the financial institution.
- (5) The Bangladesh Bank shall determine the remuneration to be paid to any person appointed to control or manage a financial institution under this section or the other conditions etc. of his work, and the financial institution shall bear the expenses thereof and such other expenses as may arise through its control.

Chapter VII

Submission of statement of accounts and audit of accounts

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

24. Appointment of an auditor and duties of the auditor. - (1) Notwithstanding anything contained in the Companies Act, every financial institution shall annually, subject to the consent of the Bangladesh Bank, appoint one auditor.

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

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

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

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

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

- a) 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;
- b) on account of losses the capital of a financial institution has fallen under eighty-five per cent;
- c) there has occurred any serious irregularity including that the payment of the creditors' demands is no longer guaranteed; or
- d) 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.

25. Managing directors etc. not being qualified. - (1) No person who is, or at any time has been, adjudicated insolvent, or has suspended payment of his creditors, or has compounded with his creditors, or who has been convicted by a criminal court of an offence involving moral turpitude may be or continue to be director of a financial institution or be appointed for the management of a financial institution.

(2) No director of a financial institution declared suspended under this Act or person directly involved in the management of such financial institution may, without the prior approval of the Bangladesh Bank, be appointed to the office of a director of another

financial institution or to any office which may be connected with the management of another financial institution.

(3) Notwithstanding anything contained in any other law for the time being in force, no person who is director of any other financial institution, of a banking company or of an insurance company shall be qualified to be director of a financial institution.

26. Removal of a chairman, principal executive officer, board of directors or of any director.- (1) Where the Bangladesh Bank is satisfied that it is necessary to remove a chairman or director or principal executive officer of a financial institution in order to prevent its affairs being conducted in a manner prejudicial to the interests of the financial institution or its depositors or to secure in the public interest the proper management of the financial institution, it may, after committing its reasons to writing, issue a direction that such chairman, director or principal officer be removed from his office.

(2) Before issuing a direction under sub-section (1), the person affected shall be given reasonable opportunity to make a representation.

Chapter VIII

Moratorium in respect of financial institutions, reconstruction etc.

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

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

(2) If during the period the order given under sub-section (1) is in force the Bangladesh Bank is satisfied that in the public interest or in the interest of the depositors or in order to secure the proper management of the financial institution or in the interest of the finance system of the country as a whole it is necessary so to do, it may prepare a scheme for the reconstruction of the financial institution, or for the amalgamation of the financial

institution with another financial institution, henceforth in this chapter referred to as the transferee institution.

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

- a) 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;
- b) in the case of amalgamation of the financial institution, the transfer to the transferee institution of the business, properties, assets and liabilities of the financial institution on such conditions as are specified in the scheme;
- c) any change in the Board of Directors, or the appointment of a new Board of Directors, of the 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;
- d) 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;
- e) 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);
- f) 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;
- g) payment in cash to the depositors and other creditors in full satisfaction of their claims-
 - i) in respect of their interests or rights in or against the financial institution before its reconstruction or amalgamation; or

- ii) where their interests or rights in or against the financial institution have been reduced under clause f), in respect of such interests or rights as so reduced;
- h) the allotment of shares in the financial institution on its reconstruction or, as the case may be, in the transferee institution to the members of the financial institution for all the shares of the financial institution held by them before its reconstruction or amalgamation or where has been made a reconstruction in accordance with clause f), for those reduced shares and where cash is claimed instead of shares or where it is not possible to allot shares to any member, the payment in cash to those members in full satisfaction of their claims-
- i) in respect of their interest in shares in the financial institution before its reconstruction or amalgamation; or
- ii) where such interest has been reduced under clause f), in respect of their interest in those reduced shares;
- i) 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-

- i) 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;
- ii) 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;

j) 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;

k) any other rule or condition for the reconstruction or amalgamation of the financial institution;

l) incidental, consequential and supplemental matters required to carry out the reconstruction or amalgamation.

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

(6) The Bangladesh Bank may make such modifications in the draft scheme as it may consider necessary after considering the suggestions and objections received in the light of the invitation under sub-section (5).

(7) The Bangladesh Bank shall, after proceeding in accordance with sub-section (5) and (6), place the scheme before the Government for its sanction, and the Government shall sanction the scheme without any modifications or with such modifications as it may consider necessary, and the scheme as sanctioned by the Government shall come into force on such date as the Government may specify on this behalf:

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

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

a) the financial institution, the transferee institution and any other financial institution concerned with the amalgamation;

b) the members, depositors and other creditors of the financial institution concerned;

c) the said financial institution and the employees of the transferee institution;

d) any trustee involved in the management of any retirement fund or any other fund, kept by the said financial institution or the transferee institution or any person having any right or liability in relation to that financial institution or transferee institution.

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

(10) If any difficulty arises in giving effect to the provisions of the scheme, the Government may by order do anything not inconsistent with such provisions which appears to it necessary for the purpose of removing that difficulty.

(11) Where a scheme for amalgamation of a financial institution under this section has been approved, any business acquired by the transferee institution under the scheme or under any provision thereof shall, after coming into operation of the scheme or such provision, be carried on in accordance with the law governing the activities of the transferee institution: Provided that, in order to give full force to the scheme, the Government may, on the recommendation of the Bangladesh Bank, by notification in the official Gazette, exempt for a period of no more than seven years that business from the application of any provision of that law.

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

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

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

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

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

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

Offences and punishments

30. Punishment for carrying on the business of financing without holding a license. - Whoever carries on the business of financing without holding a licence under this Act or continues to carry on the business of financing after the annulment of his licence 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.

31. Punishment for not cooperating in an investigation under section 5.- (1) If any suspect engaged in the business of financing at the time of an investigation under section 5 intentionally refuses to produce any information, documents, files, books, accounts or records required for the investigation to the officer conducting the investigation or refuses to cooperate in the investigation, he shall be punishable with imprisonment for a term which may extend to one year, or with a fine which may extend to two hundred thousand Takas, or both.

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

32. Punishment for giving false information in order to receive a licence. - Whoever intentionally gives false or erroneous information in an application for a licence 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 licence. - If any person fails to comply with any condition of a licence 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 licence under this Act, introduces itself, and carries on business, as a financial institution holding a licence, 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.

41. Punishment for adding anything untrue in account books etc. of financial institutions.-

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

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

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

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

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

Chapter IX

Miscellaneous

44. Cognizance of offence. - (1) No court other than a sessions court shall try any offence under this Act.

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

45. Publication of list of financial institutions. - (1) The Bangladesh Bank shall, immediately after the granting of a licence to a financial institution, publish by notification the name and address of the said institution.

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

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

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

47. Actions taken in good faith. - No suit or other legal proceeding shall lie against the Government or the Bangladesh Bank or against any of its officers or employees for anything which is in good faith done or intended to be done under this Act, or for any damage caused or likely to be caused by anything intended to be done in good faith.

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.

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

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

a) may be determined the fees which are to be determined under this Act;

b) may be controlled the advertisement of financial institutions.

50. Amendment of PO No.127 of 1972.- The Articles 49, 50, 51, 52, 53, 54, 55, 56, 57 and 58 of Chapter V of the Bangladesh Bank Order, 1972 (PO No.127 of 1972) shall be abolished.

51. Repeals and savings. - (1) The Financial Institution Ordinance, 1993 (Ordinance No.6, 1993) stands herewith repealed.

(2) Notwithstanding such repeal, any action done or any measure taken under the repealed ordinance shall be deemed to have been done or taken under this Act.

Artho Rin Adalat Ain, 2003

Preliminary and Objective

One of the most serious problems of the banks and financial institutions in Bangladesh pertains to ‘classified loans’ (non-performing loans) caused by default in repayment by the borrowers, particularly large borrowers. This is not a new problem; rather it has been created over the years because of many reasons. Whatever may be the reasons, the net effect of the NPL or NPA on the banks is disastrous. Bank has to keep a huge provision out of the profits against those classified loans and advances. As a result, profitability remains low adversely affecting deposit and lending rates, capital adequacy ratio and management efficiency of the banks including NCBs and DFIs. There had been no separate law for loan recovery other than “The Civil Procedure Code-1908” as Money Suits and Public Demand Recovery Act-1908. It took huge time for settlement of loan recovery suits as the civil courts were overburdened with other business suits.

After introduction of Loan Classification and Provisioning vide BCD Circular No.34/1989 and subsequent BCD circular No.20/1994, BRPD Circular No.16/1998, master Circular No. BRPD-05/2006, BRPD Circular No.07 dated June 14,2012 and Master Circular No.14 dated 23/11/2012 the increased NPL became growing concern for the industry and considered major challenge to the bank- based economy.

With a view to helping the banks and financial institutions in recovery of such classified loans, the Money Loan Court Act was enacted as early as in 1990 with the objective of speedy disposal of loan cases.

Artho Rin Adalat Ain-2003 (Act No. 8 of 2003) assented to by the President on march 10, 2003 has been made effective from May 1, 2003 excepting the Sections-46 and 47. Those two sections made effective from May 1, 2004.

Bankers and the readers are strongly advised to follow the original law in this regard.

Till date the following amendments have been made to the law:

- a) Artha Rin Adalat (Amendment) Ain -2004.
- b) Artha Rin Adalat (Amendment) Ordinance –2007 (Repealed)
- c) Artha Rin Adalat (Amendment) Ain -2010.

Basic changes of Artha Rin Adalat Ain -2003 over the Act that was enacted as early as in 1990.

- Further codification of the Civil Procedure-1908 i.e. simplification of the procedure for filing of suit and awarding judgment within a minimum stipulated time schedule.
- Emphasis on documentary evidence and less importance on verbal argument before the court.
- Alternative Dispute Resolution through settlement conference or mediation between the lenders and borrowers.
- Changes in the Limitation Act-1908.
- Changes in the doctrines of finality.

Subjects covered by the Act.

The Act contains sixty Sections divided into eight chapters as shown below:

- Chapter- I : Preliminary
- Chapter- II : Setting up of Courts
- Chapter- III : Power and Jurisdiction of Court
- Chapter- IV : Filing of Suits, Judicial procedure
- Chapter- V : Dispute Resolution by alternative method
- Chapter- VI : Execution
- Chapter-VII : Appeal and Revision
- Chapter-VIII : Miscellaneous

(Section-46). Special provision and time limit in respect of disposal of suits:

(1) Notwithstanding anything contained, to the contrary, in the Limitation Act, 1908 (Act no. IX of 1908), if the borrower does not repay-

- (a) a minimum 10% in the first one year; or
- (b) a minimum 15% in the first two years; or
- © a minimum 25% in the first three years

of the amount, as will be payable during the period, after the commencement of the repayment of the loan as per repayment schedule according to the contract or terms of the

contract signed, the financial institution shall, subject to the provision of sub-section (2), file suit within the next one year thereafter.

(2) If the financial institution reschedules the schedule of loan repayment within the period mentioned in sub-section (1), then, the provision of sub-section (1) shall, accordingly, be effective afresh with necessary changes (*mutatis mutandis*).

(3) In case of the prescribed total period for repayment of loan as per loan repayment schedule mentioned in sub-section (1) being less than 3(three) years, if the total amount realization within that fixed total period is less than 20%, then, the financial institution shall file suit within one year next thereafter.

(4) If the financial institution reschedules the schedule of loan repayment within the period mentioned in sub-section (3), then, the provision of sub-section (3) shall, accordingly, be effective afresh with necessary changes (*mutatis mutandis*).

(5) If any suit is filed after the time limit mentioned then, the court shall, without delay inform the chief executive of the relevant financial institution of the matter in writing; and, if the suit is not so filed within such time limit on account of failure to perform duty by any officer, the appropriate authority shall take disciplinary action against such responsible officer, and shall apprise the govt. and the court, within 90 days of being informed under this sub-section, of such action taken.

Sec. 47. Restriction in respect of imposition of claim:

Suit value will be the principal amount of loan plus a maximum of 200 percent interest thereon. The court will entertain no suit exceeding this amount. (100+200)

Duties and Responsibilities of the Banker for Recovery of Loans before filing suit under Artho Rin Adalat Ain-2003 (Sec. 12, 33, 46 & 47)

No case to be filed before sale or try sale of securities: Financial institutions are required to file case, if there is power of attorney to this effect, only after selling goods secured by lien, pledge and hypothecation or property under mortgage. If case is filed before that, they are required to sell it as soon as possible under intimation to the court. If they fail to handover the possession of the property to the buyer, on sale, the financial institutions will

seek help from the court. The court, if satisfied, will hand over the property to the buyer on behalf of the lending institutions. (Sec.-12).

Auction Sale: The MLC, while executing any decree or order, shall, in case of sale of any property, invite at the expense of the plaintiff, sealed tenders giving 15 (fifteen) days' time from the date of publication of the notice, such notice shall be published in at least in one well circulated national Bangla daily and, in addition to that, in another local paper, if any, if the court deems that to be necessary in the interest of justice; and the notice shall also be published by hanging in the notice board of the court and through beating of drums locally (Sec.33).

Every bidder shall submit with the tender an amount equivalent to 20% for up to 10.00 lac, 15% for more than 10.00 lac but up to 50.00 lac and 10% for exceeding 50.00 lac of the quoted price in the form of bank draft or pay order in favour of the Court, the tender shall be dropped directly in the tender box or sent to the prescribed authority through registered post within the prescribed time; and the bidder shall pay the total price within 30, 60 and 90 days respectively for the amount specified of acceptance of the price and, in case of failure, the court shall forfeit his security money. Provided that, the court may cancel the tender, if the price offered for the property appears to be unusually insufficient or low.

If the security is forfeited, the money thereof, shall be paid to the decree holder, the money shall be adjusted with the decree claim, and then, the court, if the price quoted by the second highest bidder and the security forfeited together, is not less than the price quoted by the highest bidder, shall invite the second highest bidder to auction-purchase the property; and the second highest bidder shall pay the total price within next 10 (ten) days of being so invited and if he fails to do that, his security shall be forfeited and, the money thereof, shall be paid to the decree holder to be adjusted with the decreed claim.

If any property cannot be sold the court shall again invite sealed tenders by publishing notice in the same way and shall follow the procedures in respect of sale and forfeiture mentioned earlier.

If any property cannot be sold in the previous way that property shall vest in the decree holder with rights of possession and enjoyment for as long as the decreed claim shall not be fully realized, and the decree holder may realize the unpaid decreed claim by selling

that property as per provisions of sub-sections (1), (2), (3) and (4) of sec.33, and the court shall issue a certificate to that effect.

If any money, in addition the decreed amount is realized through sale, that additional money shall be refunded to the judgment debtor, and if the money realized through the sale is less than the decreed claim, further execution case shall, subject to the provision of section 28, be maintainable for the residuary amount.

In spite of the above, if the decree holder makes an application to the court, in writing, expressing its intention to get that property with title, the court, without any prejudice to the provisions of sub sections (1), (2), and (3) of sec.33, shall refrain from following the provisions of sub-sections (4) and (5) of section-33 and shall issue, as per prayer of the decree holder, a certificate with declaration to the effect that the said property has vested with title in the decree holder and such issued certificate shall deemed as a title deed; and the court shall send a copy of that to the office of the relevant local sub registrar for registration. No duty or registration fee shall be payable in respect of the certificate issued under sub-section 7 of sec.33. The said decree execution case shall, subject to the provision of section 28, be finally disposed of, if the rights of possession and enjoyment of the property under sub-section (5) or the title of the property under sub-section (7) of sec.33 are vested in the decree holder.

Judicial procedure:

The code of Civil Procedure-1908, if not inconsistent with this act, will also be applicable to money loan cases. The financial institutions will file the plaint giving particulars of the case along with documentary evidence and an affidavit against the defendant principal debtor and third-party mortgagor or third-party guarantor, if any. The affidavit will be treated as substantive evidence.

Similar will be the process of reply by the defendant (sec- 6). The contents of the plaint will include among others, the following (**Sec-8**)

- a) Name, address and workplace of the plaintiff;
- b) Name, address, workplace and residence etc. of the defendant;
- c) All occurrences related to the claims;
- d) Place, date and time when the case originated and

e) Relief sought from the court.

In addition, the plaint will also include a schedule which will contain: amount of loans and advances given to the defendant, interest charged, penal interest, other charges, payment made by the defendant prior to the filing of suit and a comparative position between claims by the plaintiff and payment made by the defendant. A schedule of the securities showing particulars against which loans were sanctioned will also be included in the plaint.

Serving summons:

The summons of the court upon the defendant is required to be returned served within 15 days. If not, summons is required to be polished in the newspapers within next 15 days for which a sample of advertisement copy will be submitted to the court by the plaintiff beforehand (**Sec-7**).

Written reply by the defendant: The defendant will produce himself before the court on the date specified in the summons. He will submit written reply about the claims of the plaintiff along with any documentary evidence he has in his possession or indicate the source of those documents if not in his possession (**Sec-9**). No written reply will be acceptable to the court later than 40 days of his producing himself before the court (**Sec-10**). However, subject to the expenses (Minimum Tk. 2000/- and not more than Tk. 5,000/-) as specified in the Act to be borne by the defendant, the time may be extended by another 20 days by the Court (**Sec-10**)

Formulation of the case and settlement:

On submission of the written reply by the defendant, the judge on the basis of plaint and written reply will formulate the case after hearing both sides, if present. If there is no merit of the case, the judge will immediately award judgment or order (**Sec-13**).

Adjournment of Hearing:

Subject to the time limit of settlement of the case given in the Act, hearing will not be, on application by either party adjourned more than once provided that the court, if satisfied, may adjourn proceedings for more than once (Sec-14).

Judgment:

Judgment will be awarded within 10 days on completion of hearing or written 10 days from the date of hearing verbal argument. The judgment debtor will be directed to pay the decretal amount within 60 days, if more time is not considered (**Sec-16**)

Settlement of the case:

A case under this Act is required to be settle within 30 days, if expert or within 90 days from the date of submission of written statement by the judgment debtor. The court may, however, extend time limit by another 30 days stating the reasons thereof (Sec-17).

Finality of judgment:

No question will be entertained by any Court on the judgment, order or decree of the loan court (Sec-20).

Chapter VI, Execution (Sec. 26 to 39)

The chapter on execution comprising fourteen sections deals with the issues like: Court for execution, time limit for filing execution case, rules for serving notice, objections against notice, rules regarding auction sale, rules regarding civil imprisonment of debtor, recovery of money from third party and settlement during execution case etc. the important ones are given below:

Time limit for execution case: Execution case is required to be filed within 360 days of the judgment or decree. Time limit will be effective in case of decree to pay in lump sum or in installment, from the date of expiry of such payment dates (**Sec-28**).

Auction sale:

Sale will have to be affected through open auction of 15 days' notice Intending bidder will deposit required percentage of the value in draft or pay order to the court The entire money will have to be paid within the specified time of acceptance of bid, failing which the deposited money will be forfeited (Sec-33).

Civil Imprisonment:

On written application by the decree holder, the court may order civil detention of the judgment debtor for six months with a view to compelling him to pay the decretal amount (Sec-34).

Settlement during execution case:

The concerned parties may mutually settle the execution case with intimation to the court (sec-38).

Chapter VII, Appeal and Revision (Sec. 40-44)

Sec 40- 44 deals with the issues like: appeal, revision, interim order and jurisdiction of the court etc.

Filing Appeal: Appeal will have to be filed, on payment 50 percent of the decretal amount, before the district judge if the decretal amount is less than Tk 50 lacs and before the high court, if it is more than Tk 50 lacs Appeal will be settled within 90 days of filing, extendable by another 30 days (Sec. 41).

Revision Case: In the case of revision suit, the judgment debtor will have to pay 75 percent of the decretal amount. The case will be settled within 60 days, extendable by another 30 days (Sec.42).

Some important amendments made in 2010

In 2007, the last 'Care Taker Government' made some important amendments and promulgated an ordinance namely 'Artha Rin Adalat (Amendment) ordinance – 2007'. But it was automatically repealed in 2008, as the newly formed government did not approve it in the parliament within 30 days. Later on, in the light of that repealed ordinance, some important amendments were made in 2010. Some major amendments are discussed in the following briefly: -

- (a) Banks/FI's can sell the mortgage property under section 12(3), though the Power of Attorney has not been offered.
- (b) The suit can be amicably settled through arbitration, under section 22, at any stage of the suit. It can be settled even in execution or appeal stage.
- (c) Execution suit must be filed within one year (Instead of 180 days) of the decree under section 28(1).
- (d) The court shall publish the notice aforesaid in such a newspaper which is directed by the decree-holder lodging a written petition before the court. (Section 30).

(e) The amount to be deposited in case of objection in execution suit has been made 10% (Instead of 25%) in section 32.

(f) In case of auction sale under section 33, every bidder shall deposit 20% of the quoted value, if it is maximum 10.00 lac. 15% of the quoted value, if it is between 10.00 lac to 50.00 lac. 10% of the quoted value, if it is more than 50.00 lac. But it was 25% in all slabs earlier.

The time limit for payment of the rest amount has been fixed for 30 days, 60 days and 90 days. Even the time may be extended to more 60 days on application of the bidder.

(g) The time for filing appeal in the High Court Division has been extended to 60 days. (Section 41).

(h) The interest on the decretal amount has been increased from 8% to 12%. In case of appeal/revision, it will be 16% and in case of appeal/revision against the order of Higher Court, it will be 18%.

Where any writ petition has been filed challenging any order or decree and is discharged, interest will be charged at the rate of 25%.

Model Questions:

1. State the new features of the Artho Rin Adalat Ain, 2003.
2. Describe in brief about the Duties and Responsibilities of the Banker for Recovery of Loans before filing suit under Artho Rin Adalat Ain-2003 (Sec. 12, 33, 46 & 47)
3. Discuss about the provisions made for Appeal and Revision (Sec. 40-44) under the Artho Rin Adalat Ain, 2003.

Module B: Financial Instrument Related Laws

Negotiable Instrument Act,1881

Preliminaries and Purposes

The Negotiable Instrument Act derived from The English Common Law in the Year 1881 and came into effect from March 01, 1882. It contains 17 Chapters and 141 Sections. This Act has been enacted in our country vide P.O. No. 127 of 1972. Since its inception several amendments have been made to this Act. The Negotiable Instruments Act, 1881 governs all

transactions in relation to the negotiable instruments drawn, endorsed, transferred and realized in Bangladesh.

The Negotiable Instrument Act-1881 is the legislative enactment of the law relating to the negotiable instruments which are in common use in monetary transactions. The act regulates the issue and negotiation of the various classes of negotiable Instruments which the bankers commonly deal. Every negotiable instrument shall be governed by the provisions of this Act, and no usage or custom at variance with any such provision shall apply to any such instrument. The Act has 17 chapter and 141 sections as under:

Chapters and Sections of the Negotiable Instrument Act,1881.

- Preliminary (Chapter I): Section 1-3
- Of Promissory note, Bill of exchange and Cheques, Parties-Drawer, Drawee, Payee, Holder, Holder in due course, Payment in due course etc. (Chapter II): Section 4 -25
- Capacity to make etc., Transferor by delivery & transferee, Signature essential to liability, Forged or unauthorized signature, Liability of drawer of cheque, Liability of indorser etc. (Chapter III): Section 26 - 45
- Of negotiation – Delivery, Negotiation by delivery, Negotiation by indorsement, conversion of indorsement, Effect of indorsement, Rights of holder, Defective title etc. (Chapter IV): Section 46-60
- Of presentment- presentment for acceptance, Presentment of promissory note for sight, presentment for payment, Hours for presentment, presentment of instrument payable on demand, When presentment unnecessary etc. (Chapter V): Section 61 -77
- Of payment and interest- To whom payment should be made, Interest when rate specified or not specified, Interest when no rate specified, Delivery of instrument on payment or indemnity in case of loss etc. (Chapter VI): Section 78 - 81
- Of discharge from liability on notes, bills and cheques -Discharge from liability by cancellation, by release, by payment, cheque payable to order, Draft drawn by one branch of a bank on another payable to order, Effect of material

alteration, payment of instrument on which alteration is not apparent etc. (chapter VII): Section 82 -90

- Of notice of dishonour- dishonour by non-acceptance, dishonour by non-payment, By and to whom notice should be given, Mode in which notice may be given, when notice of dishonour is unnecessary etc. (Chapter VIII): Section 91 - 98
- Of Noting and Protest – Noting, protest, contents of protest, notice of protest, protest for foreign bill etc. (Chapter IX): Section 99 - 104.
- Of reasonable time for giving notice of dishonour etc. (Chapter X): Section 105 -107
- Of acceptance and payment for honour & reference in case of need etc. (Chapter XI): Section 108 – 116
- Of compensation- Rules as to compensation etc. (Chapter XII) Section 117
- Special Rules of evidence – presumptions as to Negotiable instruments etc. (Chapter XIII) Section 118 -122
- Special provisions relating to cheques – Revocation of banker’s authority, cheque crossed generally, cheque crossed A/C payee, Cheque crossed specially, crossing after issue etc. (Chapter XIV) Section 122A – 131C
- Special provisions relating to bills of exchange etc. (Chapter XV) Section 131D – 133
- Of International Law- Law governing liability of parties to a foreign instrument etc. (Chapter XVI) Section 134 -137
- On penalties in case of dishonour of certain cheques for insufficiency of funds in the account etc. (Chapter XVII) Section 138 -141

Bankers and the readers are strongly advised to follow the original law in this regard.

Interpretation-clause

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

(a) “accommodation party” means a person who has signed a negotiable instrument as a maker, drawer, acceptor or endorser without receiving the value thereof and for the purpose of lending his name to some other person;

- (b) “banker” means a person transacting the business of accepting, for the purpose of lending or investment, of deposits of money from the public, repayable on demand or otherwise and withdrawable by cheque, draft, order or otherwise, and includes any Post Office Savings Bank;
- (c) “bearer” means a person who by negotiation comes into possession of a negotiable instrument, which is payable to bearer;
- (d) “delivery” means transfer of possession, actual or constructive, from one person to another;
- (e) “issue” means the first delivery of a promissory note, bill of exchange or cheque complete in form to a person who takes it as a holder;
- (f) “material alteration” in relation to a promissory note, bill of exchange or cheque includes any alteration of the date, the sum payable, the time of payment, the place of payment, and, where any such instrument has been accepted generally, the addition of a place of payment without the acceptor's assent; and
- (g) “notary public” includes any person appointed by the Government to perform the functions of notary public under this Act and a notary appointed under the Notaries Ordinance, 1961.

Chapter II, Section 4 - “Promissory note”

. A “promissory note” is an instrument in writing (not being a bank-note or a currency-note) containing an unconditional undertaking, signed by the maker, to pay on demand or at a fixed or determinable future time a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument.

Illustrations

A signs instruments in the following terms:

- (a) “I promise to pay B or order Taka 500.”
- (b) “I acknowledge myself to be indebted to B in Taka 1,000 to be paid on demand, for value received.”
- (c) “Mr. B, I O U Taka 1,000.”
- (d) “I promise to pay B Taka 500 and all other sums which shall be due to him.”

(e) “I promise to pay B Taka 500, first deducting thereout any money which he may owe me.”

(f) “I promise to pay B Taka 500 seven days after my marriage with C.”

(g) “I promise to pay B Taka 500 on D's death, provided D leaves me enough to pay that sum.”

(h) “I promise to pay B Taka 500 and to deliver to him may black horse on 1st January next.”

The instruments respectively marked (a) and (b) are promissory notes. The instruments respectively marked (c), (d), (e), (f), (g) and (h) are not promissory notes.

“Bill of exchange” Sec. 5

A “bill of exchange” is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay on demand or at fixed or determinable future time a certain sum of money only to, or to the order of, a certain person or to the bearer of the instrument.

A promise or order to pay is not “conditional”, within the meaning of this section and section 4, by reason of the time for payment of the amount or any instalment thereof being expressed to be on the lapse of a certain period after the occurrence of a specified event which, according to the ordinary expectation of mankind, is certain to happen, although the time of its happening may be uncertain.

The sum payable may be “certain,” within the meaning of this section and section 4, although it includes future interest or is payable at an indicated rate of exchange, or is payable at the current rate of exchange, and although it is to be paid in stated instalments and contains a provision that on default of payment of one or more instalments or interest, the whole or the unpaid balance shall become due.

Where the person intended can reasonably be ascertained from the promissory note or the bill of exchange, he is a “certain person” within the meaning of this section and section 4, although he is misnamed or designated by description only.

An order to pay out of a particular fund is not unconditional within the meaning of this section; but an unqualified order to pay, coupled with-

(a) an indication of a particular fund out of which the drawee is to reimburse himself or a particular account to be debited to the amount, or

(b) a statement of the transaction which gives rise to the note or bill, is unconditional.

Where the payee is a fictitious or non-existing person the bill of exchange may be treated as payable to bearer.

“Cheque” Sec.6

“cheque” is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand.

Sec. 7 - “Drawer” “Drawee” “Drawee in case of need” “Acceptor” “Acceptor for honour” “Payee”

The maker of a bill of exchange or cheque is called the “drawer;” the person thereby directed to pay is called the “drawee.”

When in the bill or in any indorsement thereon the name of any person is given in addition to the drawee to be resorted to in case of need, such person is called a “drawee in case of need.”

After the drawee of a bill has signed his assent upon the bill, or, if there are more parts thereof than one, upon one of such parts, and delivered the same, or given notice of such signing to the holder or to some person on his behalf, he is called the “acceptor”.

When a bill of exchange has been noted or protested for non-acceptance or for better security, and any person accepts it supra protest for honour of the drawer or of any one of the endorsers’, such person is called an “acceptor for honour.” “Acceptor for honour”

The person named in the instrument, to whom or to whose order the money is by the instrument directed to be paid, is called the “payee”.

“Holder” Sec. 8 - “Payee”

The “holder” of a promissory note, bill of exchange or cheque means the payee or endorsee who is in possession of it or the bearer thereof but does not include a beneficial owner claiming through a benamidar. “Holder”

Explanation - Where the note, bill or cheque is lost and not found again, or is destroyed, the person in possession of it or the bearer thereof at the time of such loss or destruction shall be deemed to continue to be its holder.

Sec. 9 “Holder” in due course”

Holder in due course means any person who for consideration becomes the possessor of a promissory note, bill of exchange or cheque if payable to bearer, or the payee or endorsee thereof, if payable to order, before it became overdue, without notice that the title of the person from whom he derived his own title was defective. “Holder in due course”

Explanation - For the purposes of this section the title of a person to a promissory note, bill of exchange or cheque is defective when he is not entitled to receive the amount due thereon by reason of the provisions of section 58.

Sec. 10 “Payment in due course”

“Payment in due course” means payment in accordance with the apparent tenor of the instrument in good faith and without negligence to any person in possession thereof under circumstances which do not afford a reasonable ground for believing that he is not entitled to receive payment of the amount therein mentioned.

Inland instrument- Sec. 11.

A promissory note, bill of exchange or cheque drawn or made in Bangladesh, and made payable in, or drawn upon any person resident in, Bangladesh shall be deemed to be an inland instrument.

Foreign instrument Sec.-12

Any such instrument not so drawn, made or made payable shall be deemed to be a foreign instrument.

“Negotiable instrument” Sec. 13

(1) A “negotiable instrument” means a promissory note, bill of exchange or cheque payable either to order or to bearer.

Explanation (i) - A promissory note, bill of exchange or cheque is payable to order which is expressed to be so payable or which is expressed to be payable to a particular person, and

does not contain words prohibiting transfer or indicating an intention that it shall not be transferable.

Explanation (ii) - A Promissory note, bill of exchange or cheque is payable to bearer which is expressed to be so payable or on which the only or last indorsement is an indorsement in blank.

Explanation (iii) - Where a promissory note, bill of exchange or cheque either originally or by indorsement, is expressed to be payable to the order of a specified person, and not to him or his order, it is nevertheless payable to him or his order at his option.

(2) A negotiable instrument may be made payable to two or more payees jointly or it may be made payable in the alternative to one of two, or one or some of several payees.

*Negotiation*¹⁴.

When a promissory note, bill of exchange or cheque is transferred to any person, so as to constitute that person the holder thereof, the instrument is said to be negotiated.

*Indorsement*¹⁵.

When the maker or holder of a negotiable instrument signs the same, otherwise than as such maker, for the purpose of negotiation, on the back or face thereof or on a slip of paper annexed thereto, or so signs for the same purpose a stamped paper intended to be completed as a negotiable instrument, he is said to indorse the same, and is called the “endorser”.

Indorsement “in blank” and “in full” “Indorsee”¹⁶.

(1) If the indorser signs his name only, the indorsement is said to be “in blank”, and if he adds a direction to pay the amount mentioned in the instrument to, or to the order of, a specified person, the indorsement is said to be “in full”, and the person so specified is called the “indorsee” of the instrument.

(2) The provisions of this Act relating to a payee shall apply with the necessary modifications to an indorsee.

*Ambiguous instruments*¹⁷.

Where an instrument may be construed either as a promissory note or bill of exchange, the holder may at his election treat it as either, and the instrument shall be thenceforward treated accordingly.

***Where amount is stated differently in figures and words* 18.**

If the amount undertaken or ordered to be paid is stated differently in figures and in words, the amount stated in words shall be the amount undertaken or ordered to be paid:

Provided that if the words, are ambiguous or uncertain, the amount may be ascertained by referring to the figures.

***Instruments payable on demand* Sec. 19**

A promissory note or bill of exchange is payable on demand, - (a) where it is expressed to be so, or to be payable at sight or on presentment; or
(b) where no time for payment is specified in it; or
(c) where the note or bill accepted or indorsed after it is overdue, as regards the person accepting or indorsing it.

***Inchoate stamped instruments* Sec. 20**

(1) Where one person signs and delivers to another a paper stamped in accordance with the law relating to stamp duty chargeable on negotiable instruments, either wholly blank or having written thereon an incomplete negotiable instrument, in order that it may be made, or completed into a negotiable instrument he thereby gives prima facie authority to the person who receives that paper to make or complete it, as the case may be, into a negotiable instrument for the amount, if any, specified therein, or, where no amount is specified for any amount, not exceeding, in either case, the amount covered by the stamp.

(2) The person so signing shall, subject to the provisions of sub-section (3), be liable upon such instrument, in the capacity in which he signed the same, to any holder in due course, for the amount specified in the instrument or filled up therein:

Provided that no person other than a holder in due course shall receive from the person so signing the paper anything in excess of the amount intended by him to be paid thereunder.

***“At sight” “On presentment” “After sight”* Sec. 21.**

The expression “after sight” means, in a promissory note, after presentment for sight, and, in a bill of exchange, after acceptance, or noting for non-acceptance, or protest for non-acceptance.

Anti-dating and post-dating Sec.21C

A promissory note, bill of exchange or cheque is not invalid by reason only that it is anti-dated or post-dated:

Provided that anti-dating or post-dating does not involve any illegal or fraudulent purpose or transaction.]

Capacity to make, etc., promissory notes, etc.Sec.26

Every person capable of contracting, according to the law to which he is subject, may bind himself and be bound by the making, drawing, acceptance, indorsement, delivery and negotiation of a promissory note, bill of exchange or cheque.

Minor

Where such an instrument is made, drawn or negotiated by a minor, the making, drawing or negotiation entitles the holder to receive payment of such instrument and to enforce it against any party thereto other than the minor.

Nothing herein contained shall be deemed to empower a corporation to make, indorse or accept such instruments except in cases in which, under the law for the time being in force, they are so empowered.

Agency Sec.27.

Every person capable of binding himself or of being bound, by the making, drawing, acceptance or negotiation of a negotiable instrument, may so bind himself or be bound by a duly authorized agent acting in his name.

A general authority to transact business and to receive and discharge debts does not confer upon an agent the power of accepting or indorsing bills of exchange so as to bind his principal.

An authority to draw bills of exchange does not of itself import an authority to indorse.

Liability of agent signing Sec.28

(1) Where a person signs a promissory note, bill of exchange or cheque without adding to his signature words indicating that he signs it as an agent for and on behalf of a principal or in a representative character, he is personally liable thereon but the mere addition to his

signature of words describing him as an agent or as filling a representative character does not exempt him from personal liability.

(2) Notwithstanding anything contained in sub-section (1), any person signing a promissory note, bill of exchange or cheque for and on behalf of the principal is not liable to a person who induces him to sign upon the belief that the principal alone would be held liable.

Forged or unauthorized signature Sec. 29B.

Subject to the provisions of this Act, where a signature on a promissory note, bill of exchange or cheque is forged or placed thereon without the authority of the person whose signature it purports to be, the forged or unauthorized signature is wholly inoperative, and no right to retain the instrument or to give a discharge therefor or to enforce payment thereof against any party thereto can be acquired through or under that signature, unless the party against whom it is sought to retain or enforce payment of the instrument is precluded from setting up the forgery or want of authority:

Provided that nothing in this section shall affect the ratification of an unauthorized signature not amounting to a forgery.

Stranger signing instrument presumed to be indorser

29C. A person placing his signature upon a negotiable instrument otherwise than as maker, drawer or acceptor is presumed to be an indorser unless he clearly indicates by appropriate words his intention to be bound in some other capacity.

Liability of drawer – Sec 30.

(1) (a) The drawer of a bill of exchange by drawing it, engages that on due presentment it shall be accepted and paid according to its tenor, and that if it be dishonoured, he will compensate the holder or any indorser who is compelled to pay it; and

(b) the drawer of a cheque by drawing it, engages that in the case of dishonour by the drawee he will compensate the holder:

Provided that due notice of dishonour of the bill or cheque has been given to or received by the drawer as hereinafter provided.

(2) The drawee of a bill of exchange is not liable thereon until acceptance in the manner provided by this Act.

Liability of drawee of cheque – Sec 31. The drawee of a cheque having sufficient funds of the drawer in his hands properly applicable to the payment of such cheque must pay the

cheque when duly required so to do, and, in default of such payment, must compensate the drawer for any loss or damage caused by such default.

Liability of indorser Sec.35

In the absence of a contract to the contrary, the indorser of a negotiable instrument, by indorsing it, engages that on due presentment it shall be accepted and paid according to its tenor and that if it be dishonored, he will compensate the holder or subsequent indorser who is compelled to pay it for any loss or damage caused to him by such dishonour.

Every indorser after dishonour is liable as upon an instrument payable on demand.

Liability of prior parties to holder in due course Sec 36.

Every prior party to a negotiable instrument is liable thereon to a holder in due course until the instrument is duly satisfied.

Maker, drawer and accept or principals Sec.37. The maker of a promissory note or cheque, the drawer of a bill of exchange until acceptance, and the acceptor are, in the absence of a contract to the contrary, respectively liable thereon as principal debtors, and the other parties thereto are liable thereon as sureties for the maker, drawer or acceptor, as the case may be.

Negotiation by delivery

Sec. 47. Subject to the provisions of section 58, a promissory note, bill of exchange or cheque payable to bearer is negotiable by delivery thereof.

Exception - A promissory note, bill of exchange or cheque delivered on condition that it is not to take effect except in a certain event is not negotiable (except in the hands of a holder for value without notice of the condition) unless such event happens.

Illustrations

(a) A, the holder of a negotiable instrument payable to bearer, delivers it to B's agent to keep for B. The instrument has been negotiated.

(b) A, the holder of a negotiable instrument payable to bearer, which is in the hands of A's banker, who is at the time the banker of B, directs the banker to transfer the instrument to B's credit in the banker's account with B. The banker does so, and accordingly now possesses

the instrument as B's agent. The instrument has been negotiated, and B has become the holder of it.

Negotiation by indorsement

Sec. 48. Subject to the provisions of section 58, a promissory note, bill of exchange or cheque payable to order is negotiable by the holder by indorsement and delivery thereof.

Conversion of indorsement in blank into indorsement in full

Sec. 49 When a negotiable instrument has been indorsed in blank, any holder may, without signing his own name, convert the blank indorsement into an indorsement in full by writing above the endorser's signature a direction to pay the amount to or to the order of himself or some other person; and the holder does not thereby incur the responsibility of an endorser.

Effect of indorsement Sec.50

(1) Subject to the provisions of this Act relating to restrictive, conditional and qualified indorsement, the indorsement of a negotiable instrument followed by delivery transfers to the indorsee the property therein with the right of further negotiation.

(2) An indorsement is restrictive which either-

(a) restricts or excludes the right to further negotiate the instrument; or

(b) constitutes the indorsee an agent of the indorser to indorse the instrument or to receive its contents for the indorser or for some other specified person:

Provided that the mere absence of words implying right to negotiate does not make the indorsement restrictive.

Illustrations

B signs the following indorsements on different negotiable instruments payable to bearer:-

(a) "Pay the contents to C only."

(b) "Pay C for my use."

(c) "Pay C or order for the account of B."

(d) "The within must be credited to C."

These indorsements exclude the right of further negotiation by C.

(e) "Pay C."

(f) "Pay C value in account with the Oriental Bank."

(g) "Pay the contents to C, being part of the consideration in a certain deed of assignment executed by C to the indorser and others."

These indorsements do not exclude the right of further negotiation by C.

Who may negotiate Sec.51

Every sole maker, drawer, payee or indorsee, or all of several joint makers, drawers, payees or indorsees, of a negotiable instrument may, if the negotiability of such instrument has not been restricted or excluded as mentioned in section 50, indorse and negotiate the same.

Explanation - Nothing in this section enables a maker or drawer to indorse or negotiate an instrument, unless he is in lawful possession or is holder thereof; or enables a payee or indorsee to indorse or negotiate an instrument, unless he is holder thereof.

Illustration

A bill is drawn payable to A or order. A indorses it to B, the indorsement not containing the words "or order" or any equivalent words. B may negotiate the instrument.

Holder claiming through holder in due course Sec. 53.

(1) A holder who derives his title through a holder in due course, and who is not himself a party to any fraud or illegality affecting the negotiable instrument, has all the rights therein of that holder in due course as regards the acceptor and all parties to the instrument prior to that holder.

(2) Where the title of the holder is defective, -

(a) if he negotiates the instrument to a holder in due course, that holder obtains a good and complete title to the instrument; and

(b) if he obtains payment of the instrument, the person who pays him in due course gets a valid discharge for the instrument.

Rights of holder in due course Sec. 53A

A holder in due course holds the negotiable instrument free from any defect of title of prior parties, and free from defences available to prior parties among themselves, and may enforce payment of the instrument for the full amount thereof against all parties liable thereon.

Instrument indorsed in blank Sec.54

Subject to the provisions hereinafter contained as to crossed cheques, a negotiable instrument indorsed in blank is payable to the bearer thereof even although originally payable to order.

Conversion of indorsement in blank into indorsement in full Sec.55

If a negotiable instrument, after having been indorsed in blank, is indorsed in full, the amount of it cannot be claimed from the indorser in full, except by the person to whom it has been indorsed in full, or by one who derives title through such person.

Hours for presentment Sec.65

Presentment for payment must be made during the usual hours of business, and, if at a banker within banking hours.

Liability of banker for negligently dealing with bill presented for payment

Sec.77: When a bill of exchange accepted payable at a specified bank has been duly presented there for payment and dishonored, if the banker so negligently or improperly keeps, deals with or delivers back such bill as to cause loss to the holder, he must compensate the holder for such loss.

Discharge from liability-

82. The maker, acceptor or endorser respectively of a negotiable instrument is discharged from liability thereon-

(a) by cancellation

(a) to a holder thereof who cancels such acceptors or endorser's name with intent to discharge him, and to all parties claiming under such holder;

(b) by release

(b) to a holder thereof who otherwise discharges such maker, acceptor or endorser, and to all parties deriving title under such holder after notice of such discharge;

(c) by payment

(c) to all parties thereto, if the instrument is payable to bearer, or has been indorsed in blank, and such maker, acceptor or indorser makes payment in due course of the amount due thereon.

Cheque payable to order Sec.85(1)

Where a cheque payable to order purports to be indorsed by or on behalf of the payee, the drawee is discharged by payment in due course.

(2) Where a cheque is originally expressed to be payable to bearer, the drawee is discharged by payment in due course to the bearer thereof, notwithstanding any indorsement whether in full or in blank appearing thereon, and notwithstanding that any such indorsement purports to restrict or exclude further negotiation.

Drafts drawn by one branch of a bank on another payable to order Sec. 85A.

Where any draft, that is, an order to pay money, drawn by one office of a bank upon another office of the same bank for a sum of money payable to order on demand, purports to be indorsed by or on behalf of the payee, the bank is discharged by payment in due course.

Effect of material alteration Sec.87

Any material alteration of a negotiable instrument renders the same void as against anyone who is a party thereto at the time of making such alteration and does not consent thereto, unless it was made in order to carry out the common intention of the original parties;

Payment of instrument on which alteration is not apparent

89. Where a promissory note, bill of exchange or cheque has been materially altered but does not appear to have been so altered, or where a cheque is presented for payment which does not at the time of presentation appear to be crossed or to have had a crossing which has been obliterated, payment thereof by a person or banker liable to pay, and paying the same according to the apparent tenor thereof at the time of payment and otherwise in due course, shall discharge such person or banker from all liability thereon; and such payment shall not be questioned by reason of the instrument having been altered or the cheque crossed.

Presumptions as to negotiable instruments (Section 118)

Until the contrary is proved, the following presumptions shall be made:

- (a) that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, endorsed, negotiated or transferred, was accepted, endorsed, negotiated or transferred for consideration;
- (b) that every negotiable instrument bearing a date was made or drawn on such date;
- (c) that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity;
- (d) that every transfer of a negotiable instrument was made before its maturity;
- (e) that the endorsements appearing upon a negotiable instrument were made in the order in which they appear thereon;
- (f) that a lost promissory note, bill of exchange or cheque was duly stamped;
- (g) that the holder of a negotiable instrument is a holder in due course: provided that, where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burden of proving that the holder is a holder in due course lies upon him.

Estoppel against denying original validity of instrument Sec.120

No maker of a promissory note, and no drawer of a bill of exchange or cheque, and no acceptor of a bill of exchange for the honour of the drawer, shall, in a suit thereon by a holder in due course, be permitted to deny the validity of the instrument as originally made or drawn.

Estoppel against denying capacity of payee to indorse Sec. 121

No maker of a promissory note and no acceptor of a bill of exchange payable to order shall, in a suit thereon by a holder in due course, be permitted to deny the payee's capacity, at the date of the note or bill, to indorse the same.

Estoppel against denying signature or capacity of prior party Sec.122

No indorser of a negotiable instrument shall, in a suit thereon by a subsequent holder, be permitted to deny the signature or capacity to contract of any prior party to the instrument.

Revocation of Banker's authority

122A. The duty and authority of a banker to pay a cheque drawn on him by his customer are determined by-

- (1) countermand of payment;
- (2) notice of the customer's death;
- (3) notice of adjudication of the customer as an insolvent.

Payment of cheque crossed generally

Cheque crossed generally¹²³. Where a cheque bears across its face an addition of the words "and company" or any abbreviation thereof, between two parallel transverse lines, or of two parallel transverse lines simply, either with or without the words "not negotiable", that addition shall be deemed a crossing and the cheque shall be deemed to be crossed generally.

Cheque crossed "account- payee" Sec. 123A

(1) Where a cheque crossed generally bears across its face an addition of the words "account payee" between the two parallel transverse lines constituting the general crossing, the cheque, besides being crossed generally, is said to be crossed "account payee". Cheque crossed "account payee"

(2) When a cheque is crossed "account payee"-

(a) it shall cease to be negotiable; and

(b) it shall be the duty of the banker collecting payment of the cheque to credit the proceeds thereof only to the account of the payee named in the cheque.]

Cheque crossed specially Sec.124

Where a cheque bears across its face an addition of the name of a banker, either with or without the words "not negotiable", that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed specially, and to be crossed to that banker.

Crossing after issue Cheque crossed specially Sec. 125

Where a cheque is uncrossed, the holder may cross it generally or specially.

Crossing after issue-

Where a cheque is crossed generally, the holder may cross it specially.

Where a cheque is crossed generally or specially, the holder may add the words "not negotiable".

Where a cheque is crossed specially, the banker to whom it is crossed may again cross it specially to another banker, his agent, for collection.

When an uncrossed cheque, or a cheque crossed generally, is sent to a banker for collection, he may cross it specially to himself.

Crossing a material part of a cheque Sec.125A.

A crossing authorized by this Act is a material part of the cheque; it shall not be lawful for any person to obliterate, or, except as authorised by this Act, to add to or alter, the crossing.

Sec. 126 Payment of cheque crossed generally

Where a cheque is crossed generally, the banker on whom it is drawn shall not pay it otherwise than to a banker.

Payment of cheque crossed specially Where a cheque is crossed specially, the banker on whom it is drawn shall not pay it otherwise than to the banker to whom it is crossed, or his agent for collection.

Sec. 127 Payment of cheque crossed specially more than once

Where a cheque is crossed specially to more than one banker, except when crossed to an agent for the purpose of collection, the banker on whom it is drawn shall refuse payment thereof.

Sec. 128 Payment in due course of crossed cheque

Where the banker on whom a crossed cheque is drawn in good faith and without negligence pays it, if crossed generally, to a banker, and if crossed specially, to the banker to whom it is crossed or his agent for collection, being a banker, the banker paying the cheque, and (in case such cheque has come to the hands of the payee) the drawer thereof, shall respectively be entitled to the same rights, and be placed in the same position in all respects, as they

would respectively be entitled to and placed in if the amount of the cheque had been paid to and received by the true owner thereof. Protection to banker crediting cheque crossed “account- payee”

Sec. 130 Cheque bearing “not negotiable”

A person taking a cheque crossed generally or specially, bearing in either case the words “not negotiable,” shall not have, and shall not be capable of giving, a better title to the cheque than that which the person from whom he took it had.

Sec. 131 Non-liability of banker receiving payment of cheque

Cheque bearing “not negotiable”-

Subject to the provisions of this Act relating to cheques crossed “account payee”, where a banker in good faith and without negligence receives payment for a customer of a cheque crossed generally or specially to himself, and the customer has no title or a defective title thereto, the banker shall not incur any liability to the true owner of the cheque by reason only of having received such payment. Non-liability of banker receiving payment of cheque.

Explanation - A banker receives payment of a crossed cheque for a customer within the meaning of this section notwithstanding that he credits his customer's account with the amount of the cheque before receiving payment thereof.

Sec.131A Application of Chapter to drafts

The provisions of this Chapter shall apply to any draft, as defined in section 85A, as if the draft were a cheque.

Sec131B Protection to banker crediting cheque crossed “account- payee”

Where a cheque is delivered for collection to a banker which does not at the time of such delivery appear to be crossed “account payee” or to have had a crossing “account payee” which has been obliterated or altered, the banker, in good faith and without negligence collecting payment of the cheque and crediting the proceeds thereof to a customer, shall not incur any liability by reason of the cheque having been crossed “account payee”, or of such crossing having been obliterated or altered, and of the proceeds of the cheque having been credited to a person who is not the payee thereof.

Sec. 138 Dishonor of cheque for insufficiency, etc. of funds in the account

Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honor the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term which may extend to one year, or with fine which may extend to [thrice] the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless-

- (a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;
- (b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice, in writing, to the drawer of the cheque, within [thirty days] of the receipt of information by him from the bank regarding the return of the cheque as unpaid, and
- (c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within [thirty days] of the receipt of the said notice.

The notice required to be served under the following manner-

- (a) by delivering it to the person on whom it is to be served; or
- (b) by sending it by registered post with acknowledgement due to that person at his usual or last known place of abode or business in Bangladesh; or
- (c) by publication in a daily Bangla national newspaper having wide circulation.

Where any fine is realized any amount up to the face value of the cheque as far as is covered by the fine realized shall be paid to the holder.

The holder of the cheque shall retain his right to establish his claim through civil court if whole or any part of the value of the cheque remains unrealized.

Restriction in respect of appeal Sec.138A. Notwithstanding anything contained in the Code of Criminal Procedure, 1898, no appeal against any order of sentence under sub-section (1) of section 138 shall lie, unless an amount of not less than fifty per cent of the amount of the

dishonored cheque is deposited before filing the appeal in the court which awarded the sentence.

Sec. 140 Offences of Companies

(1) If the person committing an offence under section 138 is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation. - For the purposes of this section-

(a) “company” means anybody corporate and includes a firm or other association of individuals; and

(b) “director” in relation to a firm, means a partner in the firm.

Cognizance of offences Sec.141.

Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1898), -

(a) no court shall take cognizance of any offence punishable under section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque;

(b) such complaint is made within one month of the date on which the cause of action arises under clause (c) of the proviso to section 138;

[(c) no court inferior to that of a Court of Sessions shall try any offence punishable under section 138.

Model Questions:

1. What do you mean by negotiable instrument? Describe the parties to a negotiable instruments. What are liabilities of the parties to a negotiable instrument?
2. State in brief about the provisions of the Act on the following:
 - a) Forged or unauthorized signature
 - b) Payment of instrument on which alteration is not apparent
 - c) Negotiation by delivery and Negotiation by endorsement

The Bangladesh Bank (Note Refund) Regulations-2012

In exercise of powers conferred by clause 82 (1) of the Bangladesh Bank Order 1972 (President's Order No. 127 of 1972) The Board of Directors of Bangladesh Bank makes the following Regulations prescribing the circumstances in, and the conditions and limitations subject to which the value of any mutilated or imperfect note may be refunded as of grace.

1. Short Title:

These Regulations may be called the "Bangladesh Bank (Note Refund) Regulations - 2012.

2. Date of enforcement:

These Regulations shall come into force with immediate effect.

Definition:

In these Regulations, unless there is anything repugnant in the subject or context: -

- a) "Altered Note" means a note in which an alteration has been made in the number, signature or value or in any other respect;
- b) "Appellate Authority" means and includes the Currency Officer or the Officer equivalent to currency officer of an Office of Bangladesh Bank authorized by the Head Office to dispose of appeals for

reconsideration received in the Office in respect of the cases rejected by the "Prescribed Officer" of the said Office. The Appellate Authority will have the same power as prescribed in these Regulations for the Prescribed Officer;

- c) "Bank" means the Bangladesh Bank constituted by the Bangladesh Bank Order - 1972 (President's Order No. 127 of 1972);
- d) "Charred Note" means a note which is burnt or having sign of burn partially or wholly;
- e) "Damp Note" means a note which is wet partly or fully, or so weak that the note(s) can be easily broken or torn when counted or handled;
- f) "Deformed and Decomposed Note" means a note which has been defonned or disfigured or vitiated or decomposed by anyway or by writing with ink or other materials on the note(s);
- g) "Essential Features" means the features, including security features, which are necessary for the identification of a note, namely-
 - (i) the name of the issuing authority in Bangla and/or English, that is; Bank or Government of Bangladesh, as the case may be; the guarantee clause in Bangla and/or in English the signature; and
 - (ii) the water-mark of Tiger head/ National Flower Shapla (Water lily)/ Portrait of the father of the nation Bangabandhu Sheikh Mujibur Rahman, Logo of Bangladesh Bank and the denomination of the note, as the case may be.

Explanation: For the purposes of this clause,

- (A) the security features of a note, for deciding the genuineness or otherwise, include,
 - (i) paper quality;
 - (ii) size and shape of numbers;
 - (iii) security thread;
 - (iv) intaglio printing;

- (v) latent image in vertical band;
- (vi) electrotype watermark (in watermark window);
- (vii) micro lettering;
- (viii) fluorescence (number panels and central band);
- (ix) optically variable ink; and
- (x) any other security feature that may be introduced by the Bank.

(B) the essential features of a note have been enumerated with a view to help the prescribed officer to establish the genuineness or otherwise of a mutilated note;

- h) "Half Note" means half of a note which has been divided vertically or horizontally through or near the centre. A note formed by joining one half, which is identifiable, to another half, which is not identifiable as belonging to the note to which first mentioned half belongs, will not be accepted as a single note but will be treated as two half notes;
- i) "Mismatched note" means a note formed by joining a half note of one note to a half note of another note.
- j) "Mutilated note" means a note of which a portion is missing or a note which is composed of pieces, provided that the note presented is clearly more than half a note in area and that if the note is composed of pieces of a note joined together, each piece is, in the opinion of Prescribed Officer, identifiable as the part of the same note.
- k) "Note" means a note of the Bangladesh Bank issued by the Bank and a currency note of the Government of the People's Republic of Bangladesh issued by the Government.
- l) "Number" includes the letter (s) and number (s) denoting the series to which the note belongs;
- m) "Obliterated Note" means a note, not being a mutilated or altered or mismatched note, which has become or has been rendered fully or

partially undecipherable;

- n) "Office of Issue" means the Issue Department of the Bank situated at Dhaka.
- o) "Prescribed Officer" means and includes the Deputy General Manager/Joint Manager or equivalent officer of the Office of Issue and other offices of Bangladesh Bank, designated by the concerned office.

General provisions in relation to all claims:

- (i) No Claim in respect of a note alleged to have been lost, stolen or wholly destroyed shall be entertained.
- (ii) No claim in respect of a note, shall be entertained by the Prescribed Officer unless such a note is identified as a genuine note.
- (iii) No claim in respect of a note which has been deliberately cut, torn, defaced, altered or dealt with in any other manner, not necessarily by the claimants, enabling the use of the same for making of a false claim under these regulations or otherwise to defraud the Bank or the public shall be entertained.
- (iv) No claim in respect of a note, which carries any extrinsic words or visible representations intended to convey or capable of conveying any message of a political or religious character or furthering the interest of any person or entity shall be entertained.
- (v) If the Prescribed Officer is satisfied that a mutilated note presented before him is one which appears to have been cancelled at any office of Bangladesh Bank or the claim is one which appears to have already been paid under these regulations, he shall, after making enquiries under regulation 6 of these regulations reject the claim on such note.
- (vi) If any information called for by the Prescribed Officer or the Bank, as the case may be, is not furnished by a claimant within a period of three months from the date of receipt of the notice or letter

asking for the information, the claim shall be rejected.

5. *Presentation of claims and disposal thereof:*

A claim in respect of a note may be presented at the Office of Issue or any other Office of the Bank. The claim shall be settled by the office of the Bank where the note is stamped with the word 'claimable'. The claim shall be disposed of within eight weeks.

6. **Inquiry of claims:**

The Prescribed Officer may, if it is considered necessary so to do, call for any information or hold any inquiry relating to any claim presented before him under these regulations, and where the genuineness of the note is doubtful, he may if considered necessary send such doubtful note for expert opinion to the Security Printing Corporation Bangladesh Limited for this purpose.

Time limit to claims:

If it appears to the Prescribed Officer, enjoying powers under these Regulations to entertain the claim, that any claim was not made by the claimant within 12 months of the time when it might first have been made by him, the Prescribed Officer shall not entertain the claim.

7. **Disposal of claim concerning half note:**

Half the value of a half note shall be paid if the number of the note is identified on the half note and the half note is entire and has not been divided and bears all the essential features of that half.

8. **Disposal of mutilated note(s):**

No Claim in respect of a mutilated note shall be entertained unless the single largest piece of the note presented is more than 50%. Where the single largest piece is more than 50% the payment shall be made in the following manner, namely:

- (i) Full value shall be payable if the area of the note presented is more than 90% of the respective denomination.

- (ii) Proportionate value shall be payable if the area of the note presented is more than 50% and less than or equal to 90% of the respective denomination as under:

Serial No.	Area of the note of respective denomination	Payable value of the note of respective denomination
1.	51%-75%	50%
2.	76%- 90%	75%

Disposal of obliterated, mismatched, altered and damp notes:

- (iii) A claim in respect of an altered, mismatched or fully obliterated note shall be rejected.
- (iv) A claim in respect of a damp note and partially obliterated note shall be rejected unless the Prescribed Officer is satisfied as to the identity and genuineness of such note.
- (v) ***Disposal of Charred note(s):***

A claim for the value of Charred note(s) shall be disposed of by a committee designated by Head Office. The committee shall be headed by the Currency Officer/General Manager and the members not below the rank of Joint Manager. No claim in respect of charred note shall be entertained unless the unburnt area of the note(s) is more than 50%, bearing main essential features and is worth to check its genuineness.

The Value shall be payable at the rate stipulated in sub regulation i & ii of regulation 9.

Disposal of Fraudulent claims:

If a note or any portion of a note presented under these Regulations in prosecution of a claim, is a forged/fake or has been deliberately cut, torn, defaced, altered or dealt with in any manner with a view to establishing a false claim under these Regulations or otherwise to defraud, notwithstanding anything to the contrary in any of these Regulations, shall be rejected.

Retention and destruction of notes:

Notwithstanding the denomination of a note or the decision of the Prescribed Officer on the claim, a note presented before the Prescribed Officer for the purpose of making a claim shall be retained and destroyed or otherwise disposed of by the Bank in the following manner, namely-

- (a) in the case of a note in respect of which full payment is made, at any time after the payment; and
- (b) in the case of a note in respect of which no payment is made, or on which half value payment has been made, on the expiry of a period of three months from the date of the decision rejecting the claim or to pay half-value, as the case may be, unless within this period, an order from a competent Court or any Appellate Authority is submitted to any office of the Bank restraining the Bank from destroying or otherwise disposing of the said note.

(c) **Appeal for claim:**

A claimant aggrieved by the decision of the Prescribed Officer may file an application to the Appellate Authority for reconsideration of his/her claim within a period not exceeding three months from the date of decision of the Prescribed Officer.

Procedure when payee is untraced:

Where, as the result of a claim under these Regulations, the value of the note(s) is payable to a claimant, and such claimant, or if he/she is dead, his/her legal representative cannot be found or fails within a period of three months from the date of communication to him/her of the decision, to take steps to receive payment, the amount payable shall be paid by the Issue Department of the Bank to the Banking Department of the Bank.

Repeal:

- (a) The Bangladesh Bank (Note Refund) Regulations 1976 is hereby repealed;
- (b) Notwithstanding the repeal of The Bangladesh Bank (Note

Refund) Regulations 1976 all claims received prior to the coming into force of these Regulations shall be dealt with in accordance with The Bangladesh Bank (Note Refund) Regulations 1976.

Model questions:

1. Discuss about the disposal of obliterated, mismatched, altered and damp notes as per the Note Refund regulations 2012.

Module C: Financial Activities Related Laws

Foreign Exchange Regulation Act, 1947

Preambles and Objectives

Foreign Exchange Regulation Act, 1947 (Act No. VII of 1947) popularly known as FERA went through its last amendment in 2015 to make it relevant of the time. The law seeks to protect the economic and financial interests of Bangladesh to provide for the regulation of certain payments, dealings in foreign exchange and securities and the import and export of currency and bullion. The law applies to the whole of Bangladesh and applies to all citizens of Bangladesh, all persons resident in Bangladesh and all persons the service of the People's Republic of Bangladesh wherever they may be. The law and the regulations issued under the law controls the holding of and activities related to foreign exchange in Bangladesh and transactions related to cross-border trade and other activities.

Bankers and the readers are strongly advised to follow the original law in this regard.

Important definitions used for the law are:

“Authorized dealer” means a person for the time being authorised under section 3 to deal in foreign exchange;

“capital account transaction” means a transaction for the creation, modification, transfer or liquidation of a capital asset, including but not limited to, securities issued in capital and money markets, negotiable instruments, non-securitized claims, units of mutual fund or collective investment securities, commercial credits and loans financial credits, sureties,

guarantees, deposit account operations, life insurance, personal capital movements, real estate, foreign direct investment, portfolio and institutional investment;

“currency” includes – (i) all coins, currency notes, bank notes, postal notes, money orders, cheques, drafts, traveler’s cheques, letters of credit, bills of exchange and promissory notes; and (ii) Such other similar physical or non-physical instruments, or both as may be notified by the Bangladesh Bank from time to time;

“Foreign currency” means any currency other than Bangladesh currency

“Foreign exchange” means foreign currency and includes any instrument drawn, accepted, made or issued under [clause (13) of Article 16 of the Bangladesh Bank Order, 1972] all deposits, credits and balances payable in any foreign currency, and any drafts, traveller's cheques, letters of credit and bills of exchange, expressed or drawn in Bangladesh currency but payable in any foreign currency

“current account transaction” means receipts and payments which are not for the purpose of transferring capital, and also includes (i) receipts and payments due in connection with foreign trade, other current business including services, and normal short-term banking and credit facilities in ordinary course of business; (ii) receipts and payments due as interest on loans and as net income from investments; (iii) moderate amounts of amortization of loans or for depreciation of direct investments, in the ordinary course of business; (iv) expenses in connection with foreign travel, education and medical care of self, parents, spouse and children; and (v) moderate remittances for family living expenses of parents, spouse and children resident abroad;

“export” means- (i) sending of goods, physical or non-physical or both, from Bangladesh to a place outside Bangladesh; (ii) Providing services by persons resident in Bangladesh to any person outside Bangladesh; or (iii) selling Bangladeshi goods or raw materials or nonphysical contents to the enterprises in Export Processing Zones, Special Economic Zones and High-tech parks of Bangladesh against payment in foreign currency.

“import” means bringing into Bangladesh any physical or non-physical goods or services
“owner”, in relation to any security, includes any person who has power to sell or transfer the security, or who has the custody thereof or who receives, whether on his own behalf or

on behalf of any other person, dividends or interest thereon, and who has any interest therein, and in a case where any security is held on any trust or dividends or interest thereon are paid into a trust fund, also includes any trustee or any person entitled to enforce the performance of the trust or to revoke or vary, with or without the consent of any other person, the trust or any terms thereof, or to control the investment of the trust moneys;

“person” means any individual, and also includes- (i) a partnership firm; (ii) a company; (iii) an association of persons or body of individuals, whether incorporated or not; (iv) every artificial juridical entity not falling within any of the preceding sub-clauses; and (v) any agency, office, or branch owned or controlled by such person;

“person resident in Bangladesh” means- (i) an individual residing in Bangladesh for six months or more in the last twelve months; (ii) an individual temporarily residing in Bangladesh holding a residential or working visa valid for not less than six months; (iii) a person whose place of business is in Bangladesh; or (iv) a person whose principal place of business may be located outside Bangladesh but branch or liaison office or representative office of such business is in Bangladesh; (v) diplomatic, consular and other representative offices of the Government of the People’s Republic of Bangladesh abroad as well as Bangladeshi citizens employed at these offices; (vi) persons holding any office in service of the People’s Republic of Bangladesh wherever they may be for the time being either on duty or on leave:

provided that “person resident in Bangladesh” shall not include foreign diplomatic representations or accredited officials of such representations located within Bangladesh and offices of organizations established by international treaty located within Bangladesh;

“security” means either in physical or demit form,- (i) shares, stocks, bonds, debenture stock and Government securities, as defined in the Securities Act, 1920; (ii) deposit receipts in respect of deposits of securities, units of mutual fund or collective investment scheme, as defined in Securities and Exchange Commission (Mutual Fund) Rules, 2001; and (iii) other instruments defined as security in the Securities and Exchange Ordinance, 1969 (Ordinance No. XVII of 1969); but does not include bill of exchange or promissory notes other than Government promissory notes;

“foreign security” means any security issued elsewhere than in Bangladesh and any security the principal of or interest on which is payable in any foreign currency or elsewhere than in Bangladesh;

“service” means services of any description, including but not limited to, business services, professional services, information technology services, information technology enabled services, communication or telecommunication services, construction services, engineering services, distribution services, educational services, environmental services, financial services (such as insurance, banking and capital market related services), health services, social services, tourism services, travel services, recreational services, cultural services, sport services, transport services, electrical or other energy services or such other service as may be notified by the government or the Bangladesh Bank from time to time;

Authorised Dealers (AD) are licensed by Bangladesh Banks to deal in foreign exchange (FX). AD can be full scale AD to deal with all types of FX activities or limited AD allowing specific activities. This may also be time bound. Bangladesh Bank can suspend or cancel an AD license or impose penalties, after giving reasonable opportunity of being heard, for violation of terms of authorization or of general or special directions or instructions. Responsibilities of an AD includes:

An authorised dealer shall in all his dealings, in foreign exchange, comply with such general or special directions or instructions as the Bangladesh Bank may from time to time think fit to give, and, except with the previous permission of the Bangladesh Bank, an authorised dealer shall not engage in any transaction involving any foreign exchange which is not in conformity with the terms of his authorization under this section.

An authorised dealer shall, before undertaking any transaction in foreign exchange on behalf of any person, require that person to make such declarations and to give such information as will reasonably satisfy him that the transaction will not involve, and is not designed for the purpose of, any contravention or evasion of the provisions of this Act or of any rules, directions or orders made thereunder, and where the said person refuses to comply with any such requirement or makes only unsatisfactory compliance therewith, the authorised dealer shall refuse to undertake the transaction and shall, if he has reason to

believe that any such contravention or evasion as aforesaid is contemplated by the person, report the matter to the Bangladesh Bank.

Without general or special permission of the Bangladesh Bank, no person other than an AD buy or borrow from, or sell or lend to, or exchange with, any person not being an authorised dealer, any foreign exchange. This means all FX transactions must be done with an AD unless otherwise allowed. Any person resident in Bangladesh may sell or purchase foreign exchange to or from an AD if such sale or purchase is a current account transaction; provided that the Bangladesh Bank may, in public interest and in consultation with the Government, impose such reasonable restriction on current account transactions as may be needed to respond to current or capital account imbalances.

Subject to such restrictions as may be prescribed, the Bangladesh Bank, in consultation with the Government, may specify the classes of permissible capital account transactions. Section 5 of the law puts restrictions on payments. (1) Save as may be provided in and in accordance with any general or special exemption from the provisions of this sub-section which may be granted conditionally or unconditionally by the Bangladesh Bank, no person in, or resident in, Bangladesh shall- (a) make any payment to or for the credit of any person resident outside Bangladesh; (b) draw, issue or negotiate any bill of exchange or promissory note or acknowledge any debt, so that a right (whether actual or contingent) to receive a payment is created or transferred in favour of any person resident outside Bangladesh; (c) make any payment to or for the credit of any person by order or on behalf of any person resident outside Bangladesh; (d) place any sum to the credit of any person resident outside Bangladesh; (e) make any payment to or for the credit of any person as consideration for or in association with- (i) the receipt by any person of a payment or the acquisition by any person of property outside Bangladesh; (ii) the creation or transfer in favour of any person of a right whether actual or contingent to receive a payment or acquire property outside Bangladesh; (f) draw, issue or negotiate any bill of exchange or promissory note, transfer any security or acknowledge any debt, so that a right (whether actual or contingent) to receive a payment is created or transferred in favour of any person as consideration for or in association with any matter referred to in clause (e).

Section 10 stipulates the responsibility of persons entitled to receive foreign exchange. Except with approval from Bangladesh Bank whole or part of such receipt cannot be delayed or kept outside Bangladesh.

Bangladesh Bank needs to be notified about establishment of branch office or liaison office or representative office or any other place of business for carrying on any activity of a trading commercial or industrial nature within 30 days of obtaining permission from Bangladesh Investment Development Authority or similar competent authority.

Contravention or attempts to contravene, abetting contravention of any provision of the law, any rule or directives carries imprisonment up to 7 years or fine or both. Every Sessions Judge shall, for the areas within the territorial limits of his jurisdiction, be a Tribunal for trial of an offence. Tribunal, if it thinks fit, and in addition to any sentence, direct that any currency, security, gold or silver, or goods or other property in respect of which the contravention has taken place shall be confiscated.

The burden of proof that the accused had requisite permissions to do the activities rest with the accused. No suit, prosecution or other legal proceedings shall lie against any person for anything in good faith done or intended to be done under this Act or any rule, direction or order made thereunder.

Model Questions:

1. Define the following as per the Forex Act, 1947:
 - a) Authorized Dealer
 - b) Foreign Exchange
 - c) Export
 - d) Import

Money Laundering Prevention Act, 2012

Preliminaries and Objectives

Money Laundering Prevention Act, 2012 (MLPA, Act No. 05 of 2012) is the prime Anti-Money Laundering law of Bangladesh. Original MLPA was promulgated in 2002 which

went through various amendments and was replaced. Current version of MLPA, 2012 includes amendments made in 2015. The law targets to prevent and punish money laundering and related activities. The law is applicable to all, not only to banks and FIs. Provisions of this law supersedes conflicting provisions of other laws in the matter of money laundering. Bankers and the readers are strongly advised to follow the original law in this regard.

The law introduces some critical definitions which are also used in other laws, especially Anti-Terrorism Act, 2009. Some important definitions are appended below:

“Smuggling of money or property” means – (1) transfer or holding money or property outside the country in breach of the existing laws of the country; or (2) refrain from repatriating money or property from abroad in which Bangladesh has an interest and was due to be repatriated; or (3) not bringing into the country the actual dues from a foreign country, or paying to a foreign country in excess of the actual dues;

Suspicious transaction is a transaction different in nature from usual transactions and raises an impression of proceeds of a crime or related to terrorist activities or financing.

(“money laundering” means –

knowingly moving, converting, or transferring proceeds of crime or property involved in an offence for the following purposes:

(i) concealing or disguising the illicit nature, source, location, ownership or control of the proceeds of crime;

(ii) smuggling money or property earned through legal or illegal means to a foreign country;

(aa) knowingly transferring or remitting the proceeds of crime to a foreign country or remitting or bringing them into Bangladesh from a foreign country with the intention of hiding or disguising its illegal source; or

(e) concluding or attempting to conclude financial transactions in such a manner so as to reporting requirement under this Act may be avoided;

(ee) converting or moving or transferring property with the intention to instigate or assist for committing a predicate offence;

(u) acquiring, possessing or using any property, knowing that such property is the proceeds of a predicate offence;

- (uu) performing such activities so as to the illegal source of the proceeds of crime may be concealed or disguised;
- (re) participating in, associating with, conspiring, attempting, abetting, instigate or counsel to commit any offences mentioned above;

Reporting organization (Sec 2 BA)

“Reporting organization” means –

- (i) bank;
- (ii) financial institution;
- (iii) insurer;
- (iv) money changer;
- (v) any company or institution which remits or transfers money or money value;
- (vi) any other institution carrying out its business with the approval of Bangladesh Bank;
- (vii) (1) stock dealer and stock broker,
 - (2) portfolio manager and merchant banker,
 - (3) securities custodian,
 - (4) asset manager
- (viii) (1) non-profit organization,
 - (2) non-government organization,
 - (3) cooperative society;
- (ix) real estate developer;
- (x) dealer in precious metals or stones;
- (xi) trust and company service provider;
- (xii) lawyer, notary, other legal professional and accountant;
- (xiii) any other institution which Bangladesh Bank may, from time to time, notify with the approval of the Government;

(z) “suspicious transaction” means such transactions –

- (i) which deviates from usual transactions;

- (ii) of which there is ground to suspect that,
 - (1) the property is the proceeds of an offence,
 - (2) it is financing to any terrorist activity, a terrorist group or an individual terrorist;
- (iii) which is, for the purposes of this Act, any other transaction or attempt of transaction delineated in the instructions issued by Bangladesh bank from time to time;
- (bb) “property” means –
 - (i) any type of tangible, intangible, moveable, immoveable property; or
 - (ii) cash, any deed or legal instrument of any form including electronic or digital form giving evidence of title or evidence of interest related to title in the property which is located within or outside the country;

Predicate Offences (Sec. 2 SHA)

“Predicate offence” means the offences mentioned below, by committing which within or outside the country, the money or property derived from is laundered or attempt to be laundered, namely: -

- (1) corruption and bribery;
- (2) counterfeiting currency;
- (3) counterfeiting deeds and documents;
- (4) extortion;
- (5) fraud;
- (6) forgery;
- (7) illegal trade of firearms;
- (8) illegal trade in narcotic drugs, psychotropic substances and substances causing intoxication;
- (9) illegal trade in stolen and other goods;
- (10) kidnapping, illegal restrain and hostage taking;
- (11) murder, grievous physical injury;
- (12) trafficking of women and children;
- (13) black marketing;
- (14) smuggling of domestic and foreign currency;
- (15) theft or robbery or dacoity or piracy or hijacking of aircraft;

- (16) human trafficking;
- (17) dowry;
- (18) smuggling and offences related to customs and excise duties;
- (19) tax related offences;
- (20) infringement of intellectual property rights; (21) terrorism or financing in terrorist activities; (22) adulteration or the manufacture of goods through infringement of title;
- (23) offences relating to the environment;
- (24) sexual exploitation;
- (25) insider trading and market manipulation using price sensitive information relating to the capital market in share transactions before it is published for general information to take advantage of the market and attempting to manipulate the market for personal or institutional gain;
- (26) organized crime, and participation in organized criminal groups;
- (27) racketeering; and
- (28) any other offence declared as predicate offence by Bangladesh Bank, with the approval of the Government, by notification in the official Gazette, for the purpose of this Act.

Sec.4 Offence of money laundering and punishment–

- (1) For the purposes of this Act, money laundering shall be deemed to be an offence.
- (2) Any person who commits or abets or conspires to commit the offence of money laundering, shall be punished with imprisonment for a term of at least 4(four) years but not exceeding 12(twelve) years and, in addition to that, a fine equivalent to the twice of the value of the property involved in the offence or taka 10(ten) lacks, whichever is greater.
- (3) In addition to any fine or punishment, the court may pass an order to forfeit the property of the convicted person in favour of the State which directly or indirectly involved in or related with money laundering or any predicate offence.
- (4) Any entity which commits an offence under this section shall be punished with a fine of not less than twice of the value of the property or taka 20(twenty) lacks,

whichever is greater and in addition to this the registration of the said entity shall be liable to be cancelled.

- (5) It shall not be a prerequisite to charge or punish for money laundering to be *convicted or sentenced for any predicate offence.*

Sec.5 Punishment for violation of an order for freezing or attachment. – Any person who violates a freezing or attachment order issued under this Act shall be punished with imprisonment for a term not exceeding 3 (three) years or with a fine equivalent to the value of the property subject to freeze or attachment, or with both.

***Sec.6 Punishment for divulging information.* –**

(1) No person shall, with an ill motive, divulge any information relating to the investigation or any other related information to any person, organization or news media.

(2) Any person, institution or agent empowered under this Act shall refrain from using or divulging any information collected, received, retrieved or known by the person, institution or agent during the course of employment or appointment, or after the expiry of any contract of service or appointment for any purpose other than the purposes of this Act.

(3) Any person who contravenes the provisions of sub-sections (1) and (2) shall be punished with imprisonment for a term not exceeding 2 (two) years or a fine not exceeding taka 50 (fifty) thousand or with both.

***Sec.7 Punishment for obstruction or non-cooperation in investigation, failure to submit report or obstruction in the supply of information.* -**

(1) Any person who, under this Act –

- (a) obstructs or declines to cooperate with any investigation officer for carrying out the investigation; or

(b) declines to supply information or submit a report being requested without any reasonable ground; shall be deemed to have committed an offence under this Act.

(2) Any person who is convicted under sub-section (1) shall be punished with imprisonment for a term not exceeding 1 (one) year or with a fine not exceeding taka 25 (twenty-five) thousand or with both.

Sec.8 Punishment for providing false information. –

(1) No person shall knowingly provide false information in any manner regarding the source of fund or self-identity or the identity of an account holder or the beneficiary or nominee of an account.

(2) Any person who violates the provision of sub-section (1) shall be punished with imprisonment for a term not exceeding 3 (three) years or a fine not exceeding taka 50 (fifty) thousand or with both.

Sec.10. Extraordinary jurisdiction of the special judge. -

(1) The special judge may impose such punishments as are specified for the offences under this Act, and where appropriate, may pass any other necessary order including orders for further investigation, freezing, attachment and confiscation of property.

(2) If the special judge passes an order for further investigation of any case filed under this Act, he shall, in the said order, specify a time-limit which shall not exceed 6 (six) months directing the investigation officer to submit his investigation report.

Sec.11. Cognizancy, non-compoundability and non-bailability of offences. –

Offences under this Act shall be cognizable, non-compoundable and non-bailable.

Sec.12. Inevitability of the approval of the Anti-Corruption Commission. -

(1) Notwithstanding anything contained in the Code of Criminal Procedure or any other law for the time being in force, no court shall take cognizance of any offence under this Act, except with the approval of the Anti Corruption Commission.

Sec.13 Provisions relating to bail. - Any person accused under this Act shall be released on bail, if – (a) the complainant is given an opportunity of being heard on the application for bail; and

(b) the court is not satisfied that there are reasonable grounds to believe that the accused shall be found guilty of the charges brought against him; or

(c) the accused is a woman, child or physically disabled person and the court is satisfied that justice may not be hindered by reason of releasing him on bail.

Sec.14 Orders to freeze or attach property. –

The court may, on the basis of a written application by the Anti Corruption Commission or any person or organization authorized by it, issue an order to freeze or attach the property, within or outside the country, involved in money laundering or any other offence.

(2) At the time of making a written application before the court under sub-section (1) for an order to freeze or attach any property, the Anti-Corruption Commission or any person or organization authorized by it shall mention the following information in the application, namely:- Money laundering Prevention Act 10 (a) full description of the property for which an order for freezing or attachment is sought; (b) grounds and primary evidence in support of the property for being attachable due to its involvement in money laundering or any other offence; (c) the apprehension that the property may be transferred or taken beyond possession before the disposal of the complaint, if an order is not passed by the court according to the application.

(3) If an order for freezing or attachment is passed under sub-section (1), the court shall, by notification in the official Gazette, publish the matter with details of the property for general information and at least in 2 (two) widely circulated national dailies [1(one) Bengali and 1(one) English] in the form of a notice.

(4) In an order passed under this section to freeze or attach any property, the name of the accused, the names of his parents, the name of spouse, nationality, designation (if any), occupation, tax identification number (TIN), present and permanent addresses and any other identification of the accused shall, in so far as

possible, be mentioned, but the enforcement of the provisions of this Act shall not be impeded by any trifling errors and omissions of these information.

Sec.15 Return of frozen or attached property. – (1) If any court makes an order to freeze or attach any property under section 14 and any person or entity other than the accused person or entity has an interest in that property, the person or the entity may make an application before the court for the return of the property within 30 (thirty) days of the publication of the notice on the order to freeze or attach the property.

Sec16. Appeal against the order to freeze or attach property. – (1) Any person or entity aggrieved by an order for freezing or attachment of any property, passed by a court under this Act, may prefer an appeal against such order before the High Court Division within 30 (thirty) days.

Sec. 17 Confiscation of property. – (1) If any person or entity is convicted of the offence of money laundering under this Act, the court may pass an order for confiscation of any property, within or outside the country, involved directly or indirectly in money laundering or predicate offence in favour of the State.

Sec18. Return of confiscated property. – (1) If a court pass an order of confiscation of any property under section 17 and any person or entity other than the convicted person has any title, interest or right in the property, the person or the entity may make an application before the court for the return of the property within 30 (thirty) days of the publication of the notice of confiscation of the property in newspaper.

Sec.21 Appointment of a manager or caretaker for taking care of the frozen, attached or confiscated property.– If any property is frozen, attached or confiscated under this Act, the court may, upon an application of the investigation agency or any person authorized by it in this behalf, appoint any law enforcement agency as a manager or caretaker of the property to take control, manage, look after or, in any other manner, deal with the total property or any part thereof under such terms and conditions as the court may deem fit.

Sec.22 Appeal. – Notwithstanding anything contained in any other law for the time being in force, any party aggrieved by an order, judgment, decree or sentence passed by a court under this Act may prefer an appeal before the High Court

Division within 30 (thirty) days from the date of such order, judgment, decree or sentence.

Sec.23 Powers and responsibilities of Bangladesh Bank in restraining and preventing the offence of money laundering. –

For the purposes of this Act, Bangladesh Bank shall have the following powers and responsibilities, namely: -

to analyze or review information related to cash transactions and suspicious transactions received from any reporting organization and to collect additional information relating thereto for the purpose of analyzing or reviewing from the reporting organizations and maintain data on the same and, as the case may be, Money laundering Prevention Act 14 provide with the said information to the relevant law enforcement agencies for taking necessary actions;

ask for any information or obtain a report from reporting organizations with regard to any transaction in which there are reasonable grounds to believe that the transaction involves in money laundering or a predicate offence;

(c) issue an order to any reporting organization to suspend or freeze transactions of any account for a period not exceeding 30 (thirty) days if there are reasonable grounds to suspect that any money or property has been deposited into the account by committing any offence: Provided that such order may be extended for additional period of a maximum of 6 (six) months by 30 (thirty) days, if it appears necessary to find out correct information relating to transactions of the account;

(d) issue, from time to time, any directions necessary for the prevention of money laundering to the reporting organizations;

e) monitor whether the reporting organizations have properly submitted information and reports requested by Bangladesh Bank and whether they have duly complied with the directions issued by it, and where necessary, carry out on-site inspections of the reporting organizations to ascertain the same;

(f) arrange meetings and seminars including training for the officers and staff of any organization or institution, including the reporting organizations, considered

necessary for the purpose of ensuring proper implementation of this Act by Bangladesh Bank;

(g) carry out any other functions necessary for the purposes of this Act.

(2) If any investigation agency makes a request to provide it with any information in any investigation relating to money laundering or suspicious transaction, then Bangladesh Bank shall provide with such information where there is no obligation for it under any existing law or for any other reason.

(3) If any reporting organization fails to provide with the requested information timely under this section, Bangladesh Bank may impose a fine on such organization which may extend to a maximum of taka 5 (five) lacs at the rate of taka 10 (ten) thousand per day and if any organization is fined more than 3(three) times in 1(one) financial year, Bangladesh Bank may suspend the registration or licence of the organization or any of its branches, service centers, booths or agents for the purpose of closing its operation within Bangladesh or, as the case may be, shall inform the registration or licensing authority about the fact so as to the relevant authority may take appropriate measures against the organization.

4) If any reporting organization provides with false information or statement requested under this section, Bangladesh Bank may impose a fine on such organization not less than taka 20 (twenty) thousand but not exceeding taka 5 (five) lacs and if any organization is fined more than 3(three) times in 1(one) financial year, Bangladesh Bank may suspend the registration or license of the organization or any of its branches, service centers, booths or agents for the purpose of closing its operation within Bangladesh or, as the case may be, shall inform the registration or licensing authority about the fact so as to the relevant authority may take appropriate measures against the said organization.

(5) If any reporting organization fails to comply with any instruction given by Bangladesh Bank under this Act, Bangladesh Bank may impose a fine on such organization which may extend to a maximum of taka 5 (five) lacs at the rate of taka 10 (ten) thousand per day for each of such non compliance and if any organization is fined more than 3(three) times in 1(one) financial year, Bangladesh Bank may suspend the registration or license of the organization or any of its

branches, service centers, booths or agents for the purpose of closing its operation within Bangladesh or, as the case may be, shall inform the registration or licensing authority about the fact so as to the relevant authority may take appropriate measures against the said organization.

(6) If any reporting organization fails to comply with any order for freezing or suspension of transaction issued by Bangladesh Bank under clause (c) of sub-section (1), Bangladesh Bank may impose a fine on such organization not less than the balance held on that account but not more than twice of the balance held at the time of issuing the order.

7) If any person or entity or reporting organization fails to pay any fine imposed by Bangladesh Bank under sections 23 and 25 of this Act, Bangladesh Bank may recover the fine from accounts maintained in the name of the relevant person, entity or reporting organization in any bank or financial institution or Bangladesh Bank, and in this regard if any amount of the fine remains unrealized, Bangladesh Bank may, if necessary, make an application before the court for recovery and the court may pass such order as it deems fit.

(8) If any reporting organization is imposed fine under sub-sections (3), (4), (5) and (6), Bangladesh Bank may also impose a fine not less than taka 10 (ten) thousand but not exceeding taka 5 (five) lacs on the responsible owner, directors, officers and staff or persons employed on contractual basis of that reporting organization and, where necessary, may direct the relevant organization to take necessary administrative actions.

Sec.24 Establishment of the Bangladesh Financial Intelligence Unit (BFIU). –

In order to exercise the power and perform the duties vested in Bangladesh Bank under section 23 of this Act, there shall be a separate unit to be called the Bangladesh Financial Intelligence Unit (BFIU) within Bangladesh Bank. For the purposes of this Act, the governmental, semi-governmental, autonomous organizations or any other relevant institutions or organizations shall, upon any

request or spontaneously, provide the Bangladesh Financial Intelligence Unit with the information preserved or gathered by them.

The Bangladesh Financial Intelligence Unit may, if necessary, spontaneously provide other law enforcement agencies with the information relating to money laundering and terrorist financing.

(4) The Bangladesh Financial Intelligence Unit shall provide with information relating to money laundering or terrorist financing or any suspicious transactions to the Financial Intelligence Unit of another country on the basis of any contract or agreement entered into with that country under the provisions of this Act and may ask for any such information from any other country.

(5) The Bangladesh Financial Intelligence Unit may also provide with such information to the Financial Intelligence Units of other countries spontaneously where there is no such contract or agreement under sub-section (4).

Sec.25 Responsibilities of the reporting organizations in prevention of money laundering. –

Sec.26 Contract with foreign countries. –

For the purposes of this Act, the Government may enter into a contract with any foreign State under bilateral or multilateral agreements, conventions or any other means recognized by international law.

If the Government enters into any contract with any foreign State under this section, the Government may, for the purpose of prevention of money laundering: -

- (a) ask for necessary information from the foreign State or organization; and
- (b) provide with information asked for by the foreign State or organization if it is not a threat to national security.

(3) For the purposes of this Act, the Bangladesh Financial Intelligence Unit (BFIU) may sign any memorandum of understanding with any foreign financial intelligence unit or other organization and under the memorandum of understanding BFIU may – ask for necessary information from the foreign financial intelligence unit or

organization; and provide information sought by the foreign financial intelligence unit or organization if it is not a threat to national security.

Sec.27. Offences committed by an entity. – If any offence under this Act is committed by an entity, every proprietor, director, manager, secretary or any other officer, staff or representative of the said entity who is directly involved in the offence shall be deemed to be guilty of the offence, unless he is able to prove that the offence has been committed without his knowledge or he tried his best to prevent it.

Explanation. – In this section “director” includes any member of the partnership entity or any of the Board of Directors of the entity, by whatever name called.

Sec.28 Protection of actions taken in good faith.– No suit or prosecution or administrative measures or any other legal proceedings shall lie against the Government or any officer or staff of the Government or Bangladesh Bank or any officer or staff of Bangladesh Bank or the Anti- corruption Commission or any officer or staff of the Commission or any reporting organization or its Board of Directors or any of its officers or staff for anything which is done in good faith under this Act or rules made thereunder for which any person is or likely to be affected.

29. Power to make rules. – For the purposes of this Act, the Government may, by notification in the official Gazette, make rules.

Model Questions:

1. Define the following as per the Prevention of Money Laundering Act,2012:
 - a) Money Laundering
 - b) Suspicious Transaction
 - c) Reporting agencies
 - d) Predicate offence
 - e) Responsibilities of the reporting organizations in prevention of money laundering.

Anti-Terrorism Act, 2009

Objectives and enactment

Anti-Terrorism Act, 2009 Act No. 16 of 2009) or ATA, 2009 was enacted to make provisions for the prevention of terrorist activities, punishment and other related matters. The law came with a retrospective effect from 11 June 2008. The law has supremacy over other laws for the matters covered. The law has extra territorial application (Section 5). Any crime committed under this law from outside Bangladesh will be considered as if committed within Bangladesh, and any crime committed to outside Bangladesh from inside Bangladesh will also be considered as if the whole crime is committed inside Bangladesh. Section 5(3) is unique as it gives provisions to punish offenders committing offence in another country and taking refuge in Bangladesh and extradition is not possible. Offences under ATA are litigated in the Special Tribunal formed under Section 28 of the law. While some of the definitions in law are same as other laws, especially MLPA-2012, there are some unique definitions including different from the MLPA (example, definition of Property). Significant definitions used in the law are:

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

- (1) “offence” means an offence punishable under this Act;
- [(2) “arms” means arms mentioned in section 4 of the Arms Act, 1878 (Act No. XI of 1878), and shall also include all types of atomic, chemical and biological weapons;]
- (3) “court” means the court of a Sessions Judge or, as the case may be, the court of an Additional Sessions Judge;
- (4) “imprisonment” means imprisonment of any description mentioned in section 53 of the Penal Code;
- (5) “Code of Criminal Procedure” or “Code” means the Code of Criminal Procedure, 1898 (Act No. V of 1898);
Substituted by section 2 of the Anti-Terrorism (Amendment) Act, 2102 (Act No. 6 of 2012).
- (6) “Schedule” means the Schedule to this Act;
- (7) “Penal Code” means the Penal Code, 1860 (Act No. XLV of 1860);

(8) “inflammable substance” means any substance which normally has a high propensity to cause or to intensify or to spread fire, such as- octane, petrol, diesel, compressed natural gas (CNG), gun powder, and shall also include any other inflammable substances;

9) “Bangladesh Bank” means the Bangladesh Bank established under the Bangladesh Bank Order, 1972 (P.O. No. 127 of 1972);

(10) “bank” means a bank company defined in section 5(o) of the Bank Companies Act, 1991 (Act No. 14 of 1991), and shall also include any institution established as a bank under any other Act or Ordinance;]

(11) “Judge” means a Sessions Judge, Additional Sessions Judge or, as the case may be, a Judge of the Anti-Terrorism Special Tribunal;

(12) “Special Tribunal” means any Anti-Terrorism Special Tribunal constituted under section 28;

Substituted by section 2 of the Anti-Terrorism (Amendment) Act, 2102 (Act No. 6 of 2012).

(13) “explosive substance” means –

a) gun powder, nitro-glycerin, dynamite, gun-cotton, blasting powder, fulminate mercury or any other metal, coloured fire and any other substances used or manufactured to create an explosive or firework effect whether or not similar to the substances mentioned above; and

(b) any material used to make explosives and any machine, equipment, machinery or thing including any part of similar machine, equipment or machinery used to create an explosion with the help of any explosive material, or with the intention of conversion or providing assistance to create an explosion, and shall also include fuse, rocket, percussion caps, detonator, cartridge and any other ammunition;

14 “property” means-

(i) any type of property, corporeal or incorporeal, moveable or immoveable, tangible or intangible and shall also include any profit derived from such property and money or negotiable instruments convertible in money;

(ii) cash, any other type of document or instrument, including electronic or digital document or instrument, which proves evidence of title or interest related to the title in the property; which is located inside or outside the country;]

(15) “Evidence Act” means the Evidence Act, 1872 (Act No. I of 1872);
Substituted by section 2 of the Anti Terrorism (Amendment) Act, 2102 (Act No. 6 of 2012).

(16) “suspicious transaction” means such transaction –

- (i) which is different from usual transactions;
- (ii) which invokes presumption that -
 - (a) it is the proceeds of an offence,
 - (b) it finances to terrorist activities, a terrorist group or an individual terrorist;
- (iii) which is any other transactions or an attempt for transactions

delineated in the instructions issued by the Bangladesh Bank from time to time for the purposes of this Act;

(17) “entity” means any organization consisting of one or more persons, including any legal entity, statutory body, commercial or non-commercial enterprise, group, partnership business, cooperative society;

Clauses (14) to (30) substituted by section 2 of the Anti-Terrorism (Amendment) Act, 2102 (Act No. 6 of 2012).

(18) “financial institution” means a financial institution defined in section 2(b) of the Financial Institution Act, 1993 (Act No. XXVII of 1993);

(19) “insurer” means an insurer defined in section 2(25) of the Insurance Act, 2010 (Act No. XIII of 2010);

(20) “reporting agency” means –

- bank;
- financial institution;
- insurer;
- money changer;
- any company or institution which remits or transfers money or money value;

any other institution carrying out its business with the approval of the Bangladesh Bank;

- (i) stock dealer and stock broker;
- (ii) portfolio manager and merchant banker;
- (iii) security custodian;
- (iv) asset manager;
- (i) non-profit organization;
- (ii) non government organization;
- (iii) cooperative society;

real estate developer;

dealer in precious metals or stones;

trust and company service provider;

lawyer, notary, other legal professionals and accountants;

(m) any other institution declared as such by the Bangladesh Bank from time to time with the approval of the Government;

(21) **“money changer” means** a person or organization approved by the Bangladesh Bank under section 3 of the Foreign Exchange Regulation Act, 1947 (Act No. VII of 1947) for dealing in foreign exchange transactions;

(22) (a) “stock dealer and stock broker” means an institution defined respectively in rules 2(i) and 2(j) of the Securities and Exchange Commission (Stock Dealer, Stock Broker and Authorized Representative) Rules, 2000;

b) “portfolio manager and merchant banker” means an institution defined respectively in rules 2(f) and 2(j) of the Securities and Exchange Commission (Merchant Banker and Portfolio Manager) Rules, 1996;

(c) “security custodian” means an institution defined in the rule 2(j) of the Securities and Exchange Commission (Security Custodial Services) Rules, 2003;

(d) “asset manager” means an institution defined in rule 2(s) of the Securities and Exchange Commission (Mutual Fund) Rules, 2001;

(23) “non-profit organization” means an institution licensed under section 28 of the Company Act, 1994 (Act No. XVIII of 1994);

(24) **“non government organization”** means the institution authorized or registered under the Societies Registration Act, 1860 (Act No. XXI of 1860), Voluntary Social Welfare Agencies (Registration and Control) Ordinance, 1961 (Ordinance No. XLVI of 1961), Foreign Donations (Voluntary Activities) Regulation Ordinance, 1978 (Ordinance No. XLVI of 1978), Foreign Contributions (Regulation) Ordinance, 1982 (Ordinance No. XXXI of 1982), Cooperative Societies Act, 2001 (Act No. XLVII of 2001) and the Microcredit Regulatory Authority Act, 2006 (Act No. XXXII of 2006) which-

(a) receives fund (loan, grant, deposit) from local sources or provide fund to others; and/or

(b) receives any kind of foreign donation or loan or grant;

(25) **“Bangladesh Financial Intelligence Unit (BFIU)”** means the Bangladesh Financial Intelligence Unit established under section 24(1) of the Money Laundering Prevention Act, 2009;

(26) **“material support”** means to provide money, service or any other property or any other assistance to any person or entity by any person or entity by which terrorist activities mentioned in this Act have been committed or may be committed;

(27) **“High Court Division”** means the High Court Division of the Bangladesh Supreme Court;

(28) **“real estate developer”** means any real estate developer or their officers or staff or agents who are engaged in constructing and buying and selling of land, home or house, commercial building and flat etc. as defined in section 2(15) of the Real Estate Development and Management Act, 2010 (Act No. XLVIII of 2010);

(29) **“trust and company services provider”** means any person or business enterprise that is not defined in any other law and provides any of the following services to any third party:

(i) to act as an agent for formation of a legal entity;

(ii) to act as a director, secretary of any legal entity or to appoint someone or to act as a partner in a partnership business or to perform any other similar responsibilities;

(iv) to act as a trustee of an express trust to appoint someone;

- (v) to act as a nominee shareholder or as a director on behalf of another person or to appoint someone;
- (30) “public security” means to ensure security of the life and the property of any person or group.

Offences and punishment

Terrorist activities. – (1) (a) If any person or entity, for the purposes of threatening the unity, integration, public security or sovereignty of Bangladesh by creating panic among the public or a section of the public with a view to compelling the Government or any entity or any person to do any act or preventing them from doing any act –

- (i) kills, causes grievous hurt, confines or kidnaps any person or abets to do the same, or damages or abets to damage any property of any person or entity or the State;
- (ii) instigates or attempts to instigate any person to murder, injure seriously, confine or kidnap any person, or instigates or attempts to instigate to damage any property of any person or entity or the State; or
- (iii) uses or keeps in his possession any explosive substance, inflammable materials and arms for the purposes of sub-clauses (i) and (ii);

Substituted by section 5 of the Anti-Terrorism (Amendment) Act, 2102 (Act No. 6 of 2012).

- (b) if any person or entity from Bangladesh, with an intent to disrupt security of other States commits or attempts to commit or instigates or abets an offence, or if any person or entity, with an intent to cause damage the property of other States has any financial involvement or commits or attempts to commit or instigates or abets to commit such offence;
- (c) if any person or entity knowingly uses or possesses any property or money derived from terrorist activities or given by any terrorist or terrorist group;
- d) if any foreign national commits an offence under clauses (a), (b) or (c); the person or entity shall commit the offence of “terrorist activities”.

(2) If any person or entity commits terrorist activities, he or any person or persons related to that entity, by whatever name called, shall be punished with death or imprisonment for life or a rigorous imprisonment not exceeding 20 (twenty) years but not less than 4 (four) years, and in addition to that a fine may also be imposed.

Offences relating to financing terrorist activities.– (1) If any person or entity knowingly provides or expresses the intention to provide money, services, material support or any other property to another person or entity and where there are reasonable grounds to believe that the same have been used or may be used in full or partially for any purpose by a terrorist person, entity or group or organization, he or the said entity shall be deemed to have committed the offence of financing terrorist activities.

(2) If any person or entity knowingly receives money, services, material support or any other property from another person or entity and where there are reasonable grounds to believe that the same have been used or may be used in full or partially for any purpose by a terrorist person or entity or group or organization, he or the said entity shall be deemed to have committed the offence of financing terrorist activities.

(3) If any person or entity knowingly makes arrangement for money, services, material support or any other property for another person or entity where there are reasonable grounds to believe that the same have been used or may be used in full or partially for any purpose by a terrorist person or entity or group or organization, he or the said entity shall be deemed to have committed the offence of financing terrorist activities.

(4) If any person or entity knowingly instigates another person or entity to provide or receive or make arrangement for money, services, material support or any other property in such a manner where there are reasonable grounds to believe that the same have been used or may be used in full or partially by a terrorist person or entity or group or organization for any purpose, he or the said entity shall be deemed to have committed the offence of financing terrorist activities.

(5) If any person is found guilty of any of the offences mentioned in sub-sections (1) to (4), the person shall be punished with an imprisonment for a term not

exceeding 20 (twenty) years but not less than 4 (four) years, and in addition to that, a fine may be imposed equal to twice of the value of the property involved with the offence or taka 10(ten) lacs, whichever is greater.

(6) (A) If any entity is found guilty of any of the offences mentioned in the sub-sections (1) to (4), steps may be taken in accordance with section 18 and in addition to that a fine may be imposed equal to thrice of the value of the property involved with the offence or taka 50 (fifty) lacs, whichever is greater; and

(6) (B) The head of such entity, whether he is designated as Chairman, Managing Director, Chief Executive or any other name, shall be punished with an imprisonment for a term not exceeding twenty years but not less than four years and in addition to that a fine may be imposed equal to twice of the value of the property involved with the offence or taka 20 (twenty) lacs, whichever is greater, unless he is able to prove that the said offence was committed without his knowledge or he had tried utmost to prevent the commission of the said offence.

8. *Membership of a proscribed organization.* – If any person is or claims to be a member of a prohibited organization under section 18, he shall commit an offence and be punished with an imprisonment for a term not exceeding 6 (six) months, or a fine, or with both.

9. *Supporting any proscribed organization.* – (1) If any person requests or invites someone to support any organization proscribed under section 18 or arranges, directs or assists to organize a meeting, or makes a speech in a meeting with intent to support that organization, expedite or encourage its activities, he shall commit an offence.

(2) If any person makes a speech in a meeting or disseminates any information through radio or television or any print or electronic media asking for supporting a proscribed organization or with intent to facilitating its activities, he shall commit an offence.

(3) If any person is found guilty of any of the offences under sub-sections (1) or (2), he shall be punished with an imprisonment for a term not exceeding 7 (seven) years but not less than 2 (two) years, and in addition to that a fine may be imposed.

10. *Punishment for criminal conspiracy of committing an offence.* – If any person does criminal conspiracy for committing an offence under this Act, he shall be punished with an imprisonment for a term not exceeding two thirds of the maximum punishment prescribed for that offence, or a fine, or with both; and if the prescribed punishment for that offence is death, the punishment for the offence shall be imprisonment for life or imprisonment for a term not exceeding 14 (fourteen) years, but not less than 5 (five) years.

11. *Punishment for attempting to commit an offence.* – If any person attempts to commit an offence under this Act, he shall be punished with an imprisonment for a term not exceeding two thirds of the maximum punishment prescribed for that offence, or a fine, or with both; and if the prescribed punishment for that offence is death, the punishment for the offence shall be imprisonment for life or imprisonment for a term not exceeding 14 (fourteen) years, but not less than 5 (five) years.

12. *Punishment for abetment of an offence.* – If any person abets to commit any offence punishable under this Act, he shall be punished with the prescribed punishment for that offence.

13. *Punishment for instigating terrorist activities.*– If any person, by his activities or participation, prepares or distributes any document, or by transmitting any information through any print or electronic [or any other] media, or through any apparatus, assistance or technology or training, assists any person or organization knowing that the said document, apparatus, assistance or technology or training shall be used in committing any offence under this Act or any such person or organization shall use the same for committing similar offences, he shall be deemed to have instigated terrorist activities; and he shall be punished with an imprisonment for a term not exceeding two thirds of the maximum punishment prescribed for that offence, or a fine, or with both; and if the prescribed punishment for that offence is death, then the punishment for the offence shall be imprisonment for life or imprisonment for a term not exceeding 14 (fourteen) years, but not less than 5 (five) years.

The words "on his own will" were omitted by section 7 of the Anti-Terrorism Act (Amendment), 2102 (Act No. 6 of 2012).

Inserted by section 7 of the Anti-Terrorism (Amendment) Act, 2102 (Act No. 6 of 2012).

15. ***Powers of Bangladesh Bank.*** – (1) Bangladesh Bank may take necessary steps to prevent and identify any transaction carried out by any reporting agency with intent to commit an offence under this Act and for this purpose it shall have the following powers and authority, namely: -

(a) to call for a report relating to any suspicious transaction from any reporting agency;

(b) to provide the reports received in accordance with sub-clause (a) to the respective law enforcement agencies for taking necessary steps or, as the case may be, provide them to foreign law enforcement agencies upon their request or exchange information relating to the reports;

(c) to collect and preserve all statistics and records;

(d) to create and maintain a database containing the reports of all suspicious transactions;

substituted by section 8 of the Anti-Terrorism Act (Amendment), 2102 (Act No. 6 of 2012).

(e) to analyze reports relating to suspicious transactions;

(f) if there are reasonable grounds to suspect that a transaction is connected to terrorist activities, to issue an written order to the respective reporting agency to suspend or freeze transactions of that relevant account for a period not exceeding 30 (thirty) days and, if it appears necessary to reveal correct information relating to transactions of the said account, such suspension or freezing order may be extended for an additional term not exceeding 6 (six) months by 30 (thirty) days at a time;

(g) to monitor and supervise the activities of reporting agency;

(h) to give directions to the reporting agencies to take preventive steps to prevent financing of terrorist activities;

(i) to inspect the reporting agencies for the purpose of identification of suspicious transactions connected with financing of terrorist activities; and

(j) to provide training to officers and employees of the reporting agencies for the purpose of identification and prevention of suspicious transactions connected with financing of terrorist activities.

16. ***Duties of reporting agency.*** – (1) Every reporting agency shall take necessary measures, with appropriate caution and responsibility, to prevent and identify financial transactions through them which is connected to any offence under this Act and if any suspicious transaction is identified, the agency shall spontaneously report it to the Bangladesh Bank without any delay.

(2) The Board of Directors, or in the absence of the Board of Directors, the Chief Executive Officer, by whatever name called, of each reporting organization shall approve and issue directions regarding the duties of its officers, and shall ascertain whether the directions issued by Bangladesh Bank under section 15, which are applicable to the reporting agency, have been complied with or not.

(3) If any reporting agency fails to comply with the directions issued by Bangladesh Bank under section 15 or knowingly provides any wrong or false information or statement, the said reporting agency shall be liable to pay a fine determined and directed by Bangladesh Bank not exceeding taka 10 (ten) lacs and Bangladesh Bank may suspend the registration or license with intent to stop operation of the said agency or any of its branches, service centres, booths or agents within Bangladesh or, as the case may be, shall inform the registering or licensing authority about the subject matter to take appropriate action against the agency.

Substituted by section 9 of the Anti-Terrorism (Amendment) Act, 2102 (Act No. 6 of 2012).

Module D: Business Related Laws

Companies Act, 1994

Preliminaries and Objective

The Companies Act 1994 has been enacted by the parliament on 11 September, 1994 and published by Notification No. SRO 177-law dated 1-10-95 of Ministry of Commerce.

This Act is basically originated from the companies Act, 1913, which was adopted in Bangladesh in 1971 and subsequently amended from time to time.

The Companies Act 1994 is an Act of the Parliament which regulates incorporation of a company, Share capital, responsibilities of a company, directors, dissolution of a company. Companies play very vital role in any economy. In our country, the Companies Act, 1994 primarily regulates the formation, financing, functioning and winding up of companies. The Act prescribes regulatory mechanism regarding all relevant aspects including organizational, financial and managerial aspects of companies.

The objective of the Companies Act

The Company's Act is the framework under which all company pursuits are undertaken. There are two direct objectives for the enactment of this Companies Act. They are a) 'to inject discipline in the management' and b) 'to protect the interest of the investors. Companies Act takes into account the proper management system in organization. The rules and regulation of the Act bound the management to work in organized manner. By this Company Act management make sure the total discipline among the employees. This company act forces the management to impose such regulations that employees maintain proper discipline.

The Companies Act 1994 is divided into 11 parts (total 404 sections) and 12 schedules.

<i>Part</i>	<i>Contents</i>
I: Section (1-3)	Preliminary
II: Section (4-29)	Constitution and Incorporation /MoA/AoA
III: Section (30-76)	Share Capital, Registration of Unlimited Company as Limited and Unlimited Liability of Directors
IV: Section (77-233)	Management and Administration

V: Section (234-346)	Winding Up
VI: Section (347-350)	Registration Office and Fees
VII: Section (351-353)	Application of Act to Companies Formed under Former Companies Act
VIII: Section (354-370)	Companies Authorized to be Registered
IX: Section (371-377)	Winding up of Unregistered Companies
X: Section (378-392)	Foreign Companies Registration
XI: Section (393-404)	Supplemental

Types of Companies

There are two types of companies-Public and Private.

Private company: A Private company is one which, by its articles, (a) restricts the right of the members to transfer their shares, if any; (b) limits the number of its members (not counting its employees) to 50; and (c) prohibits any invitation to the public to subscribe for any shares in, or debentures of, the company. —Sec.3 (1) (iii).

Where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this definition, be treated as a single member.

Public Company: All companies other than private companies are called public companies. —Sec 3(1) (IV).

- Public companies may be classified into three types:
- Companies 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. Most of the companies in our country belong to this class.
- Companies 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.

- Unlimited Companies- In these companies the liability of the shareholder is unlimited, as in partnership firms. Such companies are permitted under the Companies Act but are not known.

Difference between Public Ltd. Company and Private Ltd. Company

Public Limited Company vs. Private Limited Company

- Minimum number of members is 7 and the maximum number is unlimited. Minimum number of members is 2 and maximum 50.
- At least 3 directors. At least 2 directors.
- Can issue IPO. Cannot issue IPO
- Statutory meeting and report are mandatory. It is not required.
- An audit firm must audit financial statement. It is not mandatory.
- Its financial statement is open for public disclosure. It is not open for public disclosure.
- It has no restriction in transferring of shares. It restricts to transfer of shares.
- Certificate of commencement is required to start business operation. Certificate of incorporation is sufficient to start business operation.

Formation of a Company

-Verification Company Name to the registrar of the Joint Stock Companies.

-When verified, the Memorandum of Association (M/A) and Articles of Association (A/A) must be prepared and submitted to the Registrar of the Joint Stock Companies along with the application form.

Sec. 5 Memorandum of Association:

- Name of the Company
- Address of the registered office
- Objects of the Company
- Limited Liability

- Share Capital Amount and Number of Shares
- Each subscriber of the MoA shall take at least one share
- Each subscriber shall write opposite to his name the number of share he takes.

Sec. 17 Articles of Association:

-Provisions for Regulating the Affairs of the Company Share/ General Meeting/ Power of Directors/Accounts/Audit

- In case of public Limited Company, a duly signed list of persons has to be consented as directors of the company with their consent.

- Declaring that all the requirements of the Act have been complied with.

- After these, if the Registrar is satisfied with the requirements submitted, he issues a certificate, which is called "Certificate of Incorporation" to a public limited company as well as to a private limited company. After getting this certificate a private limited company can start its business operation. But for a public limited company, it requires to obtain another certificate, which called "Certificate of Commencement". For obtaining this certificate a public limited company has to -
 - issue a prospectus or statement in lieu of prospectus
 - ascertain that minimum subscription has been collected
 - ascertain that the directors' qualifying share have been collected
 - declare about the required formalities has been made according to the Act.
 - After obtaining the "Certificate of Commencement", a public limited company can start its business operation.

Sec.19 Form and Signature of Articles

Articles shall

- (a) be printed;
- (b) be divided into paragraphs numbered consecutively;
- (c) be signed by each subscriber of the memorandum, who shall add his address and description in the presence of at least two witness who shall attest the signature.

One Person Company

- Recently an amendment to the existing Companies Act 1994 has been enacted, that now makes it possible for one person to form a company. The amendment was made in November, 2020. The RJSC started OPC from May,2021.
- A one-person company is defined in the Amendment as a company that has only one natural person as its shareholder. Such a company must include the words 'One Person Company' or 'OPC' at the end of its name.
- The Amendment further provides provisions regarding the registration and formation of this type of company.
- The Amendment also provides that the memorandum of the one-person company shall also contain the name and consent of a nominee who shall replace the shareholder of the company upon the shareholder's death or if the shareholder is unable to manage the company for any reason or if the shareholder becomes unnatural.
- The nominee may provide his or her consent by prescribed means. As such, the Amendment also empowers the nominee to withdraw his/her consent to be a nominee of the one-person company. The nominee may also be replaced by the shareholder upon the nominee's death or incapacity.
- The minimum paid up capital of such a company is BDT 2,500,000.00 (Twenty-Five Lac) only while the maximum is BDT 5,00,00,000.00 (Five Crore) only.
- Such a company must show an annual turnover of minimum BDT 1,00,00,000.00 (One Crore) only and maximum BDT 50,00,00,000.00 (Fifty Crore) only for the immediate previous fiscal year.
- Should the amounts of paid-up capital and turnover exceed these brackets, the company shall have to be registered as a private or public limited company.
- With regards to registration of the company, the provisions regarding registration of private limited companies are to be followed. The shareholder of the one-person company shall be its director and the shareholder may appoint the company's manager, secretary and other employees.
- The shareholder of the company shall carry out a Director's meeting at least once every half of a calendar year. Such a company's memorandum may be changed by

passing a special resolution and by following the existing provisions of the Companies Act 1994 regarding the same.

- The shares of a one-person company may be transferred to another natural person only.
- The balance sheet and the financial records, signed by the Director of the company, are to be submitted to the Registrar within 180 (One Hundred Eighty) days of the end of a financial year.
- The one-person company may be wound up following the existing provisions of winding up in the Companies Act 1994.

Types of Shares of a Public Limited Company

Ordinary Share / Equity Share: Ordinary shares represent the ownership position in a company. The holders of ordinary shares, called shareholders or stakeholders are the legal owners of the company. Ordinary shares are the source of permanent capital since they do not have a maturity date. For capital contributed by shareholders by purchasing ordinary shares, they are entitled for dividends. The amount or rate of dividend is not fixed; the company's board of directors decides it.

An ordinary share is, therefore, known as a variable income security. Being the owners of the company, shareholders bear the risk of ownership; they are entitled to dividends after the income claims of others have been satisfied. Similarly, when the company is wound up, they can exercise their claims on assets after the claims of other suppliers of capital have been met. An ordinary shareholder has got the voting rights.

Preference Share: It is a senior security as compared to ordinary share. It has a prior claim on the company's income in the sense that the company must first pay preference dividend before paying ordinary dividend. It also has a prior claim on the company's assets in the event of liquidation.

Thus, in terms of risk, preference share is less risky than ordinary share. Preference shareholders generally do not have voting rights and they cannot participate in the

extra ordinary profits earned by the company. The dividend rate is fixed in the case of preference shares, and preference dividends are not tax deductible.

Types of preference share:

Cumulative and Non-Cumulative preference share – The preference dividend rate is expressed as a percentage of the per value. The amount of preference dividend will thus be equal to the dividend rate multiplied by the per value. Most preference shares carry a cumulative dividend feature, requiring that all past unpaid preference dividend be paid before any ordinary dividends are paid.

Preference dividends could be omitted or passed without the cumulative feature.

Preference shareholders do not have power to force company to pay dividends; no-payment of preference dividend also does not result insolvency. Since preference shares do not have the dividend enforcement power, the cumulative feature is necessary to protect the rights of preference shareholders.

Participating and Non-participating preference share- a company can issue preference share with voting rights called participative preference shares.

Preference shares may in some cases have participation feature, which entitles preference shareholders to participate in extraordinary profit earned by the company.

(Sec. 154) Redeemable and Irredeemable preference share- Redeemable preference share has a specified maturity. Irredeemable preference shares do not have a maturity date. A company may provide for extra dividend to preference shareholders equal to the amount of ordinary dividend that is in excess of the regular preference dividend.

Convertible and non-convertible preference share-

A convertible preference share allows preference shareholders to convert their preference shares, fully or partly, into ordinary shares at a specified price during a given period of time.

Meetings

- Annual General Meeting (***Section 81***)

- Statutory Meeting (*Section 83*)
- Extraordinary General Meeting (*Section 84*)

Section 94. Disqualifications of directors –

(1) A person shall not be capable of being appointed director of a company, if -

(a) he has been found to be of unsound mind by a competent court and the finding is in force; or

(b) he is an undischarged insolvent; or

(c) he has applied to be adjudicated as an insolvent and his application is pending; or

(d) 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

(e) he is a minor.

(2) A company may in its articles provide additional grounds for disqualification of a Director

Sec. 103. Loan of Director—

(1) No company, hereinafter in this section referred to as the lending company, shall make any loan or give any guarantee or provide any security in connection with a loan made by a third party to--

(a) any director of the lending company

(b) any firm in which any director of the lending company is a partner;

(c) any private company of which any director of the lending company is a director or member; or

(d) any public company, the managing agent manager or director where of is accustomed to act in accordance with the directions or instruction of any director of the lending company:

Provided that nothing in this section shall apply to the making of a loan or giving of any guarantee or providing any security by a lending company. if--

(i) 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

(ii) 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:

Provided further that, in no case the total amount of the loan shall exceed 50% of the paid-up value of the shares held by such director in his own name

(2) 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 extends 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.

(3) 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.

Sec.106 Removal of directors-

(1) The company may by extraordinary resolution remove any share-holder director before the expiration of his period of office 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.

Sec 107 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--

(a) sell or dispose of the undertaking of the company; and

(b) remit any debt due by a director.

Sec.108. Vacation of office of director—

(1) The office of a director shall be vacant, if-

(a) he fails to obtain within the time specified in section 97 (1) or at any time thereafter ceases to hold, the qualifications--haves, if any, necessary for his appointment; or

(b) he is found to be of unsound mind by a competent court; or

(c) he is adjudged an insolvent; or

(d) 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

(e) 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

(f) 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

(g) 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

(h) he acts in contravention of section 105.

(2) A company may provide by its articles that the office of director shall be vacated on grounds additional to those specified in sub-section (1).

Sec.126 Validity of written and unwritten contracts. —

(1) Contracts on behalf of a company may be made as follows, that is to say--

(i) any written contract which, if made between individual, would be by law required to be in writing, signed by the parties to be charged therewith, may be made on behalf of the company in writing signed by any person acting under its authority, express or implied, and may in the same manner be varied or discharged; and

(2) All contract made according to this section shall be effectual in law and shall bind the company and its successors and all other parties thereto, their heirs, of legal representatives, as the case may be.

Sec.181 Books to be kept by company and penalty for not keeping them: -

(1) Every company shall keep proper books of account with respect to-

(a) all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure take place;

(b) all sales and purchases of goods by the company;

(c) the assets and liabilities of the company; and

(d) in the case of a company engaged in production, distribution, marketing, transportation, processing, manufacturing, milling extraction and mining activities, such particulars relating to utilization of material, labour and other items of overhead cost.

(2) For the purpose of sub-section (1), proper books of account shall not be deemed to be kept with respect to the matters specified therein if there are not kept such books as are necessary to give a true and fair view of the state of the affairs of the company and to explain its transactions.

(3) The books of account shall be kept at the registered office of the company and shall at all times be open to inspection by directors during business hours:

Provided that all or any of the books of account may, for a period not exceeding six months, be kept at such other place in Bangladesh as the board of Directors may decide and when the board of Directors so decides, the company shall within seven days of the decision, file with the Registrar a notice in writing giving the full address of that other place.

Sec182. Inspection of books of account, etc. of companies: -

(1) The books of account and other books and papers of every company shall be open to inspection during business hours by the Registrar or by such other Government officer as may be authorised by the Government in this behalf.

Sec183. Annual balance sheet: -

(1) 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.

Sec190. Copy of balance-sheet, etc. to be filed with Registrar:

(1) After the balance sheet and profit and loss account or the income and expenditure account, as the case may be, have been laid before a company at an annual general meeting as aforesaid, there shall be filed with the Registrar, within thirty days from the date on which the balance sheet and the profit and loss accounts were so laid, or where the annual general meeting of a company for any year has not been held, there shall be filed with the Registrar within thirty days from the last day on which that meeting should have been held in accordance with the provisions of this Act three copies of the balance-sheet, and of the profit and loss account or the income and expenditure account, as the case may be signed by the managing director, managing agent, a manger or secretary of the company or if there be none of these, by a director of the company, together with three copies of all documents which are required by this Act to be annexed or attached to such balance-sheet or profit and loss account or income and expenditure account:

Provided that in the case of a private company, which is not a subsidiary of a public company, no person other than a member of the company shall be entitled to inspect or to obtain copies of the profit and loss account of that company.

Sec. 234 Winding-up

-By the Court (Sec.241)

-Voluntary or (Sec. 291)

-Subject to Supervision of Court (Sec.

Sec. 241. Circumstances in which company may be wound up by Court. —

A company may be wound up by the Court; if--

- (i) if the company has by special resolution resolved that the company be wound up by the Court; or
- (ii) if default is made in filing the statutory report or in holding the statutory meeting; or;
- (iii) if the company does not commence its business within a year from its

incorporation, or suspends its business for a whole year; or
(iv) if the number of members is reduced, in the case of a private company below two, or, in the case of any other company, below seven; or
(v) if the company is unable to pay its debts; or
(vi) if the Court is of opinion that it is just and equitable that the company should be wound up

Sec.291 Members' Voluntary Winding

The provisions contained in section 292 to 296 (both inclusive), shall apply in relation to a members voluntary winding up.

Winding-up:

- Any time specified in the AOA passes out
- Special Resolution
- Extra ordinary resolution

Creditor's Voluntary winding –up:

- Meeting of the creditors
- Appointment of the Liquidator
- Appointment of the committee of inspection

Sec.332 Penalty for falsification of book. —

In any director, manager, officer or contributory of any company being wound up destroys, mutilates, alters or falsifies or fraudulently secretes any books papers or securities or makes or is privy to the making of any false or fraudulent entry in any register book of account or document belonging to the company with intent to defraud or deceive any person, he shall be liable to imprisonment for a term which may extend to seven years, and shall also be liable to fine.

Penalty for false statement. Whoever in any return, report, certificate balance-sheet or other documents, required by or for the purposes of any of the provisions of this Act, willfully makes a statement false in any material particular, knowing it to be false, shall be punishable with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

Sec. 334 Penalty for false evidence: If any person, upon any examination authorised under this Act, or in any affidavit, depositing or solemn affirmation, in or about the winding up of any company under this Act, or otherwise in or about any matter arising under this Act intentionally give false evidence, he shall be liable to imprisonment for a term which may extend to seven years, and shall also be liable to find.

Sec 397. Penalty for false statement. -- Whoever in any return, report, certificate balance-sheet or other documents, required by or for the purposes of any of the provisions of this Act, willfully makes a statement false in any material particular, knowing it to be false, shall be punishable with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

Sec.398 Penalty for wrongful withholding of property.

Any director, managing agent, manager or other officer or employee of a company who wrongfully obtains possession of any property of a company, or having any such property in his possession wrongfully withholds it or willfully applies it to purposes other than those expressed or directed in the articles and authorized by this Act, shall on the complaint of the company or a creditor or contributory there-of, be punishable with fine not exceeding five thousand taka, and may be ordered by the Court trying the offence to deliver or refund within a time to be fixed by the Court any such property improperly obtained or wrongfully with- held or willfully misapplied, or in default to suffer imprisonment for a period not exceeding two years.

Model questions:

1. Differentiate between Public Ltd. Company and Private Ltd. Company.
2. Discuss in brief about the following as per the Company Act,1994:
 - a) Maintenance of books of accounts
 - b) Penalty for false statement
 - c) Winding-up of a company
 - d) Ordinary share and Preference share
 - e) One person company

Reference: The Companies Act, 1994.

Contract Act, 1872

Prelude and Objectives

This Act may be called the Contract Act, 1872. The Contract Act, 1872 is the chief contract law in Bangladesh. It extends to the whole of Bangladesh; and it came into force on the first day of September, 1872. Based on English contract law and the British Indian contract law, it was enacted in the 19th century and re-enacted by the Parliament of Bangladesh after the country's independence. It includes chapters on offer and acceptance, voidable contracts, contingent contracts, performance, breach of contract, contractual relations, bailment, agency etc. It also covers topics such as consideration, misrepresentation and indemnity. The Act has 238 sections under its 11 chapters. Bankers and the readers are strongly advised to follow the original law in this regard.

Interpretation-clause

In this Act the following words and expressions are used in the following senses, unless a contrary intention appears from the context: -

- (a) When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal:
- (b) When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted becomes a promise:
- (c) The person making the proposal is called the "promisor" and the person accepting the proposal is called the "promisee":
- (d) When, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise:
- (e) Every promise and every set of promises, forming the consideration for each other, is an agreement:

(f) Promises which form the consideration or part of the consideration for each other are called reciprocal promises:

(g) An agreement not enforceable by law is said to be void:

(h) An agreement enforceable by law is a contract:

(i) An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others, is a voidable contract:

(j) A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable.

The Contract Act 1872 was enacted to ensure that contracts are entered into freely and fairly and with full knowledge of the rights and obligations of all parties involved. It also aims to protect the interests of both parties in a contract, by spelling out the consequences of breaking it. The law of contract is the most important part of commercial law because every commercial transaction starts from an agreement between two or more persons.

The essential elements of a contract

- Offer and Acceptance
- Intention to create Legal Relationship
- Lawful consideration
- Capacity of parties
- Free consent
- Legality of the object
- Possibility of performance
- Writing, Registration and Legal formalities

Every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of sound mind, and is not disqualified from contracting by any law to which he is subject.

- Major
- Sound Mind: If he is capable of understanding the consequence of contract
- Not Disqualified

Which agreements are contracts (Section 10)

All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void.

Nothing herein contained shall affect any law in force in Bangladesh, and not hereby expressly repealed, by which any contract is required to be made in writing or in the presence of witnesses, or any law relating to the registration of documents.

What is a sound mind for the purposes of contracting (Section 12)

A person is said to be of sound mind for the purpose of making a contract if, at the time when he makes it, he is capable of understanding it and of forming a rational judgment as to its effect upon his interests. A person who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of sound mind. A person who is usually of sound mind, but occasionally of unsound mind, may not make a contract when he is of unsound mind.

Illustrations

(a) A patient in a lunatic asylum, who is at intervals of sound mind, may contract during those intervals.

(b) A sane man, who is delirious from fever or who is so drunk that he cannot understand the terms of a contract or form a rational judgment as to its effect on his interests, cannot contract whilst such delirium or drunkenness lasts.

'Free consent' defined (Section 14)

Consent is said to be free when it is not caused by-

- (1) coercion, as defined in section 15, or
- (2) undue influence, as defined in section 16, or
- (3) fraud, as defined in section 17, or

- (4) misrepresentation, as defined in section 18, or
- (5) mistake, subject to the provisions of sections 20, 21 and 22.

‘Coercion’ defined (Section 15)

‘Coercion’ is the committing, or threatening to commit, any act forbidden by the Penal Code or the unlawful detaining or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement.

Explanation - It is immaterial whether the Penal Code is or is not in force in the place where the coercion is employed.

Illustrations

A, on board an English ship on the high seas, causes B to enter into an agreement by an act amounting to criminal intimidation under the Penal Code.

A has employed coercion, although his act is not an offence by the law of England, and although section 506 of the Penal Code was not in force at the time when or place where the act was done.

‘Undue influence’ defined (Section 16)

A contract is said to be induced by "undue influence" where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other.

(2) In particular and without prejudice to the generality of the foregoing principle, a person is deemed to be in a position to dominate the will of another

(a) where he holds a real or apparent authority over the other or where he stands in a fiduciary relation to the other; or

(b) where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress.

(3) Where a person who is in a position to dominate the will of another, enters into a contract with him, and the transaction appears, on the face of it or on the evidence adduced, to be unconscionable, the burden of proving that such contract was not

induced by undue influence shall lie upon the person in a position to dominate the will of the other.

Nothing in this sub-section shall affect the provisions of section 111 of the Evidence Act, 1872.

Illustrations

(a) A having advanced money to his son, B, during his minority, upon B's coming of age obtains, by misuse of parental influence, a bond from B for a greater amount than the sum due in respect of the advance. A employs undue influence.

(b) A, a man enfeebled by disease or age, is induced, by B's influence over him as his medical attendant, to agree to pay B an unreasonable sum for his professional services. B employs undue influence.

(c) A, being in debt to B, the money-lender of his village, contracts a fresh loan on terms which appear to be unconscionable. It lies on B to prove that the contract was not induced by undue influence.

(d) A applies to a banker for a loan at a time when there is stringency in the money market. The banker declines to make the loan except at an unusually high rate of interest. A accepts the loan on these terms. This is a transaction in the ordinary course of business, and the contract is not induced by undue influence.

'Fraud' defined (Section 17)

'Fraud' means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with intent to deceive another party thereto or his agent, or to induce him to enter into the contract: -

- (1) the suggestion, as a fact, of that which is not true, by one who does not believe it to be true;
- (2) the active concealment of a fact by one having knowledge or belief of the fact;
- (3) a promise made without any intention of performing it;
- (4) any other act fitted to deceive;
- (5) any such act or omission as the law specially declares to be fraudulent.

Explanation – Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak, or unless his silence is, in itself, equivalent to speech.

Illustrations

(a) A sell, by auction, to B, a horse which A knows to be unsound. A says nothing to B about the horse's unsoundness. This is not fraud in A.

(b) B is A's daughter and has just come of age. Here, the relation between the parties would make it A's duty to tell B if the horse is unsound.

(c) B says to A-"If you do not deny it, I shall assume that the horse is sound." A says nothing. Here, A's silence is equivalent to speech.

(d) A and B, being traders, enter upon a contract. A has private information of a change in prices which would affect B's willingness to proceed with the contract. A is not bound to inform B.

'Misrepresentation' defined (Section 18)

'Misrepresentation' means and includes

(1) the positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true;

(2) any breach of duty which, without an intent to deceive, gains an advantage to the person committing it, or any one claiming under him, by misleading another to his prejudice or to the prejudice of any one claiming under him;

(3) causing, however innocently, a party to an agreement to make a mistake as to the substance of the thing which is the subject of the agreement.

Consent is said to be so caused when it would not have been given but for the existence of such coercion, undue influence, fraud, misrepresentation or mistake.

What considerations and objects are lawful and what not (Section 23)

The consideration or object of an agreement is lawful, unless- it is forbidden by law; or is of such a nature that, if permitted, it would defeat the provisions of any law; or is fraudulent; or involves or implies injury to the person or property of another; or the Court regards it as immoral, or opposed to public policy.

In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void.

Illustrations

(a) A agrees to sell his house to B for 10,000 Taka. Here B's promise to pay the sum of 10,000 Taka is the consideration for A's promise to sell the house, and A's promise to sell the house is the consideration for B's promise to pay the 10,000 Taka. These are lawful considerations.

(b) A promise to pay B 1,000 Taka at the end of six months; if C, who owes that sum to B, fails to pay it. B promises to grant time to C accordingly. Here the promise of each party is the consideration for the promise of the other party and they are lawful considerations.

(c) A promise, for a certain sum paid to him by B, to make good to B the value of his ship if it is wrecked on a certain voyage. Here A's promise is the consideration for B's payment and B's payment is the consideration for A's promise and these are lawful considerations.

(d) A promise to maintain B's child and B's promises to pay A 1,000 Taka yearly for the purpose. Here the promise of each party is the consideration for the promise of the other party. They are lawful considerations.

(e) A, B and C enter into an agreement for the division among them of gains acquired, or to be acquired, by them by fraud. The agreement is void, as its object is unlawful.

(f) A promise to obtain for B an employment in the public service, and B promises to pay 1,000 Taka to A. The agreement is void, as the consideration for it is unlawful.

(g) A, being agent for a landed proprietor, agrees for money, without the knowledge of his principal, to obtain for B a lease of land belonging to his principal. The agreement between A and B is void, as it implies a fraud by concealment by A, on his principal.

(h) A promises B to drop a prosecution which he has instituted against B for robbery, and B promises to restore the value of the things taken. The agreement is void, as its object is unlawful.

(i) A's estate is sold for arrears of revenue under the provisions of an Act of the Legislature, by which the defaulter is prohibited from purchasing the estate. B, upon an understanding with A, becomes the purchaser, and agrees to convey the estate to A upon receiving from him the price which B has paid. The agreement is void, as it renders the transaction, in effect, a purchase by the defaulter, and would so defeat the object of the law.

(j) A, who is B's mukhtar, promises to exercise his influence, as such, with B in favour of C, and C promises to pay 1,000 Taka to A. The agreement is void, because it is immoral.

(k) A agrees to let her daughter to hire to B for concubinage. The agreement is void, because it is immoral, though the letting may not be punishable under the Penal Code.

Agreements void, if considerations and objects unlawful in part (Section 24)

If any part of a single consideration for one or more objects, or any one or any part of any one of several considerations for a single object is unlawful, the agreement is void.

Illustration

A promise to superintend, on behalf of B, a legal manufacture of indigo, and an illegal traffic in other articles. B promises to pay to A promise salary of 10,000 Taka a year. The agreement is void, the object of A's promise and the considerations B's promise being in part unlawful.

Agreements void for uncertainty (Section 29)

Agreements, the meaning of which is not certain, or capable of being made certain, are void.

Illustrations

- (a) A agrees to sell to B "a hundred tons of oil". There is nothing whatever to show what kind of oil was intended. The agreement is void for uncertainty.
- (b) A agrees to sell to B one hundred tons of oil of a specified description, known as an article of commerce. There is no uncertainty here to make the agreement void.
- (c) A, who is a dealer in coconut-oil only, agrees to sell to B "one hundred tons of oil". The nature of A's trade affords an indication of the meaning of the words, and A has entered into a contract for the sale of one hundred tons of Coconut-oil.
- (d) A agrees to sell B "all the grain in my granary at ⁵[Rangpur]". There is no uncertainty here to make the agreement void.
- (e) A agrees to sell to B "one thousand mounds of rice at a price to be fixed by C". As the price is capable of being made certain, there is no uncertainty here to make the agreement void.
- (f) A agrees to sell to B "my white horse for Taka five hundred or Taka one thousand". There is nothing to show which of the two prices was to be given. The agreement is void.

Valid agreement: An agreement which fulfills all the essential elements of a contract and which is enforceable through the courts.

Void agreement: a void agreement has no legal effect. It confers no rights on any person and creates no obligations. 'An agreement not enforceable by law is said to be void'. - sec.2(g)

Example- An agreement made by a minor.

Voidable agreement: 'An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others, is a voidable contract.'-Sec.2(I). A voidable agreement can be avoided. Until it is avoided, it is a good contract.

Example- Contracts brought about by coercion, undue influence, misrepresentation etc.

X coerces Y into entering into a contract for the sale of Y's house to X. This contract can be avoided by Y.

X cannot enforce the contract. But Y, if he so desires, can enforce it against X.

Unenforceable agreement: An agreement which cannot be enforced in a court of law one or both of the parties, because of some technical defect, e.g., want of registration or non-payment of the requisite stamp duty.

Illegal Agreement: An illegal agreement is one which is against a law in force. Example- an agreement to commit murder, money laundering, robbery or cheating.

Every Contract is an agreement but all agreements are not contracts.

Obligation of parties to contracts (section 37)

The parties to a contract must either perform, or offer to perform, their respective promises, unless such performance is dispensed with or excused under the provisions of this Act, or of any other law.

Promises bind the representatives of the promisors in case of the death of such promisors before performance, unless a contrary intention appears from the contract.

Illustrations

(a) A promise to deliver goods to B on a certain day on payment of Taka 1,000. A die before that day. A's representatives are bound to deliver the goods to B, and B is bound to pay the Taka 1,000 to A's representatives.

(b) A promise to paint a picture for B by a certain day, at a certain price. A die before the day. The contract cannot be enforced either by A's representatives or by B.

Compensation for loss or damage caused by breach of contract (Section 73)

When a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things

from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it.

Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach.

Contract of Indemnity (Section 124)

A contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself, or by the conduct of any other person, is called a "contract of indemnity".

Illustration

Contracts to indemnify B against the consequences of any proceedings which C may take against B in respect of a certain sum of 200 Taka. This is a contract of indemnity.

For example, X who has lost a fixed deposit receipt issued by modern bank may claim the amount by furnishing an indemnity bond. By this act, X promises to reimburse the bank any loss that may be caused to it for paying the amount without the receipt.

Contract of Guarantee

'Contract of guarantee', "surety", "principal debtor" and "creditor'
(Section 126)

A "contract of guarantee" is a contract to perform the promise, or discharge the liability, of a third person in case of his default. The person who gives the guarantee is called the "surety": the person in respect of whose default the guarantee is given is called the "principal debtor", and the person to whom the guarantee is given is called the "creditor". A guarantee may be either oral or written.

Consideration for guarantee (Section 127)

Anything done, or any promise made, for the benefit of the principal debtor may be a sufficient consideration to the surety for giving the guarantee.

Illustrations

(a) B requests A to sell and deliver to him goods on credit. A agrees to do so, provided C will guarantee the payment of the price of the goods. C to guarantee the payment in consideration of A's promise to deliver the goods. This is a sufficient consideration for C's promise.

(b) A sell and delivers goods to B. C afterwards requests A to forbear to sue B for the debt for a year, and promises that if he does so, C will pay for them in defaults of payment by B. A agrees to forbear as requested. This is a sufficient consideration for C's promise.

(c) A sell and delivers goods to B. C afterwards, without consideration, agrees to pay for them in default of B. The agreement is void.

Surety's liability (Section 128)

The liability of the surety is co-extensive with that of the principal debtor, unless it is otherwise provided by the contract.

Illustration

A guarantee to B the payment of a bill of exchange by C, the acceptor. The bill is dishonoured by C. A is liable not only for the amount of the bill but also for any interest and charges which may have become due on it.

'Continuing guarantee' (Section 129)

A guarantee which extends to a series of transactions is called a "continuing guarantee".

Illustrations

(a) A, in consideration that B will employ C in collecting the rent of B's zamindari, promises B to be responsible, to the amount of 5,000 Taka, for the due collection and payment by C of those rents. This is a continuing guarantee.

Generally, loans and advances are made against tangible securities. When a customer has no tangible security to offer or when the security offered is inadequate, a guarantee is demanded by the banker.

A **guarantee** is a promise by a third person to the lender for the present or future debt of the borrower. The person who gives the guarantee is called a surety or guarantor. The person to whom the guarantee is given is called creditor or beneficiary. The person in respect of whose default the guarantee is given is called the principal debtor.

Example: P lends Tk. 50,000/- to Q and R promises to P that if Q does not pay the money R will do so. This is a contract of guarantee. Here Q is the *principal debtor*, P is the *creditor or beneficiary*, and R is the *guarantor or surety*.

Essential Features of Contract of Guarantee:

- The guarantor is liable when the principal debtor fails to repay the debt. The liability of the principal debtor is primary and that of guarantor is secondary.
- A guarantee may be either oral or written. Banks, however, do not accept oral guarantees. The contract must be in writing and should satisfy all legal requirements as to signature, stamp duty etc.
- A guarantee may be either (a) specific guarantee or (b) a continuing guarantee. A specific guarantee covers a single transaction. It comes to an end when the specific promise is fulfilled.
- The continuing guarantee is applicable to a series of transactions. The surety can fix up a limit on his liability as to time or amount of guarantee when the guarantee is a continuing one. **For example**, X enters into cash credit arrangement with Modern bank for a credit limit of Tk.50, 000/-. Y stands as guarantor for this amount for a period of one year. Under this arrangement, X can undertake any number of transactions subject to the amount and time specified.
- The party must be competent to enter into contract.
- Minor's guarantee is not allowed but if any major gives guarantee in favor of minor, the guarantor becomes principal debtor.
- Credit worthiness of the guarantor is to be considered before obtaining guarantee.

- As per contract, the guarantee must be supported by lawful consideration.
- The contract must be entered into with free consent.
- A guarantee obtained under misrepresentation, fraud and undue influence is voidable.

A personal guarantor is an individual who agrees to take on the obligations of a debt for a debtor, whereas a corporate guarantor is a corporation that takes on payment responsibilities.

Distinction between Guarantee and Indemnity:

- ***Number of parties:*** In case of guarantee there are three parties- the principal debtor, the creditor and the surety. A contract of guarantee requires the concurrence of the three parties. In case of indemnity there are only two parties- indemnified and indemnifier.
- ***Number of contracts:*** In case of guarantee there are two contracts, one between the principal debtor and the creditor and the second between the surety and the creditor. On the other hand, in a contract of indemnity, there is only one contract between the indemnifier and the beneficiary.
- ***Request:*** In a contract of guarantee, the guarantor undertakes his obligation at the request, express or implied, of the principal debtor; no such request is necessary in respect of an indemnity.
- ***Nature of liability:*** In a contract of guarantee the liability of the principal debtor is primary and that of surety is secondary. The person giving an indemnity is primarily and independently liable.
- ***Purpose of contracts:*** A contract of guarantee is to provide necessary security to the creditor against the loan but a contract of indemnity is made for reimbursement of loss.
- ***Right of parties:*** The surety has the right to recover from the principal debtor the amount paid by him under the contract of guarantee, the indemnifier cannot claim reimbursement from anybody else.

- **Nature of risk:** The surety agrees to discharge the existing liability of the principal debtor. So, it is a subsisting risk. The indemnifier promises to save the indemnified against risk of loss happening in future. So, it is a contingent risk.

Precautions to be observed while taking Guarantee

- Ascertain the solvency and integrity of the guarantor
- The capacity to contract
- Banker not to approach a guarantor
- Type of guarantee
- Execution of contract of guarantee
- Explanation of the clauses in the form
Joint and several liabilities
- Periodical confirmation
- Death, lunacy and insolvency of the principal debtor
- Death, insolvency or insanity of the guarantor

‘Bailment’, ‘bailor’, and ‘bailee’ defined (Section 148)

A "bailment" is the delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them. The person delivering the goods is called the "bailor". The person to whom they are delivered is called the "bailee".

Explanation – If a person already in possession of the goods of other contracts to hold them as a bailee, he thereby becomes the bailee, and the owner becomes the bailor, of such goods although they may not have been delivered by way of bailment.

Liability of bailee making unauthorised use of goods bailed (Section 154)

If the bailee makes any use of the goods bailed, which is not according to the conditions of the bailment, he is liable to make compensation to the bailor for any damage arising to the goods from or during such use of them.

Illustrations

(a) A lends a horse to B for his own riding only. B allows C, a member of his family, to ride the horse. C rides with care, but the horse accidentally falls and is injured. B is liable to make compensation to A for the injury done to the horse.

(b) A hire a horse in Dhaka from B expressly to march to Tangail. A ride with due care, but marches to Narayanganj instead. The horse accidentally falls and is injured. A is liable to make compensation to B for the injury to the horse.

Bailee's particular lien (Section 170)

Where the bailee has, in accordance with the purpose of the bailment, rendered any service involving the exercise of labour or skill in respect of the goods bailed, he has, in the absence of a contract to the contrary, a right to retain such goods until he receives due remuneration for the services, he has rendered in respect of them.

Illustrations

(a) A delivers a rough diamond to B, A jeweller, to be cut and polished, which is accordingly done. B is entitled to retain the stone till he is paid for the services he has rendered.

(b) A gives cloth to B, a tailor, to make into a coat. B promises A to deliver the coat as soon as it is finished, and to give a three months' credit for the price. B is not entitled to retain the coat until he is paid.

General lien of bankers, factors, wharfingers, attorneys and policy- brokers (Section 171)

Bankers, factors, wharfingers, advocate of the Supreme Court and policy-brokers may, in the absence of a contract to the contrary, retain, as a security for a general balance of account, any goods bailed to them; but no other persons have a right to retain, as a security for such balance, goods bailed to them, unless there is an express contract to that effect.

'Pledge', 'Pawnor' and 'Pawnee' defined (Section 172)

The bailment of goods as security for payment of a debt or performance of a promise is called "pledge". The bailor is in this case called the "pawnor". The bailee is called the "pawnee".

Pawnee's right of retainer (Section 173)

The pawnee may retain the goods pledged, not only for payment of the debt or the performance of the promise, but for the interest of the debt, and all necessary expenses incurred by him in respect of the possession or for the preservation of the goods pledged.

'Agent' and 'principal' defined (Section 182) An "agent" is a person employed to do any act for another or to represent another in dealings with third persons. The person for whom such act is done, or who is so represented, is called the "principal".

'Pledge', 'Pawnor' and 'Pawnee' defined (Section 172)

The bailment of goods as security for payment of a debt or performance of a promise is called "pledge". The bailor is in this case called the "pawnor". The bailee is called the "pawnee".

Who may be an agent (184) As between the principal and third persons any person may become an agent, but no person who is not of the age of majority and of sound mind can become an agent, so as to be responsible to his principal according to the provisions in that behalf herein contained.

Consideration not necessary (185)

No consideration is necessary to create an agency.

Agent's authority may be expressed or implied (186)

The authority of an agent may be expressed or implied.

Definitions of express and implied authority (187)

An authority is said to be express when it is given by words spoken or written. An authority is said to be implied when it is to be inferred from the circumstances of the case; and things spoken or written, or the ordinary course of dealing, may be accounted circumstances of the case.

A owns a shop in Mymensingh, living himself in Dhaka, and visiting the shop occasionally. The shop is managed by B, and he is in the habit of ordering goods from C in the name of A for the purposes of the shop, and of paying for them out of A's funds with A's knowledge. B has an implied authority from A to order goods from C in the name of A for the purposes of the shop.

Termination of Contract

- By performance of the promise of all parties
- By mutual consent canceling the agreement or substituting a new agreement in place of the old
- Subsequent impossibility of performance
- By operation of law – death, insolvency, or merger
- By lapse of time
- By material alteration without the consent of the other party
- By breach made by one party

Model Questions:

1. Discuss in brief of the following as per the Contract Act, 1872:
 - a) Contract of Indemnity
 - b) Contract of Guarantee
 - c) Free Consent
 - d) Fraud and Misrepresentation

The transfer of property Act, 1882

Preliminaries and Objectives

The transfer of property Act, 1882 came into force on the First day of July 1882. Transfer of Property Act, 1882 (Act IV of 1882) enacted with a view to 'define and amend certain parts of law relating to transfer of properties by acts of parties'. This is not a consolidating Act, nor does it purport to be a complete code dealing with the transfer of properties. It only deals with the transfer of immovable property including certain incorporeal rights by one living person to another living person by voluntary acts.

The chapters and sections of this Act which relate to contracts shall be taken as part of the Contract Act, 1872. And sections 54, paragraphs 2 and 3, 59, 107 and 123 shall be read as supplement to the Registration Act, 1908. Bankers and the readers are strongly advised to follow the original law in this regard.

The Transfer of Property Act specifically deals with certain modes of transfer of properties by way of sale, mortgage, gift, exchange and lease. Sale of immovable properties of the value of one hundred taka or more must be effected by registered instrument. Immovable properties of the value of less than one hundred taka can be transferred either by a registered instrument or by simple delivery of possession. The rights and obligations of the buyers and sellers have been enumerated in section 55 of the Act. The Act defines mortgage as the transfer of an interest in specific immovable property for the purpose of securing payment of money advanced by way of loan or performance of an engagement which may give rise to a pecuniary liability.

Transfer of property” defined (Section 5)

In the following sections “transfer of property” means an act by which a living person conveys property, in present or in future, to one or more other living persons, or to himself, or to himself and one or more other living persons; and “to transfer property” is to perform such act. In this section “living person” includes a company or associations or body of individuals, whether incorporated or not, but nothing herein contained shall affect any law for the time being in force relating to transfer of property to or by companies, associations or bodies of individuals.

Right on the property can be acquired in different ways:

1. By way of inheritance
2. By innovation
3. By addition
4. By taking possession those properties having no owners, say land-taking possession more than 12 years.
5. By transfer (a) at the consent of the parties concerned/act of parties. (b) At the operation of the laws/no action of the parties are required (succession /insolvency and goes

to the hands of official receiver/forfeiture due to certain offence/auction sale by the order of the court, etc.)

The Transfer of property Act deals with only the transfer of property and protects the interest those properties, which have been acquired at the consent of parties concerned.

It is a dynamic Act because it accepts required amendments, addition etc. from time to time with the changes of different circumstances related to properties especially in our country.

Restrictions/limitations of amount of land holding or transfer can be exercised by the Govt. for the interest of the people and it cannot be tenable in the court, even it goes against fundamental rights as per constitution.

Persons competent to transfer (Section 7)

Every person competent to contract and entitled to transferable property, or authorised to dispose of transferable property not his own, is competent to transfer such property either wholly or in part, and either absolutely or conditionally, in the circumstances, to the extent and in the manner allowed and prescribed by any law for the time being in force.

The transfer of property at the consent of parties concerned may also be in different forms:

- (a) Sale
- (b) Lease
- (c) Exchange
- (d) Gift
- (e) Mortgage etc.

Every person competent to contract and entitled to transfer property or authorized to dispose of transferable property, is competent to transfer such property either wholly or in part and either absolutely or conditionally, in the circumstances, to the extent and in the manner allowed and prescribed by any law for the time being in force.

Property can also be transferred to a minor since his guardian can establish contract. Guardian of a minor can transfer property of minor only by the order of court.

Unless otherwise expressed, the transferor transfers all interest and legal right of the property to the transferee. The transferee gets title on the property. But a man cannot give better title than he has as per this Act.

But when a transfer is occurred for some conditions i.e., especially in the case of money taken as loan against the transfer of interest of the property which in other words is known as mortgage, is very important for the bankers.

Transfer of property under Mortgage:

The legal definition of mortgage is ‘the transfer of an interest in specific immovable property for the purpose of securing the payment of money advanced or to be advanced by the way of loan, an existing or future debt or the performance or an engagement which may give rise to a pecuniary liability’. (TPA,1882 Sec.58A)

The transferor is called a ‘mortgagor’, the transferee a ‘mortgagee’, the principal money and interest of which payment is secured for the time being are called ‘mortgage money’, and the instrument (if any) by which the transfer is effected is called a ‘mortgage deed’.

Immovable Property:

The term ‘immovable property’ consists of land or attachments to it like trees, building, fixed machinery, etc. A machine/fixture attached to earth will be immovable property or not, will depend upon the degree of annexation and the object of annexation. If the plant and machinery is so embedded to earth that its removal from its place will affect its utility and it may not serve its original purpose, it would form part of immovable property for the purpose of mortgage. However, the plant and machinery attached by nuts and bolts to special concrete bases or platforms so that it can be easily moved will be hypothecated as movable property not mortgaged.

Other Acts Related to Transfer of Property Act:

The contract Act, the stamp Act, and the Registration Act are related to the Transfer of property Act. Particularly Registration Act is a part and parcel of Transfer of property Act.

Model Questions:

1. State the meaning of the following as per the Transfer of Property Act.:
 - a) Transfer of property
 - b) Transfer of property under Mortgage

c) Immovable Property

The Limitation Act-1908

Enactment and objectives

(1) This Act may be called the Limitation Act, 1908 (ACT NO. IX OF 1908) dated 7th August, 1908. (2) It extends to the whole of Bangladesh. This Act may be called the Limitation Act, 1908 and is enacted to consolidate and amend the law relating to the limitation of suits, appeals and certain applications to Courts. Bankers and the readers are strongly advised to follow the original law in this regard.

This Act provides that no legal proceeding shall be initiated after the expiration of time, which is given in the Act. The first schedule describes the limitation period for different suits. It prescribes certain periods after the expiry of which the suit and the proceedings cannot be maintained. Law of Limitation ensures that the parties do not resort to dilatory tactics and avail the remedy promptly.

An Act specifying the period of time within which a legal proceeding must be brought into court for action, otherwise the suit or proceeding with regard to a particular violation of legal right is not maintainable in a court of law. The period of time for such action varies from country to country and one action to another. A limitation period is the amount of time the law permits an individual to bring an action, or “claim”, against another party in court.

In Bangladesh, the legal action against a default borrower should be brought into court for action generally within three years after the accrual of the cause of action.

If the case is not brought into court for legal action within this specified period, the case is then termed as time-barred and is not maintainable in a court of law.

The Limitation Act – 1908 contains 29 Sections. ***The main sections of this Act*** are given below:

Section 3: Dismissal of Suits after period of Limitation.

Section 4: When the court is closed, when period expires. (When the court is closed, the Suits/appeals/applications may be instituted on the day the court re-opens).

Section 5: Extension of period in certain cases: - Any appeal or application of revision or a review of judgement or for leave to appeal or any other application to which the section made applicable by or under any enactment for the time being in force may be admitted after the period of limitation prescribed thereof, when the appellant or applicant satisfies the court that he has sufficient cause for not preferring the appeal or making the application within such period.

Section 9: Continuous running- Where once time has begun to run, no subsequent disability or inability to sue stops it.

Section 12: Exclusions of time in legal proceedings. The time requisite for obtain a copy of judgment/ decree shall be excluded.

Section 14: Exclusion of time of proceeding bona fide in court without jurisdiction.

Section 15: Exclusion of time during which proceedings are suspended.

Section 19: Written acknowledgement of liability: - before the expiration of the period prescribed for the suit or application in respect of any property or right, an acknowledgement of liability in respect of such property or right has been made in writing signed by the party, such period of limitation shall be computed from the time when the acknowledgement was signed.

Section 20: Effect of payment on account of debt or of interest on legacy: - before the expiration of the prescribed periods, due to payment a fresh period of limitation shall be counted from the period of payment made.

Section 28: Extinguishment of right to property after 12 years.

Section 29: Nothing in this Act shall affect section 25 of the Contract Act –1872.

At present, Bank/Financial Institutions file suits under the Artha Rin Adalat Ain–2003 and latest amendment in 2010. This law has been promulgated only for the Bank/Financial Institutions for recovery of their defaulted money. Since Artha Rin Adalat Ain -2003 is a special/ overriding law, the provision of Limitation Act – 1908 is not generally applicable. In the Artha Rin Adalat Ain – 2003, section 28 and 41 provides the grounds of limitation. Section 28 of this Ain provides for the time limit to file suit for execution and section 41 provides for special provision in respect of filing Appeals.

As per section 28, The decree holder shall file the execution suit within maximum one year of gaining decree. Execution suits filed after one year shall be barred by limitation and Court

shall directly reject the application/ execution suit. Where any new suit for execution is submitted after 6 years of expiry of first execution suit, the same shall be barred by limitation and the court shall directly dismiss the suit directly.

For Example: Bank can file as many execution suits as it requires for recovery of the loan. But no execution suit can be filed after six years of filing the 1st execution suit. For example: If 1st execution suit is filed on 01.01.2011, the 2nd or 3rd or 4th execution suit cannot be filed after 31.12.2016.

As per section 41, If the decretal amount is up to 50.00 lac, an appeal may be preferred to District Judge Court within 30 days of the decree but if the amount exceeds 50.00 lac, an appeal may be preferred to Honorable High Court Division of the Supreme Court within 60 days of the decree. Otherwise, such appeal shall be barred by limitation.

Points to be taken care of under period of Limitation:

DP Note – 3 years from the date of DP Note.

Overdraft– 3 years from the date of advance. Each payment by the customer would extend the limitation period in regard to the advance.

Term Loans: default in Payment of each installment gives a separate course of actions to the bank and the limitation period is 3 years from the date when each such installment becomes due. However, the bank's term loan agreement stipulates that in the event of default of one installment the entire loan becomes repayable.

Mortgage: 12 years from the date the money is due, if the money is to be recovered by sale of mortgaged property. If the borrower is to be made personally liable, it is 3 years from the date the money is due for payment.

Pledge: There is no period of limitation for sale of pledged goods. The bank can exercise the right of sale of goods by giving a reasonable notice.

Hypothecation: In case of loan 3 years from the date of loan. In case of cash credit account 3 years from the close of the year in which the last item of debit or credit is admitted or proved. Debit/Credit means only withdrawal/deposit made under the signature of the borrower.

Bills of exchange: 3 years from the due date. Limitation period against guarantee;

3 years from the breach of contract of guarantee and invocation of guarantee is made by the bank.

Extension of Limitation period:

Right of action may be revived by obtaining--

- a) Fresh set of documents or
- b) Acknowledgement of debt or
- c) Part payment

Bankruptcy Act, 1997

An Overview and Objectives

In Bangladesh, bankruptcy is governed by the Bankruptcy Act, 1997. An individual can be declared 'bankrupt' through an order of adjudication by the bankruptcy court if he commits an act of bankruptcy as described in section 9 of the said Act. Bankers and the readers are strongly advised to follow the original law in this regard.

In general, bankruptcy or insolvency means inability to meet one's debt or obligation.

Bankruptcy is a proceeding by which possession of the property of a debtor is taken for the benefit of his creditors, generally by a Receiver appointed by the Court. Upon realization, subject to certain priorities, the property is distributed ratably among the creditors.

After independence of Bangladesh, the Presidency Towns Insolvency Act (1909) was renamed as the Insolvency (Dacca) Act (1909) and was made applicable within the Municipal limits of Dacca. While, the Provincial Insolvency Act (1920) was renamed as the Insolvency Act (1920) and was made applicable outside the Municipal limits of Dacca.

In 1997 the Bankruptcy Act was enacted by consolidating the earlier two Acts, and under section 119, both the Insolvency (Dacca) Act (1909) and the Insolvency Act (1920) were repealed. Now, we have one bankruptcy law which is applied all over Bangladesh. At the same time Bankruptcy Rules 1997 have been framed. Again, in 1997 two separate Bankruptcy Courts were established in Dhaka and in Chittagong.

The Bankruptcy Act came into force on August 1997.

Objects of law of bankruptcy

The Bankruptcy Act has been designed to give relief to a debtor from the pressure of his creditors. The Act protects the debtor from arrest or detention for any debt. The purpose of the law is to ascertain the debts owed by a debtor, take possession of all assets and distribute them amongst all his creditors equitably.

Bankruptcy is a legal process or court order, while insolvency is a state of financial distress. Bankruptcy is a type of insolvency, but there are others. Bankruptcy isn't the only way out of insolvency. Bankruptcy applies only to individuals and sole traders with unlimited liability. The Act provides opportunities to both creditors and debtors to initiate bankruptcy proceedings.

The Insolvency Act-1997 comprises all total 119 sections is divided into 11 chapters dealing with different issues of the subject.

The chapters covered are:

1. Preliminary containing definitions
2. Formation of court, power and procedure
3. Act of Insolvency, complaint, declaration etc.
4. Composition, scheme of arrangement and recognition
5. Discharge from liability and indebted insolvent
6. Management of property
7. Offence and fines
8. Incapability of insolvent
9. Summary administration of estate
10. Appeal & Review and
11. Miscellaneous.

Some definitions (Section-2)

1. ***Claim:*** Claim of any nature which is measurable in terms of money will be claimed covered by the Act.
2. ***Individual or person:*** Individuals are natural persons, legal persons will, however, include company, statutory organization, association and partnership firm.

3. **Eligible Creditor:** Creditor(s) who individually or collectively has/have placed before debtor the claim for payment of overdue amount of at least Tk. Five lac as per section 9 (1) of the Act will be called eligible creditor.
4. **Property of debtor:** Property of a debtor will include property in his own name or in the names of his wife or husband, sons, daughters or in the name of any other persons.

Which court to try?

The District Court shall be the Court under this Act and the District Judge shall be the Judge to deal with and dispose of the proceedings under this Act within the territorial jurisdiction of that court

Act of bankruptcy:

1. If a debtor, in the general interest of the creditors, transfers to third parties, his properties in full or in part in Bangladesh or outside or benami property belonging to his wife, sons and daughters;
2. If a debtor, in Bangladesh or elsewhere, makes a transfer of his property or property kept in the name of his wife, son or daughter by benami or of any part thereof with intent to defeat or delay his creditor's demand;
3. If a debtor transfers, mortgages, creates charge on his property in full or in part in Bangladesh or outside in such a manner that such acts amount to create fraudulent preference in favour of others in settlement of debts;
4. If a debtor, with a view to delaying or foiling the claims of the creditors:
 - a. Leaves Bangladesh or stays outside Bangladesh;
 - b. Leaves place of residence and place of business;
 - c. Absconds in a manner that the creditors fail to communicate with him;
 - d. Accepts, with fraudulent motive, judgment / decree / order of any court, which is against his interest;
 - e. Sells his property for payment of a debt in the process of execution of a decree by the court;
 - f. Files a suit in a court under the Act to be declared as insolvent;

- g. Notifies the creditors by letter that he has suspended payment or is going to suspend payment of this due;
- h. If he is in jail during the process of execution of a decree of the court for being incapable to pay off debts and
- i. If he fails to pay off security to the satisfaction of the creditors of Tk. Five lac or more within 90 days of formal demand made by the creditors in prescribed form and manner under this Act mentioning the legal consequences of failure in payment.

Persons not to be Insolvent

The following persons and organizations have been excluded from the scope of this Act. In other words, court will not accept any suit against the following persons / organizations under this Act (Section-11): -

1. Jatiya Sangshad and judiciary including Govt. organizations.
2. Charitable or religious organizations.
3. Non-profit statutory organizations and
4. Autonomous bodies established by the Govt. or with the help of the Govt.

Who can file suit?

There are two ways of filing a suit. The creditor can file a suit against a person to get him declared by the court insolvent or the debtor can go to the court declaring himself insolvent. The provisions in this regard are given below:

1. Nobody will be entitled to file a suit unless he is an eligible creditor. To file a suit under this Act, creditor singly or two or more creditors jointly having a claim of minimum Tk. Five lac must produce before the court primary evidence of act of insolvency.

However, case must be filed before expiry of one year from the date of the act of insolvency (Section-12).

2. Declaring incapacity to pay off debts, a debtor having a debt of minimum Tk. 20,000 (twenty thousand) may file a suit before the court to be declared as insolvent.

However, while in jail or in custody as a consequence of decree by a court for incapacity to pay off debts or while order for attachment of property has been given by a court, a debtor can file a suit to be declared as insolvent (Section-13).

The plaint of debtor must contain:

- a. Statement that he is unable to pay,
- b. Particulars of his place of residence and place of business.
- c. Particulars of decree of any court, if applicable,
- d. Particulars of all of his debts with amount, names and addresses of his creditors,
- e. Particulars and schedule of his properties and
- f. Statement that he is ready to produce all his books of accounts etc.

(Section-16).

Suit to continue even after death of debtor: Unless ordered otherwise by the court, proceedings of the suit will continue, even after death of debtor, till it is deemed necessary for realization of assets of the debtor for distribution among the creditors (Section-20).

Consequences of Insolvency (Section-31):

- The insolvent shall cooperate with the court in the disposal of his assets for distribution among the creditors.
- All the properties except properties exempted as per section-32, will vest in the receiver or in the court in the absence of receiver for distribution among creditors.
- During pendency of insolvency suit, no creditor can initiate any case against exempted property of the debtor for dues under trial except with the permission of the court.
- Except otherwise provided for in this act, secured creditors will be entitled to normal courses for realization of the dues. Nothing will restrict their rights.
- Declaration of insolvency will be effective from the date of filing of the suit.

Some property of debtor to be exempted

- Some properties of the debtor will be beyond the scope of this Act. Possession of the following property cannot be taken. Neither these will vest in the receiver (Section-32).
 1. Machinery used by the debtor himself and
 2. Clothes, domestic appliances and essentials of the debtor, his wife, sons and daughters totaling (1+2) a maximum of Tk. 3(Three) lac and his
 3. Residential house measuring 2500 sft. Floor area in urban areas or 5000 sft. in other areas.

Insolvent to be discharged from all liabilities

- The court, in case of an insolvent who is an individual, can order discharging him from all demands, dues and liabilities as per provisions of the section-39 (Section-47).
- In case of declaration of insolvency by the court, the declared insolvent will file a petition before court within 60 days of such judgment for discharge from liability (Section-50).
- A debtor declared to be discharged from liability will not, however, be discharged from the following liabilities (Section-51):
 1. Govt. dues;
 2. Liability /dues created by a debtor through fraud or fraudulent breach of trust;
 3. Liability arising out of any rebate received by fraud and
 4. Liability in connection with maintenance for divorced wife and children as per Family Court Ordinance-1985.

Appointment of Receiver

After declaration of insolvency, the court shall appoint a receiver from among the list of persons maintained and approved by the government (section-64). There is a detailed chapter on this subject and it covers up to Section-83.

Insolvent to be punished

- A debtor declared by the court to be insolvent will be liable to imprisonment up to a maximum of two years or fine if he does not co-operate with the receiver in disclosing his properties, submitting papers, documents, accounts of properties and in disposing those off etc. (Section-84).
- An insolvent will be liable to two years imprisonment or fine, if he is found to have taken loans irresponsibly during four years preceding the filing of case of insolvency for which he did not have repayment capacity (Section-86).
- A debtor will be liable to two years imprisonment or fine if he leaves Bangladesh without permission of the court after filing of the suit of insolvency or leaves Bangladesh within 12 months preceding the filing of such suit and does not return to Bangladesh within 6 months after filing of the suit (Section- 87).

Offence of Creditor etc.

- A creditor will be punishable up to one year imprisonment or fine if important part of his claim is found to be untrue unless he can prove that he did it without fraudulent motive.
- A person will be punishable up to three years imprisonment if he is found, despite the knowledge of insolvency of the debtor, to accept, distribute or conceal any property of the debtor declared insolvent (Section-91).

What an Insolvent cannot do?

An insolvent, subject to the provisions of the act., will be incapable to do the following (Section-94):

1. He will not be able to get nominated and elected to the parliament, local government and other statutory bodies and participate and vote.
2. He cannot be appointed or allowed to work as judge, magistrate, justice of the peace or public servant.

Customs Act, 1969

Enactment and Objectives

This Act may be called the Customs Act, 1969. It extends to the whole of Bangladesh.

The Act is to protect the imports and exports of goods for achieving the policy objectives of the Government. To coordinating legal provisions with other laws dealing with the foreign exchange such as the Foreign Trade Act and the Foreign Exchange Regulation Act. To safeguard domestic trade. To protect the revenue of resources.

The primary function of Customs Services Department is to assess, collect and account for import duties and taxes due on imports. Imports enable consumers in the home country to enjoy a wide variety of products of high quality. It helps in improving the standard of living of the masses. The law is related to the levy and collection of customs-duties and to provide for other allied matters. Bankers and the readers are strongly advised to follow the original law in this regard.

The Act consists of 20 chapters and 223 sections.

Chapter 1	Preliminary
Chapter 2	Appointment of Officers of customs and their powers Sec.3 - 8
Chapter 3	Declaration of ports, Airports, land customs and stations etc. Sec. 9 - 14
Chapter 4	Prohibition and Restriction on Importation and Exportation sec. 15 -17
Chapter 5	Levy of, exemption from and Repayment of, Customs–duties Sec 18 – 34
Chapter 6	Drawback Sec. 35-41
Chapter 7	Arrival and Departure of Conveyance Sec. 42 – 59
Chapter 8	General Provisions affecting Conveyances at customs – Stations Sec. 60-72
Chapter 9	Discharge of cargo and entry inwards of goods Sec. 73 – 82A
Chapter 10	Clearance of goods for home consumptions Sec. 83 – 83 E
Chapter 11	Warehousing Sec 84 – 119B
Chapter 12	Transshipment Sec. 120 – 125
Chapter 13	Transit Trade sec. 126 – 129A
Chapter 14	Exportation or Shipment and Relanding Sec. 130 – 138
Chapter 15	Special Provisions regarding Baggage and goods Imported or Exported by

	Post Sec. 139 – 145
Chapter 16	Provisions relating to Coastal goods and vessels Sec. 146 – 155
Chapter 17	Offences and Penalties Sec. 156 – 157
Chapter 18	Prevention of Smuggling – Powers of search, Seizure and arrest – Adjudication of Offences Sec. 158 – 192
Chapter 18A	Alternative Dispute Resolution Sec. 192 A – 192K
Chapter 19	Appeals and Revision Sec. 193 - 196N
Chapter 20	Miscellaneous Sec. 197 – 223.

The Stamp Act,1899

(Act of II of 1899)

Short title, extent and commencement (Section 1)

- (1) This Act may be called the Stamp Act, 1899.
- (2) It extends to the whole of Bangladesh.
- (3) It shall come into force on the first day of July, 1899.

Any instrument executed by or on behalf of or in favor of the Government, instrument mentioned in schedule 1 of stamp Act as amended in 2012 is assessable to stamp duty.

Bankers and the readers are strongly advised to follow the original law in this regard.

All instruments chargeable with stamp duty have to be stamped either before or at the time of execution.

An unstamped or insufficiently stamped document is not admitted as evidence in a court of law and cannot form the basis of a suit.

Permission, however, can be accorded in certain cases by the court or an appropriate authority to admit an unstamped or insufficiently stamped document in evidence, on payment of certain penalties and the usual stamp duty required to be paid.

It must, however be noted that an unstamped or insufficiently stamped promissory note, bill of exchange and acknowledgement of debt are invalid documents and cannot be admitted in evidence even on payment of duty and penalty.

The banks will not be able to enforce in a suit based on such promissory note, bill of exchange or an acknowledgement.

Adhesive stamp:

Adhesive stamps are those stamps, which are affixed on the documents by gum. Certain documents like promissory notes, receipts and acknowledgement of debts are stamped with adhesive stamps. Postage stamps cannot be used on documents.

Adhesive stamps, when used, must be duly cancelled by the borrower by signing across them or otherwise so that the same stamps cannot be used again. They may be cancelled by putting cross mark over them.

If these stamps are not cancelled, the relative document will be treated as unstamped and it will not be admitted in evidence.

Special Adhesive Stamp/Impressed Stamp

Impressed or engrossed stamps are those which are impressed by the collector, or an appropriate authority.

Special Adhesive stamp used in banks mainly on Charge documents- Letter of Lien, Letter of Hypothecation, Letter of Pledge, Letter of Continuity, Letter of Guarantee, Letter of Trust receipt etc.

These printed standard forms are sent to the collectorate with the requisite amount of stamp duty in cash or pay order by the banks.

The forms are impressed or engrossed with stamps according to the stamp duty prevailing at the time.

Non-Judicial Stamp:

non-judicial stamps are printed on paper by the Government. This paper is called non-judicial stamp paper. Such papers are available in different denominations.

These papers are used for execution of agreements like indemnity bonds, sale deeds, mortgage deeds etc.

The schedule of stamp duty on documents varies from amount to amount.

Embossed Stamp:

Embossed Stamps generally used by the Notary Public, CCI&E, & other Govt., Semi-Govt. authority through pressing machine on the document.

Judicial Stamp:

Judicial Stamps used mainly for judicial purpose in filing suits and for payment of advalorem Court fee. Judicial Stamps paper in the Court also used for certified copy of decree.

Instruments chargeable with duty (Section 3)

Subject to the provisions of this Act and the exemptions contained in Schedule I, the following instruments shall be chargeable with duty of the amount indicated in that schedule as the proper duty therefore, respectively, that is to say-

- (a) every instrument mentioned in that schedule which, not, having been previously executed by any person, is executed in Bangladesh on or after the first day of July, 1899;
- (b) every bill of exchange payable otherwise than on demand or promissory note drawn or made out of Bangladesh on or after that day and accepted or paid, or presented for acceptance or payment, or endorsed, transferred, or otherwise negotiated, in Bangladesh; and
- (c) every instrument (other than a bill of exchange or promissory note) mentioned in that schedule, which, not having been previously executed by any person, is executed out of Bangladesh on or after that day relates to any property situate, or to any matter or thing done or to be done, in Bangladesh and is received in Bangladesh.

Power to reduce, remit or compound duties (Section 9)

The Government may, by rule or order publish in the official Gazette,

- (a) reduce or remit, whether prospectively or retrospectively, in the whole or any part of the territories under its administration, the duties with which any instruments, or any particular class of instruments, or any of the instruments belonging to such class, or any instruments when executed by or in favour of any particular class of persons, or by or in favour of any members of such class, are chargeable, and

(b) provide for the composition or consolidation of duties in the case of issues by any incorporated company or other body corporate of debentures, bonds or other marketable securities.

Partnership Act, 1932

Preliminaries and Objectives

An Act to define and amend the law relating to partnership. Until 30 September, 1932 the partnership businesses of the Indian subcontinent were controlled according to the Contract Act of 1872. But due the expansion of business and trade, a separate Partnership Act was enacted which was effective from October 1, 1932. It was accepted as it was in 1947 in the then East Pakistan and after liberation it was effective and enforceable in Bangladesh from March 26, 1971. Bankers and the readers are strongly advised to follow the original law in this regard.

According to the Partnership Act, "Partnership is the relationship between persons who have agreed to share the profits of a business carried on by all or any one of them acting for all".

Definition of "partnership", "partner", "firm" and "firm name (Section 4)

"Partnership" is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all.

Persons who have entered into partnership with one another are called individually "partners" and collectively "a firm", and the name under which their business is carried on is called the "firm name".

Partnership at will (Section 7)

Where no provision is made by contract between the partners for the duration of their partnership, or for the determination of their partnership, the partnership is "partnership at will".

Particular partnership (Section 8)

A person may become a partner with another person in particular adventures or undertakings.

General duties of partners (Section 9)

Partners are bound to carry on the business of the firm to the greatest common advantage, to the just and faithful to each other, and to render true accounts and full information of all things affecting the firm to any partner or his legal representative.

Duty to indemnify for loss caused by fraud (Section 10)

Every partner shall indemnify the firm for any loss caused to it by his fraud in the conduct of the business of the firm.

The conduct of the business (Section 12)

12. Subject to contract between the partners-

(a) every partner has a right to take part in the conduct of the business;

(b) every partner is bound to attend diligently to his duties in the conduct of the business;

© any difference arising as to ordinary matters connected with the business may be decided by a majority of the partners, and every partner shall have the right to express his opinion before the matter is decided, but no change may be made in the nature of the business without the consent of all the partners; and

(d) every partner has a right to have access to and to inspect and copy any of the books of the firm.

Introduction of a partner (Section 31)

(1) Subject to contract between the partners and to the provisions of section 30, no person shall be introduced as a partner into a firm without the consent of all the existing partners.

(2) Subject to the provisions of section 30, a person who is introduced as a partner into a firm does not thereby become liable for any act of the firm done before he become a partner.

Retirement of a partner (Section 32)

(1) A partner may retire-

(a) with the consent of all the other partners,

(b) in accordance with an express agreement by the partners, or

(c) where the partnership is at will, by giving notice in writing to all the other partners of his intention to retire.

(2) A retiring partner may be discharged from any liability to any third party for acts of the firm done before his retirement by an agreement made by him with such third party and the partners of the reconstituted firm, and such agreement may be implied by a course of dealing between such third party and the reconstituted firm after he had knowledge of the retirement.

(3) Notwithstanding the retirement of a partner from a firm, he and the partners continue to be liable as partners to third parties for any act done by any of them which would have been an act of the firm if done before the retirement, until public notice is given of the retirement: Provided that a retired partner is not liable to any third party who deals with the firm without knowing that he was a partner.

(4) Notice under sub-section (3) may be given by the retired partner or by any partner of the reconstituted firm.

Expulsion of a partner (Section 33)

(1) A partner may not be expelled from a firm by any majority of the partners, save in the exercise in good faith of powers conferred by contract between the partners.

(2) The provisions of sub-sections (2), (3) and (4) of section 32 shall apply to an expelled as if he were retired partner.

Definition of "partnership", "partner", "firm" and "firm name (Section 4)

"Partnership" is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all.

Persons who have entered into partnership with one another are called individually

"partners" and collectively "a firm", and the name under which their business is carried on is called the "firm name".

Liability of estate of deceased partner (Section 35)

Where under a contract between the partners the firm is not dissolved by the death of a partner, the estate of a deceased partner is not liable for any act of the firm done after his death.

Dissolution of a firm (Section 39)

The dissolution of partnership between all the partners of a firm is called the "dissolution of the firm".

Dissolution by agreement (Section 40)

A firm may be dissolved with the consent of all the partners or in accordance with a contract between the partners.

Compulsory dissolution (Section 41)

A firm is dissolved-

- (a) by the adjudication of all the partners or of all the partners but one as insolvent, or
- (b) by the happening of any event which makes it unlawful for the business of the firm to be carried on or for the partners to carry it on in partnership:

Provided that, where more than one separate adventure or undertaking is carried on by the firm, the illegality of one or more shall not of itself cause the dissolution of the firm in respect of its lawful adventures and undertakings.

Application for registration (Section 58)

(1) The registration of a firm may be effected at any time by sending by post or delivering to the Registrar of the area in which any place of business of the firm is situated or proposed to be situated, a statement in the prescribed form and accompanied by the prescribed fee, stating-

- (a) the firm name,
- (b) the place or principal place of business of the firm,
- (c) the names of any other places where the firm carries on business,

- (d) the date when each partner joined the firm,
- (e) the names in full and permanent addresses of the partners, and
- (f) the duration of the firm.

The statement shall be signed by all the partners, or by their agents specially authorized in this behalf.

Each person signing the statement shall also verify it in the manner prescribed.

Effect of non-registration (Section 69)

(1) No suit to enforce a right arising from a contract or conferred by this Act shall be instituted in any Court by or on behalf of any person suing as a partner in a firm against the firm or any person alleged to be or to have been a partner in the firm unless the firm is registered and the person suing is or has been shown in the Register of Firms as a partner in the firm.

(2) No suit to enforce a right arising from a contract shall be instituted in any Court by or on behalf of a firm against any third party unless the firm is registered and the persons suing are or have been shown in the Register of Firms as partners in the firm.

(3) The provisions of sub-sections (1) and (2) shall apply also to a claim of set-off or other proceeding to enforce a right arising from a contract, but shall not effect-

(a) the enforcement of any right to sue for the dissolution of a firm or for accounts of a dissolved firm, or any right or power to realize the property of a dissolved firm.

Model questions:

1. Discuss about the relevant provisions of Partnership Act, 1932 with regard to the following:
 - a) Partnership at will and particular partnership
 - b) Effect of non- registration
 - c) Admission and retirement of a partner

The Registration Act, 1908

Commencement and Objective

(Act No. xvi of 1908) and subsequently the registration (Amendment), Act, 2004 came in to force on the first day of July 2005. Bankers and the readers are strongly advised to follow the original law in this regard.

Registration Act, 1908 (Act XVI of 1908) stipulates registration of title deeds. Its purpose is to ensure, through registration of documents, genuineness of title documents and to avoid fake documents. According to the Act, all instruments of transfer of immovable properties of the value of one hundred taka or more, both testamentary and inter vivose, must be compulsorily registered with the sub-registrar or joint-registrar in whose jurisdiction the whole or part of the property under transfer is situated. Any document of transfer required to be registered under this Act and is not registered, will not create any right title or interest in the immovable property concerned.

Documents are ordinarily required to be presented for registration before the registering officer within four months from the date of execution of the same. If the registering officer refuses to accept any document for registration, he will record reasons for such refusal and supply a copy of the same to the person who has applied for registration. An appeal against the order of the registering officer refusing registration lies to the district registrar who may direct registration, and the registering officer on receipt of the order will register the same.

Inclusion of new sections in the registration Act:

Sec.17A: Registration of contract for sale etc. (1) notwithstanding anything to the contrary contained in this Act or any other law for the time being in force, a contract for sale of any immovable property shall be in writing, executed by the parties thereto and registered. (2) A contract for sale referred to in sub-section (1) shall be presented for registration within thirty days from the date of execution of the contract and the provisions regarding registration shall apply.

Sec.17B: Effect of unregistered contract for sale executed prior to section 17A becomes effective. (1) Where a contract for sale of immovable property is executed but not registered prior to coming in to force of sec.17A-

(a) The parties to the contract shall, within six months from the date of coming into force of that section, -

(i) Present the instrument of sale of immovable property under the contract for registration, or

(ii) Present the contract for sale itself for registration, or

(b) Either of the parties, if aggrieved for non-compliance with any of the provisions mentioned in clause (a) shall, notwithstanding anything contained to the contrary in any law for the time being in force as to the law of limitation, institute a suit for specific performance or recession of the contract within six months next after the expiry of the period mentioned in clause (a).

Failing which the contract shall stand void.

(2) The provision of sub-section (1) shall not apply to any contract for sale of immovable property on the basis of which a suit has been instituted in a civil court before coming into force of section 17A.

Sec.22A: Instrument of transfer, -

(1) Every instrument of transfer required to be compulsorily registered under this Act shall contain the particulars necessary to convey the intention of the parties, complete description of the properties to be transferred and nature of the transaction.

(2) Photographs of both the executants and the recipient shall be pasted on every instrument and the parties shall sign and put their left thumb impressions across their photographs in the instrument.

(3) The Govt. shall, within three months of coming into force of the Registration (Amendment) Act, 2004 by notification in the official Gazette, prescribe a format for the purposes of this section.

Sec.52A: Registering officer not to register unless certain particulars are included in an instrument of sale: -

Upon presentation of an instrument of sale of any immovable property, the registering Officer shall not register the instrument unless the following particulars are included in and attached with the instrument, namely-

- (a) the latest khatian of the property prepared under the state Acquisition and Tenancy Act, 1950, in the name of the seller or his predecessor, if he is owner of the property by inheritance;
- (b) the latest khatian of the property prepared under the State Acquisition and Tenancy Act, 1950, in the name of the seller or his predecessor, if he is other than the owner of the property by inheritance;
- (c) nature of the property;
- (d) Price of the property;
- (e) A map of the property together with the axes and boundaries;
- (f) A brief description of the ownership of the property for last 25 years; and
- (g) An affidavit by the executants affirming that he has not transferred the property to any person before execution of this instrument and that he has lawful title thereto.

Sec.78A: Registration fee for contract for sale, Heba and mortgage-

Notwithstanding anything contained in section 78 or any other law for the time being in force, -

- (a) registration fee payable for registration of a contract for sale of any immovable property shall be-
 - (i) five hundred takas, where valuation of the property is not more than five lakh takas;
 - (ii) one thousand takas, where valuation of the property is above five lakh taka and not more than fifty lakh takas; and
 - (iii) two thousand takas, where valuation of the property is fifty lakh takas.
- (b) Registration fee payable for registration of a declaration of Heba of any immovable property under the Muslim Personal Law (Sharia) shall be one hundred takas irrespective of the value of the property, if such Heba is made between the spouses, parents and

children, grandparents, and grandchildren, full brothers, full sisters and, full brothers and full sisters.

(c) Registration fee payable for registration of an instrument of mortgage shall be as follows:

(i) Where the amount of money to be secured does not exceed five lakh takas. 1% (one per centum) of the amount of money to be secured, but not less than two hundred taka and not more than five hundred takas;

(ii) Where the amount of money to be secured is above five lakh takas but does not exceed twenty lakh taka-0.25% (zero point two five per centum) of the amount of money to be secured, but not less than fifteen hundred taka and not more than two thousand takas; and

(iii) Where the amount of money to be secured is above twenty lakh taka- 0.10% (zero point one zero per centum) of the amount of money to be secured, but not less than three thousand taka and not more than five thousand takas.

Inclusion of new sections in the transfer of property Act, 2004 as amended and came into force on the first day of July, 2005.

Sec.53B: Immovable property under a contract for sale not to be transferred- No immovable property under a contract for sale shall be transferred except to the vendee so long the contract, unless the contract is lawfully rescinded, and any transfer made otherwise shall be void.

Sec.53C: Immovable property without khatian not to be sold- No immovable property shall be sold by a person unless his name, if he is the owner of the property otherwise than by inheritance, or his name or the name of his predecessor, if he is the owner of the property by inheritance, appears in respect of the property in the latest khatian prepared under the State Acquisition and Tenancy Act, 1950, and any sale made otherwise shall be void.

Sec.53D: Immovable property under mortgage not to be transferred-No immovable property under registered mortgage shall be re-mortgaged or sold without the written consent of the mortgagee, and any re-mortgage or sale made otherwise shall be void.

Sec.53E: Instrument of transfer to be supported by affidavit- Every instrument of sale, gift, mortgage and declaration of Heba of any immovable property shall be supported by an affidavit by the executants affirming that he has lawful title to the property.

Sec.54A: Contract for sale to be registered, etc.- Notwithstanding anything to the contrary contained in this Act or any other law for the time being in force, a contract for sale of any immovable property can be only by an instrument in writing and registered under the Registration Act, 1908, whether or not the transferee has taken possession of the property or any part thereof.

In a contract for sale of any immovable property, a time, to be effective from the date of registration, shall be mentioned for execution and registration of the instrument of sale, and if no time is mentioned, six months shall be deemed to be the time.

Sec.54: Sale

Sale is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.

‘Mortgage,’ ‘mortgagor,’ ‘mortgagee,’ ‘mortgage-money’ and ‘mortgage-deed’ defined (Section 58)

A mortgage is the transfer of an interest in specific immovable property for the purpose of securing the payment of money advanced or to be advanced by way of loan, an existing or future debt, or the performance of an engagement which may give rise to a pecuniary liability. The transferor is called a mortgagor, the transferee a mortgagee; the principal money and interest of which payment is secured for the time being are called the mortgage-money, and the instrument (if any) by which the transfer is effected is called a mortgage deed.

Lease: Sec.105

A lease of immovable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, to accept the transfer on such terms.

The transferor is called the lesser, the transferee is called the lessee, the price is called the premium, and the money, share, service or other thing to be so rendered is called the rent.

Exchange: Sec.118

When the persons mutually transfer the ownership of one thing for the ownership of another, neither thing nor both things being money only, the transaction is called an exchange.

Gift: Sec.122

Gift is the transfer of certain existing movable or immovable property made voluntarily and without consideration, by one person, called the donor, to another, called the donee, and accepted by or on behalf of the donee. If the donee dies before acceptance, the gift is void.

Model Questions:

1. Write short notes on the following:
 - a) Lease, Exchange and gift
 - b) Mortgage, mortgagor, mortgagee, mortgage-money and mortgage-deed.

Module E: Information and Data Related Laws

Bankers Book Evidence Act, 2021

Commencement and objectives

Original law (Act No. XVIII of 1891) is replaced with Bankers Book Evidence Act, 2021 (Act No. 27 of 2021) to make the law relevant to current time and practices. While the previous law was mainly focused on providing entries of a bank's books to the court as evidence the updated one covers a wider area in terms of sharing information by banks for different other activities, purposes, and situations. Bankers and the readers are strongly advised to follow the original law in this regard.

Since banks have been receiving, generating, and retaining many records and documents in electronic/ digital forms this law caters for both physical and non-physical data and records. ***The definition of “Bankers Book”*** has been widened to cover all these. Bankers Book means-

- (a) ledger, day-book, cashbook, account book and all other books and records used in day-to-day activities of a bank which can be in written form, or in microfilm or with electronic signature or kept in any other medium of information technology;
- (b) any deed generally used in bank’s business or used as register for bank’s transactions which can be saved in the form of bound volumes or loose sheet, page, folio or card;
- (c) account opening form, client identity record or document; and
- (d) handwritten script of security deeds, typed or printed stenciled documents or any other deed created through mechanical or semi-mechanical process and any document prepared as photograph or photocopy.

Different issues covered under the law:

Another important definition is that of “Person” which effectively covers individuals, entities and associations of all forms and shape. Certified copy of Bankers Books for the court can be issued by Chief Accounts Officer, Manager, Departmental Heads, or an officer authorized by the bank to do this. Law has two slightly different provisions for the certificate clearly mentioned in Section 3. In case of providing certified copy of any entry of Bankers Book kept in written form certain attestations are required to be made about its authenticity including whether the original source to be distracted as per standard process of the bank. In cases where Bankers Book is kept as data in microfilm, magnetic tape, electronically signed or any other medium information technology certificate copy of the entry has to be added with additional attestations about the source, storage, security, protection measures, etc.

While the provisions of Evidence Act, as exists now, does not accommodate copies of a document where the original is available to be produced as primary evidence this law gives that benefit to banks. Section 4 of the law allows certified copies produced, following the provisions of this law, by the banks to be used as prima facie evidence.

Section 5 of the law limits where bankers can be compelled to produce books. Except for the provisions of this law or where bank is not a party to a legal proceeding, without order of the court Bankers Book or bank officials cannot be compelled to be used as evidence or witness. Obviously, if the bank is a party to a litigation this protection does not apply.

Section 6 provides for court order for production of Bankers Book. This has two parts, one, where the court can allow an applicant to inspect relevant entries Bankers Books and obtain certified copy. There is precedence where courts have rejected applications to use this to explore Bankers Books for information. Two, order to the bank to produce Bankers Book which will be in line with Section 3. The order needs to be issued to the bank 7 days before deadline. A bank can apply against such court orders before the deadline and the order will remain on hold till further court order.

Section 7 of the law allows banks to share customer information to persons and authorities mentioned in the Schedule of the law following the conditions for sharing such information. Different parties are allowed to get information for different purposes only. In this law “Customer” is defined as persons who are account holders or beneficial owners of an account, or any person included in the definition by Bangladesh Bank through government gazette notification. This Section also provides that the persons and authorities receiving the information is also liable to ensure confidentiality of the information and liability of relevant officials of the authorities will continue even after they leave their job. Customer information received by Bangladesh Bank conducting inspection is also confidential.

This special law is very important in the practice of banking. Section 11 of the law also provides protection to the bankers against any legal action under any law for activities conducted under this law in good faith. However, non-compliance carries provisions for both imprisonment and financial penalty for bankers. Offences under this law are non-cognizable, bailable and compoundable with court permission.

Considering increasing progress of digitization, fast spread of use of non-physical data, risks of cybercrime, data privacy requirements, etc. it is imperative that banks and FIs have appropriate policies and practices in terms of how it receives, processes, retains, shares/ discloses data and records. Only required persons within the bank should have access to

specific data/ record, appropriately authorized persons should have the capacity to share/ disclose data/record following delineated procedures. All these must be under appropriate oversight and periodic review for updating. Training of all employees is essential.

Since this law has not been provided by the concerned ministry in English version, to have more distinct clarification the extract of some provisions of the law are given below:

২। সংজ্ঞা। (১) বিষয় বা প্রসঙ্গের পরিপন্থি কোনো কিছু না থাকিলে, এই আইনে

(ক) 'আইনি কার্যক্রম (মবমধম ঢৎড়পববফরহমত্থ) অর্থ এই আইন বা অন্য কোনো আইন বা আইনগত দলিলের অধীন গৃহীত কোনো কার্যক্রম বা তদন্তকার্য যেখানে সাক্ষ্য প্রদান করা হয় বা প্রদান করা যাইতে পারে এবং কোনো মধ্যস্থতা বা সালিশ কার্যও ইহার অন্তর্ভুক্ত হইবে;

(খ) 'আদালত' অর্থ সুপ্রীম কোর্টসহ যে কোনো আদালত;

(গ) 'ইলেক্ট্রনিক স্বাক্ষর' অর্থ তথ্য ও যোগাযোগ প্রযুক্তি আইন, ২০০৬ (২০০৬ সনের ৩৯ নং আইন) এর ধারা ২ এর দফা

(১) এ সংজ্ঞায়িত ইলেক্ট্রনিক স্বাক্ষর;

(ঘ) 'উপাত্ত' অর্থ তথ্য ও যোগাযোগ প্রযুক্তি আইন, ২০০৬ (২০০৬ সনের ৩৯ নং আইন) এর ধারা ২ এর দফা (১০) এ সংজ্ঞায়িত উপাত্ত;

(ঙ) 'কম্পিউটার সিস্টেম' অর্থ ডিজিটাল নিরাপত্তা আইন, ২০১৮ (২০১৮ সনের ৪৬ নং আইন) এর ধারা ২ এর উপ-ধারা

(১) এর দফা (ঙ) এ সংজ্ঞায়িত কম্পিউটার সিস্টেম;

(চ) 'কোম্পানী' অর্থ কোম্পানী আইন, ১৯৯৪ (১৯৯৪ সনের ১৮ নং আইন) এর ধারা

২ এর উপ-ধারা (১) এর দফা (ঘ) এ সংজ্ঞায়িত কোনো কোম্পানী;

(ছ) 'গ্রাহক' অর্থ এইরূপ কোনো ব্যক্তি যাহার ব্যাংকে কোনো হিসাব রহিয়াছে বা প্রকৃত সুবিধাভোগী (নবহবভরপরধম ড়হিবৎ) হিসাবে যাহার পক্ষ হইতে ব্যাংকে কোনো হিসাব পরিচালনা করা হইয়াছে এবং বাংলাদেশ ব্যাংক কর্তৃক, সময় সময়, সরকারি গেজেটে প্রজ্ঞাপন দ্বারা সংজ্ঞায়িত অন্য কোনো ব্যক্তিও ইহার অন্তর্ভুক্ত হইবে; (জ) 'গ্রাহকতথ্য' অর্থ ব্যাংকার বহিতে লিপিবদ্ধ বা সংরক্ষিত গ্রাহক সম্পর্কিত তথ্য;

(ঝ) 'প্রত্যয়িত অনুলিপি' অর্থ ধারা ৩ এর অধীন প্রদত্ত কোনো অনুলিপি;

(ঞ) 'ব্যক্তি' অর্থে কোনো ব্যক্তি বা প্রতিষ্ঠান, কোম্পানী, কর্পোরেশন, সমবায় সমিতি, সংঘ, অংশীদারি কারবার, সমিতি, ফার্ম বা অন্য কোনো সংস্থা বা উহাদের প্রতিনিধি বা কোনো পেশাদার আর্থিক মধ্যস্থতাকারীও (যেমন-এজেন্ট, ট্রাস্টি, হিসাবরক্ষক, আইনজীবী বা এতদসংশ্লিষ্ট অন্য কোনো পেশাজীবী) অন্তর্ভুক্ত হইবে;

(ট) 'ব্যাংক' এবং 'ব্যাংকার' অর্থ

(অ) ব্যাংক-কোম্পানী আইন, ১৯৯১ (১৯৯১ সনের ১৪ নং আইন) এর ধারা ৫(গ)এ সংজ্ঞায়িত কোনো ব্যাংক-কোম্পানী এবং অন্য কোনো আইন দ্বারা বা আইনের অধীন ব্যাংক হিসাবে প্রতিষ্ঠিত যে কোনো প্রতিষ্ঠানও ইহার অন্তর্ভুক্ত

হইবে; এবং

(আ) আর্থিক প্রতিষ্ঠান আইন, ১৯৯৩ (১৯৯৩ সনের ২৭ নং আইন) এর ধারা ২(খ) এ সংজ্ঞায়িত কোনো আর্থিক প্রতিষ্ঠান;

(ঠ) 'ব্যাংকার বহি' অর্থ কোনো ব্যাংকের

(অ) খতিয়ান বহি (স্ববক্ষ্যবৎ), দৈনিক বহি (ফধু-নড়ুশ), নগদান বহি (পধংযনড়ুশ), হিসাব বহি (ধপপড়ুং-নড়ুশ)

এবং ব্যাংকের দৈনন্দিন কার্যে ব্যবহৃত অন্য সকল প্রকার বহি ও নথি, যাহা লিখিত আকারে, অথবা মাইক্রোফিল্ম বা

ইলেকট্রনিক স্বাক্ষরযুক্ত বা তথ্য প্রযুক্তির অন্য কোনো মাধ্যমে সংরক্ষিত হয়;

(আ) যে কোনো দলিল যাহা সাধারণভাবে ব্যাংকের ব্যবসায় ব্যবহৃত হয় অথবা ব্যাংকের লেনদেন দপ্তরে নিদর্শনপত্রের নিবন্ধনবহি (ৎবমরংঃবৎ) হিসাবে ব্যবহৃত হয়, যাহা বাঁধাইকৃত বইয়ের ভলিউমরূপে অথবা লুজ শিট, পৃষ্ঠা, ফর্দ (ভড়মরড) বা কার্ড আকারে সংরক্ষিত হয়;

(ই) হিসাব খোলার ফর্ম, গ্রাহকের পরিচিতিমূলক রেকর্ড বা নথি; এবং

(ঈ) জামানতি দলিলাদির হস্তলিখিত পাণ্ডুলিপি, টাইপকৃত বা মুদ্রিত স্টেনসিল্ড দস্তাবেজ অথবা সময় সমং ব্যবহৃত অন্য যে কোনো যান্ত্রিক বা অর্ধ-যান্ত্রিকপ্রক্রিয়ায় সৃষ্ট দলিল এবং আলোকচিত্র বা ছায়ালিপি হিসাবে প্রস্তুতকৃত কোনো দলিল;

(ড) 'তপশিল' অর্থ এই আইনের তপশিল।

(২) এই আইনে ব্যবহৃত যে সকল শব্দ বা অভিব্যক্তির সংজ্ঞা প্রদান করা হয় নাই, সেই সকল শব্দ বা অভিব্যক্তি, ক্ষেত্রমত, ডারফবহপব অপঃ, ১৮৭২ (অপঃ ঘড়. ও ডভ ১৯৭২), ইধহমধধফবংয ইধহশ ঙৎফবৎ, ১৯৭২ (চৎবংরফবহঃঃ ঙৎফবৎ ঘড়. ১২৭ ডভ ১৯৭২), ব্যাংক-কোম্পানী আইন, ১৯৯১(১৯৯১ সনের ১৪ নং আইন), আর্থিক প্রতিষ্ঠান আইন, ১৯৯৩ (১৯৯৩ সনের ২৭ নং আইন), কোম্পানী আইন, ১৯৯৪ (১৯৯৪ সনের ১৮ নং আইন), ব্যাংক আমানত বীমা আইন, ২০০০ (২০০০ সনের ১৮ নং আইন), তথ্য ও যোগাযোগ প্রযুক্তি আইন, ২০০৬ (২০০৬ সনের ৩৯ নং আইন), ডিজিটাল নিরাপত্তা আইন, ২০১৮ (২০১৮ সনের ৪৬ নং আইন), সমবায় সমিতি আইন, ২০০১ (২০০১ সনের ৪৭ নং আইন) এবং 'অর্থ ঋণ আদালত আইন, ২০০৩ (২০০৩ সনের ৮ নং আইন) এ যে অর্থে ব্যবহৃত হইয়াছে সেই অর্থে প্রযোজ্য হইবে।

৩। ব্যাংকার বহির প্রত্যয়িত অনুলিপি।□(১) এই আইনের উদ্দেশ্য পূরণকল্পে, এই ধারার অন্যান্য বিধান সাপেক্ষে, ব্যাংকের প্রধান হিসাবরক্ষণ কর্মকর্তা, ব্যবস্থাপক, বিভাগীয় প্রধান বা ক্ষমতাপ্রাপ্ত কর্মকর্তা ব্যাংকার বহির কোনো এন্ট্রির প্রত্যয়িত অনুলিপি প্রদান করিতে পারিবে।

(২) ব্যাংকার বহি লিখিত আকারে সংরক্ষিত থাকিলে, উহার কোনো এন্ট্রির প্রত্যয়িত অনুলিপি প্রদানের ক্ষেত্রে উক্ত অনুলিপির সহিত নিম্নলিখিত বিষয়সমূহ উল্লেখপূর্বক একটি প্রত্যয়নপত্র থাকিতে হইবে, যথাঃ

(ক) ইহা একটি অবিকল অনুলিপি;

(খ) ইহা নিত্যনৈমিত্তিক ও সাধারণ কার্যকালে প্রস্তুত করা হইয়াছে;

(গ) ইহা ব্যাংকারের কোনো একটি সাধারণ বহিতে লিপিবদ্ধ এবং অদ্যাবধি ব্যাংকারের হেফাজতে রক্ষিত আছে;

(ঘ) ইহা এইরূপ যান্ত্রিক বা ইলেকট্রনিক স্বাক্ষরযুক্ত বা অন্য কোনো প্রক্রিয়ায় সংগৃহীত হইয়াছে যাহা স্বয়ংক্রিয়ভাবে উক্ত অনুলিপির যথার্থতার নিশ্চয়তা প্রদান করে; এবং

(ঙ) ইহা যে বহি হইতে প্রস্তুত করা হইয়াছে উক্ত বহি ব্যাংকের প্রথাগত স্বাভাবিক প্রক্রিয়ায় উক্ত অনুলিপি প্রস্তুতের পরবর্তী কোনো তারিখে ধ্বংস করা হইয়াছে বা হয় নাই।

(৩) উপ-ধারা (২) এর অধীন প্রদত্ত প্রত্যয়নপত্রে তারিখ সহকারে ব্যাংকের প্রধান হিসাবরক্ষণ কর্মকর্তা, ব্যবস্থাপক, বিভাগীয় প্রধান বা ক্ষমতাপ্রাপ্ত কর্মকর্তার নাম ও দাপ্তরিক পদবি উল্লেখসহ স্বাক্ষর থাকিতে হইবে।

(৪) ব্যাংকার বহি উপাত্ত আকারে মাইক্রোফিল্ম, চৌম্বকীয় টেপ, ইলেকট্রনিক স্বাক্ষরযুক্ত তথ্য প্রযুক্তি বা তথ্য প্রযুক্তির অন্য কোনো মাধ্যমে সংরক্ষিত থাকিলে, উহার কোনো এন্ট্রির প্রত্যয়িত অনুলিপি প্রদানের ক্ষেত্রে নিম্নলিখিত শর্তসমূহ পূরণ করিতে হইবে, যথাঃ

(ক) ইহা যে উৎস হইতে মুদ্রিত উহার বর্ণনা;

(খ) ইহা এইরূপ যান্ত্রিক বা ইলেকট্রনিক স্বাক্ষরযুক্ত বা অন্য কোনো প্রক্রিয়ায় সংগৃহীত যাহা স্বয়ংক্রিয়ভাবে উক্ত অনুলিপির যথার্থতার নিশ্চয়তা প্রদান করে; এবং (গ) ইহা যে উক্ত এন্ট্রির, তৎসম্মে ব্যাংকের প্রধান হিসাবরক্ষণ কর্মকর্তা, ক্ষমতাপ্রাপ্ত কর্মকর্তা, ব্যবস্থাপক, বিভাগীয় প্রধান এবং সংশ্লিষ্ট কম্পিউটার সিস্টেম পরিচালনার দায়িত্বে নিয়োজিত ব্যক্তি কর্তৃক একটি প্রত্যয়নপত্র প্রদান করিতে হইবে।

(৫) উপ-ধারা (৪) এর অধীন প্রদত্ত প্রত্যয়নপত্রে নিম্নলিখিত বিষয়াদি সংক্ষিপ্তরূপে অন্তর্ভুক্ত থাকিবে, যথাঃ

(ক) এমন কম্পিউটার সিস্টেম যাহাতে কেবল অনুমোদিত ব্যক্তির তথ্য লিপিবদ্ধকরণ ও পরিচালনার প্রবেশাধিকার ছিল মর্মে গৃহীত নিরাপত্তামূলক ব্যবস্থা;দি;

(খ) তথ্যে অননুমোদিত পরিবর্তন চিহ্নিতকরণ ও প্রতিরোধের লক্ষ্যে গৃহীত নিরাপত্তামূলক ব্যবস্থা;দি;

(গ) কম্পিউটার সিস্টেমে যান্ত্রিক ত্রুটি বা অন্যবিধ কারণে হারানো তথ্য পুনরুদ্ধারের জন্য গৃহীত ব্যবস্থা;দি;

(ঘ) কম্পিউটার সিস্টেম হইতে তথ্য বহনযোগ্য মাধ্যম হিসাবে ফ্লপি ডিস্ক, চৌম্বকীয় টেপ, পেনড্রাইভ, ডিভিডি ডিস্ক বা অন্য কোনো ডিজিটাল ডিভাইসে যে প্রক্রিয়ায় তথ্য স্থানান্তর করা হইয়াছে উহার বিবরণ;

(ঙ) তথ্য বহনযোগ্য মাধ্যমে সঠিকভাবে তথ্য স্থানান্তর হইয়াছে কিনা তাহা যাচাইয়ের পদ্ধতি;

(চ) উক্তরূপ ডিজিটাল ডিভাইস শনাক্তকরণের পদ্ধতি;

(ছ) উক্তরূপ ডিজিটাল ডিভাইস সংরক্ষণ ও হেফাজতের জন্য গৃহীত ব্যবস্থা;দি;

(জ) কম্পিউটার সিস্টেমে যে কোনো প্রকারের অনধিকার প্রবেশ চিহ্নিতকরণ ও উহা প্রতিরোধে গৃহীত নিরাপত্তামূলক ব্যবস্থা;দি;

এবং

(ঝ) অন্য কোনো বিষয় যাহা উক্ত কম্পিউটার সিস্টেমের যথার্থতা ও শুদ্ধতার সমর্থনের প্রমাণ বহন করে।

৪। ব্যাংকার বহির প্রত্যয়িত অনুলিপি সাক্ষ্যমূল্য।—এই আইনের অন্যান্য বিধান সাপেক্ষে, ব্যাংকার বহির যে কোনো এন্ট্রির প্রত্যয়িত অনুলিপি সকল প্রকার আইনি কার্যক্রমের ক্ষেত্রে উক্ত এন্ট্রির অস্তিত্বের আপাত গ্রহণযোগ্য সাক্ষ্য (ঢ়ৎরসধ ভধপরব বারফবহপব) হিসাবে গণ্য হইবে।

৫। যেক্ষেত্রে ব্যাংকের কর্মকর্তা ব্যাংকার বহি উপস্থাপনে বা সাক্ষী হইতে বাধ্য নহেন।—ধারা ৭ এর অধীন গ্রাহকতথ্য প্রকাশে বাধ্য না হইলে, কোনো ব্যাংকের কোনো কর্মকর্তা বা কর্মচারীকে কোনো আইনি কার্যক্রমে, যদি উক্ত ব্যাংক উক্ত আইনি কার্যক্রমে পক্ষ না হয়, কোনো ব্যাংকার বহি উপস্থাপনা করিতে অথবা আদালতের নির্দেশ বা বিশেষ আদেশ ব্যতীত উক্ত ব্যাংকার বহিতে লিপিবদ্ধ কোনো বিষয়বস্তু, লেনদেন ও হিসাব প্রমাণের জন্য সাক্ষীরূপে হাজির হইতে বাধ্য করা যাইবে না।

৬। আদালতের আদেশবলে ব্যাংকার বহি পরিদর্শন।—(১) কোনো আইনি কার্যক্রমে কোনো পক্ষের আবেদনের প্রেক্ষিতে আদালত এই মর্মে আদেশ প্রদান করিতে পারিবে যে,

(ক) উক্ত আইনি কার্যক্রম সংশ্লিষ্ট কোনো উদ্দেশ্য সাধনের লক্ষ্যে উক্ত আবেদনকারীর কোনো ব্যাংকার বহির সংশ্লিষ্ট এন্ট্রি পরিদর্শন এবং উহার অনুলিপি সংগ্রহ করিতে পারিবে; বা

(খ) ব্যাংক সংশ্লিষ্ট এন্ট্রির প্রত্যয়িত অনুলিপি, আদেশে উল্লিখিত সময়ের মধ্যে, প্রস্তুত করিয়া উপস্থাপন করিবে, যাহার সহিত এই মর্মে একটি প্রত্যয়নপত্র থাকিবে যে, উক্ত কার্যক্রম সংশ্লিষ্ট অন্য কোনো প্রাসঙ্গিক এন্ট্রি ব্যাংকার বহিতে পাওয়া যায় নাই এবং উক্ত প্রত্যয়নপত্র ধারা ৩ অনুসরণে প্রদান করা হইয়াছে।

(২) আদালত ব্যাংকের প্রতি সমন জারি করিয়া বা না করিয়া এই ধারার অধীন কোনো আদেশ প্রদান করিতে পারিবে এবং আদালতের ভিন্নরূপ কোনো নির্দেশনা না থাকিলে, উক্ত আদেশ কার্যকর করিবার জন্য ৭ (সাত) কার্যদিবস পূর্বে উহা সংশ্লিষ্ট ব্যাংক বরাবর জারি করিতে হইবে।

(৩) এই ধারার অধীন কোনো আদেশ প্রতিপালনের জন্য প্রদত্ত সময় সমাপ্ত হইবার পূর্বে যে কোনো সময় ব্যাংক উহার ব্যাংকার বহি আদালতে উপস্থাপনের জন্য প্রদান করিতে পারিবে অথবা এইরূপ আদেশ কার্যকর না করিবার বা প্রযোজ্য ক্ষেত্রে আদেশ

পরিপালনে যৌক্তিক প্রতিবন্ধকতার বিষয়ে কারণ দর্শানোর অভিপ্ৰায় ব্যক্ত করিয়া আবেদন করিতে পারিবে এবং উক্ত ক্ষেত্রে আদালত কর্তৃক পরবর্তী আদেশ প্রদান না করা পর্যন্ত পূর্বের আদেশ অকার্যকর থাকিবে।

৭। গ্রাহকতথ্য প্রকাশের অনুমোদিত ক্ষেত্র ও শর্তাবলি। (১) আপাতত বলবৎ অন্য কোনো আইনে যাহা কিছুই থাকুক না কেন, এই আইনে উল্লিখিত ক্ষেত্র ব্যতীত, ব্যাংকের কোনো কর্মকর্তা বা কর্মচারী অন্য কোনো ব্যক্তির নিকট কোনো গ্রাহকতথ্য প্রকাশ করিবে নাঃ

তবে শর্ত থাকে যে, তপশিলে উল্লিখিত গ্রাহকতথ্য প্রকাশের অনুমোদিত ক্ষেত্রে, গ্রাহকতথ্য প্রকাশের শর্তাবলি প্রতিপালন সাপেক্ষে, সংশ্লিষ্ট অনুমোদিত ব্যক্তি বা সংস্থার নিকট গ্রাহকতথ্য প্রকাশ করা যাইবে : তবে আরও শর্ত থাকে যে, তপশিলে উল্লিখিত গ্রাহকতথ্য প্রাপ্তির জন্য অনুমোদিত ব্যক্তি বা সংস্থা বা সংস্থার কোনো কর্মকর্তা, তপশিলে উল্লিখিত অনুমোদিত ক্ষেত্র অথবা আদালতের সুনির্দিষ্ট আদেশ ব্যতীত, কোনো গ্রাহকতথ্য বা উহার কোনো অংশ কোনোভাবে অন্য কাহারও নিকট প্রকাশ করিবে না।

(২) উপ-ধারা (১) এর বিধান অনুযায়ী কোনো সংস্থার নিকট তপশিলে উল্লিখিত গ্রাহকতথ্য প্রকাশ করিবার ক্ষেত্রে উক্ত সংস্থার এতদুদ্দেশ্যে অনুমোদিত দায়িত্বপ্রাপ্ত কর্মকর্তার নিকট গ্রাহকতথ্য প্রকাশ করা যাইবে এবং গ্রাহক তথ্য গ্রহণকারী অনুমোদিত দায়িত্বপ্রাপ্ত কর্মকর্তার দায়বদ্ধতা, নিয়োগকারী সংস্থাতে তাহার নিয়োগ বা কর্ম অবসান পরবর্তীকালেও বহাল থাকিবে।

(৩) ব্যাংক-কোম্পানী আইন, ১৯৯১ (১৯৯১ সনের ১৪ নং আইন) এর ধারা ৪৪ এবং আর্থিক প্রতিষ্ঠান আইন, ১৯৯৩ (১৯৯৩ সনের ২৭ নং আইন) এর ধারা ২০ এর অধীন বাংলাদেশ ব্যাংক কর্তৃক ব্যাংক পরিদর্শনকালে সংগৃহীত গ্রাহকতথ্য উক্ত ব্যাংকের নিয়ন্ত্রণ বা তত্ত্বাবধানের জন্য প্রয়োজনীয় না হইলেও উহা গোপনীয় হিসাবে গণ্য হইবে।

৮। দণ্ড। এই আইনের ধারা ৭ এর বিধান লঙ্ঘন করিলে উহা এই আইনের অধীন একটি অপরাধ হিসাবে গণ্য হইবে এবং উক্ত অপরাধের জন্য দায়ী ব্যাংকের কর্মকর্তা বা কর্মচারী অনধিক ৩(তিন) বৎসরের কারাদণ্ড বা অনধিক ১০ (দশ) লক্ষ টাকা অর্থদণ্ড বা উভয়দণ্ডে দণ্ডিত হইবেন।

৯। অপরাধের আমলযোগ্যতা, জামিনযোগ্যতা ও আপসযোগ্যতা। এই আইনের অধীন অপরাধ অ-আমলযোগ্য (হড়হ-পড়মহরুধনষব), জামিনযোগ্য (নধরষধনষব) এবং আদালতের সম্মতি সাপেক্ষে আপসযোগ্য (পড়সঢ়ঁহফধনষব) হইবে।

১০। অপরাধের বিচার, ইত্যাদি। (১) ঈড়ফব ডভ ঈৎরসরহধষ চৎড়পবফঁৎব, ১৮৯৮ (অপঃঘড়. ঠ ডভ ১৮৯৮) এ যাহা কিছুই থাকুক না কেন, অপরাধ সংঘটকের উর্ধ্বতন কর্মকর্তার লিখিত প্রতিবেদপড়ংযবফ্ফুংতীত কোনো আদালত এই আইনের অধীন কোনো অপরাধ বিচারার্থে গ্রহণ করিবে না।

(২) এই আইনের অধীন সংঘটিত অপরাধের তদন্ত, বিচার, আপিল এবং সংশ্লিষ্ট অন্যান্য বিষয়ে ঈড়ফব ডভ ঈৎরসরহধষ চৎড়পবফঁৎব, ১৮৯৮ (অপঃ ঘড়. ঠ ডভ ১৮৯৮) এর বিধানাবলি প্রযোজ্য হইবে।

১১। সরল বিশ্বাসে কৃত কাজকর্ম রক্ষণ। এই আইনের অধীন সরল বিশ্বাসে কৃত কোনো কাজের ফলে কোনো ব্যক্তি ক্ষতিগ্রস্ত হইলে বা ক্ষতিগ্রস্ত হইবার সম্ভাবনা থাকিলে, তজ্জন্য ব্যাংকের কোনো কর্মকর্তা বা কর্মচারীর বিরুদ্ধে কোনো দেওয়ানি বা ফৌজদারি মামলা বা অন্য কোনো আইনগত কার্যক্রম গ্রহণ করা যাইবে না।

১২। খরচাদি।(১) এই আইনের অধীন বা উহার উদ্দেশ্য পূরণকল্পে, আদালতের নিকট দাখিলকৃত কোনো আবেদনের খরচ এবং আদালত কর্তৃক প্রদত্ত আদেশের অধীন সম্পাদিত বা সম্পাদিতব্য কোনো কার্য বাবদ খরচ আদালতের স্বেচ্ছাধীন ক্ষমতার আওতায় থাকিবে, এবং আদালত এই মর্মে আরও আদেশ প্রদান করিতে পারিবে যে, কোনো খরচ বা খরচের অংশবিশেষ ব্যাংক কর্তৃক কোনো পক্ষের অনুকূলে পরিশোধ করিতে হইবে যদি এইরূপ খরচ ব্যাংকের ত্রুটি বা ইচ্ছাকৃত বিলম্বেও কারণে হইয়া থাকে।

(২) এই ধারার অধীন ব্যাংকের অনুকূলে বা ব্যাংক কর্তৃক কোনো খরচ প্রদানের ক্ষেত্রে প্রদত্ত কোনো আদেশ এমনভাবে কার্যকর করা হইবে যেন উক্ত আইনি কার্যক্রমে ব্যাংক একটি পক্ষ।

(৩) এই ধারার অধীন খরচ প্রদানের আদেশ কার্যকর করিবার ক্ষেত্রে সংশ্লিষ্ট কোনো দেওয়ানি আদালতে অর্থ ডিক্রি জারির মামলা দায়ের করা যাইবেঃ

তবে শর্ত থাকে যে, এই উপ-ধারার কোনো কিছুই এইরূপ খরচ পরিশোধের আদেশ কার্যকর করিবার ক্ষেত্রে উক্ত আদেশ প্রদানকারী আদালতের স্বেচ্ছাধীন ক্ষমতাকে খর্ব করিবে না।

১৩। তপশিল সংশোধনের ক্ষমতা।□সরকার, সরকারি গেজেটে প্রজ্ঞাপন দ্বারা, সময় পড়ধপয়, এই আইনের তপশিল সংশোধন করিতে পারিবে।

১৪। রহিতকরণ ও হেফাজত।(১) ইধহশবৎঃ ইডডশং উরফবহপব অপঃ, ১৮৯১ (অপঃ ঘড়. চঠওওও ডভ ১৮৯১), অতঃপর উক্ত অপঃ বলিয়া উল্লিখিত, এতদ্বারা রহিত করা হইল।

(২) উক্তরূপ রহিতকরণ সত্ত্বেও, উক্ত অপঃ এর অধীন প্রণীত কোনো বিধি বা জারিকৃত কোনো আদেশ, বিজ্ঞপ্তি বা প্রজ্ঞাপন এই আইনের সহিত সামঞ্জস্যপূর্ণ হওয়া সাপেক্ষে বহাল থাকিবে।

(৩) উক্ত অপঃ এর অধীন গৃহীত কোনো কার্যধারা চলমান থাকিলে উহা এইরূপে নিষ্পত্তি হইবে যেন উক্ত অপঃ রহিত হয় নাই।

১৫। ইংরেজিতে অনূদিত পাঠ প্রকাশ। এই আইন কার্যকর হইবার পর সরকার, সরকারি গেজেটে প্রজ্ঞাপন দ্বারা, এই আইনের মূল বাংলা পাঠের ইংরেজিতে অনূদিত একটি নির্ভরযোগ্য পাঠ(অঃযবহঃরপ উহমষরংয এঃবীঃ) প্রকাশ করিবেঃ

তবে শর্ত থাকে যে, মূল বাংলা ও ইংরেজি পাঠের মধ্যে বিরোধের ক্ষেত্রে মূল বাংলা পাঠপ্রাধান্য পাইবে।

Model questions:

1. What do you mean by Books of a bank as per Bankers' Books Evidence Act, 2021?

2. Who is authorized to provide the attested true copy of any entry of a bankers' book under Bankers' Books Evidence Act, 2021?
3. Any violation of section 7 under Bankers' Books Evidence Act, 2021 will be an punishable offence. What is the punishment that may be given under this Act to the responsible officer?

Information and Communication Technology Act, 2006

The ICT Act, 2006 was enacted in Bangladesh for prevention of cyber-crimes and regulation of E-commerce. Prior to the enactment of this Act, the law applicable to cyber offences was the penal code, 1860 which was enacted back in 1860 when no one even thought of computer technology or cyber criminality.

(Act No. 39 of 2006), popularly known as ICT Act, was enacted to give legal validity and security to Information and Communication Technology, and to promulgate rules on related matters. This law paved the way for the government's Digital Bangladesh initiatives. Before this law, banks were using information technology and technology-based banking services under the coverage of other laws, mainly the Contract Act, 1872, which were not always adequate. Bankers and the readers are strongly advised to follow the original law in this regard.

The ICT Act, 2006 has 9 chapters and 90 sections in all.

The law went through an amendment in 2013 and 5 Sections of the law (Sections 54, 55, 56, 57 and 66) were repealed with the promulgation of Digital Security Act, 2018 (DSA). Provisions of this law has supremacy over conflicting provisions of other laws. The law has extra territorial application (Section 4). Any crime committed under this law from outside Bangladesh will be considered as if committed within Bangladesh, and any crime committed to outside Bangladesh from inside Bangladesh will also be considered as if the whole crime is committed inside Bangladesh.

Section 2 of this law is the ***primary source of definitions*** for various terms, concepts and equipment used in ICT activities and are also used in or referred to by various other laws. In this Act, unless the context otherwise requires,--

(1) "digital signature" means data in an electronic form, which--

- (a) is related with any other electronic data directly or logically; and
- (b) is able to satisfy the following conditions for validating the digital signature--
 - (i) affixing with the signatory uniquely;
 - (ii) capable to identify the signatory;
 - (iii) created in safe manner or using a means under the sole control of the signatory; and
 - (iv) related with the attached data in such a manner that is capable to identify any alteration made in the data thereafter.
- (2) "digital signature certificate" means a certificate issued under section 36;
- (3) "electronic" means electrical, digital, magnetic, wireless, optical, electromagnetic or any technology having equivalent such capability;
- (4) "electronic data interchange" means transferring data from one computer to another computer electronically by following a standard for the purpose of organizing information;
- (5) "electronic form" with reference to information means any information generated, sent, received or stored in media, magnetic, optical, computer memory, microfilm, computer generated microfiche or similar device or technology;
- (6) "electronic gazette" means the official gazette published in the electronic form in addition to official printed & published gazette;
- (7) "electronic record" means data, record or data generated, image or sound stored, received or sent in an electronic form or microfilm or computer-generated microfiche;
- (8) "internet" means such an international computer network by which users of computer, cellular phone or any other electronic system around the globe can communicate with one another and interchange information and can browse the information presented in the websites;
- (9) "electronic mail" means information generated electronically and transmitted using internet;
- (10) "data" means a representation of information, knowledge, facts, concepts or instructions which are being prepared or have been prepared in a formalized manner, and is intended to be processed, is being processed, or has been processed in a computer system or computer network, and may be in any form including computer

printouts, magnetic or optical storage media, punch cards, punched tapes or stored internally in the memory of the computer;

(11) "data message" means electronic, electronic data interchange including optical, electronic mail, telegram, telex, fax, telecopy, short message or created something similar, sent, received or stored information;

(12) "website" means document and information stored in computer and web server which can be browsed or seen by the user through internet;

(13) "computer" means any electronic, magnetic, optical or other high-speed data processing device or system which performs logical, arithmetical and memory functions by manipulations of electronic, magnetic or optical impulses, and includes all input, output, processing, storage, computer software or communication facilities which are connected or related to the computer in a computer system or computer network;

(14) "computer network" means the interconnection of one or more computers through the use of satellite, microwave, terrestrial line, wireless equipment, wide area network, local area network, infrared, WiFi, bluetooth or other communication media; and terminals or a complex consisting of two or more interconnected computers whether or not the interconnection is continuously maintained;

(15) "subscriber" means a person in whose name the Digital Signature Certificate is issued;

(16) "chairman" means a chairman appointed under cyber appeal tribunal of section 82 of this Act;

(17) "civil procedure" means Code of Civil Procedure, 1908 (Act V of 1908);

(18) "penal code" means Penal Code, 1860 (Act XLV of 1860);

(19) "prescribed" means prescribed by rules;

(20) "secure signature generating machine or technology" means any signature generating machine or technology subject to the conditions illustrated under section 17;

(21) "addressee" with reference to data message means a person who is intended by the originator to receive the electronic record but does not include any intermediary;

(22) "verification" means such procedure used to identify signatory or authentication of data message;

- (23) "originator" with reference to data message means a person who sends or prepares data message before preservation or causes any data message to be sent, generated, stored or transmitted but does not include an intermediary;
- (24) "regulation" means regulation prepared under this Act;
- (25) "criminal procedure" means Code of Criminal Procedure, 1898 (Act V of 1898);
- (26) "person" relates to unique person having any natural entity, partnership business, union, company, body corporate, cooperatives;
- (27) "adjudicating officer" means an adjudicating officer of cyber tribunal constituted under section 68 of this Act;
- (28) "rule" means rule prepared under this Act;
- (29) "medium" means any person sending, receiving, advancing or saving any data message or any service rendering on this data message on behalf of any other person for a particular data message;
- (30) "licence" means a licence granted under section 22 of this Act;
- (31) "authentication service provider" means certificate issuing authority or any person rendering service related to digital signature.
- (32) "certifying authority" means a person or authority who has been granted a licence under section 18 to be read with section 22 of this Act to issue a Digital Signature Certificate:
- (33) "certification practice and description of procedure" means certification practice and description of procedure defined by the regulation where practices and procedures are written for issuing Digital Signature Certificate;
- (34) "member" means a member of cyber appeal tribunal constituted under section 82 of this Act;
- (35) "signatory" means a person providing signature generated through signature generating machine or procedure;
- (36) "signature verification machine" means software or hardware used for verifying signature;
- (37) "signature generating machine" means software or hardware used generating data for creating signature;
- (38) "cyber tribunal" or "tribunal" means a cyber tribunal constituted under section 82 of

this Act;

(39) “cyber appeal tribunal” means a cyber appeal tribunal constituted under section 82 of this Act.

3. Domination of the Act. -- Where any law provides whatever anything it contained, the rules of this Act shall be in force;

4. Inter-state application of the Act. --(1) If any person commits offence or contravention under this Act outside of Bangladesh which is punishable under this Act if he commits it in Bangladesh, then this Act shall apply as such he commits offence or contravention in Bangladesh;

(2) If any person commits offence or contravention in Bangladesh under this Act from outside Bangladesh using a computer, computer system or computer network located in Bangladesh, then this Act shall apply as such the entire process of the offence or contravention took place in Bangladesh;

(3) If any person from within Bangladesh commits offence or contravention outside of Bangladesh under this Act, then this Act shall apply against him as such the entire process of the offence or contravention took place in Bangladesh;

ICT Act provides legality of electronic record, electronic document, electronic signature, and attestation of electronic record with electronic signature. An Electronic Signature will become invalid if the electronic record associated with it is tampered with. Electronic record retention must fulfil certain conditions to ensure its authenticity against tampering.

5. Authentication of electronic records by digital signature. --(1) Subject to the provision of sub-section (2) of this section, any subscriber may authenticate an electronic record by affixing his digital signature.

(2) The authentication of electronic record shall be effected by the use of technology neutral system or standard authentic signature generating machine or strategy.

6. Legal recognition of electronic records. --Where any law provides that information or any

other matter shall be in writing or in the typewritten or printed form, then, notwithstanding anything contained in such law, such information or matter is rendered or made available in an electronic form:

Provided that such information or matter is accessible so as to be usable for a subsequent

reference.

7. Legal recognition of digital signatures. --Where any law provides that--

(a) any information or any other matter shall be authenticated by affixing the signature;
or (b) any document shall be authenticated by signature or bear the signature of any person;
then, notwithstanding anything contained in such law, such information or matter is authenticated by means of digital signature affixed in defined manner or so is the case of any document.

8. Use of electronic records and electronic signatures in Government and its agencies. --

(1) Where any law provides for--

(a) the filing of any form, application or any other document with any office, authority, body or agency owned or controlled by the appropriate Government in a particular manner;

(b) the issue or grant of any licence, permit, sanction, approval or order by whatever name called in a particular manner;

(c) the receipt or payment of money in a particular manner;

then, notwithstanding anything contained in such law, filing, issue, grant of the document and receipt and payment of money, as the case may be, is effected by means of prescribed electronic form.

(2) The manner and format in which such electronic records shall be filed, created or issued and the manner or methods of payment of any fee or charges for creation and filing shall be fixed by the rules for fulfilling the purposes of this section.

9. Retention of electronic records. --(1) Where any law provides that any document, record or information shall be retained for any specific period, then such requirement shall be deemed to have been satisfied if such documents, records or information, as the case may be, are retained in the electronic form if the following conditions are satisfied--

(a) the information contained therein remains accessible so as to be usable for a subsequent reference;

(b) the electronic record is retained in the format in which it was originally generated, sent or received, or in a format which can be demonstrated to represent accurately the information originally generated, sent or received;

(c) such information, if any, as enables the identification of the origin and destination of an electronic record and the date and time when it was sent or received, is retained:

Provided that this sub-clause does not apply to any information which is automatically generated solely for the purpose of enabling an electronic record to be dispatched or received.

(2) A person may satisfy the requirements referred to in sub-section (1) of this section by using the services of any other person, if the conditions in clauses (a) to (c) of that sub-section are complied with.

(3) Nothing in this section shall apply to any law that expressly provides for the retention of documents, records or information.

10. Electronic gazette. -- Where any law requires that any law, rule, regulation, order, bye-law, notification or any other matter shall be published in the Official Gazette, then, such requirement shall be deemed to have been satisfied if such law, rule, regulation, order, bye-law, notification or any other matter is published in the Official Gazette or Electronic Gazette:

Provided that where any law, rule, regulation, order, bye-law, notification or any other matter is published in the Official Gazette or the Electronic Gazette, the date of publication shall be deemed to be the date of the Gazette which was first published in any form.

11. No liability on Government to accept documents in electronic form. --Nothing contained

in this Act shall by itself compel any Ministry or Department of the Government or any authority or body established by or under any law or controlled or funded by the Government to accept, issue, create, retain and preserve any document in the form of electronic records or effect any monetary transaction in the electronic form.

12. Power of Government to make rules in respect of digital signatures. --The Government may, by notification in the Official Gazette and in additionally optionally in the Electronic Gazette, make the following rules (all or any of them) to prescribe for the purposes of this Act--

(a) the type of digital signature;

(b) the manner and format in which the digital signature shall be affixed;

(c) the manner and procedure which facilitates identification of the person affixing the

digital signature;

(d) the control processes and procedures to ensure adequate integrity, security and confidentiality of electronic records and payments; and

(f) any other matter which is necessary to give legal effect to digital signatures.

Section 13. Attribution. -- (1) An electronic record shall be that of the originator it was sent by the originator himself.

14. Acknowledgement of receipt. -- (1) Sub-sections (2), (3) & (4) of this section shall apply where, on or before sending an electronic record, or by means of that electronic record, the originator has requested or has agreed with the addressee that receipt of the electronic record be acknowledged.

15. Time and place of dispatch and receipt of electronic record. -- (1) Save as otherwise agreed to between the originator and the addressee, --

(a) the time of dispatch of an electronic record shall be determined when it enters a computer or electronic machine or resource outside the control of the originator;

16. Secure electronic record. -- Where any security procedure has been applied to an electronic record at a specific point of time, then such record shall be deemed to a secure electronic record from such point of time to the time of verification.

17. Secure digital signature. -- (1) If, by application of a security procedure agreed to by the parties concerned, it can be verified that a digital signature, at the time it was affixed, was--

(a) unique to the person affixing it;

(b) capable of identifying the person affixing it; and

(c) created in manner or using a means under the sole control of the person affixing;

then such digital signature shall be deemed to be a secure digital signature as per sub-section (2).

(2) Despite the fact of sub-section (1), the digital signature would be invalidated if the electronic record was altered relating to this very digital signature.

18. Certifying Authorities Controller and other officers. -- (1) For the purpose of this Act, the Government may, by notification in the Official Gazette and additionally optionally in Electronic Gazette, appoint a Controller and such number of Deputy Controller(s) and Assistant Controller(s) as it deems fit within 90 days of the enactment of this law.

(2) The Controller shall discharge such functions as are vested in him under this Act under

the general superintendence and control of the Government.

(3) The Deputy Controllers and the Assistant Controllers shall perform such functions as are assigned to them by the Controller under the general superintendence and control of the Controller.

(4) The qualifications, experience and terms & conditions of service of Controller, Deputy Controllers and Assistant Controllers shall be such as may be prescribed by the Service Code.

(5) The Head Office of the Controller shall be located at Dhaka and as the Government may think fit may establish Branch Offices at such places for fixed time duration or permanently.

(6) There shall be a seal of the office of the controller, which will be used in places approved by the Government and other defined areas.

(7) For the purpose of preserving all electronic records under this Act there shall be a room in the Office of Controller which will be named as "electronic records repository room."

19. Functions of the Controller. --The Controller may perform all or any of the following functions, namely: --

(a) exercising supervision over the activities of the Certifying Authorities;

(b) laying down the standards to be maintained by the Certifying Authorities;

(c) specifying the qualifications and experience which employees of the Certifying Authorities should possess;

(d) specifying the conditions subject to which the Certifying Authorities shall conduct their business;

(e) specifying the contents of written, printed or visual materials and advertisements that may be used in respect of a Digital Signature Certifying;

(f) specifying the form and content of a Digital Signature Certificate;

(g) specifying the form and manner in which accounts shall be maintained by the Certifying Authorities;

(h) specifying the terms and conditions subject to which auditors may be appointed and the remuneration to be paid to them for auditing the Certifying Authorities;

(i) facilitating the establishment of any electronic system by a Certifying Authority either solely or jointly with other Certifying Authorities and regulation of such systems;

(j) specifying the manner in which the Certifying Authorities shall conduct them

dealings with the subscribers;

(k) resolving any conflict of interests between the Certifying Authorities and the subscribers;

(l) laying down the duties and responsibilities of the Certifying Authorities;

(m) maintaining computer-based databases, which--

(i) contain the disclosure record of every Certifying Authority containing such particulars as may be specified by regulations; and

(ii) shall be accessible to the member of the public;

(n) perform any other function under this Act or Codes prepared under this Act.

21. Controller to act as repository. -- (1) The Controller shall be the repository of all Digital Signature Certificates issued under this Act.

(2) The Controller shall ensure that the secrecy and security of the digital signature are assured and in order to do so shall make use of hardware, software and procedures that are secure from intrusion and misuse and follow such standards as may be prescribed.

22. Licence to issue Digital Signature Certificate. -- (1) Subject to the provision of subsection (2) of this section, any person may make an application to the Controller for a licence to issue

29. Power to investigate contraventions. — (1) The Controller or any officer authorized by him in this behalf shall take up for investigation any contravention of the provisions of this Act, rules or regulations made thereunder.

(2) The Controller or any officer authorized by him in this behalf shall, for the purposes of sub-section (1) of this section, have the same power as are vested in a Civil Court under the Code of Civil Procedure, when trying a suit in respect of the following matters, namely:

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(a) discovery and inspection;

(b) enforcing the attendance of any person and examining him on oath or affirmation;

(c) compelling the production of any document; and

(d) issuing commissions for the examination of witness. Digital Signature Certificates.

48. Penalty for failure to furnish document, return and report. —If any person fails to

submit given document, return and report under the provisions of this Act, or rules and regulations made thereunder to the Controller or Certifying Authority, the Controller or any officer of the Government authorized by the Government by special order, as the case may be, can fine the person which may extend to Taka ten thousand mentioning reasons in written by administrative order.

49. Penalty for failure to file return, information, book etc.—If any person fails to deliver any information, books or any other documents under the provisions of this Act, or rules and regulations made thereunder within stipulated time, the Controller or any officer of the Government authorized by the Government by special order, as the case may be, can fine the person which may extend to Taka ten thousand mentioning reasons in written by administrative order.

50. Penalty for failure to maintain books of accounts or record. —If any person fails to maintain books of accounts or records which is supposed to be preserved under the provisions of this Act, or rules and regulations made thereunder, the Controller or any officer of the Government authorized by the Government by special order, as the case may be, can fine the person which may extend to Taka two lakhs mentioning reasons in written by administrative order.

51. Residuary penalty. —If any person contravenes any rules of this Act for which the provision of penalties has not been fixed separately under the provisions of this Act, or rules and regulations made thereunder, the Controller or any officer of the Government authorized by the Government by special order, as the case may be, can fine the person for breaching the very rule which may extend to Taka twenty-five thousand mentioning reasons in written by administrative order.

64. Punishment for publishing false Digital Signature Certificate. --No person shall publish a Digital Signature Certificate or otherwise make it available to any other person knowing that--

- (a) the Certifying Authority listed in the certificate has not issued it; or
- (b) the subscriber listed in the certificate has not accepted it; or
- (c) the certificate has been revoked or suspended;

unless such publication is for the purpose of verifying a digital signature created prior to such suspension or revocation and by breaching the rules such Digital Signature Certificate is published or otherwise make it available to others shall be regarded as an offence.

66. Punishment for using computer for committing an offence. --(1) Whosoever knowingly assists committing crimes under this Act, using any computer, e-mail or computer network, resource or system shall be regarded as an offence.

(2) Whoever aids committing any offence under sub-section (1) of this section he shall be punishable with the punishment provided for the core offence.

67. Offences committed by companies etc.--If any offence is committed by a company under this Act, then each director, manager, secretary, partner, officer and staff of the company who has directly involvement in committing the said offence shall be guilty of the offence or the contraventions, as the case may be, unless he proves that the offence or contravention was committed without his knowledge or that he exercised due diligence in order to prevent commission of such offence or contravention.

Explanation. —For the purposes of this section. —

(a) “company” means anybody corporate and includes commercial firm, partnership business, cooperatives, association, organization or other association of individuals; and

(b) “director” in relation to a commercial firm includes a partner or member of Board of Directors.

68. Establishment of Cyber Tribunal. — (1) The Government shall, by notification in the Official Gazette, establish one or more Cyber Tribunals to be known as Tribunal at times for the purposes of speedy and effective trials of offences committed under this Act.

71. Rules relating to bail. —The Judge of Cyber Tribunal shall not bail any person accused in committing crime under this Act, which is punishable, unless--

(a) Hearing opportunity is given to the Government side on similar bail orders;

(b) The Judge is satisfied that, --

(i) There is reasonable cause to believe that the accused person may not be proved guilty in the trial;

(ii) The offence is not severe in relative term and the punishment shall not be tough enough even the guilt is proved.

(c) He writes down the reasons of similar satisfactions.

72. Time limit to deliver verdict. --(1) The Judge of Cyber Tribunal shall give the verdict within ten days from the date of completing of taking evidence or debate, what happened later, unless he extends the time limit no more than ten days with having written reasons.

82. Establishment of Cyber Appellate Tribunal. — (1) The Government shall, by notification

in the Official Gazette, establish one or more Cyber Appellate Tribunals to be known as Appellate Tribunal.

(2) Cyber tribunal established under sub-section (1) of this section shall consist of one Chairman and two members to be appointed by the Government.

88. Power of Government to make rules. --The Government may, by notification in the Official Gazette and in the Electronic Gazette, make for all or any of the following rules for carrying out of this Act:

- (a) the manner in which any information or matter may be authenticated or any document may be signed by means of digital signature;
- (b) the electronic form in which filing, issue, grant or payment;
- (c) the manner and format in which electronic records shall be filed, or issued and the method of payment;
- (d) the matters relating to the type of digital signature, manner and format in which it may be affixed;
- (e) the qualifications, experience and terms and conditions of service of the Controller, Deputy Controllers and Assistant Controllers;
- (f) other standards to be observed by the Controller;
- (g) the requirements which an applicant must fulfill;
- (h) the period of validity of licence;
- (i) the format in which an application may be made;
- (j) the amount of fees payable with application for licence;
- (k) such other document which shall accompany an application for licence;
- (l) the form of application for renewal of a licence and the fee payable;
- (m) the form in which application for issue of a Digital Signature Certificate and the amount of fees payable;

(n) the qualifications and experience of Chairman and members of Cyber Appeal Tribunal;

(o) the form in which appeal may be filed;

(p) the procedure of investigation;

(q) other such necessary matters.

89. Power of Controller to make regulations. --The Controller with prior approval of the Government, by notification in the Official Gazette and in the Electronic Gazette, make for all or any of the following regulations: --

(a) the particulars relating to maintenance of database containing the disclosure record of every Certify Authority;

(b) the conditions and restrictions subject to which the Controller may recognize any foreign Certifying Authority;

(c) the terms and conditions subject to which a licence may be granted;

(d) other standards to be observed by a Certifying Authority;

(e) the manner in which the Certifying Authority shall disclose the particular matters;

(f) the particulars of statement which shall accompany an application

Digital Security Act, 2018

Commencement and Objectives

The Digital Security Act, 2018 is a digital security law in Bangladesh.

(Act No. 46 of 2018) or Digital Security Act, 2018 (DSA) was enacted in 2018 to ensure digital security and to identify, prevent, quash, judge digital/ cyber-crime, and to formulate rules for related matters. Bankers and the readers are strongly advised to follow the original law in this regard.

This also aims to prevent the spread of racism, sectarianism, extremism, propaganda, and hatred against religious or ethnic minorities, government, individuals through social media or any other digital/ electronic media. The law has extra territorial application (Section 4). Any crime committed under this law from outside Bangladesh will be considered as if committed within Bangladesh, and any crime committed to outside Bangladesh from inside Bangladesh will also be considered as if the whole crime is committed inside Bangladesh.

Provisions of this law has supremacy over conflicting provisions of other laws, except for the Right to Information Act, 2009. Some critical terms increasingly in use are define in this law.

National Digital Security Council (N-DSC) comprising of 13 members including several ministers, secretaries and Bangladesh bank Governor has been formed under Section 12. The Council is responsible for strengthening the coordination, collaboration and cooperation between the different public administrations with competencies in cybersecurity matters, as well as between the public and private sectors. Government has formed the Digital Security Agency with a Director General and two Directors for implementing the law. Rules under the law stipulates the power, responsibilities, and activities of the agency. Law gives the DSA power to request Bangladesh Telecommunication Regulatory Commission (BTRC) to remove or block information/ data disclosed/ circulated in any digital medium that it considers harmful to Digital Security. Similarly, law enforcement agencies can request BTRC, through the DSA, to remove or block content they consider harmful to the camaraderie of the nation, economic activities, security, defense, religious morals, public discipline, or creates ethnic dispute and hatred.

The National Computer Emergency Response Team (N-CERT) has been formed under the DSA in line with Section 9 of the law. Its responsibilities include ensuring security of Critical Information Infrastructures (CII), taking initiatives to prevent possible or imminent cyber/ digital attack, taking immediate appropriate remedial actions if cyber/ digital attack/ security breach happens, etc. Bangladesh Government's e-Government Computer Incident Response Team (BGD e-GOV CIRT) serves as the National CIRT of Bangladesh (N-CERT). Bangladesh Bank has a Computer Incident Response Team (CIRT). As instructed through regulations issued by Bangladesh Bank all banks and FIs need to have a Computer Incident Response Team (CIRT) to oversee Cyber/ Digital Security of the institution. Without appropriate

Chapters covered

Chapter 6 covering Sections 17 to 38 defines what constitutes various offences under this law and stipulates punishment for those. Punishments range from few months' imprisonment

and/ or penalty of few lacs of Taka to life imprisonment and/ or crores in penalty. Offence includes (this has a few examples; the law has full detail):

- illegally entering /accessing / damaging unsecured/ secured/ restricted data, computers, digital/ electronic devices, systems, networks, information infrastructure, etc.
- illegally copying/ stealing/ retaining/ transferring/ deleting/ modifying/ damaging data/ source code, etc.
- any propaganda or transmission against independence war, spirit of the independence war, father the nation, national anthem, or national flag of Bangladesh.
- digital or electronic fraud/ forgery, identity fraud, assuming false identity, collecting or using identity information without approval,
- using websites or digital or electronic means to disclose/ spread information/ rumor to defame anyone, to use aggressive/ false/ threatening information, to hurt religious morality or sentiment, to deteriorate law and order situation, etc.
- conducting illegal digital transactions, violating government secrets, committing cybercrime, etc.

According to Section 30, Illegally conducting e-transactions carries up to 5 years imprisonment or up to Taka 5 lacs penalty or both. Second or subsequent offence up to 7 years imprisonment or up to Taka 10 lacs penalty or both.

According to Section 34, Hacking carries up to 14 years imprisonment or up to Tk. 1 crore penalty or both. Second or subsequent offence up to life imprisonment or up to Taka 5 crores penalty or both.

In this section “Hacking” means. To destroy, change, format, cancel any information of the compute data storage or to reduce the value or suitability of it or damaging it in any other way, or

b. Without ownership or possession illegally entering and damaging any computer, server, computer network, or any electric system

Trying to commit an offence or helping someone else in coming or trying to commit an offence under this law is also an offence and carries the same punishment as the principal.

Committing same offence, a second or more time carries higher punishment. Offences under some Sections (17, 19, 21, 22, 23, 24, 26, 27, 30, 31, 33 and 34) or second/ subsequent same offence under other Sections is cognizable and non-bailable. The Cyber Tribunal formed under Section 68 of the ICT Act, 2006 judge the cases under this law. Criminal law procedures are applicable for investigation and other processes of this law.

Like many other laws offences committed by a Company (which includes all business or non-business bodies) can be attributable to its officials and related parties (which includes shareholder, partner, director, trustee, etc.) unless they are able to prove that the said offence took place without their knowledge, or they tried their best to prevent so. Similar provision applies to service providers.

On top of the punishments stipulated under various sections court can order for compensation to be paid to parties affected by some offences.

Banks and FIs cannot compete or grow without digital platforms or services to customers. While this brings in speed, flexibility, and efficiency of services to customers internally processing capacity, risk management and governance can be significantly enhanced at low cost. On the other hand, Cyber/ Digital Security risk has become the most critical risk for them also.

43) Search, Seizure and Arrest without Warrant: -

(1) If a police officer has a reason to believe that an offence under this Act has been or is being or will be committed in any place, or there is a possibility of it happening, or if there is a possibility of evidence being lost, destroyed, deleted or altered or possibility of it being made scarce in some other way, then the officer, upon recording the reason for his/her belief, can undertake the following tasks: -

- a. Enter and search the said place and, if interrupted, take necessary action in accordance with the Code of Criminal Procedure;
- b. Seize the computer, computer systems, computer network, data-information or other objects which were used in committing the offence or documents that can aid in proving the offence that are found in that place while conducting the search;

- c. Conduct physical search of any person present in that place;
 - d. Arrest anyone present in the said place if suspected of committing or having committed an offence under this Act.
- (2) After conducting a search under subsection (1), the police officer will submit a search report to the Tribunal.

Right to Information Act, 2009

Commencement and Relevance

The Right to Information Act, 2009 popularly known as RTI has been enacted with a retrospective effect from 20 October, 2008 except for Sections 8, 24 and 25. The Act makes provisions for ensuring free flow of information and people's right to information. The freedom of thought, conscience and speech is recognised in the Constitution as a fundamental right and the right to information is an alienable part of it.

The Gazette on rules prescribing formats for application, rejection and appeal was published on 01 Nov 2009. A Schedule has also been issued through Right to Information Rules, 2010 prescribing maximum time to publish information. Bankers and the readers are strongly advised to follow the original law in this regard.

Consisting of 37 sections, the Act is divided into eight parts, each dealing with specific aspects. These included (i) definitions, (ii) right to information, preservation, disclosure and access. Access to as many as 20 categories of information such as state security, secret information received from foreign government, hampering security of the people, affecting privacy of any person, endangering life or bodies, security of any person, any secret information supplied to help a law enforcing body by any person etc, (iii) provision for appointment of designated officials in charge of access to information unit, (iv) establishment of Information Commission with one Principal Information Commissioner and two other Commissioners, their powers and functions, (v) establishing the fund of the Commission, its budget, financial independence, accounts and audit, (vi) officials and staff of Commission, (vii) manner of disposal of complaints and (viii) miscellaneous.

Whereas freedom of thought, conscience and speech is recognized in the Constitution of the People's Republic of Bangladesh as one of the fundamental rights and right to information is an inalienable part of freedom of thought, conscience and speech; if the right to information of the people is ensured, the transparency and accountability of all public, autonomous and statutory organisations and of other private institutions constituted or run by government or foreign financing shall increase, corruption of the same shall decrease and good governance of the same shall be established. Government has formed Information Commission (www.infocom.gov.bd) in line with Section 11 of the RTI.

Private Banks as an 'Authority' under the Law: A Gazette has also been published on 19 Oct 2018 defining private banks as authority under Section 2(b)(e). Accordingly, Banking Regulation and Policy Department, Bangladesh Bank has communicated the gazette to all banks through BRPD Circular Letter 23, dated 20 Nov 2018.

Information as defined in the Law: "information" includes any memo, book, design, map, contract, data, log book, order, notification, document, sample, letter, report, accounts, project proposal, photograph, audio, video, drawing, painting, film, any instrument done through electronic process, machine readable record, and any other documentary material regardless of its physical form or characteristics, and any copy thereof in relation to the constitution, structure and official activities of any authority. It shall not include note-sheets or copies of notesheets.

Requirement by banks under the Act: The Law requires banks to put:

- Appointment of 'Designated Officer' & "Appellate Authority" in all branches/information giving units.
- Catalogue/index of all information and preserve all "Applications for Information" received.
- Publication/sharing of information shall be made at reasonable price.
- Publication of matters of public interest through press note or other means.
- Use of the forms prescribed under this Act for all Applications for Information from citizens.
- On receipt of request, information to be provided within the timeline stated in the Act.

Steps to provide information: The steps to be followed can be briefly seen as below:

- Applicant to submit the prescribed “Application for Information” to ISO and ISO to provide acknowledgment receipt to the applicant.
- ISO to record the application received in a register and request relevant unit for the information with a target date.
- Information owner(s) will share the information to the ISO within the target date or will request for additional time if required.
- On receipt of the information, ISO will share the information to the Applicant within the time frame. If target date cannot be met, it will be communicated to the applicant with a new target date.
- When the information is shared with the applicant, it will be recorded in a register. If the information can not be shared, it will be communicated to the Applicant and recorded in a register.

Examples of information that can be shared under the Law: There are various provisions to share information, few examples are as appended below:

- Organizational structure, description of activities, responsibilities & decision-making process;
- Departments/Functions and directory of officers/executives with their responsibilities;
- Notifications, directives, manuals, and all decisions taken in the board meetings;
- Reports on proposed budget of any of the offices/branches and its actual costs;
- Implementation process of activities for Social Security, Poverty Eradication, Health Care service etc. and beneficiaries, allotted money and assets for these activities;
- Issued all concession, donation and its recipient along with the T&C with the recipient;
- Facilities for information, library and reading room available for the citizens.

Publication of information: Every authority shall publish and publicise all information pertaining to any decision taken, proceeding or activity executed or proposed by indexing them in such a manner as may easily be accessible to the citizens. In publishing and

publicising such information, no authority shall conceal any information or limit its easy access.

Every authority shall publish a report every year which shall contain the following information, namely:

(a) particulars of its organisational structure, activities, responsibility of the officers and employees, or description and process of decision making;

(b) lists of all laws, Acts, Ordinance, rules, regulations, notifications, directives, manuals, etc. of the authority including the classification of all information lying with the authority;

(c) description of the terms and conditions under which a citizen may get services from the authorities in obtaining any license, permit, grant, consent, approval or other benefits and of such conditions that require the authority to make transactions or enter into agreements with him;

(d) particulars of the facilities ensuring right to information of the citizens, and the full name, designation, address, and, in cases where applicable, fax number and e-mail address of the assigned officer.

(4) If the authority frames any policy or takes any important decision, it shall publish all such policies and decisions and shall, if necessary, explain the reasons and causes in support of such policies and decisions.

(5) The report prepared by authority under this section shall be made available free of charge for public information and its copies shall be stocked for sale at nominal price.

All the publications made by the authority shall be made available to the public at reasonable price. The authority shall publish and publicise the matters of public interest through press note or through any other means. The Information Commission shall, by regulations, frame instructions to be followed by the authority for publishing, publicising and obtaining information and all the authority shall follow them.

Provision to withhold information: There are also provisions based on which a bank can withhold information like below:

- a) Information that may, if disclosed, cause a threat to the security, integrity and sovereignty of Bangladesh;

- b) Information relating to any aspect of foreign policy that may affect the existing relationship with any foreign country or international organization or any regional alliance or organization;
- c) Secret information received from a foreign government;
- d) Inherent secrets of commercial or business nature, copyright or intellectual property right that may, if published, affect the intellectual property right of a third party.
- e) Following information that may, if disclosed, be gainful or damaging to any individual or entity:
 - a) advance information about income tax, customs, VAT and law relating to excise duty, budget or change in the tax rate;
 - b) advance information about changes relating to exchange rate and interest rate;
 - c) advance information about the management and supervision of the financial institutions including banks;
- f) Information that may, if disclosed, obstruct the enforcement of law or incite any offence;
- g) information that may, if disclosed, endanger the security of public or impede the due judicial process of a pending case;
- h) Information that may, if disclosed, offend the privacy of the personal life of an individual;
- i) Information that may, if disclosed, endanger the life or physical safety of any person;
- j) Information given in confidence to any law enforcement agency by a person;
- k) Matter pending before any court of law, and which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court;
- l) Information that may, if disclosed, impede the process of investigation;
- m) Information that may, if disclosed, affect any investigation process of offence and the arrest and prosecution of offender;
- n) Information which is, according to law, liable to be published only for a certain period;
- o) Information that is generated through technical or scientific experiment, and is expedient to keep secret for strategic or commercial reasons;

- p) Information pertaining to a purchase process before it is complete, or a decision has been taken about it;
- q) Information that may be prejudicial to the special rights of the House of the Nation;
- r) Secret information of a person which is protected by law;
- s) Information relating to question papers of an examination or marks given;
- t) Summaries to be placed before the Cabinet or before the Council of Advisers and information relating to discussions and decisions of such meetings.

Appeal: Any applicant can file an appeal to “Appellate Authority” and “Information Commission (IC)”. IC may make enquiry and take any decision under section 25(11) of RTI including the decision of a fine (BDT 50 per day to maximum total of BDT 5,000) on the officer-in-charge under section 27 of RTI. The respective officer/bank shall be given the opportunity of being heard pursuant to section 25(8) of RTI, 2009.

Questions cannot be raised on any activity in reference to this law before appealing to the Appellate Authority or complaining to the IC, where applicable.

Module F: General Laws

Bangladesh Environment Conservation Act, 1995

Objectives and preliminaries

Former environmental laws in Bangladesh include the Bangladesh Wild Life (Preservation) Order of 1973, the Marine Fisheries Ordinance of 1983 and the Brick Burning (Control) Act of 1989. Other major preservation laws enacted before the independence of Bangladesh include the Public Parks Act of 1904, the Agricultural and Sanitary Improvement Act of 1920, Forest Act of 1927, and the Protection and Conservation of Fish Act of 1950.

The Act followed the establishment of the Ministry of Environment and Forest in 1989 and the National Environment Management Action Plan (NEMAP) in 1992, as well as the Forest Policy in 1994 and the Forestry Master Plan (1993–2012) in 1993.

The act was put in place on 30 May 1995. Bangladesh Environment Conservation Act, 1995 (Act No. 1 of 1995) was enacted to conserve environment, improve environmental standards, and to control and mitigate environment pollution. The rules under the law came in 1997.

Bankers and the readers are strongly advised to follow the original law in this regard.

The Environmental Pollution Control Ordinance, 1977 (Ordinance XIII of 1977) was repealed by this law. The law was given supremacy over the conflicting provisions of other laws in force at the time of enactment. Among other things the law provides for:

- Government to declare an area Ecologically Critical Area and take measures to come of the crisis, prepare and circulate Environmental Directives to control and mitigate environment pollution and to preserve and improve environment
- Restrictions for vehicles emitting some detrimental to environment
- Restrictions on production, sales, etc. of products detrimental to environment
- Restrictions on cutting and/ or razing hills
- Restrictions on production, import, storage, loading, transportation, disposal, dumping, etc. of risky waste
- Restrictions on pollution created through ship breaking
- Restrictions on water bodies
- Measures against harm to ecology, excessive emissions harmful to environment

Department of Environment (DoE, <http://www.doe.gov.bd/>) has been established to fulfil the purpose of the law and regulate implementation of the requirement. The Director General of DoE has been given wide ranging authority to instruct or take support from law enforcing and other authorities for this purpose. DoE advises the government on various environmental matters, prepares various environmental reports, conducts various activities to inform the public on environment protection.

Short title and commencement. - (1) This Act may be called the Bangladesh Environment Conservation Act, 1995.

(2) It shall come into force on such date as the Government may, by notification in the Official Gazette, specify and it shall be brought into force in different areas on different dates.

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

"Conservation of environment" means improvement of the qualitative and quantitative characteristics of different components of environment as well as prevention of degradation of those components;

"Department" means the Department of Environment established under section 3 of this Act;

"Director General" means Director General of the Department;

"ecosystem" means the inter-dependent and balanced complex association of all components of the environment which can support and influence the conservation and growth of all living organisms;

"environment" means the inter-relationship existing between water, air, soil and physical property and their relationship with human beings, other animals, plants and micro-organisms;

"Environment pollutant" means any solid, liquid or gaseous substance which causes harmful effect to the environment and also includes heat, sound and radiation;

"Hazardous substance" means a substance, the chemical or biochemical properties of which are such that its manufacture, storage, discharge or unregulated transportation can be harmful to the environment;

"occupier", in relation to any factory or premises, means a person who has control over the affairs of the factory or the premises, and in relation to a product, means the person in possession of the product;

"person" means a person or group of persons, and includes any company, association or corporation, whether incorporated or not;

"pollution" means the contamination or alteration of the physical, chemical or biological properties of air, water or soil, including change in their temperature, taste, odor, density, or any other characteristics, or such other activity which, by way of discharging any liquid, gaseous, solid, radioactive or other substances into air, water or soil or any component of the environment, destroys or causes injury or harm to public health or to domestic, commercial, industrial, agricultural, recreational or other useful activity, or which by such discharge destroys or causes injury or harm to air, water, soil, livestock, wild animal, bird, fish, plant or other forms of life;

"rule" means rule made under this Act;

"use", in relation to any material, means manufacturing, processing, treatment, package, storage, transportation, collection, destruction, conversion, offering for sale, transfer or similar activity relating to such material;

"waste" means any solid, liquid, gaseous, radioactive substance, the discharge, disposal and dumping of which may cause harmful change to the environment;

Department of Environment. - (1) The Government shall, for carrying out the purposes of this Act, establish a Department to be called the Department of Environment and headed by a Director General.

(2) The Director General shall be appointed by the Government and the terms and conditions of his service shall also be determined by the Government.

(3) For proper performance of the functions of the Department, necessary officers and employees shall be appointed in the manner and on the terms and conditions prescribed by rules.

4. Power and functions of the Director General. - (1) Subject to the provisions of this Act, the Director General may take such measures as he considers necessary and expedient for the conservation of the environment, and improvement of environmental standards, and for the control and mitigation of environmental pollution, and he may issue necessary directions in writing to any person for the discharge of his duties under this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such measures may include all or any of the following: -

(a) co-ordination with the activities of any authority or agency having relevance to the objectives of this Act;

(b) prevention of probable accidents which may cause environmental degradation and pollution, undertaking safety measures and determination of remedial measures for such accidents and issuance of directions relating thereto;

(c) giving advice or, as the case may be, issuing directions to the concerned person regarding the environmentally sound use, storage, transportation, import and export of a hazardous substance or its components.

- (d) conducting inquiries and undertaking research on conservation, improvement and pollution of the environment and rendering assistance to any other authority or organization regarding those matters;
- (e) searching any place, examining any equipment, manufacturing or other processes, ingredients, or substance for the purpose of improvement of the environment, and control and mitigation of pollution; and issuance of direction or order to the appropriate authority or person for the prevention, control and mitigation of environmental pollution;
- (f) collection and publication of information about environmental pollution;
- (g) advising the Government to avoid such manufacturing processes, commodities and substances as are likely to cause environmental pollution;
- (h) carrying out programs for observation of the quality of drinking water and preparation of reports thereon, and rendering advice or, as the case may be, issuing direction to the concerned persons to follow standards for drinking water.

(3) A direction issued under this section may include matters relating to closure, prohibition or regulation of any industry, undertakings or processes, and the concerned person shall be bound to comply with such direction:

[Provided that-

- (a) the Director General shall, before issuing a direction of closure or prohibition of an industry, undertaking or process, send to the owner or occupier thereof a written notice so that he gets reasonable opportunity to make that industry, undertaking or process environmentally sound; and
- (b) where the Director General considers it appropriate, he may also specify in the notice that actions under sub-section (2) of section 4A may be taken if, pursuant to the notice, measures are not taken to make the relevant activities environmentally sound:

Provided further that, if the Director General considers that, due to a particular environmental pollution, the public life is likely to be in danger and that urgent action is necessary, he may immediately issue necessary directions.

(4) A time limit may be specified by the Director General for carrying out a direction issued under this section.

5. Declaration of ecologically critical area. - (1) If the Government is satisfied that an area is in an environmentally critical situation or is threatened to be in such situation, the

Government may, by notification in the official Gazette, declare such area as an ecologically critical area.

(2) The Government shall, in the notification published under subsection (1) or in a separate notification, specify the activities or processes that cannot be initiated or continued in an ecologically critical area.

6. Restrictions regarding vehicles emitting smoke injurious to environment. - (1) A vehicle emitting smoke or gas injurious to health or environment shall not be operated nor shall such vehicles be switched on except for the purpose of test-operation for stopping the emission of such smoke or gas.

Explanation. - In this section “smoke or gas injurious to health or environment” means any smoke or gas which exceeds the standards fixed by rules.

6A. Restrictions on manufacture, sale etc. of articles injurious to environment.- If, on the advice of the Director General or otherwise, the Government is satisfied that all kinds or any kind of polythene shopping bag, or any other article made of polyethylene or polypropylene, or any other article is injurious to the environment, the Government may, by notification in the official Gazette, issue a direction imposing absolute ban on the manufacture, import, marketing, sale, demonstration for sale, stock, distribution, commercial carriage or commercial use, or allow the operation or management of such activities under conditions specified in the notification, and every person shall be bound to comply with such direction: Provided that such direction shall not be applicable to the following cases: -

- (a) if the article specified in the notification is exported or used for export;
- (b) if the direction mentions that it is not applicable to any particular kind of polythene shopping bag.

Remedial measures for injury to ecosystem.- (1) If it appears to the Director General that any act or omission of a person is causing or has caused, directly or indirectly, injury to the ecosystem or to a person or group of persons, the Director General may determine the compensation and direct the firstly mentioned person to pay it and in an appropriate case also direct him to take corrective measures, or may direct the person to take both the measures; and that person shall be bound to comply with the direction.

(2) If a person, to whom a direction under sub-section (1) has been issued, fails to comply with the direction, the Director General may file a suit for compensation in the competent court or file a criminal case for failure to comply with the direction or file both kinds of cases.

(3) For the purposes of determination of compensation or corrective measures under sub-section (1), the Director General may engage any specialist and other persons.

(4) The Government may direct the Director General to take any action under this section and to submit a report thereon.

Environmental Clearance Certificate. - No industrial unit or project shall be established or undertaken without obtaining, in the manner prescribed by rules, an Environmental Clearance Certificate from the Director General.

Section 12 empower the DoE to issue Environmental Certificate. The certificate is a mandatory requirement to start an industry or project anywhere in Bangladesh or to continue the same. Certificate holders are required to comply with the conditions applicable to them. DoE has the authority deny Environmental Certificate and suspend or cancel an existing one. It also has the authority to order shutting down an industrial enterprise or project irrespective of whether the same has obtained a certificate or not. If any party continues to operate in breach of DoE instruction it has the authority to ask the service providers to stop providing electricity, gas, telephone, water, or similar services. The service provider is required to comply with the order of DoE irrespective of whatever is stipulated in the service agreement or other documents.

From the perspective of banks and FIs up to date Environmental Certificate needs to be a check point while they are financing customers. Industrial enterprises or projects mentioned in Green, Orange – Ka, Orange – Kha, and red categories require initial and subsequently renewed Environmental Certificate. While the certificate of green category is valid for 3 years the other categories require annual renewal. DoE also issues certificate for importing hazardous chemicals.

Anybody affected by or fearing to be so due to environmental pollution or deterioration can apply to the Director General of DoE for remedy. The Director General can take any action including conducting public hearing to resolve such applications.

Violation of various provisions of the law carries punishments up to 3 years imprisonment or Taka 5 lacs penalty or both. Repeat offences can double the punishment in most of the cases. Breach of provisions related to Environmental Certificate carries 2 to 5 years imprisonment or Taka 1 lac to Taka 5 lacs penalty or both. If a person, group, or public is harmed due to breach of this law or associated rules the aggrieved or the Director General on their behalf can file a case for damages against the offender.

If the offender is punished the court can also order to confiscate or destroy the machinery, parts thereof, vehicle, or related goods involved in committing the offence. Like many other laws in case of offence by a non-individual body/ entity it can be punished with applicable financial penalty while related individuals (trustee, owner, shareholder, chairman, director, manager, employee, agents) will be liable to both jail and penalty unless they can establish that the offence took place without their knowledge or best efforts to prevent the offence from taking place.

Powers of Attorney Act, 2012

Commencement and objectives

Original law (Powers of Attorney Act, 1882) was replaced with Powers of Attorney Act, 2012 (Act No. 35 of 2012) to make the law relevant to current time and practices. While the previous law was focused on execution under power of attorney, payment by attorney, deposit of original instrument and power of attorney of married women the new law has wider coverage including operation of irrevocable power of attorney and dispute resolution. Bankers and the readers are strongly advised to follow the original law in this regard.

Description of some important sections

Section 2 covers various definitions of which some are critical. “Power of Attorney” means any such deed through which any person provides power to any other person legally to execute activities mentioned in the deed on his behalf. “Irrevocable Power of Attorney” means any power of attorney given for executing sales contract for the purpose of sale of immovable property or for mortgaging immovable property against loan, or any power of attorney to take price against immovable property in exchange of land development and

execution of sale deed. “General Power of Attorney” means any power of attorney executed for any purpose other than an Irrevocable Power of Attorney under Section 4 of the law.

An act made or done by a donee of a **Power of Attorney (POA)** or obligations arising out of that will be applied as if the donee has done that. In case of death of one of the joint donors his successors will replace him as if he has not died. In case of death of one of the joint donees the POA will not become invalid, rather it will remain valid for the living donees. Section 10 stipulates that any person making or doing any payment or act in good faith, without being aware of the death, lunacy, bankruptcy, insolvency of that the donor of the POA or revocation of the POA will get same remedy from the donee of the POA as he would get from the donor. This makes the donee liable as he is effectively representing himself as a valid donee of a valid POA.

Section 4 requires Land development related Irrevocable POAs to have an expiry date and is not revocable before expiry. Other Irrevocable POAs may or may not have expiry dates. Expiry date of a POA can be extended through a registered contract with consent of donor and donee both. If donor or donee of an Irrevocable POA dies or becomes legally unable to execute deed his responsibilities and rights will automatically pass on to his successor or replacement. However, this is not applicable for single donee as section 9 stipulates an Irrevocable POA to remain valid for living donees after death one of the joint donees.

Section 6 requires Irrevocable POAs to be registered and the provisions of section 52A of the Registration Act are applicable while fee is applicable as per section 78 of the same law. The deed must clearly stipulate the purpose of the donor of the power and responsibilities, power, and activities of donee of the power. A photograph and copy of National Identity Card (NID) of both parties must be attached to the deed. If the donor of the power is residing outside Bangladesh, there are allowed deviations to this requirement. Irrevocable POA executed overseas must be affixed with necessary stamps under section 18 of the Stamp Act, 1899 by the relevant collector after authentication by the foreign ministry on first entry to Bangladesh.

A POA is revoked (a) on completion of the purpose or act for which it was executed, (b) after the expiry date mentioned in the deed, (c) on destruction or elimination of the purpose or act for which it was executed, (d) insolvency or lunacy or death or abolition of legal entity status

of the donee of a POA which is not irrevocable. Donor can revoke a POA by giving 30-day notice provided actions before serving the notice will remain valid as if done under the POA. Donee can also revoke with 30-day notice.

Banks deal with POAs for many of its own activities and while providing products and services to the customers. It is important for the bankers to understand the type, requirements, validity, and nuances of a POA and make decisions accordingly. Inactions and mis-actions can cause financial and reputational losses.

Since this new law has not been provided by the concerned ministry in English version, to have more distinct clarification the *extract of some provisions* of the law are given below:

সংজ্ঞা

২। বিষয় বা প্রসংগের পরিপন্থী কোন কিছু না থাকিলে, এই আইনে,-(১) “পাওয়ার অব অ্যাটর্নি” অর্থ এমন কোন দলিল যাহার মাধ্যমে কোন ব্যক্তি তাহার পক্ষে উক্ত দলিলে বর্ণিত কার্য-সম্পাদনের জন্য আইনানুগভাবে অন্য কোন ব্যক্তির নিকট ক্ষমতা অর্পণ করেন;

(২) “পণ মূল্য” অর্থ কোন ভূমি উন্নয়নের নিমিত্ত অপ্রত্যাহারযোগ্য পাওয়ার গ্রহীতা যে অংশ বিক্রয় বা হস্তান্তরের ক্ষমতাপ্রাপ্ত হন উহার বাজার মূল্য ও পাওয়ার দাতা কর্তৃক গৃহীত কোন অর্থ, যদি থাকে, যাহা দলিলের মূল্য হিসাবে গণ্য হয়;

(৩) “ব্যক্তি” অর্থে যে কোন ব্যক্তি, অংশীদারী কারবার, সমিতি, কোম্পানী, সংবিধিবদ্ধ সংস্থা এবং সমবায় সমিতিও উহার অন্তর্ভুক্ত হইবে;

(৪) “অপ্রত্যাহারযোগ্য পাওয়ার অব অ্যাটর্নি” অর্থ স্থাবর সম্পত্তি বিক্রয়ের উদ্দেশ্যে, বিক্রয় চুক্তি সম্পাদনের বা ঋণ গ্রহণের বিপরীতে স্থাবর সম্পত্তির বন্ধক প্রদানের জন্য প্রদত্ত কোন পাওয়ার অব অ্যাটর্নি অথবা স্থাবর সম্পত্তির বিপরীতে পণ মূল্য গ্রহণের বিনিময়ে ভূমি উন্নয়নসহ উক্ত দলিল সম্পাদনের ক্ষমতা প্রদান সম্পর্কিত কোন পাওয়ার অব অ্যাটর্নি

(৫) “বিধি” অর্থ এই আইনের অধীন প্রণীত কোন বিধি;

(৬) “ভূমি উন্নয়ন” অর্থ ব্যবস্থাপনা ও বিক্রয়ের নিমিত্ত আবাসিক বা বাণিজ্যিক প্লট প্রস্তুত, অথবা এপার্টমেন্ট বা মিশ্র ফ্লোর স্পেস বা ফ্ল্যাট নির্মাণের মাধ্যমে কোন প্লট বা ভূমির উন্নয়ন;

(৭) “সাধারণ পাওয়ার অব অ্যাটর্নি” অর্থ দফা (৪) এ উল্লিখিত বিষয়ে সম্পাদিত অপ্রত্যাহারযোগ্য পাওয়ার অব অ্যাটর্নি ব্যতিত অন্য কোন বিষয়ে সম্পাদিত পাওয়ার অব অ্যাটর্নি;

(৮) “রেজিস্ট্রেশন আইন” অর্থ Registration Act, 1908 (Act XVI of 1908)

অপ্রত্যাহারযোগ্য পাওয়ার অব অ্যাটর্নির মাধ্যমে ক্ষমতা অর্পণ, ইত্যাদি

৪। (১) পণ মূল্য গ্রহণের বিনিময়ে ভূমি উন্নয়ন সংক্রান্ত অপ্রত্যাহারযোগ্য প্রতিটি পাওয়ার অব অ্যাটর্নির একটি নির্দিষ্ট মেয়াদ থাকিবে এবং উক্ত মেয়াদে উহা অপ্রত্যাহারযোগ্য শর্তে বহাল থাকিবে।

(২) উপ-ধারা (১) এ যাহা কিছুই থাকুক না কেন, ভূমি উন্নয়ন সংক্রান্ত পাওয়ার অব অ্যাটর্নির মেয়াদ অতিক্রান্ত হইবার পরও পাওয়ার গ্রহীতার অংশের বিক্রয়, বিক্রয় চুক্তি সম্পাদন বা ঋণ গ্রহণের বিপরীতে বন্ধকী দলিল সম্পাদনের ক্ষমতা বাধাগ্রস্ত হইবে না এবং উক্ত ক্ষমতা প্রয়োগ না হওয়া পর্যন্ত সংশ্লিষ্ট পাওয়ার অব অ্যাটর্নি বহাল আছে মর্মে গণ্য হইবে।

(৩) উপ-ধারা (১) ও (২) এর বিধান সত্ত্বেও, পাওয়ার অব অ্যাটর্নির উদ্দেশ্য বা শর্ত ব্যাহত বা কোন পক্ষ ক্ষতির সম্মুখীন হইলে রেজিস্টার্ড ডাকের মাধ্যমে পাওয়ার দাতা বা গ্রহীতা ৩০ (ত্রিশ) দিনের নোটিশ প্রদানপূর্বক উক্ত দলিলে প্রদত্ত ক্ষমতার অবসান পারিবেন এবং উক্ত নোটিশের একটি কপি সংশ্লিষ্ট সাব-রেজিস্ট্রি অফিসে নথিভুক্তকরণের নিমিত্ত প্রেরণ করিতে হইবে:

তবে শর্ত থাকে যে, ধারা ১৩ এর বিধান মোতাবেক কোন পদক্ষেপ গৃহীত হইলে উহা চূড়ান্ত নিষ্পত্তি না হওয়া পর্যন্ত উক্ত দলিলে প্রদত্ত ক্ষমতার অবসান ঘটানো যাইবে না।

(৪) উপ-ধারা (৩) এর অধীন প্রদত্ত নোটিশ জারীর সঙ্গে আইনে, -(ধারা ১৩ এর বিধান মোতাবেক চূড়ান্ত নিষ্পত্তি না হওয়া পর্যন্ত উক্ত পাওয়ার অব অ্যাটর্নির কার্যকরতা স্থগিত হইয়া থাকিবে।

(৫) পাওয়ার অব অ্যাটর্নির মেয়াদ শেষ হইবার পূর্বে পাওয়ারদাতা ও পাওয়ারগ্রহীতা সম্মতির ভিত্তিতে রেজিস্ট্রিকৃত চুক্তি সম্পাদনের মাধ্যমে উহার মেয়াদ বর্ধিত করিতে পারিবেন।

(৬) অপ্রত্যাহারযোগ্য পাওয়ার অব অ্যাটর্নির মেয়াদ অবসান হইবার পূর্বে পাওয়ারদাতা বা পাওয়ারগ্রহীতার মৃত্যু হইলে বা তাহারা আইনগতভাবে দলিল সম্পাদনে অক্ষম হইলে উক্ত মৃত বা অক্ষম ব্যক্তির বৈধ ওয়ারিশ বা স্থলবর্তীর উপর দলিল হইতে উদ্ধৃত দায় বা অধিকার স্বয়ংক্রিয়ভাবে অর্পিত হইবে:

তবে শর্ত থাকে যে, ধারা ৯ এর বিধান সাপেক্ষে, একক গ্রহীতার ক্ষেত্রে এ বিধান প্রযোজ্য হইবে না।

নোটিশ জারী, ইত্যাদি

৫। (১) এই আইনের অধীন কোন নোটিশ কোন পক্ষ বা ব্যক্তির উপর জারী করা প্রয়োজন হইলে এবং জারীর বিষয়ে পক্ষগণ ভিন্নভাবে সম্মত না হইলে, উক্ত নোটিশ সেই পক্ষ বা ব্যক্তির উপর জারী হইয়াছে বলিয়া গণ্য হইবে, যদি-

(ক) উহা তাহাকে ব্যক্তিগতভাবে বা তাহার ব্যবসায়িক ঠিকানা বা তাহার স্বাভাবিক বাসস্থান বা অন্য কোনভাবে তাহার চিঠির ঠিকানায় সরবরাহ করা হইয়া থাকে; এবং

(খ) দফা (ক) তে উল্লিখিত কোন জায়গায় স্বাভাবিক অনুসন্ধানের পরও তাহাকে না পাওয়া যায় তাহা হইলে সর্বশেষ জ্ঞাত ব্যবসায়িক, বাসস্থান বা চিঠির ঠিকানায় রেজিস্ট্রিকৃত ডাকযোগে, কুরিয়ার সার্ভিসের মাধ্যমে বা অন্য কোন পদ্ধতিতে প্রেরিত হয় এবং উহাতে উক্তরূপে প্রেরণের প্রমাণ লিপিবদ্ধ থাকে।

(২) নোটিশ যে তারিখে, ক্ষেত্রমত, সরবরাহ বা প্রেরণ করা হইবে সেই তারিখে প্রাপ্ত হইয়াছে মর্মে গণ্য হইবে।

পাওয়ার অব অ্যাটর্নি সম্পাদন

৬। (১) রেজিস্ট্রেশন আইনে যাহা কিছুই থাকুক না কেন, এই আইনের অধীন সম্পাদিত অপ্রত্যাহারযোগ্য পাওয়ার অব অ্যাটর্নির রেজিস্ট্রেশন বাধ্যতামূলক এবং রেজিস্ট্রেশন আইনের section 52A এর বিধানাবলী প্রযোজ্য হইবে।

(২) উপ-ধারা (১) এর অধীন সম্পাদিতব্য পাওয়ার অব অ্যাটর্নি দলিলে অবশ্যই পাওয়ারদাতার উদ্দেশ্য এবং পাওয়ারগ্রহীতার দায়িত্ব, ক্ষমতা ও কার্যাবলীর সুস্পষ্ট বিবরণ থাকিতে হইবে।

(৩) উপ-ধারা (১) এর অধীন সম্পাদিতব্য পাওয়ার অব অ্যাটর্নি দলিলে পাওয়ারদাতা ও পাওয়ারগ্রহীতার ১ (এক) কপি করিয়া ছবি স্থায়ীভাবে সংযুক্ত এবং জাতীয় পরিচয়পত্রের অনুলিপি সংযুক্ত করিতে হইবে।

(৪) উপ-ধারা (৩) এ যাহা কিছুই থাকুক না কেন, বাংলাদেশের বাহিরে বসবাসরত পাওয়ার দাতার ক্ষেত্রে, উপ-ধারা (৫) এর বিধান সাপেক্ষে, রেজিস্ট্রেশন আইনের section 33 এর sub-section (1)(c) এর বিধান প্রযোজ্য হইবে।

(৫) পাওয়ারদাতা বাংলাদেশের বাহিরে বসবাস করিলে, পাওয়ার অব অ্যাটর্নি দলিল সম্পাদনের সময় পাওয়ারদাতা উপ-ধারা (৩) এর অধীন সংযুক্তকৃত পাওয়ার গ্রহীতার ছবি, স্বাক্ষরপূর্বক সনাক্ত করিবেন।

(৬) বিদেশে সম্পাদিত অপ্রত্যাহারযোগ্য পাওয়ার অব অ্যাটর্নি দলিল বাংলাদেশে প্রথম প্রবেশের পর পররাষ্ট্র মন্ত্রণালয় কর্তৃক প্রমাণীকরণ (Authentication) অন্তর্গত উহা Stamp Act, 1899 (Act II of 1899) এর section 18 অনুযায়ী সংশ্লিষ্ট কালেক্টর কর্তৃক প্রয়োজনীয়রূপে স্ট্যাম্পযুক্ত করিতে হইবে।

(৭) উপ-ধারা (৬) এর অধীন পাওয়ার অব অ্যাটর্নি স্ট্যাম্পযুক্ত হওয়ার পর উহার একটি কপি কালেক্টর কর্তৃক সংশ্লিষ্ট সাব-রেজিস্ট্রারের নিকট প্রেরণ করিতে হইবে, এবং উক্তরূপে কোন কপি প্রেরণ করা হইলে উহা, রেজিস্ট্রেশন আইনের section 89 এ যাহা কিছুই থাকুক না কেন, সংশ্লিষ্ট সাব-রেজিস্ট্রার ১ নং বহিতে নথিভুক্ত করিয়া সংরক্ষণের ব্যবস্থা গ্রহণ করিবেন।

পাওয়ারগ্রহীতা কর্তৃক সম্পাদিত কর্মের আইনগত ফলাফল

পাওয়ারগ্রহীতা কর্তৃক সম্পাদিত বা কৃত বা উহার ফলপ্রসূত কোন বাধ্যবাধকতা এমনভাবে বলবৎ হইবে যেন স্বয়ং পাওয়ারদাতা উক্ত কার্য সম্পাদন করিয়াছেন।

যৌথদাতার একজনের মৃত্যুর পরিণাম

৮। অপ্রত্যাহারযোগ্য পাওয়ারদাতা একাধিক হইলে উক্ত পাওয়ার অব অ্যাটর্নির উদ্দেশ্য বাস্তবায়িত হইবার পূর্বে কোন পাওয়ারদাতার মৃত্যুতে তাহার ওয়ারিশগণ এমনভাবে মৃত পাওয়ারদাতার স্থলাভিষিক্ত হইবেন এবং কার্য-সম্পাদন করিবেন যেন পাওয়ারদাতার মৃত্যু হয় নাই।

যৌথগ্রহীতার একজনের মৃত্যুর পরিণাম

৯। অপ্রত্যাহারযোগ্য পাওয়ারগ্রহীতা একাধিক হইলে, উহাদের কোন একজনের মৃত্যুতে, উক্ত পাওয়ার অব অ্যাটর্নি বাতিল হইবে না বরং উহা অবশিষ্ট জীবিত পাওয়ারগ্রহীতাদের ক্ষেত্রে অক্ষুণ্ণ ও বলবৎ থাকিবে।

মৃত্যু, ইত্যাদি সম্পর্কে অবগতি ব্যতিত পাওয়ার অব অ্যাটর্নির অধীন অর্থ প্রদান

১০। পাওয়ার অব অ্যাটর্নি দাতার মৃত্যু, মস্তিষ্ক বিকৃতি, দেউলিয়াত্ব, অসচ্ছলতা বা পাওয়ার অব অ্যাটর্নির অবসান সম্পর্কে অবগত না থাকিয়া কেহ সরল বিশ্বাসে কোন অর্থ প্রদান বা কার্য করিলে, উক্ত ব্যক্তি পাওয়ারদাতার নিকট হইতে যে প্রতিকার লাভ করিত পাওয়ারগ্রহীতার নিকট হইতেও অনুরূপ প্রতিকার লাভ করিবে।

পাওয়ার অব অ্যাটর্নির অবসান

১১। (১) নিম্নবর্ণিত ক্ষেত্রে পাওয়ার অব অ্যাটর্নির অবসান ঘটিবে, যথাঃ-

(ক) কোন নির্দিষ্ট কার্য-সম্পাদনের উদ্দেশ্যে পাওয়ার অব অ্যাটর্নি সম্পাদিত হইলে উক্ত কার্য সম্পাদিত হইবার পর বা কোন বিশেষ উদ্দেশ্য সাধনের জন্য উহা সম্পাদিত হইলে উক্ত বিশেষ উদ্দেশ্য অর্জিত বা হাসিল হইবার পর;

(খ) ধারা ৪ এর উপ-ধারা (১) এর বিধান সাপেক্ষে, কোন নির্দিষ্ট মেয়াদের জন্য পাওয়ার অব অ্যাটর্নি সম্পাদিত হইলে, উক্ত মেয়াদ অতিক্রান্ত হইবার পর;

(গ) যে বিষয়বস্তুর উপর পাওয়ার অব অ্যাটর্নি সম্পাদন করা হয় সেই বিষয়বস্তুর বিনাশ বা অস্তিত্বের বিলোপ ঘটিলে;

(ঘ) অপ্রত্যাহারযোগ্য পাওয়ার অব অ্যাটর্নি ব্যতিত অন্যন্য পাওয়ার অব অ্যাটর্নির ক্ষেত্রে পাওয়ারদাতা দেউলিয়া বা অপ্রকৃতিস্থ হইলে বা মৃত্যুবরণ করিলে বা পাওয়ারদাতার আইনী স্বত্ত্বা (legal entity) বিলুপ্ত হইলে।

(২) সাধারণ পাওয়ার অব অ্যাটর্নি দাতা উক্ত পাওয়ার অব অ্যাটর্নির মাধ্যমে পাওয়ারগ্রহীতাকে রেজিস্টার্ড ডাকের মাধ্যমে ৩০ (ত্রিশ) দিনের নোটিশ প্রদানপূর্বক, প্রদত্ত ক্ষমতার অবসান ঘটাইতে পারিবেন:

তবে শর্ত থাকে যে, এইরূপে অবসান ঘটাইবার নোটিশ জারীর পূর্ব পর্যন্ত উক্ত পাওয়ার অব অ্যাটর্নি বলে কৃত সকল কার্যাদি বৈধ বলিয়া গণ্য হইবে।

(৩) পাওয়ারগ্রহীতা উপ-ধারা (২) এর অনুরূপভাবে পাওয়ারদাতাকে রেজিস্টার্ড ডাকের মাধ্যমে ৩০ (ত্রিশ) দিনের নোটিশ প্রদানপূর্বক পাওয়ার অব অ্যাটর্নির দায়িত্ব পরিত্যাগ করিতে পারিবেন।

রেজিস্ট্রেশন ফি, ইত্যাদি

১২। এই আইনের অধীন সম্পাদিত অপ্রত্যাহারযোগ্য পাওয়ার অব অ্যাটর্নির ফি রেজিস্ট্রেশন আইনের section 78 অনুযায়ী নির্ধারিত হইবে।

বিরোধ নিষ্পত্তি

১৩। (১) রেজিস্ট্রেশন আইনের অধীন রেজিস্ট্রিকৃত পাওয়ার অব অ্যাটর্নি হইতে উদ্ভূত যে কোন বিরোধ পক্ষগণ প্রথমে নিজেদের মধ্যে আপোষ মিমাংসার মাধ্যমে নিষ্পত্তির চেষ্টা করিবেন।

(২) উপ-ধারা (১) অনুযায়ী আপোষ মিমাংসার পদক্ষেপ গ্রহণের পর যদি কোন পক্ষের অসহযোগিতার কারণে উহা ব্যর্থ হয়, তাহা হইলে অপরপক্ষ বিবাদমান বিষয়টি একজন নিরপেক্ষ মধ্যস্থতাকারীর মাধ্যমে নিষ্পত্তির জন্য অপরপক্ষকে নোটিশ প্রদান করিবেন।

(৩) উপ-ধারা (২) এর অধীন নোটিশ প্রাপক উক্ত নোটিশ প্রাপ্তির ৩০ (ত্রিশ) দিনের মধ্যে নোটিশ প্রেরকের সহিত যৌথভাবে মধ্যস্থতাকারী নিয়োগ করিবেন।

(৪) পক্ষগণ কর্তৃক নিয়োগকৃত মধ্যস্থতাকারীর সিদ্ধান্ত পক্ষগণসহ তাহাদের মাধ্যমে বা অধীনে দাবীদার যে কোন ব্যক্তির উপর বাধ্যকর হইবে এবং উহার বিরুদ্ধে কোন আদালতে কোন পক্ষের আপত্তি উত্থাপনের অধিকার থাকিবে না।

(৫) উপ-ধারা (৩) মোতাবেক পক্ষগণ মধ্যস্থতাকারী নিয়োগে ব্যর্থ হইলে যে কোন পক্ষ বিবাদমান বিষয়টি নিষ্পত্তির জন্য কোন উপযুক্ত আদালতে মামলা দায়ের করিতে পারিবেন।

বিধি প্রণয়নের ক্ষমতা

১৪। সরকার, সরকারি গেজেটে প্রজ্ঞাপন দ্বারা, এই আইনের উদ্দেশ্যপূরণকল্পে, বিধি প্রণয়ন করিতে পারিবে।

আইনের ইংরেজি অনূদিত পাঠ

১৫। ১) এই আইন কার্যকর হইবার পর সরকার, সরকারি গেজেটে প্রজ্ঞাপন দ্বারা, এই আইনের ইংরেজিতে অনূদিত একটি নির্ভরযোগ্য পাঠ (Authentic English Text) প্রকাশ করিতে পারিবে।

(২) বাংলা পাঠ ও ইংরেজি পাঠের মধ্যে বিরোধের ক্ষেত্রে বাংলা পাঠ প্রাধান্য পাইবে।

রহিতকরণ ও হেফাজত

১৬। (১) Powers-of-Attorney Act, 1882 (Act VII of 1882) এতদ্বারা রহিত করা হইল।

(২) উপ-ধারা (১) এর অধীন রহিতকরণ সত্ত্বেও, রহিত আইনের অধীনকৃত কাজকর্ম বা গৃহীত ব্যবস্থা এই আইনের অধীনকৃত বা গৃহীত হইয়াছে বলিয়া গণ্য হইবে।

Bank Deposit Insurance Act, 2000

Introducing Deposit Insurance:

Deposit Insurance System (DIS) is an institutional initiative by Bangladesh Bank for the protection of the commercial banks deposits maintained by small depositors in Bangladesh. The system works among deposit owners. In Bangladesh, deposit insurance was introduced in August, 1984 as a scheme in terms of the provisions of the legal framework called

"The Bank Deposit Insurance Ordinance, 1984" promulgated by the Government on August 11, 1984. In July, 2000 the Ordinance was repealed by an Act of the Parliament called the "Bank Deposit Insurance Act, 2000". Deposit Insurance in Bangladesh is now being administered by the said Act. Bankers and the readers are strongly advised to follow the original law in this regard.

Bangladesh Bank has taken the membership of International Association of Deposit Insurers (IADI) in 2006.

Membership/Member Institution:

All scheduled banks including foreign banks operating in Bangladesh are brought under the Deposit Insurance Scheme by the Bank Deposit Insurance Act, 2000. Membership is compulsory for all those Banks (60 banks) as provided under Article # 04 (Ka) & (Kha) of "The Bank Deposit Insurance Act, 2000"

Deposit Insurance Trust Fund (DITF) and Investment Scope:

In accordance with the provisions of the Bank Deposit Insurance Act, 2000, premium collected from the insured banks and all other receivables are deposited in to an account called Deposit Insurance Trust Fund (DITF) maintained by Bangladesh Bank. The DITF is invested in the Government Securities and the income derived from such investments is also credited to the DITF account to strengthen and enhance the overall insurance coverage.

Coverage under Deposit Insurance Scheme:

According to "The Bank Deposit Insurance Act, 2000", in case of winding up of an insured bank, Bangladesh Bank shall pay to every depositor of that bank an amount equal to the amount of his/her deposit in that bank but not exceeding Taka one hundred thousand. Eligible compensation up to the coverage cap Taka one hundred thousand would be on per depositor per bank basis.

Management of Scheme:

As per provisions of the Act, The Board of Directors of the Bangladesh Bank is the Trustee Board is responsible for administration and management for the DITF.

Trustee Board: For the Overall Administration and Management of The Deposit Insurance Systems (DIS), A Trustee Board Was Formed as Per Provisions of The Act. The Board of Directors of The Bangladesh Bank Is the Trustee Board for The DIS. The Governor of Bangladesh Bank Is the Chairman of Trustee Board. The Trustee Board Is Authorized to Carry Out a Fund Called Deposit Insurance Trust Fund (DITF). The Deposit Insurance Systems Is Now Being Administered and Managed Under the Guidance of The Trustee Board.

DID: The Deposit Insurance Department (DID), Bangladesh Bank, Has Been Entrusted to Administer the Activities of Deposit Insurance Systems in Bangladesh. Under The Guidance of Trustee Board, DID Formulate the Work Plans, Policies, Procedures and Guidelines for Maintaining Deposit Insurance Systems & Managing the Deposit Insurance Trust Fund (DITF) Through an Operational Manual. This Operational Manual Has Been Designed to Serve That Purpose Keeping an Option to Further Updates as And When Necessary.

MEMBER INSTITUTIONS

Deposit Insurance Premium Rates:

According to Deposit Insurance Act, 2000, every member of scheduled bank is to be treated as insured bank and premium from the member banks are required to contribute half yearly premium, prescribed from time to time, and based on the total insured deposits held by a member bank as of preceding 30 June or 31 December. Before 2007, the premium was determined at a flat rate i.e. 0.07%. Now risk based deposit insurance premium rates have been introduced and in 2012, the premium rates have been revised which have been affected from 2013. The increased premium rates are as follows:

Sl. No. CAMEL Rating/Category Premium Rate

1 SCBs, DFIs, PCBs excluding EWS and Problem Banks 0.08%

2 EWS Banks 0.09%

3 Problem Banks 0.10%

Conclusion:

The Deposit Insurance System is designed to protect depositors against the loss of their insured deposits placed with member banks in the event of its liquidation. However, the effectiveness of DIS in reducing systemic risk would be increased if the public is well aware

of its existence and scope. With this end of view, Deposit Insurance Department of Bangladesh Bank has already been issued a circular regarding public awareness and organized public awareness seminar with stakeholders. The department has always updated detail information about DIS in the Bangladesh bank website to let public know about present scenario. Since the English version of the Act is not available, The Bengali version of the Act is given below:

যেহেতু Bank Deposit Insurance Ordinance, 1984 (LIII of 1984) রহিত করিয়া কতিপয় সংশোধনীসহ উহা পুনঃপ্রণয়ন সমীচীন ও প্রয়োজনীয়;

সেহেতু এতদ্বারা নিম্নরূপ আইন করা হইল :-

সংক্ষিপ্ত শিরোনামা। এই আইন ব্যাংক আমানত বীমা আইন, ২০০০ নামে অভিহিত হইবে।

সংজ্ঞা। বিষয় বা প্রসংগের পরিপন্থী কোন কিছু না থাকিলে, এই আইনে,-

(ক) “আমানত” অর্থ কোন তফসিলি ব্যাংক এর তেগত্রে, উহার আমানতকারীর (depositors) হিসাবের অপরিশোধিত অবশিষ্টের সমষ্টি;

(খ) “ট্রাস্টি বোর্ড” অর্থ ধারা ৮ এ উল্লিখিত তহবিলের ট্রাস্টি বোর্ড;

(গ) “তফসিলি ব্যাংক” অর্থ Bangladesh Bank Order, 1972 (P.O. No. 127 of 1972) এর Article 2(j) এ সংজ্ঞায়িত Scheduled Bank;

(ঘ) “তহবিল” অর্থ ধারা ৩ এর অধীন সংরতিগত ট্রাস্ট তহবিল;

(ঙ) “নিরীক্ষক” অর্থ The Chartered Accountants Order, 1973 ((P.O. No. 2 of 1973) এর Article 2(1)(b) তে সংজ্ঞায়িত chartered accountant;

(চ) “প্রিমিয়াম” অর্থ ধারা ৫ এর অধীন বীমাকৃত ব্যাংক কর্তৃক প্রদেয় প্রিমিয়াম;

(ছ) “বাংলাদেশ ব্যাংক” অর্থ Bangladesh Bank Order, 1972 (P.O. No. 127 of 1972) এর অধীন প্রতিষ্ঠিত বাংলাদেশ ব্যাংক;

(জ) “বীমা” অর্থ আমানত বীমা;

(ঝ) “বীমাকৃত ব্যাংক” অর্থ এই আইনের অধীন বীমাকৃত ব্যাংক।

আমানত বীমা ট্রাস্ট তহবিল। (১) বাংলাদেশ ব্যাংক আমানত বীমা ট্রাস্ট তহবিল নামে একটি তহবিল সংরক্ষণ করিবে এবং এই তহবিলের অর্থ বাংলাদেশ ব্যাংক কর্তৃক অনুমোদিত কোন খাতে বিনিয়োগ করা যাইবে।

(২) তহবিলে নিম্নবর্ণিত অর্থ জমা হইবে, যথা:-

(ক) বীমাকৃত ব্যাংক হইতে প্রাপ্ত অর্থ;

(খ) তহবিলের অর্থ বিনিয়োগ হইতে প্রাপ্ত আয়;

(গ) ধারা ৭ এর অধীন অবসায়িত ব্যাংক হইতে প্রাপ্ত অর্থ;

(ঘ) অন্য কোন উত্স হইতে প্রাপ্ত আয়।

(৩) তহবিলের অর্থ ধারা ৭ এর বিধান মোতাবেক অবসায়িত ব্যাংকের আমানতকারীর পাওনা পরিশোধ এবং এই তহবিল রক্ষণাবেক্ষণের খরচ ব্যতীত অন্য কোন উদ্দেশ্যে ব্যয় করা যাইবে না।

(৪) Income Tax Ordinance, 1984 (XXXVI of 1984) এর কোন কিছুই তহবিল এর আয়ের তেগত্রে প্রযোজ্য হইবে না।

বীমাকৃত ব্যাংক৪। আপাততঃ বলবত্ অন্য কোন আইনে যাহা কিছুই থাকুক না কেন,-

(ক) এই আইন প্রবর্তনের তারিখে বিদ্যমান প্রত্যেক তফসিলি ব্যাংক উক্ত তারিখ হইতে তহবিল এর সহিত বীমাকৃত বলিয়া গণ্য হইবে; এবং

(খ) এই আইন প্রবর্তনের পর প্রতিষ্ঠিত প্রত্যেক তফসিলি ব্যাংক তহবিল এর সহিত বীমাকৃত হইবে।

বীমাকৃত ব্যাংক এর প্রিমিয়াম৫। (১) প্রত্যেক বীমাকৃত ব্যাংক উহার আমানতের ঐ অংশের উপর প্রতি বত্সর শতকরা সাত পয়সা হারে তহবিলে প্রিমিয়াম প্রদান করিবে যাহা বাংলাদেশ ব্যাংক সময় সময় নির্ধারণ করিবে:

তবে শর্ত থাকে যে, বাংলাদেশ ব্যাংক, সরকারের পূর্বানুমোদনক্রমে, প্রিমিয়ামের হার কম বেশী করিতে পারিবে।

(২) বীমাকৃত ব্যাংক উহার ব্যয় খাত হইতে প্রিমিয়াম পরিশোধ করিবে।

(৩) বাংলাদেশ ব্যাংক কর্তৃক নির্ধারিত সময় ও পদ্ধতিতে প্রিমিয়াম পরিশোধ করিতে হইবে।

(৪) বীমাকৃত কোন ব্যাংক প্রিমিয়াম প্রদানে ব্যর্থ হইলে বাংলাদেশ ব্যাংক উহার নিকট রতিগত উক্ত ব্যাংক এর হিসাব হইতে সমপরিমাণ অর্থ উক্ত ব্যাংকের প্রিমিয়াম বাবদ কর্তন করিয়া তহবিলে জমা দানের নির্দেশ প্রদান করিতে পারিবে।

প্রিমিয়াম প্রদানে একাধিকবার ব্যর্থতার জন্য ব্যবস্থা গ্রহণ৬। কোন বীমাকৃত ব্যাংক একাধিকবার প্রিমিয়াম পরিশোধে ব্যর্থ হইলে, বাংলাদেশ ব্যাংক উক্ত ব্যাংককে শুনানীর সুযোগ প্রদানপূর্বক, সরকারী গেজেটে প্রজ্ঞাপন দ্বারা প্রজ্ঞাপনে উল্লেখিত সময়ের জন্য, আমানত গ্রহণ হইতে বিরত থাকার নির্দেশ প্রদান করিতে পারিবে।

তহবিল-এর দায়৭। (১) কোন বীমাকৃত ব্যাংক-এর অবসায়নের আদেশ প্রদান করা হইলে, বাংলাদেশ ব্যাংক কর্তৃক ঐ অবসায়িত ব্যাংক-এর প্রত্যেক আমানতকারীকে তাহার আমানতের সমপরিমাণ টাকা, যাহা সর্বাধিক এক লক্ষ টাকার বেশী হইবে না, তহবিল হইতে প্রদান করিবে।

(২) অবসায়িত ব্যাংকে কোন আমানতকারীর একাধিক হিসাব থাকিলে এবং ঐ সকল হিসাবে একত্রে এক লক্ষ টাকার অধিক স্থিতি থাকিলেও তাহাকে তহবিল হইতে সর্বাধিক এক লক্ষ টাকার অধিক পরিশোধ করা হইবে না। তবে এইরূপ পরিশোধ অবসায়িত ব্যাংক-এর নীট সম্পদের বিপরীতে লিকুইডিটর কর্তৃক আমানতকারীদিগকে দেয় অংকের সহিত সমন্বয় করা হইবে।

(৩) অবসায়িত ব্যাংকের অবসায়ক, যে নামেই অভিহিত হউক না কেন, তাহার কার্যভার গ্রহণের পর অনধিক নব্বই দিনের মধ্যে বাংলাদেশ ব্যাংক কর্তৃক নির্ধারিত ছকে আমানতকারীর আমানতের তালিকা বাংলাদেশ ব্যাংক-এর নিকট দাখিল করিবে।

(৪) উপ-ধারা (৩) এর অধীন আমানতকারীদের তালিকা প্রাপ্তির পর ট্রাস্টি বোর্ড অনধিক নব্বই দিনের মধ্যে উপ-ধারা (১) এর বিধানমতে আমানতকারীদের প্রাপ্য টাকা তহবিল হইতে পরিশোধের ব্যবস্থা করিবে।

(৫) তহবিলে জমাকৃত অর্থের পরিমাণ পরিশোধিতব্য টাকা হইতে কম হইলে বাংলাদেশ সরকার, বাংলাদেশ ব্যাংক-এর মাধ্যমে, কম পড়া টাকা তহবিলে ব্যাংক রেটে সুদের ভিত্তিতে ঋণ প্রদান করিবে।

(৬) এই ধারায় যাহা কিছুই থাকুক না কেন, আমানতকারীর আমানতের পরিমাণ নির্ধারণকালে বীমাকৃত ব্যাংক আইনগতভাবে আমানতকারীর নিকট কোন পাওনা থাকিলে উহা বাদ দিয়া তাহার পাওনা নির্ধারণ করিবে।

ট্রাস্টি বোর্ড। তহবিল পরিচালনা ও প্রশাসনের জন্য একটি ট্রাস্টি বোর্ড থাকিবে এবং বাংলাদেশ ব্যাংক-এর বোর্ড অব ডাইরেক্টরস্ তহবিল এর ট্রাস্টি বোর্ড হইবে।

বাত্‌সরিক প্রতিবেদন। নিরীক্ষক কর্তৃক প্রত্যায়িত এবং বাংলাদেশ ব্যাংক এর গভর্নর কর্তৃক স্বাক্ষরিত তহবিলের বাত্‌সরিক হিসাবের কপি এবং কার্যক্রম সম্পর্কিত প্রতিবেদন উক্ত হিসাব প্রস্তুতের দুই মাসের মধ্যে ট্রাস্টি বোর্ড সরকারের নিকট প্রেরণ করিবে।

রহিতকরণ ও হেফাজত। (১) The Bank Deposit Insurance Ordinance, 1984 (LIII of 1984) এতদ্বারা রহিত করা হইল।

(২) রহিত Ordinance এর অধীন সংরতিগত ডিপোজিট ইনসুরেন্স ফান্ড এর সকল অর্থ তহবিলে হস্তান্তরিত হইবে।

Module G: Overview

Bank

A bank is a financial institution licensed to receive deposits and make loans. Banks are regulated by the central bank of the country i.e., Bangladesh Bank. Banks act as financial intermediaries which mobilize funds from surplus units of the economy and deploy the same to the deficit units. Surplus units are those units who receive more money than they spend. They can be termed as investors. On the other hand, deficit units are those units who spend more money than they received. They are also termed as borrowers.

A sound banking system mobilizes the small and scattered savings of the people and make available for investment in productive enterprises. Mobilization of deposit is done by the banks by opening different deposit account and introducing new and innovative savings schemes with attractive interest /profit facilities as per prevailing situation and competitive atmosphere. Just like any other business, the goal of a bank is mainly to earn a profit for its owners. Banks make a profit by charging more interest to borrowers than they pay on savings and other accounts. For a simple example, a bank that pays 4% average interest on savings and other deposit accounts and charges 9% interest for loans earns a gross profit of 5% for its owners.

Apart from accepting and lending money, banks also provide many other services such as ATM services, online fund transfers, cheque payments, locker facilities, foreign currency exchange, issuing debit/credit cards etc. As per Section 5 (p) of the Banking Companies Act, 1991 "banking" means the accepting, for the purpose of lending or investment, of deposits of money from the public, repayable on demand or otherwise, and withdrawable by cheque, draft, order or otherwise.

A banking system is the key to economic growth and development. It is essential to unlocking wealth, creating opportunities, providing jobs, and facilitating commerce. It provides a mechanism for individuals and businesses to participate in the global economy. Banking sector plays a crucial role in attaining the economic stability.

Types of Banks

After the independence, banking industry in Bangladesh started its journey with 6 Nationalized commercialized banks, a few State-owned Specialized banks and Foreign Banks. In the 1980's banking industry achieved significant expansion with the entrance of private banks.

Now, banks in Bangladesh are primarily of two types: Scheduled and Non-Scheduled banks. The banks that remain in the list of banks maintained under section 36(2) of the Bangladesh Bank Order, 1972 are scheduled banks. Scheduled banks are licensed under the Bank Company Act, 1991 (Amended up to 2013). Scheduled banks are comprising of both Commercial and Specialized banks.

Scheduled Banks

State-owned commercial banks (SOCBs)

State-owned commercial banks (SOCBs) that are fully or majorly owned by the Government of Bangladesh.

- Agrani Bank Limited
- Bangladesh Development Bank
- BASIC Bank Limited
- Janata Bank Limited
- Rupali Bank Limited
- Sonali Bank Limited

Specialized banks (SDBs)

3 specialized banks are now operating which were established for specific objectives like agricultural or industrial development. These banks are also fully or majorly owned by the Government of Bangladesh.

- Bangladesh Krishi Bank
- Rajshahi Krishi Unnayan Bank
- Probashi Kallyan Bank

Private commercial banks (PCBs)

A good number of PCBs are in operation right now. They are majorly owned by private entities and classified into two types.

Conventional PCBs

The following PCBs are now operating in the industry. They perform the banking functions in conventional fashion i.e., interest-based operations.

- | | |
|-------------------------------------|--------------------------|
| • AB Bank Limited Limited | Bangladesh Commerce Bank |
| • Bank Asia Limited | BRAC Bank Limited |
| • Citizens Bank PLC | City Bank Limited |
| • Community Bank Bangladesh Limited | Dhaka Bank Limited |
| • Dutch-Bangla Bank Limited | Eastern Bank Limited |
| • IFIC Bank Limited | Jamuna Bank Limited |
| • Meghna Bank Limited | Mercantile Bank Limited |
| • Midland Bank Limited | Modhumoti Bank Limited |
| • Mutual Trust Bank Limited | National Bank Limited |

- National Credit & Commerce Bank Limited NRB Bank Limited
- NRB Commercial Bank Limited One Bank Limited
- Padma Bank Limited Premier Bank Limited
- Prime Bank Limited Pubali Bank Limited
- Shimanto Bank Limited Southeast Bank Limited
- Uttara Bank Limited Bengal Commercial Bank Limited
- Trust Bank Limited United Commercial Bank Limited
- South Bangla Agriculture and Commerce Bank Limited

Islami Shariah Based PCBs

The following are the Shariah-based PCBs in Bangladesh and they execute banking activities according to Islami Shariah-based principles i.e., Profit-Loss Sharing (PLS) mode.

- Al-Arafah Islami Bank Limited
- EXIM Bank Limited
- First Security Islami Bank Limited
- ICB Islamic Bank Limited
- Islami Bank Bangladesh Limited
- Shahjalal Islami Bank Limited
- Social Islami Bank Limited
- Union Bank Ltd
- Standard Bank Limited
- Global Islamic Bank Ltd (former NRB Global Bank)

Foreign commercial banks (FCBs)

The following FCBs are operating in Bangladesh as the branches of the banks which are incorporated in abroad.

- Bank Al-Falah Limited (United Arab Emirates)
- Citibank N.A (United States of America)
- Commercial Bank of Ceylon PLC (Sri Lanka)
- Habib Bank Limited (Pakistan)
- HSBC (Hong Kong)
- National Bank of Pakistan (Pakistan)
- Standard Chartered Bank (United Kingdom)
- State Bank of India (India)
- Woori Bank (South Korea)

Non-scheduled banks

Non-scheduled banks are licensed only for specific functions and objectives and do not offer the same range of services as scheduled banks. They do not get the privileges of clearing system and re-discounting of bills. These banks clear their cheques through any scheduled bank.

- Ansar VDP Unnayan Bank
- Grameen Bank
- Jubilee Bank
- Karmashangosthan Bank
- Palli Sanchay Bank

Banking System: The structure and organization of commercial banks differ from country to country. The well-known systems of banking prevalent in different parts of the world which we can see are – Branch banking, Unit banking, Chain banking, group banking or Holding company banking etc.

Branch banking

Branch banking is a system where the banking business is carried on by a single bank with a network of branches spreading all over the country. The branches are controlled from a central office known as the Head Office located in the city. There is a manager in each branch who carries the business in accordance with the instructions given by the Head office of the bank as per the rules and regulations set by the Bangladesh bank. In our country banking business operates through this banking system.

Unit Banking

In the unit banking system, the banking operations are carried out through a single office and confined to a particular area. The banks maintain no branches. Unit Banks, offer all their services from one office, though a small number of services (such as taking deposits or cashing of cheques may be offered from limited-service facilities, such as drive in windows, automated teller machines, and retail store point of sale terminals that are linked to the bank's computer system. These organizations are common in U.S. banking today.

Chain banking

Chain banking refers to the system where one or few individuals control two or more banking companies which are independently chartered or by the same group of persons through purchases of shares of such banks. Individuals secure enough stocks to get the controlling interest in the banking corporations involved. This type of banking system developed in the U.S.A. towards the middle of the 19th century and remained popular till the Great Depression of 1929.

Group Banking

Group banking is a system where a group of banks are brought under the control of a holding company. The holding company controls the affairs of all units in the group. But each bank in the group maintains its separate identity. The purpose of group banking is to unify the management of banks, to achieve economies of large-scale operation and to grab more power.

The chief advantage of this system is that each bank need not carry large cash reserve; such cash reserves are concentrated in one or few member banks of the group. This type of banking was popular in the U.S.A between 1925-29.

The main difference between the two systems is that in case of group banking, the affairs of the group are controlled by holding company, whereas in case of chain banking system banks are owned and controlled by a single person or a group of persons or family.

Deposit banking

Receiving deposits and making advances for short period is called deposit banking. The underlying principle of this system is that banks cannot lock up their deposits in long-term investment, as the deposits are repayable on demand. Banks were custodians as well as trustees to keep safe the deposits of the public. Pure deposit banking has its origin in England. Banks in England were only confined to accepting deposits and lending for short periods to industries and trade.

Investment Banking

During the second half of the 19th century the industrialization of Germany was made possible only by the investment banks. When Germany wanted to industrialize the country, it did not have adequate funds, secondly, moneyed people were unwilling to

finance industries on their own. There was an imperative need for an agency which would pool the resources and divert to the promotion and development of industries. This necessitated the evolution of investment banking in Germany. The banks did varied services like granting short- and long-term loans, subscribing to shares and debentures, drawing and accepting bills etc.

Mixed Banking

The banking system that combines deposit banking with investment banking is known as Mixed Banking. The mixed bank receives deposits from public and provides short term, medium term and long-term loan to industries. Mixed banking system refers to that banking system under which the commercial banks make long term loans to industry. In England, commercial banks are mainly concerned with supplying the short-term credit requirements of trade and commerce. Generally, the commercial banks refrain from supplying the long-term credit to the industry.

Modern Banking

Retail banking

Retail banking, also known as consumer banking or personal banking, is the provision of services by a bank to the general public, rather than to companies, corporations or other banks, which are often described as wholesale banking. Banks with exciting consumer banking divisions are: The City Bank Ltd., BRAC Bank Ltd., Eastern Bank Ltd., Bank Asia Limited, Dutch-Bangla Bank Ltd., Prime Bank Ltd., Dhaka Bank Ltd., United Commercial Bank Ltd., IFIC Bank Ltd., SCB, HSBC etc. in our country. Common products they deal with are: Opening of new Deposit Accounts, Bill payment, Car Loan, Home loan, Personal Loan, Loan Against Salary, Debit and Credit card facilities etc. Key Dimensions of Retail Banking are:

- Customer Focused.
- Prudent Risk Management.
- Convenience of Customer.
- Widespread distribution network.
- Variety of Products.
- Strong Processes.

Universal Banking: Universal banking is a system in which banks provide a wide variety of comprehensive financial services, including those tailored to retail, commercial, and investment services. It is the combination of commercial banking and investment banking. “Banking that involves not only services related to loans and savings but also those involved in making investments in companies is called universal banking”.

Virtual Banking

The important types of virtual banking services include automated teller machines (ATMs), shared ATM networks, electronic fund transfer at point of sale (POS), internet banking, mobile banking, smart cards etc. With the help of these modern and virtual devices the customers can transact banking business from anywhere as he desires easily.

Functions of Banks

Central Bank (Bangladesh Bank)

After the Independence of Bangladesh, the Government of Bangladesh passed the Bangladesh Bank Order, 1972 (P.O. No. 127 of 1972), reorganizing the Dhaka branch of the State Bank of Pakistan as Bangladesh Bank, the country's central bank and apex regulatory body for the country's monetary and financial system.

The Bangladesh Bank performs all the functions that a central bank in any country is expected to perform. Such functions include maintaining price stability through economic and monetary policy measures, managing the country's foreign exchange and gold reserve, and regulating the banking sector of the country. Like all other central banks, Bangladesh Bank is both the government's banker and the banker's bank, a "lender of last resort". Bangladesh Bank, like most other central banks, exercises a monopoly over the issue of currency and banknotes. Except for the one-, two-, and five-taka notes and coins which are the responsibility of the Ministry of Finance of the Government of Bangladesh. The major functional areas include:

- Formulation and implementation of monetary and credit policies.
- Regulation and supervision of banks and non-bank financial institutions, promotion and development of domestic financial markets.
- Management of the country's international reserves.
- Issuance of currency notes.

- Regulation and supervision of the payment system.
- Acting as banker to the government.
- Money laundering prevention.
- Collection and furnishing of credit information.
- Implementation of the Foreign Exchange Regulation Act.1947
- Managing a deposit insurance scheme.

Bangladesh Bank is the central bank of Bangladesh and is a member of the Asian Clearing Union. It is fully owned by the Government of Bangladesh. The bank is active in developing green banking and financial inclusion policy and is an important member of the Alliance for Financial Inclusion. Bangladesh Financial Intelligence Unit (BFIU), a department of Bangladesh Bank, has got the membership of Egmont Group of Financial Intelligence Units.

Functions of Commercial Banks

Commercial banks are authorized to provide a variety of financial services. Functions that a commercial bank performs may be divided into two categories - primary and secondary. The bottom-line objective of commercial banks is to earn profit. Profit maximization or in other words shareholders wealth maximization is their ultimate goal. The primary functions of commercial banks are:

Accepting Deposits

Commercial banks accept deposits from people, businesses, and other entities in the form of:

- Savings deposits – The commercial bank accepts small deposits, from households or persons, in order to encourage savings in the economy.
- Time deposits – The bank accepts deposits for a fixed time and carries a higher rate of interest as compared to savings deposits.
- Current deposits – These accounts do not offer any interest. Further, most current accounts offer overdrafts up to a pre-specified limit. The bank, therefore, undertakes the obligation of paying all cheques against deposits subject to the availability of sufficient funds in the account.
- Short Notice Deposits - Special Notice Deposit (SND) Account is an interest-bearing deposit account where advance notice is required for withdrawal. This

deposit account is specially designed to facilitate the financial need of large corporate or Government bodies. This account allows customers withdraw and deposit any amount and earn a higher rate of return at the end of month.

- Recurring deposits -Deposits under different special schemes. This deposit accounts are designed to save specific amount over a period of time. A recurring deposit allows a deposit holder to save bit by bit, and get interest for the outstanding balance.

Lending of Funds

- Commercial banks lend funds to customers in the form of loans and advances like, Term loans, cash credit, overdraft, discounting of bills, etc.
- Loans and advances that a bank extends to his customers with or without security for a specified time and at an agreed rate of interest.

The secondary functions of commercial banks are:

Agency services

A bank acts as an agent to its customers for various services like:

- Collection of cheques bills, drafts, pay orders etc.
- Paying the insurance premium, rent, loan installments, professional fees, periodic subscriptions to clubs and societies etc.
- Remittance of funds through demand drafts or electronic transfers
- Receiving utility bills
- Collection of dividend warrants on shares and securities
- Acting as an executor, administrator, or trustee of the estate of a customer
- Also, preparing income tax returns, claiming tax refunds, etc.

General Utility Services

There are several general utility services that commercial banks offer like:

- Issuing debit cards and credit cards
- Offering locker facilities for keeping valuables in safe custody
- Issue of commercial letters of credit, guarantees etc.

- Providing suitable investment advice
- Opening students file to secure admission for the children of the customers in foreign schools, college or universities.

Functions of commercial banks are categorized under the following activities:

- **General Banking:** All general banking activities are done through deposit department, cash department, clearing department, bills department, remittance department, accounts department, treasury department. Treasury department performs the functions relating to money market, foreign exchange, asset-liability management. The entire money market and foreign exchange operations are performed through dealing room.
- **General Credit/advance:** Credit functions are operated by loans department, project credit department, cash credit department (hypothecation and pledge), agriculture and SME department etc. Apart from these corporate banking department, credit risk management department, credit administration department (CAD) and recovery department are there at head office to perform the functions of credit approval, loan documentation, recovery and follow-up of the credit.
- **International Trade (Foreign Trade):** Import and export financing activities are done by import and export department. Import department deals with L/C opening/issuing import L/C, post import financing like, loan on imported financing (LIM) and loan against trust receipt (LTR). Export department performs the activities of opening back- to - back L/C (both foreign and local) for procurement of raw materials, arranging packing credit for packing of goods, providing facilities in the form of cash credit (hypothecation) or cash credit (pledge) for transportation and shipment of finished goods, collection of foreign documentary bills/foreign documentary bills purchase (FDBC/FDBP)

Areas of general banking

The world of banking and finance is changing very fast and banks are also transforming themselves with the focus on knowledge. Banks and technology are evolving so rapidly that bank employees must continually seek new skills that enable them not only to respond to change, but also to build competence in handling various queries raised by customers as well.

Since general banking holds the major part of overall banking activities, emphasis should have been given more on the areas related to general banking.

The continuous changes which are taking place in the economic and financial surroundings of the country, the areas needing special attention for improvement in the areas for ensuring that the banks attract quality management and service, protecting and building up their deposit base, growing their capacity for creating products in different areas of operation, strengthening their ability to manage different areas of general banking, and enhancing their ability for providing services as per customer needs.

A critical challenge of general banking, malpractices that take the form of irregularities or non-compliance of procedures and fraudulent activities like bank fraud, money laundering became a crucial concern for the banks. The common view that the main risk within general banking is fraud, forgery, Money laundering etc. The malpractices could be particularly detrimental for banks that are widely perceived to be more fragile than other non-financial organizations. As a measure to handle the challenges of malpractices and especially frauds, relevant legislative measures have been made and stringent compliance requirements need to be increased tremendously. However, avoidance of the procedures and compliance requirements in general banking could prove to be very challenging for banks. Thus, all associated risks of general banking need to be addressed accordingly.

In the context of Bangladesh, general banking is the key component which consists of the management of deposits (i.e., current deposit, savings deposit, short notice deposit, fixed deposit, and recurring deposit), cash, honor cheques, clearing of cheques, customer services, locker facilities and other ancillary services of the bank. General Banking Department is considered as the direct customer service center. It is the starting point of all the banking operations. Moreover, it opens new account, remits fund, takes deposit, issues bank draft and pay order, issues debit and credit cards etc.

Alongside ensuring satisfaction of the customers, the efficiency level of the bankers in general banking with due compliance of the laws and procedures is also very crucial. As such, capacity development of all concerned officials of the banks is also a matter to be considered for handling general banking challenges effectively. In view of the above the important areas of general banking may be summarized as follows:

- Banker Customer Relationship

- Opening and Operations of Bank Deposit Accounts
- Customer services
- Negotiable Instruments
- Clearing and Collection of Instruments: BACH, BACPS
- Bills for Collection and Remittance Procedure
- Cash and Vault Management
- Locker facilities
- Laws and Regulations Related to General Banking
- Fraud, Forgeries & Malpractices Related to General Banking
- Internal Control and Compliance

Banker:

Generally, a person who is doing the banking business is called banker. A Banker's main job is to give financial advice to clients, especially on matters related to savings, investments, loans, and securities. Their knowledge and advice help customers solve their financial problems while also increasing the organization's profit.

According to Dr. Hart, 'A 'Banker' is one who in the ordinary course of his business honors cheques drawn upon him by persons from and for whom he received money on current accounts.'

A banker performs multifarious functions. He deals with others money but with his own faculties. A banker essentially be a man of wisdom. A banker is not only acting as a depository, agent, but also as a repository of financial advices. To be a banker, company's main functions will have to be 'business of banking'.

A banker needs to have good judgment, service orientation and the ability to cope well under stressful circumstances. Organizational skills, time management and a strong work ethic are also essential for this job.

Customer

In simple words, a customer is such a person to whom one extends their services in return for consideration. According to Sir John Paget one has to fulfil two conditions to become a bank customer. First, there must be some recognizable course of habit of dealing between

the customer and the bank and second, the transactions must be in the nature of regular banking business.

According to Dr. Hart, 'a customer is one who has an account with a banker or for whom a banker habitually undertakes to act as such'.

A customer is a person who maintains an account with the bank without taking into consideration the duration and frequency of operation of his account. To be a customer for any bank the individual should have an account with the bank. The individual should deal with the bank in its nature of regular banking business. A customer of a bank need not necessarily be an individual. A firm, an organization, any corporate body, a club, society or associations, educational institutions and any separate legal entity may become a customer. Thus, a person or entity that maintains an account and/or has a business relationship with the bank may be called as a customer.

Those who do not maintain any account relationship with the bank but frequently visit a branch of a bank to avail of banking facilities such as for purchasing a draft, receiving payment of a cheque over the counter etc. technically they are not customers, as they do not maintain an account with the bank branch. However, they may be called as walk-in-customer. Customer benefits can be considered on the safety of deposits held at banks; interest received for them; that the money held in bank accounts can be returned at any time upon request; transfers of money to them, instead of wearing them large sums of cash.

Banker - Customer relationship

The relationship between a banker and a customer comes into existence when the banker agrees to open an account in the name of the customer. The relationship between a banker and a customer depends on the activities, products, or services provided by the bank to its customers or availed by the customer. Bank's business depends much on the strong bondage with the customer. Trust plays an important role in building a healthy relationship between a banker and a customer. Relationship between banks and their clients is fiduciary one. It is based on trust and bank has to carry out their duties to the customer in utmost good faith and due diligence. Bank's supreme responsibility lies in protecting customers deposit and secrecy about customers. Banks shall be impartial and non-discriminatory in their dealings with the

customers. Any favor or indulgence to any one client or group of clients will be considered violation of fiduciary relationship.

General Relationship between Banker and Customer

When someone walks into a bank and asks to open a banking account, he is making an offer to enter into a contract. When the banker agrees to open the account, he is legally accepting the offer and thus a binding contract is created. Bank accounts are opened basically in relation to the Contract Act, 1872. However, before committing himself, the banker will want to be satisfied that the person will be a suitable customer, either by personal introduction, by taking and following up references or making some form of enquiry like KYC etc. Thus, the relationship between a banker and a customer is essentially on the basis of contract; it is fundamentally the relationship of a debtor and a creditor. As a customer must be an account holder, the basic relationship between banker and customer is that of debtor and creditor, the banker being the debtor with regard to funds deposited with him, and being the creditor in respect of money lent by him.

1. Debtor and Creditor relationship:

When a banker receives deposits from a customer, he is technically said to borrow money from the customer. So, he is acting as a debtor who is bound to return the money on demand to his creditor namely his customer. But in the cases of a loan, cash credit and overdraft, the banker becomes a creditor and the customer assumes the role of a debtor.

2. Principal and Agent relationship

When the banker collects cheques, bills, dividend warrants, pays insurance premium, subscriptions etc. on behalf of his customer then the agent – principal relationship exists between a banker and his customer. Banker acts as an agent on behalf of their customer. So, customer is the principal and bank being the agent.

3. Trustee and Beneficiary relationship

When a person entrusts valuable items with an intention that such items would be returned on demand to the customer/beneficiary the relationship becomes of a trustee and beneficiary. A banker becomes a trustee only under certain circumstances, for example, when money is deposited for a specific purpose, till that purpose is fulfilled; the banker is regarded as a

trustee for that money. Again, when a cheque is given for collection, till the proceeds are collected, he holds the cheque as a trustee.

4. Bailor and Bailee Relationship

This relationship arises out of contract of bailment. As per section 148 of contract act, 1872 a 'bailment' is the delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them. The person delivering the goods is called the 'bailor'. The person to whom they are delivered is called the 'bailee'. Such relationship exists while lending against pledge of goods.

5. Lessor-Lessee Relationship

The banks provide safe deposit lockers to the customers who hire them on lease basis. The relationship, therefore, is that of lessor and lessee. In such case a banker becomes the lessor and the customer becomes the lessee.

6. Mortgagor-Mortgagee

A mortgage is the transfer of an interest in specific immovable property for the purpose of securing the payment of money advanced or to be advanced by way of loan, an existing or future debt or the performance of an engagement which may give rise to a pecuniary liability. The person transferring the interest is called the mortgagor, and the person to whom the interest is transferred is called the mortgagee.

Special Relationship between Banker and Customer

Apart from general features of relationship, there exist some special features that arise due to the following legal obligations:

1. Statutory obligation to honour cheque

When a customer opens an account there arises a contractual relationship between the banker and the customer by virtue of which the banker undertakes an obligation to honor its customers' cheques. This obligation is a statutory obligation under section 31 of the Negotiable Instrument Act, 1881. However, this statutory obligation is not absolute. The statutory obligation to honour a cheque is limited in the following ways:

- a) Properly drawing of the cheque
- b) The availability of the money in the account of the customer
- c) Proper application of the funds
- d) Reasonable time for collection
- e) Existence of legal bar

Overriding the obligation: When a banker overrides his /her statutory obligation and dishonors a cheque on reasonable ground, the banker is justified in doing so. However, if dishonors a cheque by mistake, the bank is liable to compensate the customer for any loss or damage caused to him.

2. Banker's duty to maintain secrecy of customer's account

When a person opens an account in a bank, he/she is entitled to a reasonable assurance that information regarding the account remains a matter of knowledge only between the banker and account holder. This is so because; it is one of the principal duties of the banker to maintain complete secrecy of the status of its customer's account. This obligation of the bank to maintain secrecy continues even after the customer's account is closed. There are certain circumstances in which the banker is entitled or required to make disclosures about a customer's account which are as follows:

Disclosure under compulsion of law

- By order of the court. In such situation banks are bound to disclose the status of the customer's account even if he is not a party to it. As for example, considering inconvenience of producing ledgers and other records, the bank may produce before the Court only certified copy of the entries made in the customer's account as per the Bankers' Book Evidence Act, 2021.
 - Ordered by the income tax Authorities (under Income Tax Ordinance, 1984).
 - Disclosure to Police for conducting an authorized investigation purpose.
 - Disclosure under the Companies Act, 1994 for investigating the affairs of a company.

- Disclosure under the Bank companies Act,1991. As for example- every banking company has to provide a statement/transfer in respect of bank accounts which remained unclaimed for a period of ten years (Section 35 of the Bank companies Act, 1991)
- Disclosure under The Foreign Exchange Regulations Act,1947 and FERA amendment Act, 2015. The officials of Bangladesh Bank may inspect the books of accounts and other documents of any Authorised Dealer. Under the FERA, banking companies dealing in foreign exchange business are designated as ADs in Foreign exchange.
- Disclosure under Prevention of Money Laundering Act,2012 and Antiterrorism Act, 2009.

Consent of the Customer: A banker may disclose the state of his customer's account to a person or his agent only where there is expressed (written) consent of the customer.

a) *Banker's Own Interest:* When banker's own position is at stake, a banker may be compelled to ignore his oath of secrecy. Any prudent banker will safeguard his position before fulfilling his obligations. As for example- where it is necessary to recover the dues from the guarantor, banker at their own interest may disclose the facts of the account to the guarantor.

b) *Disclosure in public interest*

A banker may justifiably disclose any information relating to its customers account when it stands as a duty to the public to disclose such information.

As for example-

- When a bank considers that the customer is involved in activities prejudicial to the interest of the country.
- Where as per the records of the bank it reveals that the customer is contravening the provision of any law.

3. *Right to claim incidental charges interest etc.*

Another special relationship exists between banker and customer is that the banker may claim incidental charges on unremunerated accounts. These incidental charges take the

form of service charges, processing charges, appraisal charges, penal charges, handling/ collection charges and so on.

4. Banker's Lien

Another special feature of the relationship existing between a banker and his customer is that a banker can exercise the right of lien on all goods and securities entrusted to him as a banker. It must be noted that a banker's lien is generally described as an implied pledge. It means that a lien not only gives a right to retain the goods but also gives a right to sell the securities and goods of the customer after giving reasonable notice to him. This right of sale is normally available only in the case of a pledge. That is why a banker's lien is regarded as an implied pledge.

Rights and Obligations of Banks & Customers

The Obligations or Duties of a banker

The obligations or duties of a banker may be explained under the following heads:

1. Obligation to Honour Cheques

It is one of the implied terms of the contract between a banker and a customer to honour cheques drawn by the customer subject to fulfilment of certain conditions under section 31 of the Negotiable Instruments Act, 1881. The Banker is under statutory obligation to honour his customer's cheques, provided the following conditions are satisfied:

- a) There must be sufficient funds (credit balance) or within the permissible limit of overdraft.
- b) The funds must be properly applicable to the payment of cheque. For example, the customer may have two accounts: one showing more credit balance and the other showing less credit balance. He cannot present a cheque for higher amount against his account showing less credit balance, although his other account shows sufficient credit balance.
- c) The banker must be duly required to pay. This means the cheque must be presented within a reasonable time i.e., within 6 months. After 6 months it becomes stale and cannot be honoured unless revalidated. Similarly post-dated (i.e., cheque with future date) cheque cannot be honoured. The customer shall present postdated cheque on or after the date of cheque. The cheques must also be presented on working days and within the statutory transaction hours.

d) The banker must have reasonable time for crediting funds before cheque can be drawn against them. Reasonable time depends upon the facts and circumstances of each case. For example, if a customer presents a cheque before the instruments deposited and collected, such cheque to be returned by the banker with a remark 'effects not cleared'.

e) Banker is to properly record countermanding/stop payment instruction given by the customer and act accordingly.

f) The banker must see before honoring a cheque that there being no legal bar or order of the court (Garnishee Order) to draw the amount from his bank account.

g) *Garnishee Order*: It is issued by a court in favor of the judgment creditors for a debt due from the judgment debtors (bank customer), upon a third party (bank), so as to attach the money so owing for the purpose of satisfying the decree. The order is issued under the Civil Procedure Code on the banker.

More precisely, when a debtor fails to repay his creditor, the latter (creditor) may apply to the court for the issue of a Garnishee Order on the banker of his debtor. By Garnishee Order, the debtor's account with the banker stands suspended and the debtor (customer) will not be allowed to draw, though he has a credit balance. The creditor at whose request, the order is issued is called 'the judgement Creditor', the customer is called judgement debtor, and the banker (debtor of the judgement debtor) is called Garnishee'.

Features of Garnishee Order

- It (Garnishee Order) attaches the entire or specific amount of the customer (Judgement Debtor).
- It does not extend to overdraft account of the Judgement debtor, though he had not drawn the amount permitted under overdraft.
- It is not applicable in case of cheques, bills of exchange, drafts etc. presented by customer and sent for collection (which remain uncleared at the time of order).
- It cannot attach the amounts deposited into the customer's account after the order unless mentioned by the court.
- It is not effective in respect of payments already made before the receipt of the order.
- It is not applicable to money held abroad by the Judgement Debtor.

- It is not applicable to securities held in safe custody of the Banker or trustee.
- It may be served on the Head Office of the Bank concerned and it will be treated as sufficient notice to all the branches.
- It is not effective against a joint account in which only one is a judgement debtor or all are not judgement debtors.
- It may be issued against income tax defaulters also.

Kinds of Garnishee Order

The Garnishee Order issued by the court is of two types namely:

- a) Order Nisi or Preliminary Order and
- b) Order Absolute or Final Order.

Order Nisi: Order Nisi is a preliminary order issued to the banker:

- To stop the payment over the customer's account.
- To give explanation, why, the judgement debtors credit balance should not be used for the purpose of payment of the judgement creditor and
- It is also a duty of the banker to inform the same to his customer.

Order Absolute: It is a final order issued by the court to the banker to pay the amount in the judgement debtors account to the judgement creditor (decree holder) according to the direction given by the court.

Effect of Garnishee Order

After receiving garnishee order, banker is not justified in honouring the cheques of his customer. And as such, customer cannot claim the damages for dishonour of his cheque.

Obligation of Banker for Wrongful Dishonor

A banker has a statutory obligation to honour his customer's cheques provided, the conditions under Sec. 10 of the Negotiable Instruments Act, are satisfied. According to Section 31 of the Negotiable Instruments Act, 1881, the Banker is liable to compensate the drawer for loss or damage caused by such wrongful dishonour. Section 31 runs as follows: *“The drawee of a cheque having sufficient funds of the drawer in his hands, properly applicable to the payment of such cheque must pay the cheque when duly required to do so*

and, in default of such payment, must compensate the drawer for any loss or damage caused by such default”.

If there are sufficient funds to meet the cheque and the same is dishonoured by a bank, it can be held liable for the wrongful dishonour of the cheque and required to pay compensation for the damage caused thereby. The banker has a contractual relationship with the customer, having a duty to honour his cheques, and therefore, only a customer i.e., the drawer can bring an action against the bank for the wrongful dishonour of the cheque. After receiving garnishee order, banker is not justified in honouring the cheques of his customer. And as such, customer cannot claim the damages for dishonour of his cheque.

3. Banker’s obligation to maintain secrecy of customer’s account

The banker is under obligation to take utmost care in keeping secrecy about the accounts of its customers. If the banker fails to maintain the secrecy, it will be liable for any damages or adverse effect of the customer’s reputation, credit worthiness and business. This obligation continues even after the customer has closed his account with the bank and even after the death of the customer. However, the obligation to maintain secrecy is not absolute. Thus, the general rule about the secrecy of the customer’s accounts may be dispensed with the following circumstances:

- 1) Where disclosure is under compulsion of law.
- 2) Where such disclosure requires in the interest of the bank and as per banking practice.
- 3) Where such disclosure is in public interest.
- 4) Where the disclosure is made by the express or implied consent of the customer.

Other Obligation of banks/ Customer’s Rights

- Banker to Maintain Proper Records.
- Banker to Follow Customer’s Instructions properly.
- Banker to give Notice before Closing the Account.
- Bank should exercise proper care and skill in carrying out any business it has agreed to transact for its customer.

- Banks are to disclose of Current Interest Rates Prior to signing the contract with the consumers for both interest-bearing deposits and loans.
- Inform the customers of the charges, if any, and consequences of premature termination of a fixed deposit or loan.
- Inform the customers whether the interest rate is fixed or variable.
- Inform the basis and frequency on which interest payments or deductions are to be made.
- Explain the method used to calculate interest of each product.
- Disclose prominently the total amount of income that the customers shall receive on the fixed deposits.
- Disclose the total cost of credit with break up, if any.
- Disclose the latest Schedule of Charges, Fee, Commission etc.
- As financial service provider Banks/FIs shall, for all charges and fees to be levied at the time of service rendered or on request.
- To know the customers with a schedule of charges, fees, commissions payable for the products or services that the customers have chosen.
- Display prominently their standard fees and charges at all branches.
- Inform the customers of any additional charges or expenses that the customers have to pay, such as searching fees to retrieve available past records etc.
- Notice of Changes to Terms and Conditions.
- The terms and conditions provided by banks/FIs shall highlight to a consumer the fees, charges, penalties, relevant interest rates and any other consumer liabilities or obligations in the use of the financial products or services. Banks/FIs shall ensure that a consumer is notified reasonably before implementing any changes to the terms and conditions, fees or charges, discontinuation of services or relocation of premises of the financial services provider.
- Immediately of any changes in interest rates regarding the product or service
- Banks/FIs must take written consent from their customers for any value-added services, such as, internet banking, SMS banking, ATM services etc.

and inform the customers of the terms and conditions along with the charges, levied for that.

- Prior to a person acting as a guarantor, banks/FIs shall in writing advise the person of the quantum and nature of his or her potential liabilities; and advise the person to seek independent legal advice before acting as a personal guarantor.

Rights of a Banker

Right of lien: Lien signifies the right of a person, who has possession of the goods to another, to retain such possession until a debt due to that person has been discharged. Lien may be either a particular lien or general lien.

A particular lien confers a right to retain the goods in respect of a particular debt involved in connection with a particular transaction.

To exercise a particular lien, the following conditions are essential:

- The right of lien can be exercised only when the bailee has expended his labor and skill on the goods bailed. Therefore, mere custody of goods does not give a right of lien.
- The right of lien can be exercised only when the work has been completed in time. If the work has not been completed in time, the lien cannot be exercised.
- The right of lien can be exercised only if the payment is due. If the payment is to be made on delivery but at a future date, then the lien cannot be exercised.

As for Example, A delivered some gold to B, a goldsmith for the purpose of making ornaments. B made the ornaments. Here, B is entitled to retain the ornaments till he is paid for the services he has rendered.

A general lien confers a right to retain goods not only in respect of debts incurred in connection with a particular transaction but also in respect of any general balance arising out of the general dealing between the two parties. General Lien means the right of an individual to retain as security any movable property, which belongs to someone else, against a general

balance of the account, until the liability of the holder is discharged. It is described under section 171 of the Contract Act, 1872.

As per Contract Act a banker has a general lien on cash, cheques, bill of exchange and securities deposited with him in his character of a banker for any money due to him as banker. Since it extends to all transactions and thus it is more extensive than that of a particular lien. This right can be exercised against any property belonging to the other party in possession of the person exercising the right.

This right can be exercised for a general balance of the account, i.e., for any amount due. This right is available only to bankers, factors wharfingers, attorneys of High Courts, and policy brokers.

As for Example - A has two accounts in a bank. In the savings bank account, he has a credit balance of BDT5,00,000. In the current account, the account holder has an overdraft of BDT10,00,000. The bank can exercise the right of lien on the savings account for the amount due on the current account.

Exceptions to the Right of General Lien

The right of lien cannot be exercised in the following circumstances:

a) Safe custody deposits: When a customer deposits his valuables – securities, ornaments, documents, etc. – with the banker for safe custody, he entrusts them to the banker as a bailee or trustee with the purpose to ensure their safety from theft, fire, etc. A contract inconsistent with the right of lien is presumed to exist.

For example, if he directs the banker to collect the proceeds of a bill of exchange on its maturity and utilize the same for honoring a bill of exchange on his behalf, the amount so realized will not be subject to the right of general lien.

b) Entrustment for a specific purpose: For example, if a customer hands over to the banker some shares with the instruction to sell them at or above a certain price and the same are lying unsold with the banker, the latter cannot exercise his right of lien on the same, because the shares have been entrusted for a specific purpose and hence a contract inconsistent with the right of lien comes into existence.

But, if no specific purpose is mentioned by the customer, the banker can have lien on bills or cheques sent for collection or dividend warrants, etc. If the security comes into the

possession of the banker in the ordinary course of business, he can exercise his right of general lien.

c) Securities left with the banker negligently: The banker does not possess the right of lien on the documents or valuables left in his possession by the customer by mistake or by negligence.

d) The banker cannot exercise his right of lien over the securities lodged with him for securing a loan, before such loan is actually granted to him.

e) Securities held in Trust. The banker cannot exercise his right of general lien over the securities deposited by the customer as a trustee in respect of his personal loan.

Right of Set-off

A banker, like other creditors, possesses the right of set-off, which enables him to combine two accounts in the name of the same customer and adjust the debit balance in one account with the credit balance in the other. This right to combine two accounts is known as the right of set-off.

The right of setoff is a legal right by a debtor to reduce the amount owed to a creditor by offsetting against it any amounts owed by the creditor to the debtor. For example, a bank can seize the amount in a customer's bank account to offset the amount of an unpaid loan.

Example: when the right of set-off arises, if B owes A Tk.5,00,000, but A in fact owes B Tk. 2,00,000, B can set off that Tk. 2,00,000 when A claims its Tk.5,00,000 and pay to A only the balance of Tk. 3,00,000.

The right of set-off can be exercised subject to the fulfillment of the following conditions:

- The accounts must be in the same name and in the same right.
- The right can be exercised in respect of debts which have become due on the date and not in respect of future or contingent debts.
- The right may be exercised if there being no express or implied agreement inconsistent with the right of set-off.
- The banker has the option to exercise the right. The customer cannot compel the banker to do so. As such this at the discretion of the bank.
- The banker has the right to exercise the right of set-off before the Garnishee order is made effective. For example, where a banker receives a garnishee order in respect of the funds belonging to its customer, banker has the right at

first to exercise its right of set-off and thereafter to surrender only the balance of money left to the account to the judgment creditor.

Automatic Right of Set-off arises in the following cases:

- Death, insanity or insolvency of the customer,
- On the insolvency of a partner or a firm or on the winding up of a company,
- On receiving notice of assignment of a customer's credit balance,
- On receiving notice of second mortgage over the security charged to the bank.

Right of Appropriation

Where there are several debts outstanding between the creditor and the debtor, the general rule is that the debtor has the first choice and can appropriate the payment to any debt he/she likes. It is the debtor who has to advise the bank about his/her desire to appropriate the amount at the time of payment. If the debtor gives no instruction as to this regard, banker may make the appropriation of payment to any debt according to its discretion.

Banker has an implied right to charge a reasonable commission for its service and interest upon loans.

Customer's Obligations to his Bank

Duty of reasonable care in drawing cheques: The customer is under the duty to exercise reasonable care when drawing his cheques, to help prevent fraud or forgery; The customer's self-regarding duty is to draw cheques on his account in a way which does not facilitate the alteration of the amount failure to do so, will entitle the customer's bank to debit his account for the amount for which cheque appears to have been drawn and if it pays that amount on presentation of the cheque and does so in good faith and without negligence.

Non-drawing of cheque in insufficient of funds: The customer should not draw a cheque for the insufficiency of funds in the account which leads to the dishonor of the cheque and it is considered as a criminal offense. The customer can be punished with imprisonment for a term which may extend to 1 year and a fine thrice of the cheque.

The customer must observe due care when he requires payment either from the counter of the bank or through ATM or by any other means;

To pay bank charges: A customer is obliged to pay the service charges they enjoy from banks like, locker facility, issuance of demand draft, debit/credit card, etc. A customer must pay

reasonable interest and commission and other charges for banking services and this is implied when he/she opens an account.

Operation of account: The customer should immediately notify any forged activities drawn on his account. It can help the banker and will not pay to honor the cheques drawn by the forged signature.

To repay overdrawing: Bankers generally allow overdraft facilities to its customers holding current accounts. Hence, it's the duty of the customer to pay the overdraft amount. Alike is the case with the credit card facility.

Other obligations:

- Customers shall follow the banking norms, practices, functional rules etc.
- Customers shall abide by the terms and conditions prescribed for each banking product and services.
- Customers shall maintain disciplinary arrangement at the customer service points.
- Customers shall convey their grievance to the bank in proper way or in prescribed form.
- Customers shall convey the bank any changes in their address, contact numbers, KYC & TP
- Customer shall not try to show unreasonable persistence, demand, argument & behavior.
- Customers generally shall ask any query at prescribed desk such as Customers' Service Desk, Help Desk, Information Desk or Enquiry Desk at first instance.
- Customer should avoid misunderstanding as far as possible.

Termination of relationship

The relationship can be terminated because of two reasons, first voluntarily at customers will and second by operation of law.

Termination by the customer

- A customer may close his account at will without notice to a banker at any time in the following circumstances.
- If the customer is not satisfied with the services of the bank.
- If he cannot get required facilities from the banker
- If he loses his confidence in the bank's reputation, economic stability, etc.
- If he does not agree with the terms and conditions of the bank.

Termination by the banker

Death of the customer

As soon as the bank receives the information on the death of a customer, he should stop the transaction and also should notify the information in ledgers and others. Reliable information includes the announcement in the newspapers, radio, or from relatives. In such a case banker should close the account and hand over the balance to the nominee or deceased heirs on the production of the death certificate.

Customer's insanity

The same is the case of insanity once the bank receives the information of the insanity of the customer, the banker should stop the transaction from his account and close the account. Later, the banker can reopen with the orders of the court or the certificate issued by the medical authorities.

Customer's Insolvency

The bank should stop the transaction of the account of the customer after receiving information about his becoming insolvent.

Assignment

If the customer assigns his account with its fund to any other person and orders the bank for the assignment then the bank should handover the account to such a person.

Winding-up of the company

If a company is wound up, the banker should act according to the instruction of the court.

Closing of partnership firms

If the partnership firm is closed by the consent of partners or due to death of one or more partners, the bank should stop the transaction, and then close the account of the said firm. Bank closes the account of the customer if a customer becomes fraudulent and turns to be a cheater.

Providing services in accordance with customer acceptance policy & schedule of charges

Customer Service

Customer service is considered as a priority objective of a bank along with its profitability, sustainability and therefore, the managing authority of each bank have direct involvement with customer service quality. With this end in view each bank has a separate framework for customer services and complaint management.

At the head office level there is a cell which is named as Central Customer Service & Complaints Management Cell (CCS & CMC) under the direct supervision of the Managing Director or the Chief Executive Officer (CEO) of the bank.

A banker is to remember, the best asset of a bank is a satisfied customer. Business goes where it is invited and stays where it is treated well. The one who progresses is the one who gives a little more service, a little better service. He makes profit most who serves best.

Banks need to incorporate personalization to cater to the specific needs and preferences of each of their customers. Customers can switch to another bank if they don't get the expected level of service. In fact, most people are more likely to leave a bank due to poor service rather than poor products. That's why it is crucial for a bank to meet customers' expectations if they don't want to lose them. To maintain a profitable business in the long run, banks need to focus on customer retention. Providing good customer service is the key to achieve it.

Effective customer service may include the following:

- Pleasant attitude
- Good behavior
- Clear Communication Skills
- Speed of delivery/ Valuing customers' time,
- Personal Skills
- Competency and informative
- Respond to Customers Promptly
- Using technology in day-to-day service operations.

- Long term relationship

All Banks are required to provide customer services in accordance with customer acceptance policy and schedule of charges.

Customer acceptance policy

Customers are the key to operation of banking business. They are the important parts for survival and success as a whole for the bank. But it is equally important to keep in mind that sometimes criminals enter to banks as customers and pose the risk of money laundering and terrorist financing to the banks. In our country, banks do not open accounts or deal with customer of unknown identity or have fictitious or imaginary names. Bank will accept only those clients whose identity is established by conducting due diligence appropriate to the risk profile of the client.

As per regulatory requirement every bank should develop a clear Customer Acceptance Policy laying down clear criteria for acceptance of customers.

The policy includes adequate description of customers in accordance to their associated risk. The following important factors are required to be taken into consideration:

- Customer's background,
- Country of origin,
- Public or high-profile position
- Linked accounts,
- Business activities of customers
- Basic requirements for account opening
- Other risk indicators

Branches should not open the account, commence business relations or perform the transaction; or should terminate the business relationship if it is-

- unable to identify the customer and verify that customer's identity using reliable, independent source documents, data or information;
- unable to identify the beneficial owner taking reasonable measures; and
- unable to obtain information on the purpose and intended nature of the business relationship;

In such a situation bank branch should consider the customer as suspicious and make a suspicious transactions report in relation to the customer. The Bank should not enter into a business relationship or execute any transactions or provide customer services before applying due diligence procedures stipulated in these instructions.

Schedule of Charges

Banks charge fees for the services they provide to their customers. These fees may be charged on a one-time or ongoing basis. Bank charges make up a big portion of bank revenue in addition to their interest income.

A service charge is a fee charged to customers for rendering services as account maintenance fee, account transfer charge, activation of dormant account, account Closing, premature encashment fee, issuance of cheque book, remittance (Inland), fee/charge for miscellaneous services, cheque collection charges, issuance of duplicate instruments, issuance of guarantee and e-GP system, standing instruction, locker service, loan application fee, loan processing fee, loan rescheduling and restructuring fee, early settlement of loan installment fee etc. Banks also charge service fees for things such as falling below a minimum required balance, receiving a paper statement, making a foreign transaction or replacing a debit card. Some banks even require an account to be open for a minimum period of time and will charge an early closure fee if the account is closed before that time. Banks charge credit cardholders' late payment fees if they miss the due date listed on their statements.

Schedule of charges are issued through the Circular from Banking Regulation and Policy Department (BRPD) of Bangladesh Bank. All the banks are to follow the Revised Schedule of Charges as per BRPD Circular No. 11, dated June 10, 2021. All banks required to be transparent about their bank fees.

Commissions may be realized on the basis of Banker-Customer relationship which will be approved by the Management of the Bank. VAT is applicable as per Government rules on realized Fees & Charges.

It is one of the obligations on the part of the bank that they should have disclosure of latest Schedule of Charges, Fee, Commission etc. As financial service provider Banks shall, for all charges and fees to be levied at the time of service rendered or on request.

Model questions (Module G: Overview)

MCQs

1. Banking financial institutions are generally guided by-
 - a) Financial Institutions Act 1993
 - b) Bangladesh Bank Order, 1972
 - c) Bank Company Act 1991
 - d) None of these

2. Which one of the following is not a financial institution related law?
 - a) The Contract Act, 1872
 - b) The Negotiable Instrument Act, 1881
 - c) Bank Company Act 1991
 - d) Grameen Bank Act, 2013

3. Which one of the following is not a scheduled Bank?
 - a) Sonali Bank Limited
 - b) BRAC Bank Ltd.
 - c) State Bank of India
 - d) Karmasangsthan Bank

4. Which one of the following is not a state-owned Bank?
 - a) Agrani Bank Limited
 - b) BRAC Bank Limited
 - c) BASIC Bank Limited
 - d) Bangladesh Krishi Bank

2. Which one of the following is not a function of a commercial bank?
 - a) Lending of money
 - b) Accepting of deposit
 - c) Agency services
 - d) Credit control and money supply

3. Banker customer relationship comes to an end in case of-
 - a) Insolvency of a customer
 - b) Death of a customer
 - c) Insanity of a customer
 - d) All of the above

Short questions/ short notes on:

1. Schedule and non-schedule banks
2. Customer acceptance policy
3. Major Functional areas of central bank
4. Retail banking and Virtual Banking
5. Garnishee Order

Broad questions:

1. State the obligation of banker to their customer.
2. Describe General and special relationship between banker and customer.
3. Identify the important areas of general banking and the challenges involved therein.
4. Briefly discuss the functions of commercial bank

Module H: Deposit Accounts & Operation

Customer and Unique customer identification code (UCIC)

Bank opens deposit account in the name of different customers- individual, traders, businessmen, corporates etc. as per their need and purposes. Again, banks make personal loans, retail loans, SME loans and many other types of loans and advances to traders, businessmen, agriculturists and industrialists. The increasing complexity and volume of financial transactions necessitate that customer do not have multiple identities within a bank, across the banking system and across the financial system. As such it is felt for setting up a centralized KYC Registry. While setting up such a system for the entire financial system is likely to take quite long time, banks undertake an immediate beginning in this regard by having such identification code for their own customers.

Bangladesh Bank recently came up with idea of allotting unique code for each bank account holder. It has been instructed that all bank branches should use unique identification code for any customer maintaining more than one account or availing more than one facility. Such unique identification system could facilitate Branches to avoid redundancy, and saves time and resources.

Availability of a unique customer identification code (UCIC) will help banks to identify a customer, track the facilities availed, monitor financial transactions in various accounts, improve risk profiling and smoothen banking operations for the customer.

Hence, System shall maintain unique Customer ID to open any relationship with bank for a customer. Customer may have multiple products in a bank but he/she shall have one unique ID/customer ID. System shall have option to create a group ID linking with multiple customers IDs. System shall have different types of searching option to identify unique customer.

KYC (Know your customer)

KYC is required for banks and other financial institutions to establish the legitimacy of a customer's identity and identify risk factors. KYC procedures help prevent identity theft, money laundering, financial fraud, terrorism financing, and other financial crimes.

Money Laundering Prevention Act, 2012 requires all reporting agencies to maintain correct and concrete information with regard to identity of its customer during the operation of their accounts. KYC is a regulatory and legal requirement. KYC is required to establish the identity of the client, verifying the client's identity by using reliable, independent source documents, data or information.

Components of KYC Program

Financial institutions in the process of designing the KYC program need to maintain certain key elements. Such essential elements should start from the financial institutions' risk management and control procedures and should include –

- 1) Customer acceptance policy,
- 2) Customer identification,
- 3) On-going monitoring of high-risk accounts, and
- 4) Identification of suspicious transactions.

Banks and FIs should not only establish the identity of their customers, but should also monitor account activities to determine those transactions that do not conform with the normal or expected transactions for that customer or type of account. KYC should be a core feature of financial institutions' risk management and control procedures, and be complemented by regular compliance reviews and internal audit. The intensity of KYC programs beyond these essential elements should be tailored to the degree of risk.

Customer acceptance policy of a bank must include-

- No account in anonymous or fictitious name or account only with numbers shall be opened;
- No banking relationship shall be established with a Shell Bank; and
- No account in the name of any person or entity listed under United Nations Security Council Resolutions (UNSCRs) or their close alliance adopted under Chapter VII of the Charter of UN on suspicion of involvement in terrorist or terrorist financing activities and prescribed or enlisted by Bangladesh Government shall be opened or operated.

Customer Identification Procedure

KYC guidelines of Bangladesh Bank mandate banks to collect three types of proof from the customers. These are: Proof of Identity (NID), Proof of address and Recent photograph.

Applicability of KYC

KYC will be carried out at the following situations:

- Opening of a new account
- Opening of a subsequent account where documents as per current KYC has not been submitted while opening the initial account
- Availing of Locker facility
- At the desire of the bank if it is necessary to obtain additional information from existing customers based on conduct of the account
- When there are changes to signatories, mandate holders, beneficial owners etc.
- Short KYC where necessary in case of non-account holders

Financial Action Task Force (FATF) recommendation (The FATF Recommendations are recognized as the global anti-money laundering (AML) and counter-terrorist financing (CFT) standard)¹⁰ states that where the financial institution is unable to-

- identify the customer and verify that customer's identity using reliable, independent source documents, data or information, and
- to identify the beneficial owner, and to take reasonable measures to verify the identity of the beneficial owner and
- unable to obtaining information on the purpose and intended nature of the business relationship, it should not open the account, commence business relations or perform the transaction; or should terminate the business relationship; and should consider making a suspicious transactions report in relation to the customer.

Electronic Know Your Customer (e-KYC)

Electronic Know Your Customer (e-KYC) is a combination of paperless customer onboarding, promptly identifying and verifying customer identity, maintaining KYC profile

in a digital form and determining customer risk grading through digital means. It is a faster process of doing KYC of customer verifying his/her identity document or bio-metric data. Electronic Know Your Customer is a digital process which deals with electronic customer onboarding, identification and verification of customer identity, creating of customer digital KYC profile as well as risk grading of customer in a digital means. e-KYC guideline issued by Bangladesh Bank contains a set of instructions for the financial institutions to enable them to conduct customer due diligence in a digital means. e-KYC shall only be applicable for natural person who have valid NID document. Natural person without NID and a legal entity or arrangement has to follow the KYC norms as prescribed by the BFIU from time to time. The key objective of promoting e-KYC is that it can provide an ample scope of quick onboarding of customer by verifying customer identity through digital means which can leverage saving of time and provide ease both for the client and service providers. Additionally, e-KYC can save institutional cost as well as foster growth of customer base compare to the traditional growth. Therefore, the basic objectives of implementing e-KYC are as follows:

- Establish good governance within the financial industry;
- Enhancing the growth of financial inclusion;
- Protect financial sector from abuse of criminal activities;
- Ensure integrity and stability of the financial sector;
- Manage ML/TF risks;
- Reduction of cost related to customer on boarding and managing CDD;
- Promote fintech services; and
- Participate in the national level well-being.

The traditional KYC process requires to be filled in the KYC form and collect photo ID and signature of the customers along with required documents. All the way it's a manual process. However, e-KYC is a digital process where financial institutions can open a customer account by filling up a digital form, taking photograph on the spot, and authenticate the customer's identification data (ID No., biometric information, address proof) instantaneously. Such bio metric information or digital signatures or electronic signatures may be used for transaction authentication as well. The banks/financial institutions shall

conduct paper-based customer onboarding and simplified or regular KYC and CDD measures if any customer unable to onboard with this e-KYC mechanism.

Customer Due Diligence (CDD)

CDD is a process, where relevant information about a customer is collected and subsequently evaluated to determine the risk of money laundering. In practice, this means obtaining a customer's name, photograph on an official document which confirms their identity and residential address and date of birth. Banks apply CDD checks to verify their clients' identities and ensure that none of the clients are involved in financial crimes.

Customer Due Diligence (CDD) is the act of assessing customers' background to determine their identity and the level of risk they possess. This is done by assessing a customer's name, photograph on an official document and residential address.

Upon completion of CDD, the customer may be given a risk rating in accordance with the risk he or she may present to the company. Risk ratings can be in the form of a category, such as "low risk" or "high risk", or a numeric value derived from a risk matrix based on a pre-defined set of criteria.

A risk rating helps a company in deciding how and when to apply the appropriate checks, treatment, and controls that commensurate to the level of risk. This methodology is also known as the risk-based approach, which allows a company to prioritize resources accordingly to areas that require more attention.

The first step of CDD is to obtain information from a customer. The following points outline the general information that should be collected:

Customer Profile (Individual): Full name, including any aliases Residential address, mailing address Contact numbers, email addresses, Place of birth, date of birth, Gender, Marital status Nationality, Race, Government-issued identification number, Government-issued tax identification number, Occupation, Specimen signature, Parental consent form (where the individual is a minor).

Customer Profile (Entity): Name of corporation, Type of corporation, Date of incorporation, Place of incorporation, Board resolution on authorized signatories of Articles of Association/ MOA, Certificate of Incorporation. Annual report- Directors, Shareholders, Senior Management Ultimate Beneficial Owners.

Enhanced Due Diligence (EDD)

EDD is an in-depth customer due diligence check for difficult or suspicious cases. Enhanced due diligence (EDD) is a KYC process that provides a greater level of scrutiny of potential business partnerships and highlights risk that cannot be detected by customer due diligence. EDD goes beyond CDD and looks to establish a higher level of identity assurance by obtaining the customer's identity and address, and evaluating the risk category of the customer.

Enhanced due diligence is specifically designed for dealing with high-risk or high-net worth customers and large transactions. Because these customers and transactions pose greater risks to the financial sector, they are heavily regulated and monitored in order to ensure that everything is on the up and up.

There are several characteristics that distinguish EDD from regular KYC policies:

Rigorous and Robust: EDD policies must be “rigorous and robust” which requires significantly more evidence and detailed information.

Detailed Documentation: The entire EDD process must be documented in detail, and regulators should be able to have immediate access to enhance due diligence reports. This demands more scrutiny when it comes to how data is captured and validating the reliability of those information sources.

Reasonable Assurance: EDD requirements call for “reasonable assurance” when calculating a KYC risk rating. This means that the professionals responsible for making a “go” or “no go” decision must have completed all the necessary research steps and exercised professional skill and care in reaching their judgment.

Special Attention for PEPs: Special attention must be paid to politically exposed persons (PEPs) — they're viewed as being a higher risk because they are in positions that can be potentially abused for money laundering.

Banks should examine, as far as reasonably possible, the background and purpose of all complex, unusual large transactions, and all unusual patterns of transactions, which have no apparent economic or lawful purpose. Where the risks of money laundering or terrorist financing are higher, banks should be required to conduct enhanced due diligence (EDD) measures for higher-risk business relationships that include:

- Obtaining and verifying additional information on the customer (e.g., occupation, volume of assets, information available through public databases, internet, etc.), and updating more regularly the identification data of customer and beneficial owner;
- Obtaining and verifying additional information on the intended nature of the business relationship;
- Obtaining and verifying information on the source of funds or source of wealth of the customer;
- Obtaining and verifying information on the reasons for intended or performed transactions;
- Obtaining and verifying the approval of senior management to commence or continue the business relationship;
- Conducting enhanced monitoring of the business relationship, by increasing the number and timing of controls applied, and selecting patterns of transactions that need further examination;
- Requiring the first payment to be carried out through an account in the customer's name with a bank subject to similar CDD standards.

Politically Exposed Persons (PEPs) /IPs

PEPs (as well as their family members and persons known to be close associates) are required to be subject to undertake enhanced due diligence by a reporting organization in general. This is because PEP may be in a position to abuse their public office, political power for private gains and PEP may use the financial system to launder the illicit gains. The FATF has categorized PEPs into 3 (three) criteria which include:

- Foreign PEPs;
- Domestic PEPs (known as Influential Persons: IPs in Bangladesh) and
- Chief or similar high-ranking positions in an international organization.

It is important to note that only foreign PEPs automatically should be treated as high risk and therefore a reporting organization should conduct Enhanced Due Diligence (EDD) in this scenario. However, EDD should be undertaken in case of domestic PEPs (Influential

Persons: IPs) and PEPs of the international organization when such customer relationship is identified as higher risk.

A politically exposed person (PEP) is defined by the FATF as an individual who is or has been entrusted with a prominent public function which include individuals in foreign country and domestic level. So, *PEPs as per the FATF Standards and IPs* as per Bangladeshi regulations, are the following individuals but not limited to-

- Heads of state or government, ministers and deputy or state ministers;
- Members of parliament or of similar legislative bodies;
- Members of the governing bodies of political parties (generally only apply to the national governing bodies where a member has significant executive power, e.g. over the selection of candidates or distribution of significant party funds);
- Senior politicians
- Members of supreme courts, of constitutional courts or of any judicial body the decisions of which are not subject to further appeal except in exceptional circumstances;
- Members of courts of auditors or of the boards of central banks;
- Ambassadors, Charges d'affairs and high-ranking officers in the armed forces;
- Head or the senior executives or members of the administrative, management or supervisory bodies or State-owned enterprises;
- Chief, directors, deputy directors and members of the board or equivalent function of an international organization.

Chief or similar high-ranking positions in an international organization:

Persons who are or have been entrusted with a prominent function by an international organization refers to members of senior management, i.e., directors, deputy directors and members of the board or equivalent functions.

Family members of a PEP shall include:

- spouse, or civil partner
- children and their spouses or civil partner

- parents

Higher risk indicators (geographical)

A PEP may pose a greater risk if he/she is entrusted with a prominent public function in a country that is considered as a higher risk for corruption. To draw this conclusion, a reporting organization should have regard to whether, based on information available, the country has the following characteristics:

- associated with high levels of corruption
- political instability
- weak state institutions
- weak anti-money laundering defense
- armed conflict
- non-democratic forms of government
- widespread organized criminality
- lacking a free press and where legal or other measures constrain journalistic investigation
- a criminal justice system vulnerable to political interference
- lacking expertise and skills related to book-keeping, accountancy and audit, particularly in the public sector
- law and culture antagonistic to the interests of whistleblowers
- weaknesses in the transparency of registries of ownership for companies, land and equities
- human rights abuses

Higher risk indicators – personal and professional:

- personal wealth or lifestyle is inconsistent with known legitimate sources of income or wealth;
- credible allegations of financial misconduct (e.g., facilitated, made, or accepted bribes)
- responsibility for, or able to influence, large public procurement exercises, particularly where procurement is not subject to competitive tender, or otherwise lacks transparency
- responsible for, or able to influence, allocation of scarce government licenses such as mineral extraction concessions or permission for significant construction projects.

Indicators that a PEP's family or known close associates pose a higher risk:

- wealth derived from the granting of government licenses (such as mineral extraction concessions, license to act as a monopoly provider of services, or permission for significant construction projects)
- wealth derived from preferential access to the privatization of former state assets
- wealth derived from commerce in industry sectors associated with high-barriers to entry or a lack of competition, particularly where these barriers stem from law, regulation or other government policy
- wealth or lifestyle inconsistent with known legitimate sources of income or wealth;
- credible allegations of financial misconduct (e.g., facilitated, made, or accepted bribes);
- appointment to a public office that appears inconsistent with personal merit.

The following measures should be taken where a customer meets the definition of a foreign PEP, IPs/Chief of International Organization posing higher risk or a family member or known close associate of a foreign PEP, IPs/Chief of International Organization posing higher risk:

- obtain senior management approval for establishing or continuing business relationships with such persons;

- take adequate measures to establish the source of wealth and source of funds that are involved in business relationships or transactions with such persons;
- conduct enhanced, ongoing monitoring of those business relationships.

Beneficial owner(s)

A beneficial owner is a person who enjoys the benefits of ownership even though the title to some form of property is in another name.

It is crucial to know who the beneficial owner(s) are so that one can make appropriate decisions about the level of money laundering and terrorist financing risk associated with customer. Some criminal enterprises deliberately try to hide the true owners and controllers of their business and its assets. Sometimes identifying and verifying can be difficult which customers are beneficial owner(s). This could be because the ownership structure is complex but legitimate. However, someone should remain alert to the possibility that it may be because there is an attempt to conceal the beneficial owner(s).

Corporate entities such as companies, trusts, foundations, partnerships, and other types of legal persons and arrangements conduct a wide variety of commercial and entrepreneurial activities. However, despite the essential and legitimate role those corporate entities play in the economy, under certain conditions, they have been misused for illicit purposes, including money laundering (ML), bribery and corruption, insider dealings, tax fraud, terrorist financing (TF), and other unlawful activities. This is because, for criminals trying to avoid anti-money laundering (AML) and countering the financing of terrorism (CFT) measures, corporate entities provide an attractive avenue to disguise the ownership and hide the illicit origin.

The definition of beneficial owner means the individual who – a) has effective control of a customer; or b) owns a prescribed threshold, 20% as per Bangladeshi regulation of the company or legal arrangements.

Identifying the beneficial ownership of a customer one must apply three elements. Any one element or any combination of these three elements satisfies beneficial ownership. These elements are:

- a. who owns 20 or more percent of a company or legal arrangements
- b. who has effective control of the customer;
- c. the person on whose behalf a transaction is conducted

Effective control, ownership and persons on whose behalf a transaction is conducted are not mutually exclusive. The beneficial owner must be a natural person and cannot be a company, an organization or a legal arrangement.

Example:

Mr. Johan is a majority shareholder with a share of 55 percent of company X, which owns 33 percent of company Z's shares. Johan is a beneficial owner of company X because he directly owns more than 20 percent of it. Johan is also a beneficial owner of company Z.

Types of Deposit Accounts

Mostly the bank's business is funded through deposits from retail and corporate customers. Every bank has already introduced several deposit schemes to attract deposits from various customers group. Many banks are opening branches all across the country to reduce dependence on urban deposits. All types of deposits constitute liabilities for the bank. Because banks are obliged to refund the deposits of their customers as and when demanded by them or as per the agreed terms and conditions. Deposits can be withdrawn through cheques and debit cards. Meanwhile, a number of banks have built up its alternative channel infrastructure to offer the full suite of ATM's, POS, Internet Banking, Call center, SMS Banking for its customers.

Current Deposit Account

A Current account is generally opened by business people for their convenience. Big customers as Individual business man, Group of persons, Joint Stock Companies, Public authorities, Non-trading Companies, Trustees, Banks, and Corporations etc. generally open this account. Money can be deposited and withdrawn at any time without restriction. Money can be withdrawn only by means of cheques. In fact, unlimited cheque facilities are its special features. Usually, a banker does not allow any interest on this deposit account. Even then

people come forward to deposit money on current account because of two important privileges, which they can enjoy in a current account, namely- Overdraft facility in some cases and other facilities like collection of cheques, transfer of money and general utility services. For this reason, account holders do not mind a banker charging some commission for services rendered and incidental charges for maintaining the account. The bank charges interest on overdraft on a day-to-day basis. Current account holders are to keep a minimum balance in the account failing which they will have to pay bank incidental charges at the time of half and annual closing of accounts. As these deposits are repayable on demand, the banker required to keep a large cash reserve. This may be one of the reasons why a banker does not pay any interest on current deposit accounts. However, in practice some banks are allowing very small percentage of interest for maintaining specific amount and above of current deposit on daily product basis.

Savings Deposit Account

This deposit is intended primarily for small scale savers. The main objective of this deposit account is to encourage savings habit among people. Any Bangladeshi National residing home or abroad may open savings account with any scheduled banks. The account may be opened in single/joint name. Quick deposit of foreign remittance, transfer of fund from one branch to another branch and transfer of fund on Standing Instruction Arrangement is allowed. The number of withdrawals is generally restricted. Rules in this regard may vary from bank to bank. Heavy withdrawals are permitted only against prior notice. Withdrawal beyond the maximum limit will require 7 days prior notice, failure to which no interest is allowed for the month in which withdrawals occurs. A minimum balance is required to be maintained all times. Cheques, dividend warrants etc. allowed for collection. Interest generally allowed on this deposit account subject to fulfillment of the terms and conditions. Interest is payable on collected funds also. Interest is allowed at the rate specified by the bank on minimum monthly balances and on monthly product basis. Cheque book is issued to the account holder. Appointment of nominee is compulsory. The nominee can get the balance amount after the death of account holder. Interest is credited to the account every six months (Generally in June and December). Interest credited to the account is subject to deduction of source tax and VAT as per the rules of the Income Tax Authority.

Fixed deposit Account

The term 'Fixed Deposit' means deposits repayable after the expiry of a certain period, which ordinarily varies from 3 months to 1 year and above. They are also known as time liabilities or term deposits. The fixing of the period enables the banker to invest money and to employ it in his business without having to keep a reserve. These deposits are occupied against acknowledgement receipt which is popularly known as FDR. Longer the period, the higher the rate of interest. But in practice always it is not. Account can be opened in the name of individual, joint name, firm or companies/corporates for different tenure. FDR is issued against the amount deposited and is used for renewal or encashment of the same. Auto renewal is also allowed in FDR as per instruction of the account holder. Deposit rate is usually higher and lucrative comparatively in this account. Renewal or encashment of FDR is allowed at maturity but pre-mature encashment is also allowed as per request of the account holder and norms of the bank.

Short Term Deposit Account

Generally, these accounts are opened who wants liquidity and some return on their deposits simultaneously. Withdrawable by short notice. No interest is payable if withdrawal is made without prior notice. Interest is payable on daily product basis. Interest rate is lower than savings deposit but, a bit higher than Current account, if any. Suitable for corporations, firms or companies. Cheque books are also issued. Interest is payable on daily product basis.

Recurring Deposits Account

Deposit pension Scheme/Monthly Savings Scheme/Contributory Savings Scheme etc. are opened by the fixed income/salaried people intend to save money with a bank monthly so that they can get back their savings and interest/profit thereon after a few years. One can take benefit at a time on maturity or can take monthly pension amount. Depositors save and deposit regularly every month a fixed installment so that they are assured of the sizeable amount at a later period. This enables the depositors to meet contingent expenses. In such accounts, only deposits can be made and no withdrawal is allowed until the expiry period as per terms of contract. The rate of interest is almost similar to the rate offered on fixed deposit

but it is compounded. A recurring deposit holder can get a loan on the security of a recurring deposit up to a certain percentage. Monthly benefit deposit scheme/Monthly income scheme, Education savings scheme, Hajj deposit scheme etc. are other special recurring deposit scheme.

Special Deposit Accounts

School Banking Account

A savings Account for those kids who aspire to be more responsible from a young age.

'No-frills' Accounts - The central bank had introduced 'no-frills' accounts in 2005 to provide basic banking facilities to poor and promote financial inclusion. One very important feature of these accounts is that opening of these accounts requires only a nominal opening balance. No minimum balance is required and banks do not charge any fees for maintaining these accounts.

Bank account for farmers – A farmer can open a bank account by depositing BDT 10 at any state-owned commercial and specialized bank against national ID card/birth registration card and 'agricultural equipment assistance card' issued by the Department of Agricultural Extension.

Account Opening Procedures and relevant documents required for opening of accounts

A bank opens accounts for various types of customers. While opening the accounts, the banker has to keep in mind the various legal aspects involved in opening and operation of these accounts, and also the practices followed in conducting these accounts. As the banker-customer relationship is a contractual relationship, all the essential features of a valid contract required to be present when a banker opens an account.

Every person who is at least of 18 (eighteen) years old is competent to enter into a contract and as such can open an account with the bank. Persons of unsound mind cannot enter into a contract and they cannot open an account with the bank. To open an account, one must be capable of understanding the contract and of forming a rational judgment as to its effects

upon his interest. He/she should not be disqualified from contracting by any law. The bank has to be satisfied regarding the genuineness of all information and documents that are required for opening the account and should be willing to establish banking relations.

Normally banks have to deal with the following types of individual and non-individual accounts:

Individual Accounts:

- Single / Joint
- Minor
- Illiterate person
- Disabled person
- Executors and Administrators Account

Non-Individual Accounts:

- a) Corporate or Account of Business Organization
 - *Sole Proprietorship*
 - *Partnership*
 - *Limited Company (Private/Public)*
- b) Government accounts (including ministries/divisions), Accounts of state-owned organizations and semi government or autonomous bodies, Accounts of projects operated under various ministries
- c) Other organization's account
 - *Club/Society*
 - *Cooperative Society/Limited society*
 - *Non-government school, college, university, madrasa, religious organizations*
 - *Trusts*

Opening of Accounts- Individual and joint accounts

While opening accounts of individual accounts banker should obtain an account opening form, which should be filled in all respects by the account holder. Banks are to use Uniform

Account Opening Form (Individual Accounts). Usual information, documents and declarations that are obtained from customers in the Account Opening Form are as under:

- Title of account
- Types of account (Savings/Current/Fixed deposit/FC/DPS/others)
- Operating instructions (Singly/Jointly/Either or survivor/others)
- Purpose of opening account
- Existing and other bank account information
- Initial deposit
- Sources of fund indicating profession (specific & details)
- The banker should also obtain his specimen signature for verification in future of his signature in cheques, etc.
- Details of nominees
- Recent KYC guidelines require the banker to obtain the recent photographs of the depositors/account holders, proof of identity i.e., NID, proof of address like, copy of electricity/ Gas bills etc. where necessary.

Transaction profile and Risk profile to be considered as per instruction of Bangladesh Bank. Personal information form (PIF) and KYC Profile Form introduced by Bangladesh bank and also FATCA declaration for opening such account should also be obtained.

Transaction profile (TP)

Transaction Profile truly represents the transactions arising out of the normal course of business of an account holder (Individual /Joint account holders). Title of the account, account number, type of account, monthly probable income to be obtained in the TP. Number of monthly probable deposit/withdrawal, maximum amount in single deposit/withdrawal, and monthly probable total deposit/withdrawal as against the following to be filled in by the account holder:

- Cash (inclusive of online & ATM)
- Through transfer/Instrument
- Export/Import receipts
- Transfer from BO account/transfer credit to BO account.

TP should be signed by the account holder declaring that the projected transaction volume is his/their normal transaction. Also, to assure that, if necessary, he/they will change/update the

transaction profile. This TP of the customer has to be reviewed by the bank officials as per the directives of BFIU.

TP should be periodically updated – because nature of transaction, number of monthly transactions, maximum size of per transaction and total amount of transaction may change or vary.

Risk profile

In the process of KYC, risk profiling is an important issue. Determination of the customer's risk in terms of propensity to commit money laundering, terrorist finance, or identity theft is also required to be made as per the bank's standard procedure. The risk is assessed considering the following factors:

Profession of the customer / type of profession in which the customer is involved and the organization is involved in business/activity. In order to assess the risk, associated with the customer, customer's occupation / business related information i.e., in case of business-customer's nature of business, transaction limit, business location, size of business, beneficial owners etc. have to be reviewed in detail along with other relevant aspects, to assess the risk rate of the customer as to high or low. Similarly, in case of service holder, after collecting detailed information risk has to be identified considering nature of employment and job responsibilities.

- Monthly income of the account holder
- Channel of procurement of the account
- Amount of probable monthly transaction of customer
- Number of probable monthly transaction of customer
- Amount of probable monthly cash transaction of customer
- Number of probable monthly cash transaction of customer

As per Bangladesh bank guidelines considering the risk factors mentioned above an overall risk rating is made in relation to risk assessment. If the total risk rating is 15 and above, it will be treated as high risk.

Personal information form (PIF)

Personal Information Form is to be filled in properly and to be affixed with the main Account Opening Form (AOF) of the Individual account holders. Usual information that are incorporated in the PIF are:

- Title of Account
- Name of customer/Beneficial owner/Account operator etc.
- Relationship with account i.e., First account/Second account/Account operator/Sole proprietor/Guardian etc.
- Father's name/Mother's name/Spouse name
- Nationality
- Date of birth /Gender
- Monthly income
- Identification Document- NID No./ Passport No. /Birth Registration Certificate No.
- E-TIN No.
- Other information – Marital status (Single/Married/Divorced/Widowed etc.)
- Religion- Islam/Hindu/Christian/Buddhist etc.
- Title i.e., Engineer/ Barrister/Doctor/Professor etc.
- Address: Present/Permanent/Office address/contact address.
- Recent photograph and specimen signature which is to be properly admitted, checked and approved by the responsible bank officials.

Declaration under FATCA

The Foreign Account Tax Compliance Act (FATCA) is a 2010 United States federal law to enforce the requirement for United States persons including those living outside the U.S. to file yearly reports on their non-U.S. financial accounts to the Financial Crimes Enforcement Network (FINCEN). Subject to applicable laws, the customer is to consent as to share their information with domestic & overseas tax authorities where necessary to establish their tax liability in any jurisdiction where required by domestic and overseas regulators or tax authorities. They will also have to agree upon if there are any requirement of changing U.S

related information, they will update the same with the bank within 30 days and the bank will not be responsible for failure on their part in this regard.

KYC profile form:

Know Your Customer (KYC)

It is a process by which banks obtain information about the identity, address of the customers and their financial dealings that to be able to serve them better and manage its risk prudently. This process helps to ensure that banks' services are not misused. KYC is a regulatory and legal requirement. Know your customer (KYC) policy is an important step developed globally to prevent identity theft, financial fraud, money laundering and terrorist financing. Thus, the objective of KYC is to enable banks to know and understand their customers better and help them manage their risks prudently. KYC is required to ensure appropriate customer identification, monitor transactions of suspicious nature and that he/she would not deceive the bank. The KYC procedure is to be completed by the banks while opening accounts and also periodically update the same. KYC profile form to be prepared by account opening officer/Relationship manager. Thereafter this should be reviewed and confirmed by BAMLCO.

In terms of the guidelines issued by the BB on KYC standards – AML measures, all banks are required to put in place a comprehensive policy framework covering KYC and AML measures.

Customer due diligence means taking steps to identify the customers. In practice this means obtaining a customer's name, photograph on an official document which confirms their identity, residential address and or date of birth.

Enhanced Due Diligence for Higher-Risk Customers. Customers that pose higher money laundering or terrorist financing risks present increased exposure to banks; due diligence policies, procedures, and processes should be enhanced as a result.

Usual information, documents and declarations that are obtained from customers in the KYC Profile form are as under:

- Title of account/Type of account
- Customer's profession/ Probable monthly income of the customer/
- Sources of fund

- Documents which have been collected for verification of sources of fund
- How the address of the customer verified
- Whether actual beneficial owner of the account has been identified or not
- Any link of the customer with PEP or IP
- Whether approval obtained from the senior management
- Whether face to face interview of the customer have been conducted
- As per relevant laws, regulations & circulars whether the name of the customer has been matched with the person or the entity listed in different Resolutions of the UNSC with regard to terrorism, terrorist activity and funding for proliferation of weapons of Mass Destruction and with any person or banned entity on the list of government of Bangladesh.

Required Documents for opening Individual account:

- Properly filled and signed AOF
- NID/Passport/Birth registration Certificate of all individual applicants.
- Personal Information Form (PIF for all individual applicants)
- 2(two) recent passport size photographs of the applicant(s)
- Documents supporting- source of fund, occupation and address
- 1(one) passport size photograph for each nominee and their photo ID/NID duly attested by the account holder
- e-TIN and VAT Certificate as applicable
- Cash/Account payee cheque/ /Transfer slip for initial and other deposit

Declaration:

While putting the signature on the account opening form the customer is to confirm and declare that they have read and understood all the terms and conditions related to opening account and agree to abide the same. They will have to solemnly declare that the information provided in the account opening form is true & correct and also to provide additional information/documents at the request of the bank.

Usual Terms and Conditions for opening Bank Accounts:

While opening any account the account holder is to acknowledge that he/they have read and understood the terms and conditions stated on the following issues and agreed to comply with them:

- The Law, rules, regulations of Bangladesh Bank, customers and procedures applicable to the scheduled banks in Bangladesh shall apply to and govern the conduct of accounts opened with the bank.
- Any person opening an account shall be deemed to have read, understood and accepted the features, tariff & rules governing the account.
- Each account will be given one account number, which to be properly quoted on all letters, documents and on all deposit slips, Cheques etc. The bank will not be responsible for any loss or damage occurring as a result of wrong quotation of account number.
- Interest / Commission / Service or Maintenance of account charge shall be levied by the Bank from time to time to time and as per Bangladesh Bank Regulations. Bank shall also have the right to fully recover all costs and expenses (including legal fees) arising in any way in connection with the above accounts. Bank may impose penalty/charges in case of pre-mature withdrawal of FDR/ special schemes.
- The funds available in any of the account holder's account (the customer) with the Bank will be considered by the bank to be a security for any commitment(s), and/or obligation(s) present and/or future of the customer to the Bank, In the event of dishonor or non-fulfilment of such obligation(s) and/or commitment(s), the Bank is entitled without giving prior notice to the customer to utilize such funds against the obligation(s) and/or commitment(s) of the customer to the Bank by consolidating/ combining all the account balances.
- Bank Shall maintain strict confidentiality of all information relating to accounts and business, bank shall always be entitled to disclose relevant customer information held with the Bank to the following: a) any regulatory, supervisory, governmental or Semi-governmental authority with the jurisdiction over the bank, b) any person to whom the bank is required or authorized by law or court order to make disclosure, c) any

authorized service-vendor/ third party staff with limited access under bank's close supervision.

- Account holders must ensure full security of the Cheque Books, ATM/ Credit Cards, Passwords etc. in their possession and the bank will not be responsible for any loss occurring due to inadequacy of security. Any loss or misuse of the above items must be immediately reported to the Bank with subsequent confirmation in writing. Cheque book & ATM will not be issued unless and until all the required verification formalities are completed.
- The Bank reserves the right to close any account without giving any prior notice if the conduct of the account is unsatisfactory in the opinion of the Bank or for any other reason(s) whatsoever. The opinion passed by the Bank in this regard shall be final and conclusive and binding upon the customer.
- The Bank will not automatically execute any customer instruction in digital channels i.e., over phone, fax, email, internet banking, mobile banking, etc. unless the customer/s have opted for these services in writing agreeing all necessary conditions.
- Accounts remaining inactive for certain periods will be classified as 'Dormant' and 'Unclaimed'. For customer's safety - there will be general restriction on A/C operation. To make the account active again, would require due diligence of the customer by the Bank. The Bank will act in accordance with the provisions in Section 35, of the Bank Company Act, 1991 for the 'Unclaimed Deposits'.
- For any disputes & disagreements between the signatories & owners of the account or entity; the Bank may suspend operations of the account, until legitimate instruction is provided by the agreed signatories/ owners in writing to the satisfaction of the Bank.
- The customer agrees to undertake scrutiny of its transactions, notifications from Bank in SMS & statements regularly and notify the Bank on any discrepancy immediately in writing.
- To comply with the local and global statutory regulations on anti-money laundering, anti-terrorism, anti-bribery & corruption, Sanctions, foreign-exchange transactions, and taxation, etc. the Bank may require additional document, information & time to process or reject a transaction. The customer also agrees to cooperate with the bank in

this regard, providing necessary documents & information promptly and recognizes that the restrictions are as per statutory provisions.

- The customer agrees that the Bank will pay the remaining balances of a deceased A/C to the Nominee/s, as per Bank record & it is the Nominee's obligation to address any other claim and the Bank will remain indemnified from all such claims. For Joint Account the 'Survivor' to receive the balances, in case of demise of the other party. However, if incidentally there is no Survivor (i.e., demise of all A/C holders at the same time) and there is Nominee in Bank record; the Nominee/s will get the funds. If there are no Nominee/s, then legal successor/s of the deceased A/C holder/s will get the balances.
- The Attorney-holder / Delegate can neither close the account nor avail facility (LCY or FCY) for him/herself against the Principal A/C holder's account.
- The customer acknowledges that, his/her Taka account will be treated as Non-Resident; if he/she ordinarily resides abroad (including non-resident Bangladeshis) and as per GFET, there will be some restrictions on transactions for the safety of the bonafide customers while living abroad. The customer agrees to notify the Bank on his/her temporary or permanent arrival in Bangladesh to avail the normal facility of the account as Resident and accordingly notify the Bank on his/her temporary or permanent departure from Bangladesh to mark the A/C as Non-Resident Taka Account (NRTA), as per GFET.
- The customer agrees to keep his/her records always updated with the bank and notify the Bank immediately on any changes of vital document and information of him / her / their entity related to the account. Bank will not be responsible for any failure or noncooperation of the customer in keeping his / her / their information.
- The Bank reserves the right to amend the present rules, terms & conditions at any time in any manner with or without giving prior notice to the account holder (s) separately or to the public.

Mandates:

A bank account holder has a primary right to operate upon his account maintained with the particular bank. No person other than the account holder can order the bank to debit his

account (except a competent court). A mandate is an authority given by the account holder in favor of a third person to do certain acts on his behalf. This is issued by an account holder with a direction to his banker authorizing the person to operate the account on his behalf.

In case a customer wants his account to be operated by another person, a mandate in writing to that effect together with the specimen signature of the agent who is to operate the account should be obtained by the banker. Power to draw and endorse cheques does not include the power to overdraw the account. So, if a customer wishes to allow his agent to overdraw the account, the mandate should clearly state this.

The signature of the person so authorized should be appended in the letter of mandate and the same should be verified by the customer/account holder. A letter of mandate is generally issued for a short and temporary period. In case of joint account holders all the parties concerned must sign the letter of mandate irrespective of operational instructions. It is unstamped letter signed by the account holder addressed / submitted to the bank.

A mandate comes to an end, on death, insanity, insolvency and bankruptcy of the account holder. A mandate can be withdrawn at any time by the account holder. The instructions should be carefully noted in the ledger account of the account holder and also in the specimen signature card/sheet. The mandate letter should be properly filed and securely kept. There should be an updated index.

Joint accounts:

A joint account is an account opened by two or more persons. All the joint account holders need to fill in the AOF and SS Card putting full signatures and specimen signatures in proper place. The names, addresses and other details of all of them should also be obtained on the account opening form. The account holders should also indicate how the account is to be operated – the banker should obtain specific directions as to one or more of them will operate on the account. Special instruction under signature of all the joint account holders to be given if the account is to be operated by any one or more than one of the joint account holders.

In the absence of specific instructions, the banker must honor only the cheques signed by all the joint account holders. Authorized person(s) of their own cannot further appoint an agent or attorney to operate the account without the written consent of all the joint account holders. Any joint account holder including the authorized signatory(s) can stop payment of a cheque.

In case of overdrawn or borrowing in the joint account all the persons are liable jointly and severally and the bankers should obtain demand promissory notes signed by all accordingly. The authority given to particular person(s) to operate the account can be revoked by any of the person(s) giving such authority. The authority given to any one terminates on the death, insolvency or insanity of any one of the joint account holders. The banker should, therefore, stop operation in the account and open a new account to record receipts and payments. Although under the law of devolution, on the death of any one of the joint account holders, the survivors are entitled to the balance standing to the credit of the account, and banks also encourage the opening of joint accounts payable to 'either' or 'survivor'; but the bankers should obtain a fresh mandate from the remaining survivors due to the fact that deaths cancel the mandate.

Minor Account

Age below 18 years of a person is regarded as a minor. But if a guardian is appointed by the court before attainment of 18 (eighteen) year in respect of the person or property of the minor, the period of minority is extended till completion of 21 years. The account can be opened in any one of the following ways:

- a. By a natural guardian, i.e., father or mother in circumstances approved by the Bank, on behalf of the minor;
- b. By a natural guardian, i.e., father or mother in circumstances approved by the Bank, in the joint names of himself/herself and the minor, payable to either or survivor;
- c. By a person in the name of any minor of whom he or she is the guardian appointed by a competent Court under any enactment for the time being in force;

Only the savings account may be opened in the joint names of a minor to be operated upon by the natural guardian of the minor or guardian appointed by the competent court.

Precautions to be taken:

- The banker should record the date of birth of the minor properly.
- The guardian should not be allowed to operate the account after attaining a majority or after the minor's death.
- In case the guardian dies before the minor attains having a joint account or to be operated by the guardian only, the money should be paid by the bank to

the minor on attaining majority or to some person appointed by the court as his guardian.

- If the minor dies, the amount of his/her credit balance is to be paid to his/her next kin on the production of a succession letter or a letter of administration.

Account of Illiterate person:

An illiterate person can open an account with the bank subject to following conditions:

- Thumb impression should be obtained on the AOF & SS card in presence of an authorized official.
- Two attested copies of recent photographs should be obtained & attached with AOF & SS card.
- One or two identification marks should be noted on the AOF & SS card with the proper authentication, and
- Finally, a letter of undertaking shall be obtained from him to the effect that he will not operate on the account unless he personally comes to the bank & put his thumb impression on the cheque in presence of the bank manager/ officer in charge.

Account of Lunatic person:

As per Section-12 of the Contract Act 1872, persons of unsound mind are disqualified from entering into a valid contract. Although he can enter into valid contracts during lucid intervals. However, no banker knowingly opens an account in a lunatic's name.

But if an existing customer becomes insane, banker must immediately stop the operation of the account till it receives a proof of his/her sanity or gets an order of the court to the effect. Usually, the court appoints a receiver when a customer becomes insane and the banker can safely deal with that receiver. However, the banker will not be responsible if it honors a cheque or bill duly drawn, accepted or endorsed by the lunatic unless it is proved that the bank knew his/her lunacy at the time of honoring or discounting. Must not permit the

customer to operate the account till receipt of an order from the court regarding his/her insanity.

Executors and Administrators Account

Executors and administrators are persons who are appointed to conduct the affairs of a person after his death. When a person known as testator (person making the will) appoints another person to administer the estate of testator in the event of his death through a 'Will' is known as an executor. Any alteration or addition in the original will might have been made in a separate instrument called 'codicil' which also forms a part of the will.

When an Executor is not named in the 'will' or if the person appointed as executor dies or refuses to act or is incapable of acting, the court appoints a person for the purpose. He is known as administrator. Both the executor and the administrator perform the same duties, i.e., to realize the assets of the deceased and to pay off his debts.

The executor is appointed by the will. His powers and authority are vested therein. He has to act according to the directions given in the will, but he is required to obtain a probate (official confirmation of the will) from the court.

The administrator is appointed by the court through a letter of administration and is directed, in the absence of the will, to settle the affairs according to the provision of the law. The administrator derives his power from the letter of administration. This letter may give full/limited power to deal with the estate.

The banker should take the following precautions while dealing with the executors and administrators:

- On the death of a customer, the banker must stop payments from his account. The executor should be permitted to operate the account of the deceased after he has obtained the probate from the court.
- The administrator is authorized to do so after securing the letter of administration.
- The banker should examine these documents before the appointed person is permitted to operate the account.

- An account in the name of an executor / administrator is opened in the following style and the balance in the account of the deceased is transferred to such account:
'ABC executors (or administrators) to the estate of XYZ deceased.'
- In case two or more persons are appointed as executors or administrators, they shall have joint interest in the estate of the deceased. This is not divisible.
- The banker should be very cautious in conducting the account of executors / administrators so as to prevent them from misappropriating the funds of the deceased.

Executors Account opening and operation:

- Account may be opened after H.O approval.
- Must produce grant of probate certified copy for scrutiny the name and address of executors.
- Identity of Executors to be ensured.
- List of executor's names with signature and account will be opened in official capacity.
- Executor's power to open & operation of Banks account.
- AOF/SSC/ Photo properly filled in.
- Not to mix with personal account.
- Mode of operation – jointly or all to sign.
- After death/ retirement /lunacy of the new executors will be appointed as per probate.

Administrators Account opening and operation:

- Account may be opened after H.O approval.
- Certified copy of letter of Administration will be obtained.
- Request letter for opening bank account.
- Account opening and operation as per letter of administration. Administrator can only operate upon account.
- Mode of operation should be joint in case of several administrators.
- AOF/SSC/ Photo properly filled in.
- Not to mix with personal account.
- Administrator cannot delegate his power to third party.

- When an administrator becomes insolvent or lunatic his appointment stands terminated. A new Administrator is appointed under fresh letter of Administration. On the death of administrator Court will appoint the new one.

School Banking Account

A savings Account for those kids who aspire to be more responsible from a young age.

Eligibility

- Nationality - Applicant must be a Bangladeshi Citizen
- Age - Below 18 years of age
- This is a Minor account opened jointly with Parent/Legal Guardian

Documents Required

- Photocopy of Parent's NID
- Photograph of the applicant duly attested by the parents/ legal guardian
- Photocopy of Student's School ID Card and Birth Certificate
- Resident address verification document (e.g., Utility Bill, etc.)

Supporting Documents of Legal Guardians who are Salaried

- Proof of Income document (e.g., Letter of Introduction/ Appointment letter/ Salary Certificate/ Bank Statement reflecting salary, etc.)
- Proof of occupation document (e.g., Employment contract / Business Card/ employee photo ID, etc.)

Supporting Documents of Legal Guardians who are Businessmen/Self-Employed

- Proof of Income document (e.g., Bank Statement/ Companies Audited Financial report/ Tax Return Acknowledgment Receipt with monetary indication, etc.)
- Proof of occupation document (e.g., Trade License/ Partnership deed/Certificate of incorporation/ Memorandum of Articles/ /Bar license/Chartered Accountant license as appropriate)

Opening of Non- Individual Accounts:

The banker should obtain an Account Opening Form applicable for non-individual accounts which should be filled in all respects by the account holder. Banks are to use Uniform Account Opening Form (Non-Individual Accounts). Account should be opened in the name of the firm/organization. Usual information, documents and declarations that are obtained from customers in the account opening form are as under:

- Title of account
- Type of organization: Sole proprietorship/partnership/Joint venture/ private Ltd. Company/public Ltd. Company/Government/Semi-government/Autonomous body/Trust/NGO/Club/Society/Associations/Educational institutions/Religious organizations/others.
- Types of account (Savings/Current/Fixed deposit/FC/DPS/others)
- Currency
- Business information- Type of business/ nature of goods or services/ Yearly turnover/ Entity's net worth & other information
- Address of organization – Registered address/ Business or office address/Factory or industry address
- Trade License number/ Registration authority & country/ Registration number / VAT Registration number/ BIN number (if any)
 - Existing and other bank account information
 - Initial deposit
 - Sources of fund indicating profession (specific & details)
 - Operating instructions
- Details of nominees (applicable for sole proprietorship only)
- The banker should also obtain his specimen signature for verification in future of his signature in cheques, etc.

Transaction profile, Risk profile of the firm/organization to be considered as per the Bangladesh bank instruction, Personal information form (PIF) and KYC Profile Form introduced by Bangladesh bank and also FATCA declaration for opening such account to be obtained from the account holder/ persons authorized to operate the

account as per resolution of the firm or company/governing body of the respective organizations.

Transaction Profile

It represents the transactions arising out of the normal course of business of a Firm's /Organizations or Companies. Title of the account, account number, type of account, monthly probable income, monthly probable turnover (in case of non-individual) to be obtained in the Transaction Profile. Number of monthly probable deposit/withdrawal, maximum amount in single deposit/withdrawal, and monthly probable total deposit/withdrawal as against the following to be filled in by the account holder:

- Cash (inclusive of online & ATM)
- Through transfer/Instrument
- Export/Import receipts
- Transfer from BO account/transfer credit to BO account.

Transaction Profile should be signed by the account holder declaring that the projected transaction volume is the normal transaction of the firm/organization/company. Also, to assure that, if necessary, he/they will change/update the transaction profile. This TP of the customer has to be reviewed by the bank officials as per the directives of BFIU.

Risk profile

In the process of account opening, risk profiling of the Entity is an important issue. Determination of the customer's risk in terms of propensity to commit money laundering, terrorist finance, or identity theft is also required to be made as per the bank's standard procedure. The risk is assessed considering the following factors:

- a) The organization is involved in Business / activity
- b) Net Worth of the Organization
- c) Channel of procurement of account
- d) Amount of probable monthly transaction of customer
- e) Number of probable monthly transaction of customer
- f) Amount of probable monthly cash transaction of customer
- g) Number of probable monthly cash transaction of customer

As per Bangladesh bank guidelines considering the risk factors mentioned above an overall risk rating is made in relation to risk assessment. The risk score is printed in non-Individual KYC profile form against the factors mentioned above. If the total risk rating is 15 and above, it will be treated as high risk. Customer may also be graded in High-Risk category considering the risk level of High-Risk Beneficial Owner with mentioning reason, though the risk grading (arithmetic) is below 15. This Risk Profile form to be prepared by the Account opening officer/Relationship Manager. It should be reviewed and confirmed by the BAMLCO with date & seal with name and designation. In case of any link of the customer with PEP or IP or Head of International Organization approval from the higher authority will be required. e-mail approval copy from Senior Management must be kept with AOF in lieu of wet-signature.

Personal information form (PIF)

Every bank must obtain Personal Information Form which is to be filled in properly and to be affixed with the main Account Opening Form (AOF) for customer information and customer due diligence of the respective non-Individual account holders as per the indications of Bangladesh Bank given below. Banks may obtain additional information and documents subject to banks satisfaction. Explanation of ‘subject to banks satisfaction’ is given in para 3.2(3) of the circular number 10 of BFIU.

a) Corporate or Business organizations account:

- i.* Sole proprietorship: PIF to be obtained in respect of the account operator (owner of the firm) as to his identity along with the trade license.
- ii.* Partnership: PIF to be obtained in respect of the partners/shareholders and also the beneficial owners as per the definition of it as to their identity along with the partnership deed and trade license.
- iii.* Limited Company: PIF to be filled in properly in respect of the persons by whom the account is to be operated and also the beneficial owners (every director/shareholder) as per the definition of it as to their identity along with the Certificate of Incorporation, Memorandum of Association (MOA), Certificate of Association (AOA), Board’s Resolution and Declaration regarding directors.

As regards verification of the genuineness of the information in respect of the Company itself or the directors of it, bank may take the help of the RJSC & Firms if necessary. In respect of the company registered outside the country, contact may be made to the place where from the company has been registered for verification/genuineness of the company if necessary. PIF to be obtained in respect of at least top five shareholding directors in case of the company. Where the number of directors is less than five in that case PIF to be obtained in respect of all the directors or in other cases personal information to be obtained from members of the executive committees where applicable.

b) Government accounts (including ministries/divisions), Accounts of state-owned organizations and semi government or autonomous bodies, Accounts of projects operated under various ministries:

PIF has to be filled in properly in respect of the persons by whom the account is to be operated along with permission from the competent authority as to the opening and operation of such accounts.

Other organization's account:

i. Club/Society- PIF required to be filled in properly in respect of the concerned president, Secretary, Treasurer and others account operating authority along with the Board's resolution, Bye-laws/constitution, Resolution for opening such accounts and if it is registered one, Government permission from concerned authority i.e., directorate of social welfare of the Government or Cooperative society as the case may be.

ii. Cooperative Society/Limited society- PIF to be filled in properly in respect of the person(s) by whom the account is to be operated along with the Bye-laws duly certified by the Co-operative officer, Description of office bearers, Resolution regarding opening of account, Certificate of Registration etc.

iii. non-government school, college, University, madrasa, religious organizations- PIF to be filled in properly in respect of the person(s) by whom the account is to be operated along with the full identity of the Governing

body or the members of the Managing Committee. Specimen signatures of the authorized person(s) to operate the account to be obtained duly attested by the President/Chairman of the Managing Committee. Registration/affiliation certificate to be obtained from the Directorate of Primary Education for primary school, Directorate of Secondary and Higher Secondary Education for Secondary school and college, Madrasa Board for Madrasa and the University grant Commission for Private University.

iv. Trusts- PIF to be filled in properly in respect of the person(s) by whom the account is to be operated along with the Certified copy of the Deed of Trust, Full identity/description of the members of the Trustee Board, Resolution for opening the account.

Usual information that are incorporated in the PIF are:

- Title of Account
- Name of customer/Beneficial owner/Account operator etc.
- Relationship with account i.e., First account/Second account/Account operator/Sole proprietor/Guardian etc.
- Father's name/Mother's name/Spouse name
- Nationality
- Date of birth /Gender
- Monthly income
- Identification Document- NID No./ Passport No. /Birth Registration Certificate No.
- E-TIN No.
- Other information – Marital status (Single/Married/Divorced/Widowed etc.)
- Religion- Islam/Hindu/Christian/Buddhist etc.
- Title i.e., Engineer/ Barrister/Doctor/Professor etc.
- Address: Present/Permanent/Office address/contact address.
- Recent photograph and specimen signature which is to be properly admitted, checked and approved by the responsible bank officials.

KYC Profile Form

Usual information required to be obtained through KYC Profile form are as under:

- Title of account/Type of account/Nature of Entity
- Entity's Net worth
- Sources of fund (in detail) along with the supportive documents
- Verification of address of the Entity with relevant documents
- Information about actual beneficial owner of the account
- E-TIN No./VAT Registration No./Registration of the Entity
- Any link of the customer with PEP or IP or Head of International Organization
- Whether approval obtained from the senior management
- Whether face to face interview of the customer have been conducted
- As per relevant laws, regulations & circulars whether the name of the customer has been matched with the person or the entity listed in different Resolutions of the UNSC with regard to terrorism, terrorist activity and funding for proliferation of weapons of Mass Destruction and with any person or banned entity on the list of government of Bangladesh.

Declaration:

Declaration under FATCA and also the declaration as to the acknowledgement of the usual terms and conditions for opening the account to be obtained with signature as required.

Generally required for all types of non-Individual accounts are:

- Properly filled & Signed AOF
- 2(two) recent passport size photographs
- NID/Passport/Birth Registration certificate of proprietor /partner /signatory / principal shareholders/ Key EC Members of entity/ Trustee as applicable.
- A/C payee cheque /cash/ transfer slip
- Supporting documents of source of Fund, Occupation & Address
- e-TIN & VAT certificate, Official seal as applicable.
-

Papers and documents required for-

Sole proprietorship account:

- Latest & valid Trade License issued by the Municipal Authority.
- Personal information form (PIF) to be filled in and to be obtained in respect of the operator of the account (Proprietor of the firm)
- 1(one) photo for each Nominee & Photo-ID
- Proper KYC/TP/RP/SS Card to be obtained
- Latest e-TIN certificate/VAT Registration as applicable
- Mandate or letter of authority to operate the account, if desired by the account holder.

Partnership Account:

Partnership firm's account cannot be opened in the name of an individual partner. A banker should get a written request from all the partners for jointly opening an account. Letter of partnership and partnership deed duly notarized or registered with the Registrar of Joint Stock Companies and Firms will be required. The following papers and documents also to be required:

- Latest & valid Trade License issued by the Municipal Authority in the name of partnership firm.
- The partners should give clear instruction as to the operation of the accounts of the Firm i.e., partnership resolution.
- Specimen signatures of the authorized persons to operate the account duly attested by all the partners.
- Latest e-TIN/VAT registration certificate to be obtained.
- Proper KYC/TP/RP to be obtained.

Any partner has the right to stop payment of a cheque issued by any of the partners. If there is any dispute among the partners regarding the operation of the account, the operations should be stopped and fresh instructions to be obtained. A partner has no authority to re-delegate his/her authority or to give a guarantee on behalf of the firm without the written consent of all other partners. In a partnership firm, the partners are jointly and severally

responsible for all the acts and liability of the firm. The liability of the partners of a firm is unlimited. On receipt of the notice of insolvency of the firm, whether the balance in the account is in credit or debit, the operations must be stopped.

In case of insolvency of the partner(s), if the balance is in debit, the account must be closed and the debt should be proved before the receiver. In case of credit balance the other partners may continue the account, but the bank must obtain a fresh mandate. Any cheques previously drawn by the insolvent can be paid on the confirmation of the other partners.

In case of retirement of a partner, his/her liability towards the banker or any other third-party ceases in respect of all transactions of the firm undertaken subsequent to the date of his/her retirement. But if the banker is not informed of the retirement, the retiring partner will continue to be liable for the transactions of the firm even after the date of his/her retirement. If there is any debit balance in the account at the time of retirement of a partner, the banker should close the account to determine the liability of the retiring partner.

In case of death of a partner(s) if the account is in credit, the other partners may continue to operate the account by giving a fresh mandate to the banker.

Any unpaid cheques of the deceased partner can be paid after confirmation by the other partners. If the balance is in debit, the account must be closed to determine the liability of the deceased's estate.

Limited Company (Private or Public):

While opening A/c's of companies' banker should obtain & examine the following documents:

- Certified copy of MOA/AOA and Certificate of incorporation from the Registrar of Joint Stock Co. & Firms (RJSC & firms)
- Board's Resolution for opening and operation of the account & the names of the person authorized to operate the account.
- Specimen signatures of the person(s) who are authorized by the resolution to operate the account. Such copy should be signed by the Chairman of the meeting and the Secretary of the company.
- Certificate of Commencement of business (In case of Public Limited Co.)
- Latest and valid Trade license

- Latest e-TIN Certificate/VAT as applicable
- Certificate from the respective Trade Body/Association
- License from Security & Exchange Commission for Stock-dealer
- BOI approval for Branch/ Liaison Office (18A/B, as applicable)
- Form XII in respect of the list of Directors and authorized signatories duly certified by RJSC
- List of Directors and detail of Beneficial Owners (=>20% shareholder)
- Schedule-X with regard to shareholding position of the Directors duly certified by RJSC
- Up-to-date & audited balance sheet of the company
- Every year up-to-date audited balance sheet and list of directors with shareholdings duly certified by the RJSC should also be taken for record.

The nature and the extent of the powers delegated to the authorized persons must be laid down in the mandate. The banker should see whether the authority given is extended to the transaction, advances, securities and safe custody as well. It is essential that the signature on the Cheque must be expressed to be on behalf of the company. Otherwise, the company may not be liable, only the directors will be liable personally. Whenever the company wants to introduce any change in the operation in the account, fresh resolution and mandate be given.

Trust Account:

A 'Trust' is an equitable obligation annexed to the ownership of property, and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another, or of another and the owner. (According to the Trust Act,1882, Sec-3). The person who reposes the confidence is called the author of the trust. Trustee is the person in whom the confidence is reposed. The person for whose benefit the trust is formed is called the beneficiary. A trust is usually formed by means of a document called the 'Trust Deed'.

The following papers to be required to open Trust Account:

- Trust Deed copy for scrutiny of the rules regarding the opening and operation of deposit account.
- Resolution for opening account by trustee Board stating Bank's name.

- List of Trustees & signed Mandate.
- Resolution regarding operation of account.
- Account opening Form (AOF), Specimen signature card (SSC), Cheque Requisition Form properly filled in.

Operation:

- Account will be opened and operated jointly.
- Cash transactions should be done cautiously.
- Bankers should open account in the name of Trust.
- In case of death, Lunacy, retirement, or change of trustee, new Trustee will be appointed in writing. Trustees should have financial soundness.
- Bankers should have vigilant eye on 'Breach of trust'.
- No transfer from Trust A/C to personal account.
- Mark 'Trust Account' on Ledger boldly.
- No borrowing will be allowed without H.O approval.
- There should always be a clause in the mandate binding the trustees to be jointly and severally liable to the bank for any liability incurred by them in the account.

While opening an account in the names of persons in their capacity as trustees the banker should take the following precautions:

- The banker should thoroughly examine the Trust Deed appointing the applicants as the trustees. The Trust Deed contains the names of the trustees, power vested in them for administering the trust property and other terms & conditions.
- The trustees are authorized to act jointly and are not competent to delegate their powers unless the Trust Deed authorizes them to do so.
- The banker should examine the trust deed to ascertain the powers and functions of the trustees.
- In case of two or more trustees, the banker should ask for clear instruction regarding the person or persons who shall operate the account.
- In the absence of such instruction all the trustees must sign the cheques, etc., because the estate is placed under their joint charge.

- If one or more of the trustees dies or retires, the authority vested in the remaining trustees depend upon the provisions of the Trust Deed.
- When all the trustees are dead, new trustees may be appointed by the court.
- The insolvency of a trustee does not affect the Trust property and the creditor of the trustee cannot recover their claims from such property.
- The banker should take all possible precautions to safeguard the interest of the beneficiaries of a trust, failing which he shall be liable to compensate the latter for any fraud on the part of the trustee.
- The banker cannot exercise right of set-off between a trust account and the private accounts of the trustees.
- The trustees may borrow money from the banker and pledge or mortgage the Trust property only if the Trust Deed specifically confers such power on them.
- The banker should, therefore, grant loans to the trustee after thorough examination of the borrowing powers as given in the Trust Deed.

Government accounts

It includes ministries/divisions/Directorate/Corporations/ semi government or autonomous bodies/Local authority/Accounts of projects operated under various ministries etc.):

- Copy of the relevant Government order/ Gazette Notification/ Provision of law by which the entity is established.
- Copy of the relevant Government order/resolution/Letter from competent authority with decision of account relationship with the respective banks.

Opening and Operation:

- Every wing of govt. authority and Local authority shall make arrangement for the proper administration of their financial affairs and shall secure that one of their officers has responsibility for the administration of those affairs.
- Request letter for opening bank account.

- Branch manager specially satisfies himself as regards the provision about the dealings with the fund, opening, operation of the bank account in the 'Statute'.
- Name, style, and nature of account must be stated in the statute or resolution.
- Any Govt. account will be opened and operated as per official capacity, subject to the permission from the competent authority.
- Account of Regimental fund (Army account) should be opened and operated as per the letter of authority from the 'Controller of Military Account'.
- Operation of account in contravention of 'Statute' will not be allowed.
- Cash transaction should be done cautiously. Pre advice should be taken in case of cheque drawings.
- In case of changing officer or office bearer new authorizing letter will be taken issued by competent authority.
- Monthly statement of account & quarterly balance confirmation to be served upon proper request.

Account of Club, Societies & Associations

- Certified copy of Registration Certificate (as applicable)
- Certified copy of Bye-laws /constitution (by Cooperative Officer for Cooperatives)
- Executive Committee (EC) Resolution with decision of account relationship with the respective banks.
- List of Executive Committee (EC) Members with identity details.

Non-Government School/College /University/Madrasa:

- Certified copy of Registration Certificate (as applicable).
- Certified list of Members of Governing Body/ Management committee with identity details.

- Resolution of governing Body / Managing committee with decision of account relationship with respective banks.

Trusts/ Foundations:

- Copy of Registered/Notarized/Certified copy of Trust Deed
- Certified list of Trustees with identity details.
- Resolution of the Board of trustees with decision of account relationship with respective banks.
- Letter from NBR/Tax authority (if tax is exempted).

Introduction The purpose of the introduction is to identify the person for whom the account is being opened. Introduction also serves the purpose of obtaining legal protection under Section 131 of the N.I. Act, so that the banker is not liable for negligence while opening the account. ***Introducer's Information is required for opening account if account holder doesn't have NID or National identity Card.***

If NID is unavailable a certificate with attested photograph from a local respectable person acceptable to the bank shall be submitted. Respectable Person of the society refer to Member of the Parliament, Mayor, Deputy Mayor and Councilors of the City Corporation, Gazetted Officials of 9th grade and above as per National Pay Scale, Teachers of Public University, Chairman and Vice-Chairman of Papilla Parishad, Chairman of Union Parishad, Mayor and Councilors of Municipality, Professor of Private University, Principal of Private College, Head Master of Private High School, Editor of National Daily Newspaper, Notary Public, Officials of 7th grade and above as per National Pay Scale of Semi-Autonomous/Autonomous/ Government Entities and Officials of 9th grade and above as per National Pay Scale of Bangladesh Bank.

In such cases bank should obtain Introducer's name, Account number of the Introducer, NID number of the Introducer and Introducers Signature with date in the prescribed account opening form.

Letter of thanks

A letter of thanks is used when one person/party wishes to express appreciation to another. Thanks letters are also sometimes referred to as letters of gratitude. These types of thanks

letter are usually written as formal business letters. The purpose of this letter is to build up a valuable relationship with the bank - good relation between a bank and the customer. Letter of thanks often written for confirmation of account opening, appreciation for being a valued client, for depositing good amount in the account, to make banking experience very special, assuring reliability and to serve best services to their clients, mutually beneficial relationship and also for choosing the bank for opening new account.

Sanction screening

Sanctions and PEP screening is a critical step in the KYC process. Banks and FIs need to perform a detailed Sanction Screening and politically exposed person (PEP) check when onboarding new customers, as well as during the ongoing review of clients, to ensure that the organization's reputation, revenue and capital are protected. Sanction screening checks individuals or companies against global law enforcement and sanctions lists to determine the risk of performing financial activities with these parties.

Sanctions lists are established to help reduce financial crime by flagging individuals, businesses and countries that have committed illegal acts (or are suspected of committing them). By screening customers against sanctions lists, Banks and FIs can lower their risk of doing business with sanctioned entities. These sanctions lists are a compilation of various regulatory and enhanced due diligence lists from major sanctioning bodies around the globe such as the UN sanctions, EU sanctions, and thousands of other regulatory and law enforcement organizations like Interpol.

For effective implementation of TFS relating to TF & PF all banks have developed an automated screening mechanism named 'Watch List Check' Software. This enhancement enables bank to set up and manage a 'watch list'. The list enables Bank to check customers when they are added or maintained and also to identify individuals, companies or other entities that on the watch list when they are making or receiving payments in order to comply with International and regional regulations. This software permits intelligent matching of the text of an inward or outward payment message or the name and address of a customer, against a list of prescribed entities provided by a national or international agency.

During creation of customer profile, built-in sanction screening system shall scan the customer information automatically and based on scanning result, it may allow creating the customer ID or waiting for decision. Bank which has separate system to check sanctioning

shall have proper audit trail and approval before opening relationship. The system shall have option for AML Escalation screening as per AML matrix of the bank.

Opening of account through digital Platform

Now a days many banks are opening bank account through digital platform. Digital account opening (DAO) is the process of empowering an applicant to open an account digitally. It can be done very quickly, easily and securely. The traditional KYC process requires to be filled in the KYC form and collect photo ID and signature of the customers along with required documents. All the way it's a manual process. e-KYC guideline issued by Bangladesh Bank contains a set of instructions for the financial institutions to enable them to conduct customer due diligence in a digital means. Electronic Know Your Customer is a digital process which deals with electronic customer onboarding, identification and verification of customer identity, creating of customer digital KYC profile as well as risk grading of customer in a digital means. e-KYC shall only be applicable for natural person who have valid NID document.

e-KYC is a digital process where financial institutions can open a customer account by filling up a digital form, taking photograph on the spot, and authenticate the customer's identification data (ID No., biometric information, address proof) instantaneously. Such biometric information or digital signatures or electronic signatures may be used for transaction authentication as well.

Contact point verification (CPV)

It is a process used to verify the details and documents provided by customers, such as ID proof, address proof, and income proof, in order to prevent fraudulent activities.

Financial institutions conduct these verifications by hiring trained verifiers / agents who collect all relevant data regarding the customer for the institution.

Issuance of Check book

As per Bangladesh Bank Guideline banks have introduced MICR coded cheque leaves, which is customized by the Bank for each and every customer. "Magnetic Ink Character Recognition (MICR) means the machine recognition of numeric data printed with magnetically charged ink. Magnetic ink character recognition (MICR) is a technology used

primarily to identify and process cheques. The MICR on a cheque is the series of characters that appears at the bottom left of the cheque.

MICR is a process of printing cheques using magnetic ink and special fonts to create machine-readable information. The key benefits of MICR cheques are quick processing and faster cheque clearing time and prevent cheque related fraudulent activities.

An application for a cheque book on a Savings/Current Account must be made on the Bank's requisition letter/slip attached with the cheque book duly signed by the account holder(s). Cheque books can also be issued upon online request, by calling from customer's registered mobile number to the customer care number of the respective bank and through ATM by selecting an option of request for Cheque Book. Through SMS customer come to know as to probably when his/her cheque book will be delivered.

Cheque Book will not be issued to a customer until and unless all the documentation considered necessary by the Bank has been provided by the account(s) holder and duly obtained by the Bank. For issuance of each cheque book, the Bank will realize applicable charge. It is the responsibility of the account holder(s) to ensure that the cheques in their possession issued by the Bank should be kept in a secured place at all times.

Cheque book shall be delivered to the customer against acknowledgement on the back of CRS and the issuing register. If the cheque book is issued through a bearer whose signature must be attested by the account holder on the CRS or a letter of authority must be obtained. A cheque book shall be issued to a dormant account holder only when the account holder calls on personally and proved as a Bonafede customer. If Cheque Requisition Slip is reported lost, a fresh cheque book may be issued after obtaining fresh Requisition slip along with an indemnity bond from the customer.

The Bank reserves the right to refuse issuance of cheque books on such accounts which are not maintained satisfactory or the account is a dormant one and also when an excessive number of cheques from the previous cheque book remain unused. The customers should comply with the conditions as printed on the inside of the front cover of the issued cheque book. When new cheque books are delivered to the customer by post it will be according to the address record kept by the Bank (or by such other means as determined by the Bank). The Bank assumes no responsibility for any delay or loss caused by any mode of forwarding. Undelivered cheque book is retained by the Bank normally up to 90 (Ninety) Days. After 90 days undelivered cheque books are destroyed by the Bank and necessary charges are realized from the respective customer account as per Bank's Tariff.

Model questions (Module H: Deposit Accounts & Operation)

MCQs

1. Enhanced Due Diligence is not generally conducted for -
 - (a) Individuals or legal entities scored with high risk
 - (b) Individuals who are identified as politically exposed persons
 - (c) Transactions are identified with unusual in regards to its pattern
 - (d) Individuals who are not identified influential persons

2. While opening an account in the name of a society the most important document to be verified is-
 - (a) List of promoters/members
 - (b) Bye-laws
 - (c) Instructions of the RJSC
 - (d) Permission from the local authority

3. Objective(s) of KYC is/are -
 - (a) To ensure appropriate customer identification
 - (b) To monitor transactions of suspicious nature
 - (c) To ensure that he/she would not deceive the bank
 - (d) All of the above

4. In which of the following situations a Mandate can be treated as cancelled?
 - (a) When the mandate noticed as insane, insolvent, or deceased
 - (b) When the notice of cancellation is received from the principal
 - (c) At the expiry of the period or completion of the purpose for which it was drawn up
 - (d) All of the above

5. Which of the following person cannot open an account with a bank?
 - a) An adult
 - b) Lunatic
 - c) Disabled
 - d) Minor with guardian

6. To open a private limited company account, which of the followings documents is not required?
 - (a) Certificate of Incorporation
 - (b) Memorandum of Association

(c) Articles of Association

(d) Certificate of commencement

7. Commercial bank deals with the wide array of general banking except-

- a) Deposit mobilization
- b) Providing efficient customer services
- c) Maximize profit for the organization
- d) Ensure money supply

Short questions:

1. What is CDD? When a bank should conduct Enhanced Due Diligence (EDD)?
2. State the characteristics that distinguish EDD from regular KYC policies.
3. What do you mean by PEPs? Why Special Attention for PEPs to be taken by the banker?
4. Who is a beneficial owner? Explain with example.
5. Write short notes on UCIC, e-KYC.

Broad questions:

1. Why do corporates prefer current account? Differentiate between Fixed and Recurring deposit.
2. What formalities should the banker follow while opening an account in the name of a partnership firm and that of a limited company?
3. Before opening a deposit account, the banker should observe certain precautions and formalities. What are the general precautions to be observed for opening a deposit account?
4. In a private limited company certificate of incorporation was obtained through a memorandum which was signed by two persons for all the seven signatories. The signatures were forged. Will the bank accept memorandum as genuine for opening bank account?
5. State the precautions to be observed while opening accounts of the following:
 - a) educational institutions
 - b) religious institutions
 - c) Govt./Semi-Govt./Autonomous body/Local authority
 - d) Club/Societies/ Association

Module I: Negotiable Instrument Act, 1881

Negotiable Instruments

The Negotiable Instrument Act derived from The English Common Law in the Year 1881 and came into effect from March 01, 1882. It contains 17 Chapters and 141 Sections. This Act has been enacted in our country vide P.O. No. 127 of 1972. Since its inception several amendments have been made to this Act. The Negotiable Instruments Act, 1881 governs all transactions in relation to the negotiable instruments drawn, endorsed, transferred and realized in Bangladesh.

According to sec-13 of Negotiable Instrument Act 1881, “Negotiable Instrument” means a promissory note, bill of exchange or cheque payable either to order or to bearer.

This does not indicate the characteristics of a negotiable instrument but only states about three instruments – promissory note, bill of exchange and cheque as negotiable instruments by statute.

A negotiable instrument is a piece of paper which entitles a person to a sum of money and which is transferable from person to person by mere delivery or by endorsement and delivery. The person to whom it is so transferred becomes entitled to the money and also to the right to further transfer it.

‘Negotiable’ means transferable by delivery and ‘Instrument’ means a written document by which a right is created in favor of some person. The term Negotiable Instrument literally means a document transferable by delivery’.

Example:

Pay to X

Pay to X or bearer

Pay to X or order

Pay to X only

An Instrument Crossed, 'Account Payee Only'.

Since the last two Instrument are not transferable i.e., the word prohibits further transfer and Account Payee crossing indicates the intention that it shall not be transferable, these are excluded from negotiable instruments.

Therefore, to identify negotiable instruments the characteristics of negotiable instruments are clarified as follows:

- The instruments like money are transferable from hand to hand by way of negotiation.
- The instruments like money are transferable from hand to hand for value and are used for settlement of debt.
- The transferee's title is not affected due to transferor's defective title if the transferee can prove himself as holder in due course.
- The title of the Holder in due course does not affect for defective title of his prior holders due to fraud, forgery etc.
- The Holder in due course is entitled to sue in his own name against all the prior parties to realize proceeds of the instruments.

Sec.4-Promissory Note:

A 'Promissory Note' is an instrument in writing (not being a bank note or a currency note) containing an unconditional undertaking, signed by the maker, to pay on demand or at a fixed or determinable future time a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument.

The person who makes the promise to pay is called the maker. He is the debtor and must sign the instrument. The person who gets the money (the creditor) is called Payee.

Example: A signs instruments in the following terms:

- (a) "I promise to pay B or order Taka 500."
- (b) "I acknowledge myself to be indebted to B in Taka 1,000 to be paid on demand, for value received."

Essential Elements

- The instrument must be in writing.
- The instrument must be signed by the maker of it.

- The instrument must contain a promise to pay. The promise to pay must be express. It cannot be implied or inferred. A mere acknowledge of indebtedness is not enough.
- The maker of the instrument must be certain and definite.
- A promissory note must be stamped according to the stamp act.
- The sum of money to be paid must be certain.
- The payment must be in the legal tender money of the country.
- The money must be payable to a definite person or according to his order.
- The promissory note may be payable on demand or after a certain definite period of time.

Sec.5- Bill of Exchange:

A 'bill of exchange' is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay on demand or at a fixed determinable future time a certain sum of money only to, or to the order of a certain person or to the bearer of the instrument”.

It is observed from the above definition that a bill of exchange contains an order from the creditor to the debtor, to pay a certain sum, to a certain person, either on demand or after a certain period. The person who draws the bill is called the ‘drawer’ and the person on whom it is drawn, is called the ‘drawee’ or ‘acceptor’ and the person to whom the amount is payable is called the ‘payee’.

When in the bill or in any indorsement thereon the name of any person is given in additional to the drawee to be resorted to in case of need, such person is called a ‘drawee in case of need’.

Example

Mr. X draws a bill on Mr. Y for 3 months for BDT 5,00,000, payable to Mr. Z or his order on 05th Sept. 2022.

Mr. X has ordered Mr. Y to pay BDT 5,00,000 to Mr. Z. If the order is acceptable to Mr. Y, he will write across the bill as follows:

Accepted

Y

Chittagong, Bangladesh

07th Sept. 2022

When the drawee writes such acceptance on the bill, it becomes a bill of exchange. In the above example Mr. X is the drawer of the bill (Creditor), Mr. Y is the acceptor (Debtor) and Mr. Z is the Payee. Mr. Y will pay the amount to Mr. Z.

Essential Elements

- The instrument must be in writing.
- The instrument must be signed by the by the drawer.
- The instrument must contain an order to pay, which is express and unconditional.
- The drawer, Drawee and the Payee must be certain and definite individuals.
- The amount of money to be paid must be certain.
- The payment must be in the legal tender money of the country.
- The money must be payable to a definite person or according to his order.
- A bill of exchange must be properly stamped.
- The bill may be made payable on demand or after a definite period of time.

Comparison of Promissory Notes & Bill of Exchange

Number of parties: In a promissory note there are two parties- the maker and the payee. In a bill of exchange there are three parties- the drawer, the drawee and the payee.

Promise and order: In a promissory note there is a promise to pay. In a bill of exchange there is an order to pay.

Acceptance: A promissory note is signed by the person liable to pay; therefore, no acceptance is necessary. A bill of exchange, except in certain cases, requires to be accepted by the drawee before it is binding upon him.

Liability: The maker of a promissory note is primarily liable on the instrument. The drawer of a bill is liable only when the drawee does not accept the instrument or pay the money due.

Relationship: In a promissory note the maker stands in an immediate relationship to the payee. In a bill of exchange a drawer stands in immediate relationship with the acceptor and not to the payee.

Notice: In case of non-payment or non-acceptance of a bill, notice must be given to all persons liable to pay. This is called the notice of dishonor. In case of a promissory note, notice of dishonor to the maker is not necessary.

Protest: In case of dishonor, a foreign bill must be protested if such a protest is necessary according to the law of the place where it is drawn. In case of dishonor of a promissory note, protest is not necessary.

Sec.6-Cheque:

A 'Cheque' is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand.

So, it can be said that a check is a written, dated, and signed instrument by the account holder that contains an unconditional order directing a bank to pay a definite sum of money to a payee.

The maker of the cheque is called the 'Drawer'. He is the account holder or the customer of the bank. The person thereby directed to pay is called the 'Drawee' i.e., Drawer's banker on whom the cheque has been drawn. The person named in the instrument, to whom or to whose order the money is by the instrument directed to be paid, is called the 'Payee'.

Features of a cheque

- The instrument must be in writing.
- The instrument must be signed by the drawer.
- The instrument must contain an order to pay, which is express and unconditional.
- The amount of money to be paid must be certain.
- The payment must be legal tender money.
- A cheque may be payable to bearer or to order but in either case must be payable on demand.

Difference between Cheque and Bills of Exchange

- A cheque is always drawn on a banker whereas, a bill of exchange may be drawn on any person including a banker.
- A cheque can only be drawn payable on demand and not otherwise. A bill may be drawn payable on demand or at the expiry of a certain period.
- A cheque does not require the acceptance and is intended for immediate payment. Acceptance is necessary in case of usance bills.
- No grace period is allowed in case of a cheque. Three days of grace period is allowed in case of a bill of exchange.
- Cheques can be crossed generally or specially. There is no crossing in the case of a bills.
- In case of cheque the holder need not to give notice of dishonor to make the previous parties liable. The holder must give such notice to all the previous parties whom he/she wants to held responsible.
- The payment of a cheque can be countermanded by the drawer. This is not possible in the case of a bill.
- A cheque is supposed to be drawn on the funds of the drawer. There is no such presumption in the case of a bill.
- Cheques are exempted from stamping and does not require noting and protesting when dishonored. All the bills of exchange require stamping depending on the value and duration of the bills and protesting is compulsory in the case of foreign bills.

Ante-dated cheque

A cheque which bears a date prior to the date on which the cheque is drawn is called an ante-dated cheque.

Example: A cheque is drawn on 10th April, 2022 but bearing the date 5th April, 2022 is an ante-dated cheque. The banker can pay such cheques, but should be presented for payment within a reasonable time.

Post-dated cheque

A post-dated cheque is one which bears a date subsequent to the one on which it is drawn. As the mandate of the of the customer is to pay the cheque on or after the ostensible date and such a refusal does not amount to dishonor of the cheque.

Example: A cheque is drawn on 10th April, 2022 but bearing the date 5th may, 2022 is an example of post-dated cheque. It means the date which is yet to arrive. Till the date arrives a banker cannot make the payment of the cheque.

Stale cheque

If a cheque is not presented within a reasonable time, it becomes stale. A cheque becomes stale after the expiry of 6(six) months from the date of the cheque. Such cheques are returned unpaid to have confirmation of the drawer.

Sec.8- Holder:

The holder of a promissory note, bill of exchange or cheque means the payee or endorsee who is in possession of it or the bearer thereof but does not include a beneficial owner claiming through a benamdar.

The person legally entitled to receive the money due on the instrument is called the holder.

Conditions to become a holder

A person is called the holder of a negotiable instrument subject to the following conditions:

- l) The person must be entitled to possess the instrument in his/her own name lawfully and in proper manner.
- m) The person must be entitled to receive or recover the amount from the parties concerned in his/her own name.

Rights of a holder

- a. An endorsement in blank may be converted by holder into an endorsement in full.
- b. Holder is entitled to cross a cheque either generally or specially.
- c. Holder can negotiate a cheque to a third person, if such negotiation

is not prohibited by the direction given in the cheque.

- d. A holder may receive payment in due course under a negotiable instrument and further negotiate it in the manner provided by this Act.
- e. A holder may also sue on such instrument in his own name.

Sec.9- Holder in due course:

'Holder in due course' means any person who for consideration becomes the possessor of a promissory note, bill of exchange or cheque if payable to bearer or the payee or endorsee thereof, if payable to order, before it became overdue, without notice that the title of the person from whom he derived his own title was defective.

Explanation – For the purposes of this section the title of a person to a promissory note, bill of exchange or cheque is defective when he is not entitled to receive the amount due thereon by reason of the provisions of section 58 i.e. when a promissory note, bill of exchange or cheque has been lost or has been obtained from any maker, drawer, acceptor or holder thereof by means of an offence or fraud, or for an unlawful consideration, neither the person who finds or so obtains the instrument nor any possessor or endorsee who claims through such person is entitled to receive the amount due thereon from such maker, drawer, acceptor or holder, unless such possessor or endorsee is, or some person through whom he claims was, a holder thereof in due course.

Therefore, holder in due course means, a person who holds a negotiable instrument in his/her own right for value and who acquires it before its maturity for payment, and without any notice of defect in the title of the transferor from whom the person takes the instrument.

Essential conditions to become a 'Holder in due course':

- If he has received the instrument innocently i.e., in good faith and without negligence.
- If he has paid the value for the same.
- If he has received the instrument before its maturity.
- If he is in possession of the instrument as a bearer or payee or endorsee.

- If he has not received any notice of defect in the title of the transferor from whom he takes the instrument.

Rights and privileges of a holder in due course

- He obtains a better title to the instrument than that of a true owner.
- The defective title of the previous endorsers (if any) will not adversely affect his rights.
- He can pass on a better title to others, since, once the instrument passes through his hands, it is purged /removed of all defects.
- Until the instrument is finally discharged, every party to that instrument is liable to him.
- Even the drawer of a negotiable instrument cannot claim invalidity of the instrument against him.
- His claim cannot be denied on the ground that the payee has no capacity to endorse.

Sec.10- Payment in due course:

Payment in due course means payment in accordance with the apparent tenor of the instrument in good faith and without negligence to any person in possession thereof under circumstances, which do not afford a reasonable ground for believing that he is not entitled to receive payment of the amount therein mentioned.

Requirements of payment in due course

- ***Payment must be in accordance with the apparent tenor of the instrument.***
Apparent Tenor means apparent direction given in the instrument. “Apparent tenor” means the instruction written on the face of a cheque. Everything written on a cheque is an instruction to the paying banker. It means according to what comes into view on the face of the instrument and that to be considered as the intention of the parties.

- ***Payment must be paid in good faith and without Negligence.*** That is, payment function must be done honestly and carefully in accordance with the prevailing circumstances. “Good Faith” means the right belief of the paying banker on the ownership of the cheque. The banker should be certain that the person presenting the cheque is the true owner of the cheque.
The paying banker has to go through the contents of cheque carefully. If there is any alteration, overwriting or cancellation, cheque cannot be paid. If a banker pays an altered cheque, it is negligence on his part. The maker of the cheque can authenticate and make good of the alterations on the cheque, by putting his full signature near the altered portion.
- ***Payment must be made to the holder of the instrument.*** Sec.78 of N.I Act provides, subject to the provisions of section 82, clause (c), payment of the amount due on a promissory note, bill of exchange or cheque must, in order to discharge the maker or acceptor, be made to the holder of the instrument. Section 82 C stipulates payment to be made to all parties thereto, if the instrument is payable to bearer, or has been endorsed in blank, and such maker, acceptor or endorser makes payment in due course of the amount due thereon.
- ***Payment of forged cheque is not a payment in due course.*** Forgery confers no title and a holder acquires no title to a forged instrument.
- ***Endorsement must be regular.***
- ***Payment must be in banking hour.*** bank will be discharged from its payment liability if the payment is made duly presented in the bank and within the banking hour. (Sec. 65 of N.I Act)

Inland instrument

Section11. A promissory note, bill of exchange or cheque drawn or made in Bangladesh, and made payable in, or drawn upon any person resident in, Bangladesh shall be deemed to be an inland instrument.

Instruments to be named as an inland instrument if:

- a. It is drawn within the country on a person residing in the country, whether payable in or outside the country, or
- b. It is drawn within the country on a person residing outside the country but payable in the country.

Example:

- i. A bill is drawn by a merchant in Chittagong on a merchant in Dhaka. It is payable in Narayangonj. The bill is an inland bill.
- ii. A bill is drawn by a merchant of Chittagong on a person in UK, but is made payable in Bangladesh. This is an inland bill.
- iii. A bill is drawn by a merchant of Chittagong on a merchant in Dhaka. It is accepted for payment in UK. The bill is an inland bill.

Foreign instrument

Section12. Any such instrument not so drawn, made or made payable shall be deemed to be a foreign instrument.

The following are the ***examples*** of a foreign bill:

- a. A bill drawn outside Bangladesh and made payable in Bangladesh.
- b. A bill drawn outside Bangladesh on any person residing outside Bangladesh.
- c. A bill drawn in Bangladesh on a person residing outside Bangladesh and made payable outside Bangladesh.
- d. A bill drawn outside Bangladesh on a person residing in Bangladesh.
- e. A bill drawn outside Bangladesh and made payable outside Bangladesh.

Negotiation

Section14. When a promissory note, bill of exchange or cheque is transferred to any person, so as to constitute that person the holder thereof, the instrument is said to be negotiated.

Negotiation may be performed by transferring a negotiable instrument with or without endorsement to another person.

Modes of Negotiation

Negotiation may be performed in the following two ways:

- 1) Negotiation by delivery (Section 47): Where a promissory note or a bill of exchange or a cheque is payable to a bearer, it may be negotiated by only delivery thereof.
- 2) Negotiation by endorsement and delivery (Section 48): Subject to the provisions of section 58, a promissory note or a bill of exchange or a cheque is payable to order can be negotiated by endorsement and delivery.

Thus, the negotiation of an order instrument requires first an endorsement thereon by the holder and, thereafter, its delivery to the transferee. Unless the holder signs his/her endorsement on the instrument and delivers it, the transferee does not become a holder. If there are more payees than one, all must endorse it.

Endorsement

Section 15: When the maker or holder of a negotiable instrument signs the same, otherwise than as such maker, for the purpose of negotiation, on the back or face thereof or on a slip of paper annexed thereto, or so signs for the same purpose a stamped paper intended to be completed as a negotiable instrument, he is said to indorse the same, and is called the 'endorser'.

The person who signs the instrument for the purpose of negotiation s/he is called Endorser & whose favor the instrument is transferred he is called endorsee.

Endorsement is nothing but the process of signing one's name or affixing an accepted rubber stamp impression on a cheque, for the purpose of transfer.

Allonge: If the space available on the back has been completely covered, a piece of paper may safely be attached to the instrument and subsequent endorsements may be made on that paper. The paper so attached is known as "Allonge."

In the process of collection banker is liable only for whether endorsement is regular or not, however he will not be liable to verify the genuineness of the signature.

Conversion of endorsement in blank into endorsement in full (Section 49). When a negotiable instrument has been endorsed in blank, any holder may, without signing his own

name, convert the blank endorsement into an indorsement in full by writing above the endorser's signature a direction to pay the amount to or to the order of himself or some other person; and the holder does not thereby incur the responsibility of an endorser.

Sec.35- Liability of endorser:

In the absence of a contract to the contrary, the indorser of a negotiable instrument, by indorsing it, engages that on due presentment it shall be accepted and paid according to its tenor and that if it be dishonored, he will compensate the holder or subsequent indorser who is compelled to pay it for any loss or damage caused to him by such dishonour.

Every indorser after dishonour is liable as upon an instrument payable on demand.

Effect of endorsement

Section 50

(1) Subject to the provisions of this Act relating to restrictive, conditional and qualified endorsement, the endorsement of a negotiable instrument followed by delivery transfers to the endorsee the property therein with the right of further negotiation.

(2) An indorsement is restrictive which either-

(a) restricts or excludes the right to further negotiate the instrument; or

(b) constitutes the endorsee an agent of the endorser to endorse the instrument or to receive its contents for the endorser or for some other specified person:

Provided that the mere absence of words implying right to negotiate does not make the endorsement restrictive.

Illustrations

B signs the following endorsements on different negotiable instruments payable to bearer:

- (a) 'Pay the contents to C only'.
- (b) 'Pay C for my use.'
- (c) 'Pay C or order for the account of B.'
- (d) 'The within must be credited to C.'

These endorsements exclude the right of further negotiation by C.

- (e)'Pay C'.

(f) 'Pay C value in account with the Oriental Bank.'

(g)'Pay the contents to C, being part of the consideration in a certain deed of assignment executed by C to the endorser and others.'

These indorsements do not exclude the right of further negotiation by C.

Sec.51-Who may negotiate:

Every sole maker, drawer, payee or endorsee, or all of several joint makers, drawers, payee or endorsees, of a negotiable instrument may, if the negotiability of such instrument has not been restricted or excluded as mentioned in section 50, endorse and negotiate the same.

Significance of Endorsement:

An endorsement consists of two contracts, namely -

- Contract of transfer of the property in the instrument, and
- Contract of a contingent assumption of liability on the part of the endorser.
The endorser of a negotiable instrument, by his act of endorsing, signifies the following to his endorsee and to any subsequent holder, that, when the instrument left his hands—

(i) He had a good title to it.

(ii) It was genuine all its particulars at the time of his endorsement.

(iii)All the previous endorsements were genuine. Sec. 122 of the N.I Act provides that “no endorser of a negotiable instrument shall, in a suit thereon by a subsequent holder, be permitted to deny signature or capacity to contract of any prior party to instrument.”

(iv)Further the endorser; by his act of endorsing, promises to indemnify the endorsee or any subsequent holder for any loss suffered by them on the dishonor of the instrument, provided, the procedure necessary on dishonor has been duly followed.

An endorsement carries with a right of further negotiation to the endorsee, along with the right of ownership’.

Assignment vs. Endorsement:

- (a) An assignment means the transfer of legal title to a property. Endorsement not only means the transfer of legal title, but also, it includes the assumption of liability till the instrument is finally discharged.
- (b) In the case of Assignment, the assignee’s title is subject to the title of the assignor. But in the case of endorsement, good title can be passed on to the endorsee, even when, there is a defective title.

Kinds of endorsement:

(a) Blank endorsement: (sec. 16(1) of N. I Act)

If the endorser signs his name only, the endorsement is said to be “Blank”. Cheques endorsed in blank can be negotiated by mere delivery. Thus, a cheque, originally payable to order, becomes payable to bearer by an endorsement in blank.

Example: A cheque is payable to X or order. If it is simply signed by X on the back, it constitutes a blank endorsement.

Pay to Mr. Anwar Hossain or order	(Without signing to whom) (Only Sign) Anwar Hossain
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(b) Special/Full endorsement (Sec. 16(1) of N.I Act):

If the endorser adds a direction to pay the amount to the order of a certain person, then, the endorsement is said to be full.

An instrument, with a blank instrument can be converted into a special instrument by any holder by specifying the name of an endorsee and putting his signature. A cheque, originally a bearer cheque, can be converted into an order cheque, by means of a full endorsement. Example: A cheque is payable to 'X' or order. He adds a direction to pay the amount to Mr. ‘Y’ or order and puts his signature below.

Pay to Mr. Anwar Hossain or Order	Pay to Mr. Monir Hossain or Order (Stating Name) (Signature Only)
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	(Anwar Hossain)
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© **Conditional Endorsement (Sec. 52)**

If the endorser of a Negotiable instrument expresses any words which is the liability of the endorsee to receive amount therein & depends on any events that type of endorsement is conditional endorsement.

Restrictive Endorsement (Sec. 50/51)

The endorsement may express the words which restricts or excludes the right to negotiate or nearly constitute the endorsee as an agent to receive its contents for the specified person.

Pay to Mr. Anwar Hossain or Order	Pay to Engr. Hasan only (Signature Only) (Anwar Hossain)
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(d) Sans recourse Endorsement (Sec.52)

An endorser for Negotiable instrument may express words in the endorsement and exclude his liability thereon.

Pay to Mr. Anwar Hossain or Order	Pay to Mr. Waded or order without recourse to me (Signature Only) (Anwar Hossain)
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(e) Facultative Endorsement

Here in this case the endorsee must give notice of dishonor of the instrument to the endorser.

Pay to Mr. Anwar Hossain or Order	Pay to Mr. Waded or order (Notice of dishonour withdrawn) Signature Only (Anwar Hossain)
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Requisites of valid endorsements

An endorsement in order to operate as elements of negotiation must comply with the following conditions:

- Endorsement must be written on the Negotiable instrument & signed (simple) by the endorser generally back of the instrument.
- Instrument must be endorsed for the entire bill amount. Endorsement of partial amount of bills or two or more endorsees severally do not operate as negotiation.
- Where a bill is payable to the order of two or more person, all must endorse.
- Where payee or endorsee's name is wrongly written or misspells, endorsement to be done as therein described. If it needs to be corrected it can be properly spell out only by his signature.
- Where there is two or more endorsement on a bill, each endorsement is deemed to have been made in order, until the contrary is proved.
- An endorsement may be made in blank or full or special. Endorsement may also contain terms making it restrictive.
- Endorsement shall not be in block letters.
- Endorsement shall not be allowed in printed character.
- The prefixes or suffixes to the name of payee or endorsee need not be included in endorsement.
- In the subsequent endorsement, endorser can clarify his present and previous position.
- An illiterate person can endorse the Negotiable instrument by affixing his thumb impression & duly witnessed or attested by somebody who gives his full address.
- In case of partnership firm endorser (partner/manager) must sign on behalf of firm by affixing firm's seal.
- If the name of payee(s) or endorsee is designated with official post, such as Companies, Institution, Club, Society, Associations etc. then endorsement must be stating official designation by affixing official seal.
- Banker can endorse an instrument on behalf of his customer(s) or on his own behalf by stating capacity & affixing proper seal.

- Endorsement of an instrument after expiry or stale is invalid.

Sec.58-Defective title:

A person who receives an instrument which has been lost or by means of fraud or any other unlawful means is not entitled to receive the amount due thereon unless he claims as holder in due course.

Sec.85A-Drafts drawn by one branch of a bank on another payable to order:

Where any draft, that is, an order to pay money, drawn by one office of a bank upon another office of the same bank for a sum of money payable to order on demand, purports to be endorsed by or on behalf of the payee, the bank is discharged by payment in due course.

Sec.3F-Material alteration:

‘Material alteration’ in relation to a promissory note, Bill of exchange or cheque includes any alteration of the date, the sum payable, the time of payment, the place of payment, and, where any such instrument has been accepted generally, the addition of a place of payment without the acceptor’s assent.

Sec.87-Effect of material alteration:

Any material alteration of a negotiable instrument renders the same void as against anyone who is a party thereto at the time of making such alteration and does not consent thereto, unless it was made in order to carry out the common intension of the original parties; and any such alteration if made by an endorsee, discharges his endorser from all liabilities to him in respect of the consideration thereof.

Sec.89-Payment of instrument on which alteration is not apparent:

Payment of any negotiable instrument which has been materially altered but not apparent to identify the alteration or any crossed cheque where crossing is not apparent and if otherwise in due course, the paying banker shall be discharged from all liabilities there on and such payment shall not be questioned for alteration.

Sec.122A-Revocation of banker's authority:

The banker can legally return a valid cheque without payment under the following conditions:

1. Countermand of payment
2. Notice of Customer's death
3. Notice of adjudication of customer as an insolvent

Crossing of cheques & its effects

Cheque crossed generally

Sec.123. Where a cheque bears across its face an addition of the words “and company” or any abbreviation thereof, between two parallel transverse lines, or of two parallel transverse lines simply, either with or without the words “not negotiable”, that addition shall be deemed a crossing and the cheque shall be deemed to be crossed generally.

Cheque crossed “account- payee”

Sec.123A. (1) Where a cheque crossed generally bears across its face an addition of the words “account payee” between the two parallel transverse lines constituting the general crossing, the cheque, besides being crossed generally, is said to be crossed “account payee”. Cheque crossed “account payee”

(2) When a cheque is crossed “account payee”-

- (a) it shall cease to be negotiable; and
- (b) it shall be the duty of the banker collecting payment of the cheque to credit the proceeds thereof only to the account of the payee named in the cheque.

Cheque crossed specially

Sec 124. Where a cheque bears across its face an addition of the name of a banker, either with or without the words “not negotiable”, that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed specially, and to be crossed to that banker.

Crossing after issue

Cheque crossed specially

Sec 125. Where a cheque is uncrossed, the holder may cross it generally or specially.

Where a cheque is crossed generally, the holder may cross it specially.

Where a cheque is crossed generally or specially, the holder may add the words "not negotiable".

Where a cheque is crossed specially, the banker to whom it is crossed may again cross it specially to another banker, his agent, for collection.

When an uncrossed cheque, or a cheque crossed generally, is sent to a banker for collection, he may cross it specially to himself.

Sec 125A Crossing a material part of a cheque

125A. A crossing authorized by this Act is a material part of the cheque; it shall not be lawful for any person to obliterate, or, except as authorized by this Act, to add to or alter, the crossing.

Payment of cheque crossed generally

Sec 126. Where a cheque is crossed generally, the banker on whom it is drawn shall not pay it otherwise than to a banker.

Payment of cheque crossed specially

Where a cheque is crossed specially, the banker on whom it is drawn shall not pay it otherwise than to the banker to whom it is crossed, or his agent for collection.

Payment of cheque crossed specially more than once.

Sec 127. Where a cheque is crossed specially to more than one banker, except when crossed to an agent for the purpose of collection, the banker on whom it is drawn shall refuse payment thereof.

Cheque bearing 'not negotiable'

Sec 130. A person taking a cheque crossed generally or specially, bearing in either case the words 'not negotiable', shall not have, and shall not be capable of giving, a better title to the cheque than that which the person from whom he took it had.

Collecting bank/Presenting bank

A collecting banker is one who undertakes to collect the amount of a cheque for his customer from the paying banker.

A Collecting Banker undertakes the responsibility of collecting cheques, drafts, bills, pay orders, Letter of credit, dividend warrants, debenture interest etc., on behalf of the customer.

Status of a Collecting Banker

While collecting his customers' cheques, a banker act either:

- as a holder for value; or
- as an agent to the customer.

A collecting banker is regarded as holder for value

- if the cheque is purchased and its value is paid before collection;
- if the customer is allowed to draw the amount of cheque before collection;
- if the cheque is expressly paid in to reduce the amount of an overdraft enjoyed by the customer before it is collected;
- if agreed between the banker and the customer that the customer may draw the amount of the cheque before collection.

Rights of a Holder for Value

A collecting banker acting as a holder for value enjoys the rights as holder in due course.

Agent to the customer

- A bank may undertake to collect a cheque as an agent to the holder thereof.
- The collecting banker incurs a fiduciary responsibility to account for and pay the money to his principal.
- Thus, the collecting banker credits the customer's account with the amount of the cheque after the amount is actually realized from the drawee-bank.

Duties of a Collecting Banker

- **Due care and diligence:** The collecting banker should exercise due care and diligence in collection of cheques entrusted to it for collection by its customers;

- **Presentment within reasonable time:** The collecting banker must present the cheque for collection within reasonable time. The banker must not delay in presenting the cheque, if there is no reasonable ground;
- **Crediting the proceeds to the customer's account:** When the cheque is realized, the bank must pay the proceeds to the customer by crediting his account without delay;
- **Notice of dishonor:** In case the cheque is dishonored, the collecting banker must serve notice of dishonor to the customer without delay, failing which, the banker will be liable held to the customer for any loss or damage that the customer might have suffered on account of such failure;

Statutory protection

Section -131 of N.I. Act provides protection to a collecting banker entrusted with the collection of cheque.

Section -131: Statutory protection

‘A banker who has in good faith and without negligence received payment for a customer of a cheque crossed generally or specially to himself shall not, in case the title to the cheque proves defective, incur any liability to the true owner of the cheque by reason only of having received such payment.’

Statutory protection

The collecting banker may enjoy the statutory protection if it fulfills the following conditions:

- receives payment for customer only;
- receives payment of the crossed cheque;
- acts in good faith and without negligence.
- It should be carefully noted that the protection is only available to the collecting banker:
- when it acts as a mere agent to the principal i.e., customer and not in the capacity of holder for value;
- that the collection must involve the crossed cheque
- That the collection has been done in good faith and without negligence.

Presenting/collecting Banks' Responsibility

By presenting an approved BACPS-Eligible Item for payment to the Bangladesh Bank, the Participating Bank:

- a. agrees to comply with the applicable BACPS rules and agrees that those rules govern the relationships among all of the participants.
- b. certifies that the front and back images of the BACPS-Eligible Item is a copy of the original negotiable instrument;
- c. it shall be the duty of the presenting bank to verify the prima facie genuineness of the cheque that can be verified with due diligence and ordinary care. The presenting bank shall be responsible for detecting the following: genuineness of the cheque leaf, material alteration of payee name, amount or date. In such cases where genuineness cannot be verified or material alteration is detected; the presenting bank should not submit such cheque(s) to the BACPS;
- d. agrees within seven calendar days to make the original negotiable instrument available for inspection during normal business hours, if requested by the Paying Bank.
- e. upon realization of the proceeds the bank shall pass the same to their customer account on the date of settlement subject to completion of the return session or internal rules of the bank;
- f. if requested by the participating bank, failure to present the original negotiable instrument will result in non-payment of the instrument. The original instrument will remain with the Paying Bank after the instrument has been made available by the Presenting Bank;
- g. authorizes the Bangladesh Bank holding the Bank's Settlement Account to credit the amount for cheques presented to the Bank's Settlement Account on the Settlement Date, and
- h. agrees to indemnify the Bangladesh Bank processing or settling for the item for any loss or expense (including attorney's fees and expenses of litigation) incurred by the Bangladesh Bank as a result of the Presenting Bank's negligence or non-compliance with any of the clauses of the BACPS Operating Rules and Procedures with respect to the presented item.

The agreements, authorizations and indemnity do not limit any other agreement, authorization or indemnity, not inconsistent with these Rules, made by a Bank, its

Correspondent Bank, or the Bangladesh Bank.

Paying Banker

- A Banker on whom a cheque is drawn should pay the cheque when it is presented for payment.
- This obligation has been imposed on him by sec. 31 of the N.I Act, 1881.
- A banker is bound to honor his customer's cheque, to the extent of the funds available and the existence of no legal bar to payment.
- Again, for making payment the cheque must be in order and it must be duly presented for payment at the branch where the account is kept.
- The paying banker should use reasonable care and diligence in paying a cheque, so as to abstain from any action likely to damage his customer's credit.
- If the paying banker wrongfully dishonors a cheque, he will be asked to pay heavy damages.

Paying Bank's Responsibility

A Paying Bank, by maintaining or using an Account with the Bangladesh Bank for settlement of items or by accepting an item from the Bangladesh Bank:

- a. agrees to comply with the applicable BACPS rules and agrees that those rules govern the relationships among the Participating Banks;
- b. agrees to process the item in accordance with these Rules;
- c. authorizes the Bangladesh Bank to charge the amount of a payment item to the Paying Bank's Settlement Account on the Settlement Date, and
- d. agrees to indemnify the Bangladesh Bank for any loss or expense (including attorneys' fees and expenses of litigation) incurred as a result of a breach of the foregoing agreements or of any action taken by the Bangladesh Bank in accordance with these Rules.
- e. The agreements, authorization and indemnity do not limit any other agreement, authorization or indemnity not inconsistent with these Rules, made by a Paying Bank to a Presenting Bank, the Bangladesh Bank or another person.

Paying Bank's Due Diligence

1. Transmission of Posting File
2. Digital Certificate Verification of CHM
3. Payment Processing:
 - Signature verification
 - Account balance verification
 - Verification of endorsement
 - Positive Pay instruction
 - Restriction to account by customer or other legal authority
 - Stop payment verification
 - Verification of date
 - Matching amount and figure
 - Verification of data entry error
 - Other prudent practice

Model questions (Module I: Negotiable Instruments Act, 1881)

MCQs

1. Which of the following is not true?
 - a) Cheque is not always drawn on bank
 - b) FDR is a financial instrument
 - c) Bill of exchange is a negotiable instrument
 - d) Payee can transfer a cheque without the consent of the drawer
2. The document drawn by a debtor on the creditor agreeing to pay a certain sum is called:
 - a) Cheque
 - b) Promissory note
 - c) Bill of exchange
 - d) all of these
3. A negotiable instrument payable to order is negotiated by -
 - a) Mere delivery
 - b) Endorsement and delivery
 - c) Mere endorsement
 - d) By assignment
4. Which of the following crossing is not General crossing?
 - a) Crossing with bank name
 - b) 'Account payee' crossing

- c) 'Not negotiable' crossing d) 'Not transferable' crossing
5. Responsibility of the presenting banks is the following except:
- Comply with the BACPS Rules
 - To certify that the presented item is a copy of the original instrument
 - Verify the prima facie genuineness of the cheque
 - Obtaining positive pay instruction from the drawer of the cheque
6. When the paying banker shall be discharged from all liabilities for materially altered cheque under section 89 of the N. I Act 1881?
- The payment of negotiable instrument which has been materially altered but not apparent to identify the alteration
 - The payment is made in due course by the banker
 - The payment is made in good faith and without negligence
 - None of these
7. An instrument having forged signature of the drawer is called-
- Inoperative cheque
 - Unauthorised cheque
 - Suspicious cheque
 - both (a) and (b)

Short questions:

- Define negotiable instrument and state the presumptions as to it under N.I Act, 1881.
- How can you define a cheque? Differentiate between Cheque and a bill of exchange.
- Who is a holder under section 8 of negotiable instrument Act, 1881? State the rights of a holder.
- What do you mean by holder in due course? State the essential conditions to become a holder in due course.

Broad questions:

- What are the points to be considered by a paying banker before passing a cheque for payment?
- Define endorsement. Describe different types of endorsements. What are the endorser's liabilities? Mention the circumstances under which an endorser of a bill is discharged from his/her liability.

3. When a banker can legally return a valid cheque without payment? What are the measures to be taken if fake note is detected in a bank branch?
4. Mention the duties and responsibilities of a collecting banker.

Cases on Negotiable instruments:

1. A housewife having an account with a bank asks one of her relations to write down a cheque for Tk. 10000/- The man wrote a cheque leaving blank space and the housewife without observing it carefully put her signature on the cheque. The cheque was presented by her relation as bearer and duly paid by the bank. Soon after receiving the SMS, it was detected that bank paid Tk. 1,10,000/- in lieu of Tk.10,000/- It was difficult to identify any alteration in the cheque. The housewife claimed Tk. 1,00,000/- to the bank failing which she will file suit. It may be noted that with the help of magnifying glass slight difference of ink could be detected which was used in altering the cheque for amount in words and the amount in figures.
2. Mr. X has a current account with ABC Bank Ltd. His clerk forged his signature to a cheque for Tk. 20,000/- and encashed it at the bank. Mr. X, having come to know of this irregularity claims the amount from the banker. Meanwhile, the banker claims that he has paid it in due course. Can a banker escape from his liability?
3. A banker has received an instruction from the drawer to maintain a certain amount in his account until further order. Meanwhile, a Garnishee order has been issued attaching the drawer's account. Discuss the position of the banker with regard to that standing instruction.
4. A bearer cheque has been presented over the counter where in payee is "ABC Co. Ltd." How and to whom the Bank should make the payment of the cheque?
5. Mr. X issued a cheque at 4.30 pm to Mr. Y. Y approached to the bank and on request paid the money at 4.45 pm. as late payment. Mr. X arrived to the bank and stopped payment of the cheque issued to Mr. Y at 4.50 pm on the same day. Is the bank justified for making payment?

6. An account holder Mr. X draws a cheque for Tk. 50,000/- favoring Anwar (a minor aged 15 years) or bearer. Anwar presents the cheque over the counter duly signed on the back. What should the banker do with the cheque of a minor?
7. A fixed deposit in the name of X and Y (payable to either or survivor) is presented for pre matured payment discharged by X alone. How will you, as a banker, deal with the situation.

Module J: General Banking

Debit Cards

A card allowing the holder to transfer money electronically from their bank account when making a purchase. A debit card is a payment card that can be used in place of cash to make purchases. Debit cards eliminate the need to carry cash or physical cheques to make purchases, and they can also be used at ATMs to withdraw cash. An ATM card is a PIN-based card, used to transact in ATMs only. While a Debit Card, on the other hand, is a much more multi-functional card. They are accepted for transacting at a lot of places like stores, restaurants, online in addition to ATM.

Whether being used to obtain cash or to buy something, the debit card functions in the same way. It draws the funds immediately from the affiliated account. Expenditures on the debit card are limited to the money the card holder have in the bank account. So, one's spending is limited to what's available in his/her bank account, and the exact amount of money one has to spend will fluctuate from day to day, along with their account balance. Debit cards usually have daily purchase limits as well, meaning one can't spend more than a certain amount with them in one 24-hour period. Debit cards come with PINs that allows the holder to withdraw cash from ATMs and also to buy goods and services.

Every transaction made with a debit card will appear on the account holder's monthly statement, making it easy to "see where the money has been used."

In case of lost or stolen cash, it is gone forever. A lost or stolen debit card can be reported to the bank, which can deactivate the card, remove any fraudulent transactions from the cardholder's account, and issue a new card.

Internet banking

In Bangladesh, Banking industry is mature to a great extent than earlier period. It has developed superb image in their various activities including electronic banking. Now modern banking services have launched by some multinationals and new local private commercial banks. Electronic banking is one of the most demanded and latest technologies in banking sector.

Internet banking, also known as online banking, e-banking or virtual banking, is an electronic payment system that enables customers of a bank or other financial institution to conduct a range of financial transactions through the financial institution's website.

Online banking is a system that enables bank customers to access accounts and general information on bank products and services through a bank's website or app. It is a means of banking through the internet that provides one of the easiest banking systems to clients with low cost and quick services.

Through internet banks can provide services like – electronic fund transfer, bills payment, balance inquiry, account maintenance, transaction flexibility, loan application etc. Internet banking service, thus, facilitates making deposits, issue withdrawals, transfer funds among accounts, collect and pay bills, make small loans etc.

Transfer of accounts

When an account is transferred from one branch to another, the account opening form etc. signed at the time the account was opened and any forms or documents signed subsequently which are necessary for its proper conduct must be forwarded to the branch to which the account is transferred together with the relative mail transfer, specimen signature cards and standing instructions, if any. No exchange should be charged on such transfer.

The account holder(s) should submit a written application or form to either the new branch or the old one (home branch). The letter should clearly indicate account numbers, which are to be transferred to another branch. The exact name of the new branch, where the account is to be transferred, must be mentioned in the letter as well. Along with the application, the account holders are required to return any cheque book(s) and unused cheque leaves. Proof of new address should be accompanied by the application. Contact

details such as new landline or mobile number should also be updated.

Once the application is received, the request is sent to the home branch.

The home branch closes the account and transfers balances to the other branch. A new account is then opened at the branch where the account is transferred and funds are deposited in this account. The whole transfer process may take a few working days. Once the account is transferred, the customer is allotted the new account number, and a new cheque book can be issued.

Standing Instruction

Banks render a useful service to their customers by complying with their standing instructions. Standing instructions are the instructions given by a customer to his banker that relates to certain financial dealings, e.g. -

- receipts,
- transfer, and
- payments of money

These instructions relate to dealings that are generally repetitive in nature. Some of these instructions are as follows:

- Payment of life insurance premium to LIC periodically.
- Payment of periodic membership fee/ subscription to clubs, libraries, professional association etc.
- Payment of various bills of the customer.
- Transfer of specific amount from one account of the customer to another account.
- Collection of dividends on behalf of customers.
- Collection of pensions from Govt. Dept.
- Collection of interest on Govt., securities held in safe custody or otherwise.

A standing order is an instruction that a bank account holder gives to their bank to pay a set amount at regular intervals to another's account. The instruction is sometimes known as a banker's order. They are typically used to pay rent, mortgage or any other fixed regular payments.

A Standing Instruction (SI) is a service offered to customers of a bank, wherein regular transactions that the customer wants to make are processed as a matter of course instead of initiating specific transactions each time. Once initiated, a standing instruction may go on for many months, or even years, with each cycle being processed automatically.

Example: Let us say, a customer has instructed your bank/branch in writing to send Tk.10,000/- to his mother's account every month, this is a standing instruction (SI). The branch will keep sending money to his mother's account as instructed by the customer until he stop it in writing. Of course, there are charges involved. Bank meticulously follow the standing instruction.

Stop and lost payment instruction & its revocation

A stop payment instruction is an order by an account holder of a bank to cancel a cheque or payment before it is processed. A stop payment can only be executed if the cheque or payment has not been processed by the receiving bank. Usually, a bank charges a fee for processing the stop payment request.

Generally, stop payment order is made in cases when the account holder does not want the cheque to be paid for various reasons. These include stolen or lost cheques, forged cheques, insufficient funds to cover the cheque amount, or a dispute between the depositor and the party that was given the cheque.

While issuing a stop payment instruction to the bank, the account holder can call the bank to ask for a stop payment with a promise to visit the bank and issue a written instruction. In the meantime, if such cheque is presented should be returned with the objection "Drawer's confirmation required".

When issuing a stop payment request to a bank, the account holder is to provide the bank with information about the cheque, such as the cheque number, payee, amount and the date when the cheque was drawn. A banker is to maintain a register of stop payment at their end with all these information for future reference. The date and time shall be marked on the instruction letter and the signature of account holder shall be verified. Stop payment seal is to be affixed on ledger folio. When a stop payment cheque is presented, return the cheque with objection 'payment stopped by Drawer'.

Stop payment instructions on electronic payments can also be made for the wrong account, wrong amount, duplicate transaction etc. and the procedure remaining same as in the case of stop payment of a cheque.

Dormant accounts and its revival

A dormant account refers to an account that has shown no activities- such as deposits and withdrawals for a long period of time. The main purpose of categorization of an account as Dormant Account is to ascertain safety & security of account and also to avoid the risk of fraud in any account, record keeping and periodic review of accounts.

The categorization is there only to bring to the notice of dealing bank staff, the increased risk in the account. To protect the dormant account from unauthorized operations, fraud and forgeries, it shall be necessary to mark clear 'alert' and 'Caution' signals on the relative account documents.

Consequences of Dormant Account

Account holder may face many consequences on his/her account being dormant like:

- Cheque book will not be issued
- Address cannot be changed
- Cash withdrawal from an ATM or branch is not allowed
- Add or delete a joint holder in the account
- No transaction through internet banking or phone banking
- No renewal of ATM/ debit card
- Get a user ID and password
- Modification of signature

- Cannot request to issue a cheque book

Earlier as regards inoperative/dormant account Bangladesh Bank vested the power to the respective bank authority. Recently BB has issued a general circular for all banks regarding dormant account. The central bank issued the notice as many banks were following different policies on inoperative and dormant accounts.

As per Bangladesh Bank recent decision Current, Savings and special notice deposit (SND) accounts would become inoperative if clients don't carry out any transaction for six months in a row. SND account is an interest-bearing deposit where advance notice is required for withdrawal of money. The interest rate on deposits at SND account is higher than savings ones.

Banks are to treat their Current and SND accounts as dormant six months after they become inoperative, according to a central bank notice which means the account cannot be used without official permission.

The inoperative Savings accounts will have to be considered as dormant after 18 months.

With the decision of BB, banks now can transfer the interest or profits to the dormant accounts if there have been any deposits. Similarly, banks are allowed to impose charges on the dormant accounts.

All system generated transactions like credit of interest on savings account by bank, penalty levied by bank, service charges initiated by bank, etc. are not considered as transactions initiated by the depositor and hence can't avoid an account being dormant.

Procedure for reactivating a dormant account

To reactivate a dormant account (current, short notice deposit and savings) the customer has to submit a written application to the branch manager. The branch manager has the authority to reactivate the account after scrutinizing the account information.

For reactivation of an Inactive/Dormant account, the account holder should submit a duly filled application to the bank in person with the request to change the status of the account from 'Dormant to Active' indicating the reasons for not operating the account in the past. The account holder should also submit the following documents / records to the Bank for verification.

- Recent color passport size photo – 2 copies
- Copy of valid photo ID document

- Copy of valid address proof documents

If an account remains dormant for five years, clients will have to fill up a new KYC (know your customer) form to activate accounts.

The banks will inform individual and institutional account holders through SMS, email or letter one month before making the account dormant.

Unclaimed deposit accounts

All unclaimed deposits & valuable articles for 10(ten) years must be sent to Bangladesh Bank. If there is no transaction for last 10 years or being no trace of the customer in spite of repeated reminders and upon serving 3 months prior notice amount in the account concerned may be transferred to BB.

If the customer could not be traced after reasonable efforts, the banker usually transfers the balance to Bangladesh Bank as “Unclaimed Deposit Accounts,” and the account is closed.

The balance is paid to the customer as and when he comes to claim it or to the legal successors under an order of the court (Sec. 35 of Bank Companies Act, 1991).

Closing of accounts

Closing of account(s) can be made at any time by giving notice in writing or submitting Account Closure Form (available in any of bank branches) to the Branch where the customer opened the account(s).

On closure of the account, the bank will pay the credit balance (if any) of the account and any interest due to customer's account(s). Necessary charges and Government levies shall be realized for the closure of the account(s). The account holder will have to surrender the unused cheque book/leaves along with requisition slip, Debit Card and other materials (if any) supplied by bank for operation of the account. If any of the above-mentioned documents or materials are lost or misplaced, then the account holder is to submit an application along with copy of the GD entry regarding the loss or misplacement.

The Bank reserves unequivocal right to close any unsatisfactory account as decided by the Bank at its absolute discretion.

The position of banker regarding closing of customer's account may be summed-up as follows:

- Customer's Request
- Unclaimed Deposit Account
- Death of customer
- Insanity of the customer
- Insolvency of the customer
- Undesirable customer
- Attachment order issued by the income Tax authorities
- On receipt of Garnishee Order

Operation of minor students

- Account will be opened with parents/ legal guardian as an authorized signatory; it will be treated as a Minor account.
- No minimum balance is required to be maintained.
- Interest will be earned on any balance kept in School Banking Account; no minimum threshold applies.
- Interest will be earned on monthly average balance and applied to the account quarterly.
- No account maintenance fee is charged.

No-frills account

'No-frills' accounts introduced to provide basic banking facilities to poor and promote financial inclusion.

Introduction of opening of No-frill accounts was an important milestone of financial inclusion initiatives taken by the government and BB. Circulars have been issued for ensuring opening following no-frill accounts.

One very important feature of these accounts is that opening of these accounts requires only a nominal opening balance. No minimum balance is required and banks do not charge any fees for maintaining these accounts. BB has issued different circulars for the banks providing them with necessary instructions for opening and maintaining these accounts.

The account holders are usually unbanked and do not have any access to other financial services. BB usually collects quarterly report from banks regarding opening and operation of these accounts for off-site monitoring. Existing no-frill accounts are of following types:

Bank account for farmers

A farmer can open a bank account by depositing BDT 10 at any state owned commercial and specialized bank against national ID card/birth registration card and ‘agricultural equipment assistance card’ issued by the Department of Agricultural Extension.

Bank accounts for Freedom Fighters

A freedom fighter can open bank account by depositing BDT 10 at any state owned commercial and specialized bank against national ID card and Payment Receipt Book for freedom fighter’s allowance.

Bank accounts for beneficiaries under Social Safety Net

Beneficiaries under Social Safety Net can open bank account by depositing BDT 10 at any state owned commercial and specialized bank against national ID card and Payment Receipt Book containing Pension Payment Order (PPO) for the beneficiaries.

Bank account for hardcore poor

A hardcore poor can open bank account by depositing BDT10 (equivalent 12 cents only) at any state owned commercial and specialized bank against national ID card and registration card issued by the Ministry of Food & Disaster Management.

Bank account for the garment’s workers

All banks have been instructed to open bank account for the garment’s workers by depositing BDT 100 against national ID card/ ID card issued by respective employer. Banks can use voucher in case of shortage of cheque book. Pay and allowances of garments workers will be payable through these accounts. Banks have been instructed to report opening and operation of this account to BB in a prescribed form on a quarterly basis.

Bank Account for Small Life Insurance Policy Holder

Small life insurance policy holders (up to BDT 0.15 million) can open bank account by depositing BDT 100 at any state owned commercial and specialized bank against national ID card/birth certificate and premium deposit book/document for life insurance.

Beneficiaries of Dustho Punorbason program of Ministry of Religious Affairs

Beneficiaries of financial rehabilitation allowances from Ministry of Religious Affairs can open bank account by depositing BDT 10 at any state owned commercial and specialized bank against national ID card/birth certificate and Certificate issued by UNO.

Cleaning staffs of Dhaka North and South City Corporation:

Cleaning staffs of Dhaka North South City Corporation can open bank account by depositing BDT 10 at any state owned commercial and specialized bank against national ID card and ID issued by city Corporation.

Incapacitated, sick and disabled accounts

Where an account holder who is too ill to sign a cheque/cannot be physically present in the bank to withdraw money from his bank account but can put his/her thumb impression on the cheque/withdrawal form, and

Where an account holder not only unable to be physically present in the bank but is also not even able to put his/her thumb impression on the cheque/withdrawal form due to certain physical defect/incapacity.

In such cases the usual operation procedure in the account is as under:

The thumb or toe impression of the sick/old/incapacitated account holder should be identified by two independent witnesses known to the bank, one of whom should be a responsible bank official.

In case the account holder will not be able to be physically present in the bank for regular operations, the account holder may be asked to provide a mandate authorizing the bank to permit a certain named person to operate the account on his/her behalf. A mandate is a simple letter of authority which indicates to the bank as to who would withdraw the amount from the bank on the basis of cheque/withdrawal form as obtained above and that person should

be identified by two independent witnesses. The person who would be actually drawing the money from the bank should be asked to furnish his signature to the bank.

Resident and non-Resident accounts

Non-resident accounts

The accounts of individuals, firms or companies' resident outside Bangladesh are designated as non-resident accounts and are treated as accounts of countries of permanent residence of the account holders. ADs should establish the countries of permanent residence of all account-holders and mark the accounts of all nonresident persons, firms or companies as non-resident accounts; indicating clearly the countries of their permanent residence as established. Where any doubt exists whether an account is to be treated as non-resident, reference should be made to the Bangladesh Bank for decision, giving relevant details.

NRTA Account

Foreign investor can open a temporary bank account (Non-resident Taka Account: NRTA) without prior permission of Bangladesh Bank to receive the capital remittance from abroad for encashment certificate. Investors can open temporary accounts through online arrangement for FDI in Bangladesh as per Circular no 11 of Foreign Exchange Policy Department of Bangladesh Bank issued on May 17, 2021.

When the company of the investor registered with the Registrar of Joint Stock Companies and Firms (RJSC&F), a new bank account can be opened to transfer the capital from the temporary account.

Non-Resident Investors Taka Account (NITA)

NITA (Non-Resident Investors Taka Account) is a facility that is provided to non-resident individuals/institutions including non-resident Bangladeshi nationals who are interested in trading Bangladeshi securities against foreign exchange remitted from abroad.

Features

- Non-resident portfolio investors have to open a Non-resident Investors Taka Account (NITA) with any authorized dealer in Bangladesh funding the purchase and easy repatriation of the sales and income proceeds.
- Securities can be purchased only through a member/registered broker of the stock exchange. However, public issues not yet listed in a stock exchange can be bought directly from the issuing company.
- For the purpose of trading securities, investors need to open a security account/trading account with stock broker listed with the exchanges.
- Funds from NITA can be used to purchase shares and securities listed in a stock exchange.
- The balances in this account are freely remittable abroad in foreign exchange.

Eligibility

- Non-Resident individuals (Foreigners and NRBs).
- Foreign intuitions.
- Institutions located abroad which are owned by NRBs.

Document Requirement

- For Institutional Trading Account
- Company NITA A/C number with custodial bank or A/C statement.
- Board Resolution.
- Memorandum and Articles of association.
- Specimen signature of account operators.
- Letter of Authorization.
- A valid photo ID of the Managing Director.
- Valid photo ID of Account Operator(s).
- Account Opening Form and Signature Card duly filled up.
- Individual NITA A/C Number with custodial bank or A/C statement.
- Valid passport or national ID card photocopy.
- Two copies passport size photograph of account holder.

- One copy passport size photograph of authorized person (if any).

For Individual Trading Account

In the case of non-resident accounts, declarations on **Form QA22** are not necessary. Notwithstanding the fact that a constituent has signed Form QA-22 the Authorized Dealer (AD) must take all reasonable steps to ensure that the constituent is not making foreign exchange available to any person in Bangladesh other than an AD against reimbursement in Taka or is not by any other means contravening the provisions of the Act. Any irregularity should immediately be brought to the notice of the Bangladesh Bank.

In QA 22 form, the prospective account holder of the bank has to declare his/her sources of funds which he/she is going to deposit in the account.

Resident accounts

The accounts of all foreign nationals who are resident in Bangladesh and the accounts of companies or firms (other than banks) whose head office or controlling interests are outside Bangladesh but are operated on by persons in Bangladesh may be treated as resident accounts. The account-holders or persons in Bangladesh authorized to operate on such accounts must sign Form QA-22). Form QA-22 should be obtained by the ADs in duplicate and a copy thereof forwarded to the Bangladesh Bank for record as and when the account is opened. Prior approval of the Bangladesh Bank for opening such accounts is, however, not necessary.

Accounting entries related to deposit/withdrawals/transfer of money

When there is any deposit of money in the bank by the customer in any deposit account banks are going on receiving the money as deposits of their customers' either in cash or by transfer (through cheque or any other financial instruments). Bank technically going on borrowing the funds from their customers. Any amount received as deposit by the bank, it creates liability for the bank. Because banks will have to repay the deposited money of their customers' accounts as and when it is demanded by them or as per agreed terms to pay it.

Again, where there is any withdrawal of money from the customer's account of the bank, the bank making payment of the customer's deposited money and thereby decreasing the liability of the bank.

At present time, a business enterprise does most of its business transactions (receipts, payments, deposits, withdrawal) through a bank. Banks play an important role in the conduct of business. A cash deposit in bank journal entry is used to record the transfer of the physical cash held by the business to the bank account. Money can be withdrawn from the bank only when there is deposit in the bank.

Recording of transaction

It is a process of accounting transactions of the business in several books of accounts like cash book, journal book, a ledger account, profit & loss account, etc. These entries are a source of documents which act as evidence for all the transactions taking place in a bank.

In accounting, to execute recording transaction it is important to understand the financial accounting rule. According to dual entry concept, there are two rules for determining 'debit' and 'credit' from the transactions. One is Traditional Rules (Golden Rules for Debit and Credit) and Modern rules (Accounting Equation Method). Whatever method or rules among the two is followed for determining 'debit' and 'credit' the effect will be same.

Under Golden Rules Debit and Credit are determined on the basis of characteristics of each Account from the transactions. Account means a summarized and classified statement of similar transactions relating to any person, institution, assets, liability, income, expenditures etc. prepared under a proper Head. These are:

Personal Account: Accounts relating to persons, firms, institutions, etc.

Real Account: Accounts relating to assets, i.e., land, building, cash machinery etc.

Nominal Account: Accounts relating to losses, expenses (rent, salaries, interest paid) and incomes & gains (Interest received on investment, commission etc.).

Thus, considering the characteristics of each account from the transactions we can determine debit and credit from the following rules:

- Personal Account- Debit the receiver and credit the giver.

- Real Account- Debit what comes in and Credit what goes out.
- Nominal Account- Debit all expenses and losses, credit incomes and gains.

Modern Rules may be summarized as under:

1. Increase of Assets (Cash, building, etc.)	DR.
2. Decrease of Assets (Cash, building, etc.)	CR.
3. Increase in liabilities (creditors, loan etc.)	CR.
4. Decrease in liabilities (creditors, loan etc.)	DR.
5. Increase of losses/expenses (Rent, Salaries etc.)	DR.
6. Decrease in losses/expenses (Rent, Salaries etc.)	CR.
7. Increase in incomes/gains (Commission etc.)	CR.
8. Decrease in incomes/gains (Commission etc.)	DR.
9. Increase in capital (Equity)	CR.
10. Decrease in capital (Drawings)	DR.

Application of the rule in case of deposit/withdrawals/transfer of money:

In case of Cash Deposit

Credit: Customer's Account

Debit: Branch Cash Account

Cash withdrawal (using cheque/ voucher/ otherwise) has the opposite set of entries. In case of Transfer of money from Customer A to Customer B

Credit: Customer B

Debit: Customer A

In case of cheque/ draft/ other monetary instrument deposit where funds need to be collected from another bank through ACH (automated clearing house) or funds come through electronic payment systems like NPS, BEFTN, RTGS, etc.

Credit: Customer's Account

Debit: Settlement Account for clearing

Transfer of money from customer's account through the same channels will have opposite set of accounting entries. Banks may have separate settlement accounts for individual

payment channels/ platforms. A branch may be doing such transactions through the Head Office or a Controlling Branch. That will require inter-branch transactions to be posted which is explained below.

If the deposit/ withdrawal/ transfer is done through a branch other than the one the customer is maintaining, there will be an inter-branch transaction to settle the accounts between the two branches. IBCA (inter-branch credit advice)/ IBDA (inter-branch debit advice) process is used for standalone branch banking while the branch handling the transaction can complete the full process in centralized banking platform (online banking). This is done by two sets of entries. For example, withdrawal or transfer from the account of a customer of Branch B done by Branch A entries will be as following:

Debit: Customer's account with Branch B

Credit: Head Office Account in the books of Branch B

Debit: Head Office Account in the books of Branch A

Credit: Cash or payout account in the books of Branch A

In case of withdrawal or transfer into deposits the account of a customer of Branch B done by Branch A the entries will be in reverse order i.e., Debits in the example will be Credits and vice versa. Most of the centralized banking platforms have capacity to do onetime maintenance and bankers only chose transaction type/code and put the Debit or Credit into customer's account while the system takes care of relevant accounting entries.

Example of Accounting entries related to deposit items:

For Cash received for Tk. 10,000 from the customer of a savings Bank account in a branch, entry to be made as under:

Dr. Cash A/C	Tk. 10,000
Cr. Deposit A/C (SB A/C)	Tk. 10,000

1. For withdrawal of Tk. 20,000 from the customer's Current account, entry to be made as under:

Dr. Deposit A/C (CD A/C)	Tk. 20,000
Cr. Cash A/C	Tk. 20,000

3. One of the savings bank account holders deposited an A/C Payee Cheque amounting to Tk. 50,000 for collecting in his account. This is a case of transfer and the entry to be made here as under:

Dr. Other Assets-Suspense A/C-Clearing Adjustment	Tk. 50,000
Credit Deposit A/c -Savings Bank A/C of the customer	Tk. 50,000
Dr. Sundry Online IBTA A/C	Tk. 50,000
Cr. Other Assets-Suspense A/C-Clearing Adjustment	Tk. 50,000

Fees and commission

The Bank earns fee and commission income from a diverse range of services it provides to its counterparties. Fee and commission income include cash operations fees and fund transfer fees, which are recognized as the services are provided. Usually, a fee is money which has to be paid for a service. Commission is money earned.

The term bank fees refer to any charges imposed by Banks and financial institutions on their personal and business customers for account set-up, maintenance, and minor transactional services. These fees may be charged on a one-time or ongoing basis. To make a profit and pay operating expenses, banks typically charge for the services they provide. Fee income is the revenue that a financial institution earns on services rather than interest payments. Bank charges can be a major source of income for a financial institution. A bank charge may be levied for a number of reasons, including the following:

- Not maintaining a minimum balance
- Issuing a cheque where sufficient funds is not available
- Depositing a cheque that bounces
- Exceeding the overdraft limit on an account
- The passage of time, if there is a monthly service fee
- The ordering of additional bank cheques
- Foreign transaction fees
- The issuance of a paper bank statement, rather than an on-line one
- Inactivity in an account

Income from commission, service charges and fees are called Non-interest Income for the bank.

Example of Accounting entries for income from Fees and commission to be as under:

Dr. Cash/Party A/C	xxxxxxx
Cr. Non-Interest Income A/C (Fees and commission)	xxxxxxx

Charging interest in deposit/loan accounts

A bank pays interest to the depositor for keeping their funds/money on various interest-bearing deposit accounts. A deposit interest rate is the rate of return a bank pays to the depositor/customer on their deposited amount into its account. Banks use the money deposited on various deposit accounts to lend to borrowers, who pay interest on their loans. The loan interest rate is the amount banks/lenders charge borrowers and is a percentage of the principal.

The difference between the interest rates a bank pays to depositors and the interest rate it receives from loans to borrowers/consumers is called the spread. The central bank has set interest rates on deposit collection at 6% and loans at 9% for the country's banking financial institutions. The banks are however allowed to fix up their own deposit and lending interest rates within this limit. This is done by the Asset – liability committee (ALCO) of the respective banks.

Encashment of deposit accounts

Banks issue a separate receipt for every Fixed Deposit because each deposit is treated as a distinct contract. This receipt is known as the Fixed Deposit Receipt (FDR), which has to be surrendered to the bank at the time of renewal or encashment.

Banks offer the facility of automatic renewal of FDs where the customers do give new instructions for the matured deposit. On the date of maturity, such deposits are renewed for a similar term as that of the original deposit at the rate prevailing on the date of renewal.

Instructions may be of for:

- renewal of Principal and Interest

- renewal of Principal and to credit interest to Link Account
- crediting Principal and Interest at maturity to the link account/savings account.

Withdrawal of the money in the fixed deposit account before maturity is termed as premature withdrawal. This is done if the investor needs money on an urgent basis. An investor can also withdraw the money in the fixed deposit before its maturity if there is an investment option which is better than the Fixed Deposit.

Although banks can refuse to repay FDs before the expiry of the deposit, they generally do not do that. This is known as a premature withdrawal. In such cases, interest is paid at the rate applicable at the time of withdrawal. *For example*, a deposit is made for 3 years at 6% but is withdrawn after 1 years. If the rate applicable on the date of deposit for 1 years is 5 percent, the interest will be paid at 5 percent. Banks can charge a penalty for premature encashment as per the schedule of charges if any.

Encashment of deposits like, FDR, DPS etc. can be made in cash or through the linked account/savings account (principal and interest/profit) after deduction of any charges as per the schedule of charges related to the deposit account and applicable Tax deducted at source from the paid interest/profit. TDS is @10% if the customer has provided the TIN and if there being no TIN it is @15%.

Example of Accounting Entries related to FDR and Encashment of FDR are as under:

1. For Issue of FDR against cash

Dr. Cash A/C	XXXXXXXX
Cr. FDR A/C	XXXXXXXX

2. For Issue of FDR against cheque

Dr. Party A/c	XXXXXXXX
Cr. FDR A/C	XXXXXXXX

3. For payment of Interest on FDR

Dr. Expense A/C: Interest on FDR	XXXXXXXX
Cr. FDR A/C (Party)	XXXXXXXX

4. For realization of Tax deduction at source

Dr. FDR A/C	XXXXXXXX
Cr. Sundry deposit A/C Tax at source	XXXXXXXX

8. For payment of interest to the account holder
- | | |
|-----------------------|----------|
| Dr. FDR A/C | xxxxxxxx |
| Cr. SB/CD A/C (Party) | xxxxxxxx |
6. For Pre-matured encashment of FDR
- | | |
|-------------------------------------|----------|
| Dr. FDR A/C | xxxxxxxx |
| Cr. Income A/C penalty Intt. on FDR | xxxxxxxx |
7. For monthly interest accrued on deposits and charged to Income and Expenditure Account
- | | |
|--|----------|
| Dr. Expenditure A/C-Interest on deposit-A/C | xxxxxxxx |
| Cr. Other Liability-Interest payable on deposits A/C | xxxxxxxx |

Example of Accounting Entries related to Charging interest on loans and advances accounts are as under:

1. For monthly interest accrued on loans & advances and charged to Income and Expenditure Account
- | | |
|--|----------|
| Dr. Other Assets-Interest Receivable on loans & Advances A/C | xxxxxxxx |
| Cr. Income A/C-Interest on Loans & Advances A/C | xxxxxxxx |
- (For the 1st month of the respective quarter)
2. For realization of interest on loans and advance
- | | |
|---|----------|
| Dr. Loans and advances (Term loan A/C) | xxxxxxxx |
| Cr. Income A/C (Interest on loans and advances) | xxxxxxxx |

Tax and Excise duty

All the banks operating in Bangladesh are bound to deduct Excise Duty from each of the customer accounts (savings, current, loan or other accounts) held with the bank as per the instruction of National Board of Revenue (NBR) according to NBR's circular. This means, for example, if a customer maintains a savings account with a bank and also has a loan

account; Excise Duty will be applicable on both the accounts separately. The latest SRO (Statutory Regulatory Order) No. 143-Law/2020/104-Excise Dated 11 June 2020 has been applicable from 01 July 2020 (Subject to change from time to time).

Highest Balance (Credit/Debit in Taka) Excise Duty in Taka

0-100,000	NIL
100,001- 500,000	BDT 150
500,001- 1,000,000	BDT 500
1,000,001- 10,000,000	BDT 3,000
10,000,001- 50,000,000	BDT 15,000
50,000,001 and above	BDT 40,000

Example of Accounting entries for deduction of Tax and excise duty to be as under:

Dr. Party deposit- A/C	xxxxxxxx
Cr. Sundry deposit A/C- Tax and Excise duty	xxxxxxxx

Issuance of Demand draft and payment orders

Although Demand Draft (DD), Telegraphic Transfer (TT) and Mail Transfer are considered as mode of remittance, but with the passage of time and innovations in banking technology, most of the banks having online banking practicing only PO/LD as mode of remittance. However, some banks are also using DD as mode of remittance and Payment Order for local payments only.

The bank issues the draft to a client (drawer) directing another branch of the same bank to pay the specific amount to the payee. The drafts are payable on demand. It cannot be paid to the bearer but the beneficiary has to present the instrument directly to the branch. It can also be collected by the clearing mechanism of the bank.

Applications for issuing drafts to be obtained in prescribed form. Rates for the issuance of drafts (Commission and excise) are prescribed by respective banks as per instructions of Bangladesh Bank.

All demand draft forms/blocks/ instruments should be kept in the custody of the Manager or Second Officer or authorized officer who will satisfy himself daily that every form/instrument issued by him has been duly accounted for.

Instrument (DD) is to be issued when the relative voucher will be sent to the Manager/

Authorized Officer who will fully satisfy that the voucher has been entered in the cash scroll in case of cash transaction or proceeds of cheque realized in case of a transfer entry. The signing officials must compare the documents with the respective vouchers and entries in the relevant registers. All instruments must bear signatures of two Authorized Signatories.

Accurate test key (check cypher) should be invariably inserted in the (i) instruments and (ii) related advices so that the payee branch can honor the instrument promptly.

Cancellation of a Draft: When the amount of a draft is required to be refunded by cancellation to the purchaser, an application for cancellation and his discharge must be obtained on revenue stamps of appropriate value on the reverse of the draft under the words- "Received payment by cancellation". Both the signatures must be verified with that of the relative application/voucher already recorded.

Issue of Duplicate Demand draft:

In the event a draft issued by the bank is reported lost and a duplicate is asked for, the issuing branch should immediately notify the drawee branch and enquire whether it is still outstanding and, if so, instruct them to exercise caution. When a duplicate draft is to be issued, a letter of indemnity on the specified form must be taken with appropriate stamp, signed by the purchaser, and, originally, by two sureties each good for the amount of the draft.

Payment Orders:

Pay order is a financial instrument which is issued by the bank on customer's behalf giving an order to pay a particular amount to a particular person in a same city. Payment orders are not negotiable and even this thing is printed in words on the instrument.

A pay order is an order drawn by a bank upon itself to make payment of the amount mentioned therein to the named payee. The pay order carries the primary liability of the issuing bank for payment and must make its payment to the payee or some another person named by the payee. The pay

order cannot be cancelled or its payment be stopped without the consent of the beneficiary. Pay orders are normally issued by the bank for effecting internal payment of different bills. Moreover, PO is issued as a security deposit or advance deposit to be kept with different government, other departments or custom authorities against any contract, work order or duty payment to be settled afterwards.

Cancellation and issuance of duplicate PO against lost cases:

An applicant of PO may require cancellation of the same. In that case the customer is required to apply mentioning specific reason. After being satisfied as to the cancellation, bank may cancel it with the consent of the beneficiary.

In case of loss of PO, an applicant may apply for issuance of a duplicate PO stating the specific reason for loss of PO. After being satisfied and obtaining an indemnity bond as per bank's format and recovering bank charges as per norms the bank may issue it.

Demand draft is issued by one branch of the bank on another whereas pay order is issued by and drawn on the same branch of the bank. Collection and payment of demand drafts are given statutory protection under section 85(A) and 131 (A) of N.I Act. Respectively; such protections are not available to pay orders.

Example of Accounting procedures for issuance of DD

Dr.	Customer A/C or Cash
Cr.	H.O A/C Paying Br.
Cr.	Income A/C DD Commission
Cr.	Income A/c Telecommunication charge
Cr.	VAT /Excise

Example of Accounting procedures for payment of DD

Dr.	DD Payable A/C
Cr.	Customer A/C or Cash
Dr.	H.O A/C issuing Br.
Cr.	DD Payable A/C

Example of Accounting procedures for cancellation of DD

Dr.	H.O A/C Drawee Br. (by the figure of the cancelled DD)
Cr.	Misc. earnings
Cr.	Customer A/C or Cash

Example of Accounting procedures for issuance of PO

Dr.	Customer A/C or Cash
Cr.	Income A/C PO Commission
Cr.	VAT /Excise
Cr.	Bills Payable A/C Pay Order issue

Example of Accounting procedures for payment of PO

If PO is presented through clearing:

Dr.	Bills Payable—PO issued
Cr.	H.O A/C (Clearing)

If the PO is duly released by the beneficiary:

Dr.	Bills Payable—PO issued
Cr.	Party A/C

Example of Accounting procedures for cancellation of PO

Dr.	Bills payable –PO issued
Cr.	Misc. earnings (by PO cancellation charge)
Cr.	Customer A/C or Cash (by balance amount)

BACH Operation management

Clearing and Collection

A process within the banking system that allows banks to collect or pay out for items drawn on or paid into accounts within their institution. This process enables banks to accept cheques and bank drafts from other financial institutions for deposit.

Clearing is the process of interbank fund collection by using Bank instruments through some systematic procedures with the involvement of the Central Bank (Bangladesh Bank).

Clearing means the settlement of accounts or exchange of financial instruments especially between banks.

A collection item (also called a noncash item) is an item presented to a bank for deposit that the bank will not, under its procedures, provisionally credit to the depositor's account or which the bank cannot (due to provisions or law or regulation) provisionally credit to a depositor's account. The collection process is the system by which a depository bank obtains payment from an issuing bank for a cheque. To put it in clearer terms, the bank which accepts a cheque for deposit needs to collect money from the bank issuing the cheque.

Clearing House

When a bank customer deposits a cheque, which may be drawn on any bank, the bank would credit the depositor's account with the amount of the cheque. Clearing houses were set up to streamline the process by collected all cheques drawn on other banks, and collecting payment from those banks for the total to be cleared.

Clearing house Function

In Bangladesh the Bangladesh Bank, being central bank of the country acts as the clearing house for scheduled banks, which have statutory accounts with it. Through this function the Bangladesh Bank enables the banks to settle their transactions among various banks easily, effectively and economically. Bangladesh Bank acts as a clearing house for all member banks. This avoids unnecessary transfer of funds between the various banks.

Types of clearing instruments:

The following MICR encoded payment instruments are eligible for clearing in accordance with Bangladesh Bank guidelines:

1. Savings Bank Account.
2. Pay Order.
3. Current Account Cheque
4. Government Cheque
5. Cash Credit Account Cheque

6. Credit Card Cheque
7. Dividend Warrant
8. Foreign Taka Demand Draft
9. Demand Draft
10. Foreign Currency Cheque
11. Refund warrant
12. Foreign Currency Demand Draft

Bangladesh Automated Clearing House (BACH):

BACH is a computer network-based clearing and settlement system to exchange of electronic bank instruments among the Participating Bank.

BACH, the first ever electronic clearing house of Bangladesh, has two components - the Automated Cheque Processing System (ACPS) and the Electronic Funds Transfer (EFT).

Both the systems operate in BACH processing mode- transactions received from the banks during the day are processed at a pre-fixed time and settled through a single multilateral netting figure on each individual bank's respective books maintained with the Bangladesh Bank.

A state-of-the-art Data Center (DC) and a Disaster Recovery Site (DRS) have been established comprising of most modern software and hardware for dealing with the operations of BACH.

A Virtual Private Network (VPN) has been created between the participating commercial banks and Data Center (DC) & Disaster Recovery Site (DRS) for communicating necessary information related to BACH. Digital Certificate has been formulated for the first time in Bangladesh for secured data communication.

Payment systems are the means by which funds are transferred among financial institutions, businesses, and individuals and are considered to be the critical factor for prop functioning of country's financial system. With the mandate of Bangladesh Bank Orde 1972, Payment Systems Department (PSD) endeavors for promoting new payments, clearing and settlement systems to ease financial transactions ensuring circulation of money in the economy and also enforces new rules regulation to facilitate payment systems innovation in the country. Established in 2012, Payment Systems Department's core objective includes establishing modern and efficient interbank payments, clearing and settlement system.

Bangladesh Automated Cheque Processing Systems (BACPS)

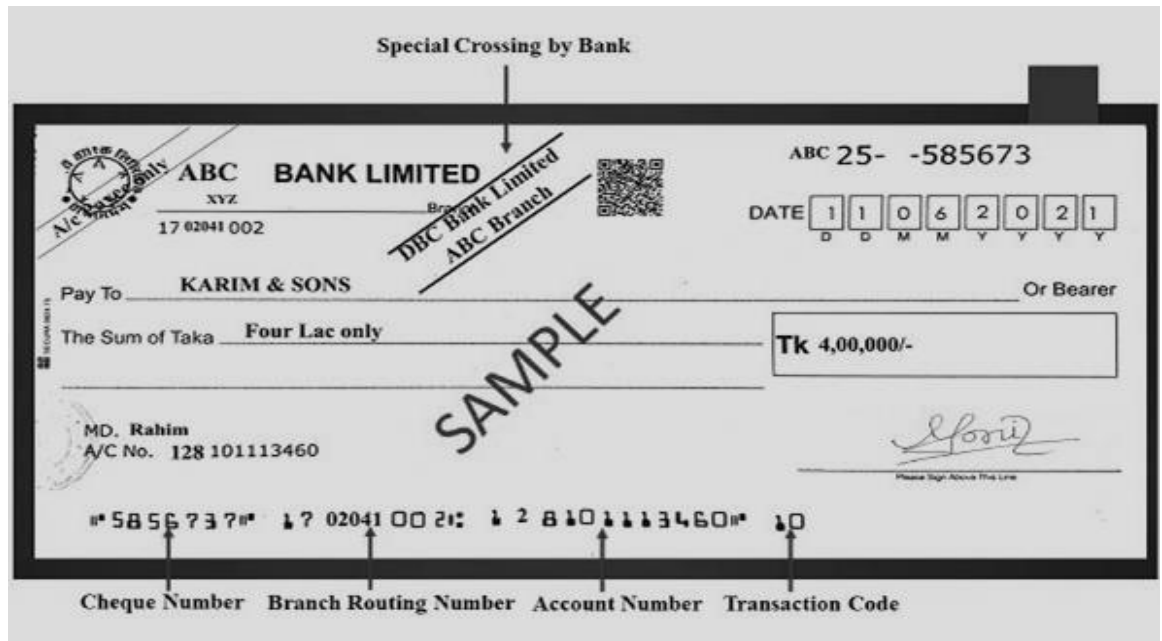
Since inception in October, 2010 BACPS is the only state-of-the art cheque clearing facility. It uses the Cheque Imaging and Truncation (CIT) technology for electronic presentment and payment of paper-based instruments (i.e., cheque, pay order, dividend & refund warrants, etc.) BACPS operates in a batch processing mode. To make it clearer, the present clearing system works with image cheque in place of original cheque through Bangladesh Automated Cheque Processing System (BACPS) under Bangladesh Automated Clearing House (BACH). Under the system banks issue Magnetic Ink Character Recognition (MICR) cheques. On MICR instrument, at the bottom of the cheque there is a code line containing some information printed in magnetic ink.

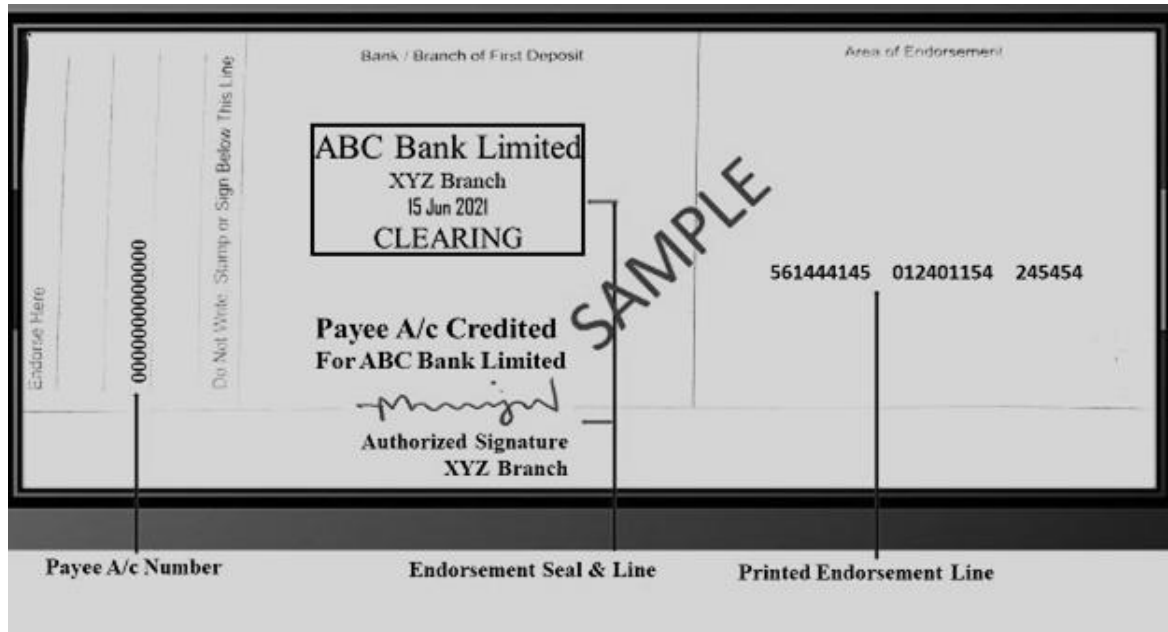
In this system, cheque leaves submitted for clearing will not be carried physically to the Clearing House as it is done today. Instead, banks will capture images and corresponding information from the cheque leaves submitted for collection and send them for electronic clearing using a secured communication links. Physical movement of instruments, i.e., cheques, drafts, pay orders, etc. across bank-branches would not be required, except in special circumstances. This would effectively reduce the time required for payment of cheques, the associated cost of transit and delay in processing, etc., thus speeding up the process of collection or realization of the cheques.

Bangladesh Bank has issued new cheque design specifications as a requirement of image-based clearing. The new cheques contain Magnetic Ink Character Recognition (MICR) line which has been formulated to provide information on Cheque Number (7 digits), Routing Number (9 digits), Account Number (13 digits) and Transaction Code (2 digits). These information on MICR line will be read electronically by machines and transmitted with the corresponding images using prescribed software and hardware electronically. Following is the composition of MICR line of the new cheques – Routing Number, an essential component of the MICR line, is newly formulated numeric code for easy identification of bank-branch of a cheque's origin. Transaction Code is a numeric code to identify different types of payments.

The operation for clearing cheques is very simple. A client of a bank branch has to submit a cheque for collection into his/her account as he/she is doing now. He/ She will receive fund after a certain time. But the clearing process has been changed from the previous manual clearing. Operating procedures of new automated clearing process are as described below: Transactions received from the banks during the day are processed and settled at a pre-fixed time. Under BACPS umbrella High Value (HV) Cheque Clearing (Cheque amounting Tk. 5,00,000 or above) and Regular Value (RV) Cheque clearing are operated. At present HV presentment cutoff time is at 12:00 and the return cutoff is at 15:00 while for RV clearing presentment cut off time is at 12:30 and return cut off is at 17:00. This time schedule can be changed by the Bangladesh from time to time.

Branch Activity Before Scan





Operating procedures of automated clearing process are described below:

1. Customers will deposit cheques for collection in the bank-branch for collecting the amount of money stated on face of the cheque.
2. Collecting banks will check prima facie information of the submitted cheques, capture images and information of the cheques submitted for collection from different banks and send them to BACPS for processing. The paper cheques will be retained by the collecting banks.
3. Collecting banks will send the images and information to BACPS electronically.
4. BACPS will then process and sends the images and information to the paying banks for validation.
5. Paying banks will examine the pertinent images and information for validation. If the information is found OK, paying bank will send them back to the Clearing House for payment. If any inconsistency found (like signature mismatch, insufficient fund, etc.) paying banks will return them with specific reason(s).
6. At a specific cut-off time, BACPS accumulate all the information, work out a single net amount for each bank, and send the return information to the collecting banks with net figure.

7. Collecting banks process the return information and adjust the customer-accounts accordingly. These operations of BACPS using CIT technology are secured, reliable and fast with no impact on the customers.

Return Reason Codes

Code Reason Re-presentable (R) and Non-Re-presentable (N)

- 01 Insufficient fund R
- 02 Amount in figure and word differs N
- 03 Stale Cheque N
- 04 Postdated Cheque R
- 05 Drawers signature differs N
- 06 Payment stopped by drawer N
- 07 Item represented too often N
- 08 Incomplete or missing endorsement R
- 09 Forged endorsement N
 - 10 Material alteration – payee name N
 - 11 Material alteration - amount N
 - 12 Material alteration - date N
 - 13 Material alteration – multiple fields N
 - 14 Forged or unauthorized signature N
 - 15 Missing signature R
 - 16 Missing corporate stamp R
 - 17 Incorrect amount R
 - 18 Item sent to the wrong bank R
 - 19 Image does not meet usability standards R
 - 20 Piggyback image R
 - 21 IQA failure R
 - 22 Account unavailable (closed, frozen, invalid etc.) N
 - 23 Present with the physical document R
 - 24 Item missing advice R
 - 25 Duplicate item – previously paid N
 - 26 Incorrect Payee N
 - 27 High value items presented to an ineligible branch N

Bangladesh Electronic Funds Transfer Network (BEFTN)

The Bangladesh Electronic Funds Transfer Network (BEFTN) operate as a processing and delivery center providing for the distribution and settlement of electronic credit and debit instruments among all participating banks. This Network operate in a real-time batch processing mode. All payment transactions are calculated into a single multilateral netting figure for each individual bank. Final settlement takes place using accounts that are maintained with Bangladesh Bank.

Participants in BEFTN: The EFT Network is a multilateral electronic clearing system in which electronic payment instructions are exchanged among Scheduled Banks. The system involves transmitting, reconciling and calculating the net position of each individual participant at the end of each processing cycle. The participants involved are:

- (a) Originator.
- (b) Originating Bank (OB)
- (c) Bangladesh Electronic Funds Transfer Network (EFT Operator)
- (d) Receiving Bank (RB)
- (e) Receiver
- (f) Correspondent Bank

a) Originator: The Originator is the entity that agrees to initiate EFT entries into the network according to an arrangement with a receiver. The originator is usually a company, government agency or an individual directing a transfer of funds to or from a consumer's or a company's account. The originator executes an EFT fund transfer entry through an Originating Bank (OB).

b) Originating Bank (OB): The originating bank is the bank which receives payment instructions from its client (the originator) and forwards the entry to the BEFTN. A bank may participate in the EFT system as a receiving bank without acting as an originating bank; however, if a Bank chooses to originate EFT entries, it must also agree to act as a receiving bank.

c) Bangladesh Electronic Funds Transfer Network (BEFTN): BEFTN is the central clearing facility, operated by Bangladesh Bank that receives entries from OBs, distributes the entries to appropriate RBs, and facilitates the settlement functions for the participating banking institutions

d) Receiving Bank (RB): The receiving bank is the bank that will receive EFT entries from BEFTN and post the entries to the account of its depositors (Receivers).

e) Receiver: A receiver is a person/organization who has authorized an Originator to transmit an EFT entry to the account of the receiver maintained with the Receiving Bank (RB).

f) Correspondent Bank: In some cases, an Originator, Originating Bank or Receiving Bank may choose to use the services of a Correspondent Bank for all or part of the process of handling EFT entries.

A Correspondent Bank's function can include, but is not limited to, the creation of EFT files on behalf of the Originator or acting on behalf of an OB or RB, respectively.

All Correspondent Banks must be approved by Bangladesh Bank before a bank enters into an agreement with the Correspondent Bank. Authorization A written arrangement with the originating company signed by an employee or customer to allow payments processed through the EFT Network to be deposited in or withdrawn from his or her account at a bank. Authorization can also be a written agreement that defines the terms, conditions and legal relationship between Originator and Receiver.

EFT Entries

A) EFT Credits

Inward Foreign remittances
Domestic remittances
Payroll private and government
Dividends/Interest/Refunds of IPO
Business to business payments (B2B)
Government tax payments
Government vendor payments
Customer-initiated transactions

B) EFT Debits

Utility bill payments
Equal Monthly Installments (EMI)
Government tax payments
Government license fees

Insurance premium

Mortgage payments

Club/Association subscriptions

Consumer vs. Corporate Payments:

EFT transactions are typically categorized as either consumer payments, Government payments or commercial payments. These transactions are defined in accordance with the relationship of parties involved in the transaction and the type of receiver account.

Consumer payments that could be made via the EFT network include credit applications such as payroll, dividend, interest and annuity payments and so on. Consumer EFT debit applications include the collection of utility bills, insurance premiums, loan installments and other recurring obligations.

Corporate EFT

Applications include cash collection and disbursement, corporate trade payments, government, tax payments etc. Cash collection and disbursement allows companies to achieve efficiency in cash management through intra-company transfer of funds. Corporate trade payments enable corporations to exchange both data and funds with trading partners, facilitating an automated process of updating their accounts receivable and accounts payable systems.

Payment Application

I. Consumer Applications

CIE- Customer Initiated Entry: Customer initiated entries are limited to credit applications where the consumer initiates the transfer of funds to a company or person for payment of funds owed to that company or person, typical example of these entries are utility bill and other Internet banking product payments.

PPD- Prearranged Payment and Deposit Entry Direct Deposit: Direct deposit is a credit application that transfers funds into a consumer's account at the receiving bank. The funds being deposited can represent a variety of products such as payroll, remittances, interest, pension, dividends and/or refunds, etc.

Preauthorized Bill Payment: A preauthorized payment is a debit application. Companies with existing relationship with the customers may participate in the EFT through the electronic transfer (direct debit) of bill payment entries. Through standing authorizations, the consumer grants the company authority to initiate periodic charges to his or her account as bills become due. This concept is especially applicable in situations where the recurring bills are regular and do not vary in amount such as insurance premiums, loan installments, etc. Standing authorization may also be used for bills where the amount does vary, such as utility payments.

II. Corporate Applications

CCD- Corporate Credit or Debit: This application can be either a credit or a debit application where funds are either distributed or consolidated between corporate entities or government entities. This application can serve as a stand-alone fund transfer between corporate or government entities, or it can support a limited disclosure of information when the funds are being transferred between organizations (i.e., sister concerns) under the same group.

CTX- Corporate Trade Exchange: This application supports the transfer of funds (debit or credit) within a trading partner relationship in which business payment remittance information is sent with the funds transfer. The payment-related information is placed in multiple addenda records in a format agreed to by the parties and BEFTN.

III. Other Applications

AAA– Automated Accounting Advice: This SEC Code represents an optional service to be provided by BEFTN that identifies automated accounting advices of EFT accounting information in machine-readable format to facilitate the automation of accounting information for Participating Banks.

Settlement: Settlement is the actual transfer of the funds between participating banks to complete the payment instruction of an EFT entry. The transactions processed by the BEFTN will affect the accounts of the concerned banks maintaining accounts with BB at the end of each processing cycle.

Legal Framework

- 1) The EFT process operates from beginning to end through a series of legal agreements.

- 2) BEFTN Rules and Procedures

Other laws/regulations that have a direct bearing on EFT operation are listed as under:

Bangladesh Bank Order, 1972 (Amended 2003)
The Banks Companies Act, 1991
Money Laundering Prevention Act, 2012
Anti - Terrorism Act 2009
Information and Communication Technology Act, 2006.
The Bankruptcy Act, 1997
Guidelines for Foreign Exchange Transaction, Volume 1 & 2.
The Bangladesh Telecommunication Act, 2001.
Bangladesh Payment and Settlement Systems Regulations, 2009 (amendment 2013)

Real Time Gross Settlement (RTGS)

RTGS is an electronic settlement system where transfer of funds takes place from one account of a bank to that of another bank on a real-time and on gross basis. Real-time refers transactions that do not need any waiting period. Transactions are settled as soon as they are executed.

An RTGS system is a gross settlement system of money or securities in which both processing and final settlement of funds transfer instructions can take place continuously (i.e., in real time). It enables instant settlement of high value local currency transactions as well as government securities and foreign currency-based transactions. As it is a gross settlement system, transfers are settled individually, i.e., without netting debits against credits.

An RTGS system can thus be characterized as a fund transfer system that is able to provide continuous intraday finality for individual transfers. In RTGS or large-value funds transfer system, the transmission and processing of payment messages are typically automated or electronic, while settlement takes place in central bank funds.

The system is currently allowed to handle lots of lucrative features including VAT Online Payment, Customs Duty E-Payment and Automated Challan System (ACS) etc. Along with these individual interbank transactions, there is an option to settle all other Deferred Net Settlement Batches (DNSB) such as BACPS, BEFTN or NPSB through RTGS system. BD-RTGS is also linked to BB core banking solution. More than 11000 online branches of about 59 scheduled banks are currently connected to this system.

RTGS Terminology, Acceptable Currencies, Operating Hour, Return Reasons & Others
Role Profile Specifications are as under:

Originator: Customer of a bank who want to take the service from RTGS system. The Originator is the entity who wishes to make payment to a recipient through RTGS entries. The Originator is usually an individual, a company, a bank itself, or the government agency who will give the instruction to the Originating Bank for debiting his/her/its account maintained with them and credit the same amount to another customer's account with a Receiving Bank.

Originating Bank: Any RTGS enabled bank. The Originating Bank is the bank that accepts payment instructions from its customer (the Originator) initiates and the transaction in their system and forwards this transaction instruction to RTGS system in Bangladesh.

BD-RTGS System: BD-RTGS system is the central processing and settlement facility; operated by Bangladesh Bank.

Receiving Bank: Any other RTGS enabled schedule bank rather than originating Bank. The Receiving Bank is the bank that receives RTGS payment instructions from BD-RTGS System and initiates their transaction for the same to the appropriate account for which instruction is received.

Receiver: Receiver of RTGS payment who is a client of any RTGS enabled schedule bank customer (Account holder). A Receiver may be an individual, a company, bank itself, government agency who are agreed with an Originator to receive RTGS payment to its account maintained with a Receiving Bank.

Acceptable Currencies in RTGS:

RTGS processes payments in the following currencies:

1. Bangladesh Taka (BDT)
2. United States Dollar (USD)
3. British Pound (GBP)
4. Canadian Dollar (CAD)
5. Euro (EUR) and
6. Japanese Yen (JPY)

For making an RTGS transaction originator/customer has to provide the following data and also have to ensure the genuineness of the provided data;

1. Have to provide the desired currency mode for making RTGS transactions.
2. Originator account number from which account he is agreed to make RTGS transaction.
3. Transaction mode whether it is debit instruction or transfer by cheque.
4. Originator contact number/ NID number which is provided at the time of account opening.
5. Beneficiary name.
6. Beneficiary Bank account name with his bank and branch name and Detail address of the bank.
7. Routing number of the bank in which beneficiary maintained his account.
8. Transaction amount and purpose.

Transaction Reference Number: There must be a sixteen-digit transaction reference number inserted by the Originating Bank to each RTGS payment instruction. This number consists of a 3-digit bank code (used for BACH), 6-digit value date (DDMMYY format), and a seven-digit transaction serial number (unique for the day) for that particular Originating Branch.

Value Limits: The minimum amount for an RTGS transaction in BDT is 1,00,000.00 (Taka One Hundred Thousand). However, there is no minimum limit for foreign currency transactions and BB may choose to relax this limit for specific local currency transaction (like Tax, VAT and Customs duty) as well. There is no maximum limit for the amounts that may be transferred through BD-RTGS except the system's acceptable amount field limit, which is 17 digits.

Execution & Notification: Payment instructions sent by an Originating Branch shall be executed in BD-RTGS System by debiting the amount to the OB's settlement account and crediting the amount to the concern Receiving Bank's settlement account. The OB and the RB shall be advised of the execution of Payment Instruction by BD-RTGS system.

Profile Matching & Sanction Screening: All RTGS transactions are subject to Real Time Sanction Screening System as per the BFIU rules and guidelines. The responsibility of both profile matching and sanction screening is vested to the bank where the complete customer KYC is kept. Therefore, it is the responsibility of the Originating Bank to ensure the sanction screening and profile matching of the Originator before sending an instruction to BD-RTGS System, while Receiving Bank would be responsible to verify the same for the Receiver before crediting the account.

Cancellation Payments: A queued payment instruction may be cancelled by the Originating Bank or by Bangladesh Bank at any time before settlement. However, unsettled payment instructions (if any) in the queue after the regular transaction period will automatically be cancelled by the system after close of Business Hour.

Monitoring Payment Flows: Each branch is responsible for monitoring throughout the day the settlement of the payment instructions it has sent, the number and number of payments pending in its Queues, the balance of both its Reserve and Settlement Account, its ILF status. Each branch must aim to avoid having unsettled payments.

Execution & Posting of Payments: An Initiating Branch shall send Payment Instructions to BD-RTGS system on behalf of its customers within at most 30 (thirty) minutes from the receipt of the corresponding request, and debiting his/her account. While all settled customer payments shall have to be posted to the Receiver's accounts within at most 30 (Thirty) minutes following the notification of the settlement received from BD-RTGS. If the account number and the name of the receiver contained in an instruction do not relate to the same account, the RB may rely solely on the account number contained in the instruction for purpose of posting.

Business Day: BD-RTGS System will operate each day Sunday to Thursday except for public holidays according to the annual calendar maintained by BB. Any deviations from this planned schedule will be announced in advance in writing (i.e., via letter/e-mail). In exceptional circumstances this announcement may be made during the Business Day and may have the effect of shortening or lengthening that particular Business Day.

Conservation and Archiving: All transactions and accounting data must be stored for a period of six years from the date it gets settled. All current transactions and data for the previous six years should be accessible.

Return payments: Return payments/Payment instructions can be initiated either by the Originator/OB or by the RB of the original payment. An OB/Originator may request the return of a completed payment from the RB. The request must be made in writing, i.e., by email, fax or letter. In this case, the RB will return the fund to the OB/Originator, if the funds are still available in the account of the Receiver. If the funds are not available, the RB will cooperate with OB/Originator to collect the fund. If a Receiving Bank aware that it's Settlement Account has received a payment erroneously or for the wrong amount, it will return the payment to the Originating Bank.

Return Reason Code:

Sl.	Code	Meaning
01	R 01	Account Closed
02	R 02	No Account/Unable to Locate Account
03	R 03	Invalid Account Number
04	R 04	Returned as per Originator/Originating Bank's Request
05	R 05	Representative Payee Deceased or Unable to Continue in that Capacity
06	R 06	Beneficiary or Account Holder (other than a Representative Payee) Deceased
07	R 07	Account Frozen
08	R 08	Non-Transaction Account
09	R 09	Entry Refused by the Receiver, because: Minimum amount required has not been remitted Exact amount required has not been remitted The account is subject to litigation Amount is too high Originator is not known to the Receiver The Receiver has not authorized this credit entry to this account.

Payment must be returned: The same day of receipt of the request by the Receiving Bank, made by the Originator/OB.

- Within one hour of receipt of the original payment where RB detects it as an erroneous payment.
- If the return payment has not been made available within the timeline above, the Originating

Bank/Organator may claim interest for the delayed period from the RB. This interest will be calculated on the basis of the overnight deposit rate applicable.

Maintaining User Profile: BB RTGS Administrators allocate initial User profiles to Participants and may in the name and for the account of BB, set up and amend information about a User, including the User profile, according to the information provided by Participant administrators. Last but not the least, Password Sharing is strictly prohibited.

National Payment Switch Bangladesh (NPSB)

Operational since 2012, NPSB is meant for establishing interoperability among participating banks for their account and card-based transactions. Currently, it caters interbank Automated Teller Machines (ATM), Point of Sales (POS) and Internet Banking Fund Transfer (IBFT)

transactions. 53 Banks are now interconnected through NPSB for their ATM transactions. Currently, three types of interbank ATM transaction (i.e., cash withdrawal, balance enquiry and mini statement) could be done through NPSB. As of October 2020, 52 banks are interoperable for POS transactions and 25 banks are interconnected for their IBFT transactions.

There are different limits for individual and institutional IBFT transactions. For individual, the maximum value of each transaction is 1,00,000 taka and the frequency is maximum 10 times a day and not more than 5,00,000 taka per day. For corporate, limit has been set on each transaction as 2,00,000 taka and maximum frequency as 20 times a day and 10,00,000 taka per day. It is mandatory for the participating banks to ensure Two Factor Authentications (2FA) for any online/e-commerce/inter banking/card not present transactions.

Mobile Financial Services (MFS)

Bangladesh Bank has introduced efficient off-branch Mobile Financial Services (MFS) during 2011 in Bangladesh as the country acquired an omnipresent mobile phone network experienced, large number of mobile phone users and improved IT infrastructure. Within seven years, this exponentially growing Bank-Led model of MFS has become the largest MFS market in the world.

Bangladesh Bank permits Cash in, Cash out, Person to Person (P2P), Person to Business (P2B), Business to Person (B2P), Person to Government (P2G) and Government to Person (G2P) payment services through MFS domestically. No cross-border money transfer is allowed under this service. However, local disbursement of inward foreign remittance comes through banking channel is permitted. Any adult can open MFS account with any provider at an agent point or bank branch with a photo and legal identification. Having more than one MFS account by one person with the same provider is not permitted. There is an MFS guideline through which MFS operate in our country.

Payment Service Provider (PSP) and Payment System Operator (PSO). According to "Bangladesh Payment and Settlement Systems Regulation-2014 (BPSSR-2014)" Payment Systems Department (PSD) issues license in two broad criteria- Payment Service Provider (PSP) and Payment System Operator (PSO).

It gives PSP license to the company who facilitates payment(s) or payment processes directly to the customers and settling their transactions through a scheduled bank or financial institution; for example, E-wallet, Mobile Wallet etc. Besides, PSD gives PSO license to the

company who operates a settlement system for payment activities between/among participants of which the principal participant must be a scheduled bank or financial institution; such as payment gateway, payment aggregator etc. PSD reviews the market demand, business rational, regulatory requirements, risk management systems, settlement systems, eligibility criteria and others according to BPSSR-2014 for considering the application of license of PSP or PSO.

Regulatory FinTech Facilitation Office (RFFO)

With the phenomena of technological advancements affecting every sphere of life, financial services have also been changed by technological and digital innovations. The disruptive innovative technology is making extraordinary impacts on Finance-in the way of doing business. Financial sectors are getting a new dimension with introduction of new technological and financial solutions designed/offered by a number of financial entities and technology firms. It has been proven that FinTech or digital innovations have become transformative force in the financial markets. FinTech brings efficiency improvements, risk reduction and greater financial inclusion.

Model questions (Module J: General Banking)

MCQs

1. To maintain secrecy of an account of a customer is-
 - a) General obligation of the banker
 - b) Contractual obligation of the banker
 - c) Statutory obligation
 - d) All of the above

2. Which of the following is not a component of Bangladesh Automated Clearing House (BACH)?
 - a) BACPS
 - b) BEFTN
 - c) OTC
 - d) None of the above

3. Participants involved in Bangladesh Electronic Fund Transfer Network is/are:
 - a) Originating Bank
 - b) Receiving Bank
 - c) EFT operator
 - d) All of them

4. In relation to dormant account which of the following is not true?
 - a) There is no transaction in Current, Savings and SND A/C for last six months.

 - b) It is done to ascertain safety and security of the account.

- c) Cash withdrawal from an ATM or branch is not allowed.
 - d) Renewal of Debit card is allowed.
5. As regards RTGS which of the following is not true?
- a) RTGS are funds transfer systems
 - b) Money takes place from one bank to another on a 'real time' and on 'net' basis
 - c) Speed up the process of high value payments
 - d) Once processed, payments are final and irrevocable
6. A customer's letter of instructions, without any stamp, in connection with the operations of his account are known as:
- a) Power of attorney
 - b) Standing Instruction
 - c) Probate
 - d) Mandate

Short questions:

1. Define MICR and BACH.
2. State procedure of stop and lost payment instruction.
3. Write down the debit and credit entries of EFT.
4. State the procedure of cancellation and duplicate issuance of Payment order.

Broad questions:

1. Define dormant account. What are the consequences of dormant account? How it can be reactivated?
2. What are the responsibilities of paying bank as regard settlement of Payment under BACH?
3. What is no-frills account? State in details about the Account operation of minor students.
4. Write short notes on:
 - a) Internet Banking
 - b) Unclaimed deposit account
 - c) Encashment of deposit account
 - d) RTGS

Module K: Cash Management

Demand and time liabilities (TDL)

Demand liabilities are customer deposits which are repayable on demand. Time liabilities refer to the liabilities which the banks are liable to repay to the customers after an agreed period.

Demand liabilities

All Current Accounts except from banks, Demand Portion of savings bank Accounts (as per BRPD Circular No-06 of 24 June, 2007, It has been decided that 9% of savings deposit will be treated as demand deposit and the rest amount will be treated as time deposit), All Cash Credit Accounts (Credit Balances), Overdue Fixed deposits accounts, Call Deposits accounts other than from banks (on Demand), Unclaimed balance accounts, Interest accrued on above accounts, All other Deposits payable to public on demand e.g., Outstanding Bills, Payment Orders, Telegraphic Transfers & M.T, Outstanding Drafts, Drafts payable Account, Demand Drafts, Hajj Deposits.

Also, Foreign Currency Deposit account, Unsold balance of NFCD account, Convertible Taka account, Other Demand Liabilities like, Margin on L/ cs., Margin on Guaranties, Lockers Key Security Deposits, Unclaimed Dividend/ Dividend Payable, Credit Balance and adjustment account, Security Deposit accounts (amount deposited by Supplier of stationery and furniture etc. as security), Sundry Deposits accounts and any other miscellaneous deposits payable on demand.

Time Liabilities

It includes Fixed Deposits from Customers other than from banks, Special Notice Deposits other than those from other banks, Time portion of the savings bank deposits, Short term Deposit accounts, Recurring Deposits, Interest accrued on all above accounts, Other Time Liabilities like, Employees' Provident Fund Accounts, Staff Pension Fund, Employees' Security Deposits, Staff Guarantee or Security Fund, Contribution towards Insurance Fund, Any other miscellaneous liabilities payable on notice or after a specified period. Also, Margin account- Foreign Currency, Liabilities towards Foreign banks/ Correspondence bank, Bi-lateral trade liabilities.

For the purpose of computation of required CRR and SLR it is important to know which items are included in demand liabilities and which are in time liabilities. The items listed

above are as per the guidelines of Bangladesh Bank and are not exhaustive. Items are generic in nature and are applicable for both Conventional and Islamic banking.

Calculation and maintenance of CRR

Every scheduled bank has to maintain a balance in cash with Bangladesh Bank 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. BB may also prescribe the procedure of maintenance of cash reserve pursuant to its monetary policy objectives. At present, the required CRR is 4% on bi-weekly average basis of the average total demand and time liabilities (ATDTL) with a provision of minimum 3.5% on daily basis of the same ATDTL. Banks are advised to follow the circular issued by Monetary Policy Department of BB in this regard. Bangladesh Bank does not pay any interest on the CRR balances maintained by scheduled banks.

Banks are required to submit the monthly statements of "Maintenance of CRR", in the prescribed formats to Department of Off-site Supervision (DOS) within the 10th of the following month. The soft copies of the formats are available for collection from DOS.

In case of default in maintenance of CRR requirement on a daily basis 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. Delay submission of statement regarding maintenance of CRR and all other statements regarding maintenance of SLR will attract daily penalty as stated above.

CRR stands for Cash Reserve Ratio, and specifies in percentage the money commercial banks need to keep with themselves in the form of cash. In reality, banks deposit this amount with Bangladesh Bank instead of keeping this money with them. Cash Reserve Ratio ensures that a part of the bank's deposit is with the Bangladesh Bank and hence it is secured. Another objective of CRR is to keep inflation under control. During high inflation in the economy, BB raises the CRR to reduce the amount of money left with banks to sanction loans. It squeezes the money flow in the economy, reducing investments and bringing down inflation.

Statutory Liquidity Ratio (SLR) is the proportion of liquid assets to time and demand liabilities. Every scheduled bank has to maintain assets in cash or gold or in the form of unencumbered 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. BB 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 13% daily for

conventional banks and 5.5% daily for Islamic Sharifah based banks and Islamic Sharifah based banking of conventional banks of their average total demand and time liabilities. Penalty will be charged at the prevailing Special Repo Rate on the amount by which the SLR falls short daily.

Branch must handle cash within Cash-in-Safe, Cash-on-Counter and Cash-in-Transit Limit duly approved by Head Office. Excess cash over the approved limit shall not be held in the Branch at any time either on Counter or in Iron Safe. However, the Cash In-charge, under due record & acknowledgment in the relevant register, shall immediately move the Excess Cash of the counter, to the Strong Room during transaction hours.

Vault Limit: Cash Safe/vault Limit means the cash which can remain in the Safe/vault of a branch overnight and this limit should be maintained.

Cash Counter Limit: The Cash Counter Limit means the cash which can remain in the counter during the transaction period and this limit should be maintained.

Cash Transit Limit: Cash Transit Limit means the cash which can be carried by a branch from one place to another if necessary and this limit should be maintained.

Insurance coverage

In no case cash should be transported beyond insurance limit. Cash handling within Branch is also a risky matter; the teller should retain cash in counter within counter limit. In every case while cash exceeded counter limit of insurance teller should transfer the cash into vault for safe custody.

Manager of the bank branches must ensure insurance coverage for cash-in-safe, cash counter and cash in transit as per the instruction the respective bank authority.

Access of unauthorized person(s), including officials of other departments, to the Cash Enclosure of the Branch, is strictly prohibited. Only the officials working in the Cash Department shall have access to the Cash enclosure but normally they will not be allowed to go outside the Bank premises until entire cash is balanced and handed over to the Cash-in-Charge. Counting, Stitching / Banding of cash (as per instructions / guidelines of Bangladesh Bank / Head Office) should be made inside Cash Enclosure by the concerned staff(s) who will not be allowed to leave Cash enclosure until cash is duly handed over to the Cash-in-charge in his full satisfaction & acknowledgement.

Maintaining vault limit: Branch has to ensure the vault/cash in safe limit as set by the Head Office time to time. Cash in excess of vault has to be deposited immediately with BB/Sonali Bank or designated cash feeding branch.

Security Measure of Cash-in-Transit: Branch shall ensure adequate and effective security measures while carrying cash to and from link branches of the Bank and Bangladesh Bank / any other banks, where the branch maintains Bankers' Account.

Rotation of Cash Officers' Duty: Rotation of duties between Paying and Receiving Cash Officials should be made at regular monthly frequency.

Surprise Verification of Cash: Head of Branch (Hob) shall make surprise verification by physical counting of entire Cash-in-Safe at least once a month and shall confirm its accuracy with the remarks "Entire Cash Checked and Found Correct" on the particular page of Cash Position Book under his / her signature.

Management of Cash in vault, ATM and feeding branches

Cash safe register

The cash safe register is a record indicating the contents of cash in the safe/vault. All deposits and the withdrawals from the cash safe should be recorded in this register denomination wise under the signature of the manager and the cash officer. The balance of this register at the close of the day's business will represent the total cash holding of the branch. The balances of prize bonds, Sanchay Patras and other cash items must agree with the respective balances and the related registers of the different cash item stock issue register.

Cash safe operating officials

The officials operating the cash safe, Namely, the manager, second officer and Cash officer will sign in full in the cash safe register as evidence of the fact that cash at the close of the day's business has been physically counted and verified by the operating officials.

Custody of safe Register

Cash safe register should be kept in a steel almirah under lock and keys in the personal custody of the manager, the keys of which must be at all time remain exclusively with the manager or other officer authorized by him.

Procedure of cash handling

The brief procedure for cash in and out from the safe / vault will be:

- Recording of denominations of the cash (Notes & coins) received and paid through individual debit cash & credit cash vouchers of the branches on the back side of the respective voucher.
- Physical movement of cash / cash items to and from cash safe / night safe must be done jointly by the manager and the cash officer.
- While operating the cash safe / night safe the manager and the cash officer will use their respective keys separately. Under no circumstances either the cash officer or the manager shall operate both the keys singly.
- No person other than the authorized holders of keys of the cash safe / night safe shall handle the keys.

Cash safe

Each branch is provided with a safe having double locking system. There may be at any time more than one safe in a branch, depending on the requirements and the size of business in the branch. In branches where there is a strong room, the cash safe(s) will always be kept inside the strong room. The keys of the strong room will be held by the manager and the second officer.

Cash Safe Keys

The keys of the cash safe will be retained by the manager and the cash officer. In the absence of the manager from the Head Quarters, the officer next in the rank to the manager or senior most authorized officer stationed in the HQ will hold the manager's keys after making necessary entries in the key register.

In no case, one person be authorized to keep keys of both the locks of the safe or of the strong room. The authorized persons responsible for operating the safe will attend personally, wherever the safe is to be opened. The keys will remain at all the times in the personal custody of the officials concerned. On no account will keys be delivered or passed-on to anyone else.

Cash safe duplicate keys

The duplicate keys of the safe and the strong room are to be deposited for safe custody with the local branch of the authorized bank. These keys should not be withdrawn from the Bank

without permission from the competent authority and on a request made jointly by the manager and the cash officer.

In the event of a key of any one of the safes of the branch is lost, the duplicate key may be obtained from the authorized bank branch with the permission of the competent authority and the safe is to be opened.

The concerned authority should give necessary instructions to the branch about the replacement of the lock or providing a new safe or otherwise.

Cash shortages

- a) Shortage of cash may arise due to:
 - a. Less amount received by the cashier against particular amount
 - b. Excess payment made to the client
 - c. Making payment to anybody against non-receipt of debit voucher
 - d. Making wrong entry in the Receive or Payment Register etc.
- b) The Cash Officer concerned shall be responsible for cash shortage and the same shall be recovered from him / her.

Procedures to Follow:

If there is any shortage in cash at the close of the day, the cash officer/teller will be called upon to meet the shortage on the spot. If he is unable to do so, the shortage will be met from the cash security deposited by him if available. The manager may allow up to a maximum of three working days within which period the cash officer/teller must replenish the shortage thus caused in his cash security.

When the amount of shortage exceeds a sum set by the authority or the cash officer / teller is unable to meet the shortage within the prescribed time the matter is to be

reported to the next higher authority forthwith stating full details along with a statement as per the specimen of the bank.

When there is cash shortage, mentioned be made in the cash scroll and the daily cash transactions register under the signatures of the manager and the 2nd officer.

Cash excess

- a) In the cash department excess cash may be received sometimes by mistake either from the Bank's side or from the client's side.
- b) Before declaring any cash as "Excess" the following steps shall be undertaken:
 - i) Sometimes excess cash is received against particular transaction. Especially in rush hours in most busy days this sort of situation may arise.
 - ii) Wrong entry in Cash Payment Register as well as System.
 - iii) Customer may be paid less than the amount written on the debit voucher (Cheque or any other instruments).
 - iv) Some deposits are received but no voucher was passed or voucher is under process for submitting to Cash Department.

Procedures to Follow:

- a) While excess cash was received, Receiving and Paying Cash Officers' cash should be kept separate and be counted once again. The cash in the safe also be counted.
- b) The computer posting, batch journal report shall be checked with every payment & receipt.
- c) Every possible area and all Books and Registers should be thoroughly checked whether any mistakes are there.
- d) When there is any excess in cash, it will be credited to the relevant sub-account under Accounts Payable Account and debited to Cash in hand Account. This will enable the branch to have its cash balanced.

If the excess cash is claimed by any person and the amount involved does not exceed a sum set by the authority manager is authorized to dispose of the amount under his discretionary power, provided, he is fully convinced that the claim made is genuine. In case of exceeding the limit and there is a claim, the manager should refer the matter to the next higher authority for an order. A statement in respect of all cash excess found will be furnished in the prescribed form to the next higher authority. The unclaimed amount in respect of each excess will not be allowed to remain outstanding for a period over three months in the appropriate sub-account under Accounts Payable Account and credited to income/Sundry income at the time of annual closing of accounts.

Mutilated notes

Mutilated notes received from the public should not be kept in the vault for unreasonable time. As per instruction of Bangladesh bank the concerned branch should deposit the mutilated notes directly to the Bangladesh bank or through their local office. During the period of examining the mutilated notes as per instruction of BB, the concerned branch/local office representative will remain present.

ATM Cash management

In order to meet the demand of cash as and when it is needed, ATMs are in the heart of the customers. To meet customers' cash needs, banking financial institutions have invested in and rely heavily on an ATM network to meet the cash demands of their customers. In maintaining this network respective banks will have on-site and off-site vigilance of their ATMs so that the customers of the bank can have the maximum facilities out of this service. Usually, ATM booths which are annexed to the bank branch on site supervision is to be ensured by the respective bank branch in respect of security, proper maintenance by the provider and the facilities are readily available for their customer. On the other hand, if the ATMs are located outside the branch premises off site supervision is to be ensured as regard security, proper maintenance by the provider and that the facilities are readily available for their customer.

Cash Management is the process of collecting, managing and investing cash in an ATM which are outsourced by banks to Managed Service Providers (MSPs). Managed services are the practice of outsourcing the responsibility for maintaining, and anticipating need for, a range of processes and functions, ostensibly for the purpose of improved operations and reduced budgetary expenditures through the reduction of directly-employed staff.

Handling Emergency situation both for branches and ATM

Every day the Branch Manager or any other designated person shall ensure that the CCTV is working properly in the branch and at the ATM booth. CCTV should be placed in a secure place in Manager or Sub-manager's room so that s/he can monitor continuously. On the other hand, CCTV to be suitably placed in the ATM booth. At the close of the day CCTV monitor should be switched off but not the CPU. The Branch Manager must take back-up copy of Video footage of CCTV for at least 1 (one) year and preserve the records in his/her custody. More over an emergency alarm system should be placed in the branch. Automated messaging system should be made available for handling emergency situation both branches and ATM booth.

Evening Banking

Evening banking facilities for accepting deposits can be offered to the customers only if the Branch concerned is allowed by Bangladesh Bank to operate Evening banking business.

Handling of Mutilated/Torn/Soiled/issue/re-issue and fake notes

- a) The Branches should meticulously follow the instructions of Bangladesh Bank in connection with payment of exchange value of defective and mutilated / torn notes over the Counter. Mutilated currency notes should be examined carefully to see that these are not counterfeit notes.

- b) The notes which should be withdrawn from circulation shall be separately bundled and paste with paper at the Back and put Branch seal and sent it to Principal / Main / Feeding Branch.

- c) The Principal / Main / Feeding Branch shall put a seal “Defective Notes” on the face of the note and signed by an Authorized Officer and make bundle of 100 of each category of notes and send it to Bangladesh Bank. Bangladesh Bank will receive the same on the counter and credit the respective bank account or it will receive the cash in security vault under joint custody of Bangladesh Bank and Local Office of the bank concerned.
- d) They will fix up a date and the safe shall be opened for counting. Bangladesh Bank will receive the notes and credit the bank’s account. In case of return of any notes against which no exchange was paid shall be taken back by Principal / Main / Feeding Branch and debit the concerned Branch from which it receives the value.
- e) Transactions in system will be as like as inter Branch transfer transactions.
- f) The Notes received from the clients which are not acceptable for paying of exchange value at the counter, the Bank shall receive the notes and get an application filled in by the client and send the filled in Application form to Bangladesh Bank. They will provide a date about the decision on the notes. Branch will give a receipt to the Client mentioning serial number of notes, denomination and total amount etc.
- g) On collection of the proceeds Branch will pay off the client.
- h) The Branches shall meticulously follow the above two circulars of Bangladesh Bank regarding handling of defective notes.

Disposal of mutilated note(s):

No Claim in respect of a mutilated note shall be entertained unless the single largest piece of the note presented is more than 50% the payment shall be made in the following manner, namely:

(I) Full value shall be payable if the area of the note presented is more than 90% of the respective denomination.

(ii) Proportionate value shall be payable if the area of the note presented is more than 50% and less than or equal to 90% of the respective denomination as under:

Serial No.	Area of the note of respective denomination	Payable value of the note of respective denomination

1.	51% - 75%	50%
2.	76% - 90%	75%

Disposal of obliterated, mismatched, altered and damp notes:

- (i) A claim in respect of an altered, mismatched or fully obliterated note shall be rejected.
- (ii) A claim in respect of a damp note and partially obliterated note shall be rejected unless the Prescribed Officer is satisfied as to the identity and genuineness of such note.

Disposal of Charred Note(s):

A claim for the value of Charred note(s) shall be disposed of by a committee designated by Head Office. The committee shall be headed by the Currency Officer/General Manager and the members not below the rank of Joint Manager. No claim in respect of charred note shall be entertained unless the unburnt area of the note(s) is more than 50%, bearing main essential features and is worth to check its genuineness.

The Value shall be payable at the rate applicable in case of disposal of mutilated notes mentioned above.

General provisions in relation to all claims

- (I) No claim in respect of a note alleged to have been lost, stolen or wholly destroyed shall be entertained.
- (ii) No claim in respect of a note shall be entertained by the Prescribed Officer unless such a note is identified as a genuine note.
- (iii) No claim in respect of a note which has been deliberately cut, torn, defaced, altered or dealt with in any other manner, not necessarily by the claimants, enabling the use of the same for making of a false claim under these regulations or otherwise to defraud the Bank or the public shall be entertained.

(iv) No claim in respect of a note, which carries any extrinsic words or visible representations, intended to convey or capable of conveying any message of a political or religious character or furthering the interest of any person or entity shall be entertained.

(v) If the Prescribed Officer is satisfied that a mutilated note presented before him is one which appears to have been cancelled at any office of Bangladesh Bank or the claim is one which appears to have already been paid under these regulations, he shall, after making enquiries under regulation 6 of these regulations reject the claim on such note.

(vi) If any information called for by the Prescribed Officer or the Bank, as the case may be, is not furnished by a claimant within a period of three months from the date of receipt of the notice or letter asking for the information, the claim shall be rejected.

Handling of Fake /Forged Notes

Note means a note of the Bangladesh Bank issued by the Bank, and a currency note of the Government of the People's Republic of Bangladesh issued by the Government.

(Genuine Note: As per section-27 of Bangladesh Bank Order-1972 Bangladesh Bank issue Currency Note with unique security features & inform everybody by press Release).

Essential Features of a note:

Essential features mean the features, including security features, which are necessary for the identification of a note, namely-,

- the name of the issuing authority in Bangla and/or English, that is; Bank or Government of Bangladesh, as the case may be;
- the guarantee clause in Bangla and/or in English;
- the signature; and
- the water-mark of Tiger head/ National Flower Shapla (Water lily)/ Portrait of the father of the nation Bangabandhu Sheikh Mujibur Rahman, Logo of Bangladesh Bank and the denomination of the note, as the case may be.

The 'Security Features of a note, for deciding the genuineness:

- paper quality;
- size and shape of numbers;
- security thread;

- intaglio printing;
- latent image in vertical band;
- electrotype watermark (in watermark window);
- micro lettering;
- fluorescence (number panels and central band);
- optically variable ink; and
- any other security feature that may be introduced by the Bank.

Forged Bank Notes

- Experts Opine that, Notes that does not contain one or more security features of a Genuine note is Forged Bank Notes
- The best chance we have of detecting a Forged counterfeit Note is knowing security features of our currency.

Measures to be taken if fake note is detected

- (1) “In the event of a forged note being presented, the note and the presenter should be handed over to the police, if the bank considers it advisable to do so.
- (2) If, however the bank office is convinced that the presenter has presented the forged note in good faith, believing it to be genuine he should impound the note, take his name, his father’s name, local and permanent address and his full signature with date or left thumb impression if he is illiterate on the back of the forged note, and his statement regarding the person from whom he received the note.
- (3) The forged note and the presenter’s statement should be sent to the police for further inquiry. After the inquiry has been completed, the police will forward the forged note to the currency office along with a report.

Note: When a forged note is impounded, it should be stamped with the word

‘Forged’ or on the word ‘Forged’ should be written on it in red ink in large letters before it is sent to the police for inquiry.

- a. Notes disfigured by oil or other substances should be scrutinized with special care as forged notes are sometimes intentionally thus disfigured to render detection difficult.

- b. The managers of all banks have instructions to send forged notes presented to them to the police who will send them to currency officer for necessary actions.
- c. Bangladesh Bank has authorized currency officer in Dhaka and designated officers in its other branches to impound forged notes.”

Purchase & sell of prize bond

The Prize Bond, a public savings plan, was established by the Bangladesh government in 1974 with the purpose of pooling local resources and providing incentives to small savers. The holders are recognized as the bond's owners because the bonds generated under this scheme are 'bearer' in nature. These bonds are actually government debt, and Bangladesh Bank manages the entire plan on the government's behalf.

Both redemption and purchase of prize bonds can be made from the cash offices of Bangladesh Bank by any approved scheduled/ commercial bank and post office. The draw worth Tk 100 prize bond is held four times a year. The dates are 31st January, 30th April, 31st July and 31st October.

Prize bonds are risk-free, government-backed investment that gives the chance to win large cash awards. Tk 100 is the minimum purchase amount for prize bonds.

Winnings from prize bonds are kept private. Prize bond recipients' names are not published, and they are not divulged to anyone other than the winner. Purchasers can look up their winning numbers in the newspaper or on the website that publishes the lottery results. The winning numbers can be found on the Bangladesh Bank's website. The winning numbers are published in national publications and are also available in Bangladesh Bank.

Prize Bonds can be cashed at any time. Prize bonds are a state-guaranteed, flexible, and safe investment. Any Bangladeshi, including can purchase prize bonds in any quantity. Only Prize bonds with an issuance date of at least 60 days before the draw date are eligible for the draw.

To claim the reward, one has to fill out an application form, which can be found at any bank or post office. The validity period for claiming a reward following a draw is two years.

Procurement of Prize Bond from Bangladesh Bank

- n) The Principal Branch or the main Branch in the area has to give requisition in writing for Prize Bonds mentioning the required number of Prize Bonds at least one day ahead of taking delivery.
- o) Bangladesh Bank will keep ready the required number of Prize Bonds on the specified date.
- c) A forwarding letter signed by two Authorized Officers whose signatures are recorded with Bangladesh Bank is sent along with the Cash or Bangladesh Bank cheque.
- d) On the forwarding letter, the signature of the Officer taking delivery of the Prize Bonds is attested by the Authorized Officers.
- e) The Officer, taking delivery of the Prize Bonds will proceed to Bangladesh Bank along with armed guarded vehicle.
- f) Bangladesh Bank will deliver the Prize Bonds to the Authorized Officer against his receipt on the back of the covering letter indicating the series and serial numbers of the Prize Bonds.

Note: As regards operational procedure branch operations manual of the respective may be followed.

Safe Keeping of Prize Bonds

- a) The Branch shall maintain a Prize Bond Stock Register. Every consignment received from Bangladesh Bank shall be entered into the Stock Register and initialed by the Dealing Officer and countersigned by the Manager / Sub-Manager / Designated Officer.
- b) The daily issue / sale of Prize Bonds shall be deducted from the previous day's stock and initialed by the Dealing Officer and countersigned by the Manager / Sub-Manager / Designated Officer. Net stock position of prize bonds at the end of the day to be recorded in the Night Safe Register and should be authenticated by the proper authority.

- c) The Manager / Sub-Manager shall make surprise checking of stock of Prize bonds.
- d) The Prize Bonds shall be kept overnight in a separate Vault other than Cash inside the Strong room under dual key control consisting of the Dealing Officer and the Manager / Sub-Manager / Designated Officer.
- e) The Prize Bonds which are issued to the purchasers, but not yet delivered, should also be kept inside the Vault.

Note: As regards operational procedure, bank operations manual may be followed.

Maintenance of security stationary, stamps etc.

Maintenance of security stationaries/documents like, MICR cheque books, pay order and demand draft pads, priced forms and stamps is also an important function of cash officers/authorized officers in the bank. These security items should be properly scrutinized and recorded in the respective security documents register by the authorized officers of the bank.

Petty Cash, Stamp on hand, Safe Deposit etc. should be checked and be recorded properly by the concerned officer while closing daily cash. However, balance of prize bonds is to be recorded in the safe in – safe out register daily by the manager /concerned officials. Cash related Registers are to be properly checked and authenticated by authorized officer. Blank Debit/credit voucher books are to be kept under personal custody of the authorized officer.

Cash vouchers, after they have been passed and forwarded to the cash officer/teller for payment or receipt will be kept in his custody till such time as cash has been balanced.

After closure of the cash the vouchers are handed over to the officer responsible for posting in the clean cash book.

Safe in-Safe out Register

The cash safe register is a record indicating the contents of cash in the safe/vault.

All deposits and the withdrawals from the cash safe should be recorded in this register denomination wise under the signature of the manager and the cash officer. The balance of this register at the close of the day's business will represent the total cash holding of the branch. The officials operating the cash safe, namely, the manager and

Cash officer will sign in full in the cash safe register as evidence of the fact that cash at the close of the day's business has been physically counted and verified by the operating officials.

The balances of prize bonds and other cash items must agree with the respective balances and the related registers of the different cash item stock issue register.

Management of Locker and safe custody services

Safe Custody is the safe keeping of important documents and valuables. Items commonly requested by customers to be held in safe custody by the bank include property deeds, a Will as well as other valuables and documents. Safe custody is keeping in the safe of the bank for which a receipt is issued with due knowledge of the bank.

In the case of safe custody service, the customer keeps certain valuable article with the bank for the purpose of safekeeping the article. The purpose of providing the article is only for the purpose of safekeeping and not for any other purposes. The legal term associated with this is bailment. For this service, the banker collects commission from the bailor.

When a customer avails safe custody service facility from the commercial bank, the relationship between the customer and the banker is bailor and bailee.

Safe deposit locker facility is one among the utility services provided by the banker to the customer. It is not a deposit and it is not also a loan. It is a service provided by the bank in the form of leasing out a small secured space for safekeeping valuable items like jewellery and valuable documents. For these services the bank collects annual rent. This is equivalent to leasing out residence to a tenant by the landlord for a monthly rent.

To open the locker a pair of keys is needed, one key remains with the bank and the other is with the customer. Both keys have to be used together to open the locker.

Since the legal term associated with this activity is known as lease, the banker is known as lessor since he provides the facility and the customer is known as lessee since he avails the facility.

One of the safest ways to store valuables like, jewellery, important documents and other precious items is safe deposit vaults or bank lockers. There is a risk of these valuables being stolen from residential or office premises. Bank lockers are relatively safe for a person to store valuables for a period of time. Bank Lockers are small, medium and large boxes kept in a room that is guarded heavily and has solid iron doors or concrete walls around it. To open the locker a pair of keys is needed, one key remains with the bank and the other is with the customer. No one can singly open the locker. Both keys have to be used together to open the locker. The banker first applies the master-key and only then the customer can open the locker by applying his key.

Items that are being kept in the locker is not known to the bank and is confidential. The contents kept in the locker are known only to the customer. No one else is expected to know them.

Entry into the locker room and exit therefrom by the lessee is recorded. Lessee is required to submit a declaration at the time of having this facility that he/she will not use this locker for putting any articles which is ultra vires to the country law. Each customer is charged an annual fee for holding the locker with the bank.

The facility is extended only to the valued clients maintaining account in the Bank branch, who agrees to abide by the set rules and regulations governing the use and operations of the locker.

Reasons to Use a Safe Deposit Locker

Customer's items are protected from fire, flood or other natural disasters at home:

Natural disasters can destroy much more than the house itself. They destroy memories like photographs, jewelry, birth certificates, and other important records. Customer can keep his most valued possessions, copies of his important papers, and even Customer's photographs in digital form in a safe deposit locker away from the house.

Customer's items are protected from theft at home: Customer's valuables can't be stolen from your home if they are not there. A safe deposit locker is a great way to give you that extra peace of mind — just in case your home is ever burglarized.

Customer's items are protected from being lost or misplaced: If customer is the type to misplace papers and other items, he might benefit from using a safe deposit locker instead of trying to keep things organized at home

Customer's family members will know where to find your important papers: If customer has a copy of something important (like his will or insurance papers) in a safe deposit locker, customer's family members will be able to retrieve those items if he, personally, cannot.

Items to Keep in a Safe Deposit Locker

Following are the most important things that you should keep in a safe deposit locker.

- Copy of will
- Copy of insurance policies
- Titles to house and cars
- Detailed list of bank and brokerage accounts, CDs and credit cards
- Marriage license / Divorce decree
- Expensive, rarely-worn jewelry
- Birth certificates
- Family heirlooms
- Stock and Bond Certificate

If a key is lost, the lessee should notify the Branch without delay. When the key of a locker is lost, the lock must be broken to open the locker in the presence of the Lessee under advice to Head Office, the cost of which must be borne by the Lessee.

As per Section 105 of the Bank Company Act, 1991, any person having deposited for safekeeping articles with a banking company may nominate a person to whom in the event of the death of the person leaving the article in the safe custody, such articles may be returned by the Bank. The nomination may be cancelled by the bailor at any time.

As per Section 107 of the Bank Company Act, 1991, the Lessee /hirer may nominate a person to whom the contents of the safety lockers held with the Bank shall be released in the event of the death of the person.

In the event of death of the lessee/hirer, the contents of the locker should be delivered only to the legal heirs of the deceased client on production of a valid Succession Certificate from

a Court of Law after obtaining legal opinion from Legal Adviser/Retainer where nomination was not made by the lessee/hirer.

Inward and outward bills for collection (IBC and OBC), e-chalan, A-chalan, E-gp.

Definition

One of the important functions of the Bank is to collect different types of bills (Import bills, Export bills) including cheques, draft, payment order, dividend warrant, FDR, Bonds etc. in favor of its clients. On the other hand, as a Paying Banker the branch has to honor those instruments drawn on itself when they are presented by other banks through collection. Such procedures for collection of values of the instruments is called the Bills for Collection.

IBC and OBC is used when Cheque, Draft or other Negotiable/ Monetary Instruments cannot process through national or local clearing. The depositor's branch sends an OBC to the bank branch on which the instrument is issued. For the receiving branch it is an IBC and on receipt it issues a Draft favoring the sender (usually another bank or FI) and mail it. Drafts are issued on the Head Office or a suitable branch of the bank so that the sender/ his bank can collect through national or local clearing at the sender's location. Prudent accounting practice is to recognize OBC in the books of the branch through accounting entries in Contingent Accounts.

If the IBC and OBC branches are nearby and the amount is not very large they settle their IBC/OBC bilaterally through payment of cash which saves time and effort.

Outward Bills for Collection (OBC) is also used for the handling of domestic sales and export documents, which are presented to the Bank by the seller to collect payment from the buyer through the buyer's bank.

The Bank handles seller's/exporter's outward documentary collections (domestic & foreign) and facilitates the payment collection from the buyer in accordance to their instructions.

When instruments received from the customer (buyer/importer) and forwards the bill for collection of the proceeds in the customer's account (seller/exporter) is called Outward Bills for Collection (OBC).

Outward Bills for Collection (OBC) is Collecting Branch function. They receive the bill from customer for collection. Scrutinize the instrument properly, whether the instrument is in order or not. Checks the pay-in-slip, payee, date, amount of the bill. Affix stamp 'Received for collection' on the counterfoil of pay-in-slip and signed by the authorized officer. While processing the bill for collection affix crossing, makes endorsement, provide OBC round stamp on the instrument. Then makes entry into the 'Outward Bill Collection' register. Then prepare OBC forwarding schedule, select the collecting agent branch (if required), numbering the instrument in order to bill register, check the register and authenticate. Passes the contingent liability (lodgment) voucher as under:

Dr. Outward Bills lodged – OBC
Cr. Outward bills for collection - OBC

In trade-based transaction Inward Bills for Collection (IBC) is also used for the handling of inward documents, both domestic and foreign, from the Remitting bank and/or seller to present to a buyer/importer. It is either for payment on sight or at a later date.

Import bill collection is a method of doing a domestic/international trade-based transaction given that the seller forwards the required commercial documents to the importer, against which the payment is done. Banks facilitates documents movement and payments to suppliers.

A documentary collection (D/C) is a transaction whereby the exporter entrusts the collection of payment to the exporter's bank (remitting bank), which sends documents to the importer's bank (collecting bank), along with instructions for payment.

A buyer of goods requires original shipping documents to take delivery of goods shipped to him by the seller. The seller (exporter) after shipment of goods prepares necessary set of documents related to goods like Bill of lading/Airway bills, LR, RR, dock warrant, dock receipt, warehouse receipt, etc. along with the invoice of the goods dispatched and order for the delivery of title to goods. The delivery of title to goods to the buyer (importer) can be either against payment (DP bills) or against the acceptance of bills (DA bills).

In the case of Delivery against Payment (DP) bills, the drawee collects the 'documents of title to goods' from the bank after making the payment of invoice value to the bank and takes the delivery of goods consigned to him from the carrier.

In the case of Documents against the Acceptance (DA) bills, the exporter's (seller's) bank instructs the buyer's bank to deliver the title documents to drawee (buyer) against the acceptance of bills of exchange. Buyer's bank notifies to the buyer for 'acceptance of bills' (acceptance of bills of change) and allows the buyer to take the delivery of the documents of title to goods against acceptance bill.

Acceptance of bills means that the drawee of the bill (buyer) unconditionally accepts the drawer's (seller's) bill of exchange without altering the original terms of the bill. By signing under the word "accepted" on the face of the bill the drawee commits an unconditional obligation to pay it to the seller on or before the maturity date of the bill. Unless the bill is accepted by the drawee, the drawee of the bill is not liable on any bill addressed to him for payment.

Inward Bills for Collection (IBC) is Paying Branch function. It receives the bill & enter in to the inward Mail Register. Then send the bill to bills department with their acknowledgement - enter the bill in IBC register - scrutiny the forwarding schedule - scrutiny the instrument i.e., bank, branch, date, amount, crossing, endorsement, instrument related papers etc. – authenticate/sign the register and initial the voucher – present the bill in respective department i.e., (Deposit/Advance/Remittance etc.) – Pass the contingent liability voucher as under:

Dr. Inward bills lodged – IBC
Cr. Inward bills for collection – IBC

If the presented bill passed for payment, then then to prepare the payment voucher (CIBT) & marking IBC register as paid & sign. Then prepare the respective advice/instrument and send to the collecting branch at an early date and prepare Reverse Lodgment Voucher as under:

Dr. Inward bills for collection – IBC
Cr. Inward bills lodged – IBC

Responding the Advice by Collecting Branch:

At first to scrutiny the advice – verify signatures – applied TEST No. – OBC No. – OBC amount – vide IBC No. etc. – Marking of amount paid in OBC Register & release by signature and then to prepare Reverse Lodgment Voucher as under:

Dr. Outward bills for collection – OBC

Cr. Outward bills lodged – OBC

And then, Respond Advice to be prepared and pay the proceed in customer's account as under:

Dr. CIBT (Respective Branch, R/O, Zone area)

Cr. Party Account (Party credit voucher)

Cr. Income Account (Commission inland bill collection)

Cr. Income account Postage

A-Challan

Automated Challan System (A-Challan System) has been introduced for online submission of various government service fees. The Automated Challan System (A-Challan) enables fast and secure deposit of VAT, Tax, Govt. fees etc.

It is an integrated online platform of the Bangladesh Government to collect the revenues, fees and various service charges from individual citizens and different organizations through banking channels.

Bangladesh Bank allows scheduled banks working in Bangladesh to collect the Government revenues and fees by using The Automated Challan System (ACS).

Under the system, any individual citizen or company would be able to deposit the money of treasury challans at any branch of commercial banks throughout the country.

Besides, the clients will also be able to deposit the money of treasury challans through online banking, internet banking, mobile financial system, cash, cheques, debit and credit card, and account debit on a real-time basis. In case of depositing money through cash, online banking, banking apps or mobile financial system, the clients will get copies of their challans immediately.

The Automated Challan System, a web-based software of the Finance Ministry for generating Government challan, has been gaining popularity among the beneficiaries.

To provide the services, the banks have to get registered with the Ministry of Finance and have user ID and passwords, namely checkers and makers who will be responsible for any fraudulent activities in this connection.

Before this process, the respective banks are to sign an agreement with Bangladesh Bank for conducting the services.

A Challan is an official document, form, or piece of paper which acts as a way of crediting the money from one account to another through a form.

E-challan can also be used for the same purpose it is an electronic format of challan. An e-challan can also be defined as a specific format used for depositing or remitting the contribution or statutory payment at a bank or treasury.

Electronic Government Procurement (e-GP) Payment Service. National e-Government Procurement (e-GP) portal of the Government of the People's Republic of Bangladesh is developed, owned and being operated by the Central Procurement Technical Unit (CPTU), IME Division of Ministry of Planning.

The e-GP System is developed as a web portal, from where and through which procuring agencies and entities can perform their procurement related activities, i.e. to publish Annual Procurement Plans, Invitation for Tender (IFT), Request for Proposal (RFP), Request for Quotation (RFQ), Tender/Application/Proposals preparation, submission, Opening, Evaluation, Contract Award Notices, Contract management, Payments, performance monitoring through Procurement Management Information System with Key Procurement Performance Indicators, and other procurement related information as required by the PPA 2006 and PPR, 2008 along with subsequent amendments, using a dedicated secure web based dashboard.

Scheduled banks and other payment service providers get secured access to the e-GP system with their own dedicated and secured Dashboard.

Payment of foreign inward remittance (COC and A/C payee)

Major Steps of Remittance Functioning: There are usually three major steps in remittance functioning.

- a) Receipt of cover fund
- b) Remittance file download and process
- c) Upload and download remittance instruments from application program.

As per the value date overseas bank/exchange houses prepare remittance payment instruction and according to the total amount of the payment file their fund section arrange to purchase equivalent US dollar and instruct their bank to place the cover fund to respective bank's Nostro A/c. Alongside, their IT team prepare the remittance file in an agreed file format with the bank and sent the same to the bank through email, SWIFT, Web site.

The security of the remittance file is maintained in various ways. There is a Test Key arrangement with the remittance counterpart and they provide a Tested forwarded message along with the remittance file. Some remittance company sends encrypted data file and the password is provided in advance to an authorized person to decrypt the same. There is another good system of providing remittance file is secured download from web site. This method is highly secured as there is restriction to unauthorized access.

Remittance processing section receives remittance files in various mode from the overseas bank/exchange houses. Way of receiving remittance raw files are as follows:

- a) EFT file through email
- b) Through web site of the company
- c) SWIFT

EFT files are merely EXCEL format file sent with Tested message and the TEST KEY section verify the Test No. with other particulars and confirm the validity of the remittance file. Remittance through web site of the company is considered as highly secured and Test verification is not required. SWIFT also be treated as highly secured data communication. After getting confirmation about sufficient balance in respective company's NRAT A/c, remittance processing section capture the raw information in application software. While processing the remittances, TRA No. Test No. and Auto signature is inserted in the system and the data are finally prepared for uploading in application server. The entire process takes almost 10-20 minutes. After completion of TRA processing, the data is sent to Head Officer server for upload therein.

NRAT Operation Section is the main section for handling operational activity of foreign remittance and is responsible to follow, execute and ensure remittance orders of foreign banks and exchange houses with due diligence. This section communicates with the correspondents to serve their needs and meet up all difficulties face at remittance receiving bank's end through mutual cooperation.

Main activity:

- Performs as an operational head for the branch regarding foreign remittance.

- Maintain close relation with all foreign bank/exchange houses and attend all requests of them.
- Ensures execution of remittance instruction in compliance with the terms and condition stated in the agreement.
- Provide remittance data to the interested parties inside the bank and Bangladesh Bank.
- Receives remittance payment instructions from the foreign bank/exchange and provide them to remittance processing section.
- Work as a part of remittance processing section.
- Maintain records related to foreign remittance.

Features of Application program:

- Credit beneficiary Account 24 to 48 Hours.
- Auto TRA issue
- Auto Test Number for any amount (Parameterized)
- Auto Signature (Parameterized)
- Highly secured data transmission
- Auto Feed Back
- Data Ready for Reconciliation
- Unique platform for all exchange company
- Consolidated Data packet for all overseas exchange/Bank
- Missing data packet traceable by outlet software
- Single Copy instrument print
- Additional instrument copy prints with “Care Duplicate”.
- Generate all types of required statements
- 100% parameterized Software
- Only local TRA prints at WECB (Wage Earner’s Corp Br.)

Upload & Download from Application Server:

Application server is located at IT Division, Head Office of respective bank. Remittance section prepare remittance data file for every exchange house and send the data file to Head Office in order for upload the same to Application server. All the branches of the respective banks is under the Application network and they can directly access to the application server to download instruments meant for their branch. Thus, in a working day, branches remain connected with the Application server and download the instruments instantly and credit the proceeds of the TRA to beneficiary's A/c. In the case of SPOT CASH, branches could only understand about the remittance after the beneficiary come to the bank counter. When spot cash data is uploaded in Application server, beneficiary receives an SMS in his/her mobile phone and by producing the proper identity paper by the beneficiary with the secret PIN code, he/she receives money from the counter in short what we call payment in COC.

Model questions (Module K: Cash Management)

Short questions:

1. What is demand and time liabilities?
2. State the reasons to use a safe deposit locker.
3. What procedures are to follow while there is shortage or excess of cash in the branch?
4. Describe in short about IBC and OBC.

Broad questions:

1. Discuss about the management of cash in vault, ATM and feeding branches.
2. Describe in details about handling of mutilated/soiled/charred/mismatched and fake notes.
3. State the procedure for payment of foreign inward remittance in case of COC and A/C payee.
4. Write short notes on:
 - (A) A-Challan and e-Challan
 - (B) CRR and SLR
 - (C) Management of locker and safe deposit services.

(D) Safe keeping of prize bonds.

Module L: Other General Banking

Reconciliation/checking of daily activity report

All accounts in a bank/ FI/ branch book should be subject to proofing or reconciliation. Monthly/ periodic statement/ balance confirmation is given to customers so that they can proof/ reconcile their transactions. Account opening conditions and/ or conditions mentioned in the statements give time for the customers to raise dispute. Bank/ FI should specific policy controls to identify and track unwanted transactions in accounts where customers do not get statements, statements return undelivered, or account becomes dormant. BRPD has issued Circular No. 23 in 2021 for managing dormant accounts. These accounts are potential source of internal and external fraud.

Account Receivables and Account Payables are parked in central consolidated account or GL/SL (General Ledger/ Sub Ledger). Usually, individual outstanding items are maintained in physical files or through separate record keeping. Proofing is a process of matching/ reconciling all individual items to match with the balances available in the consolidated/ GL/ SL numbers. Funds moved to unclaimed account, pay-order, demand draft, etc. examples. Reconciliation can be divided into two types. One is internal accounts where core banking system (CBS) has individual or consolidated accounts while separate TP (Transaction Processing) system is there to maintain all detail. Sometimes there is automation between the two in terms of passing entries, though manual entries are also passed in both systems. Separate specialized TP systems can be used for fixed deposits, loans, trade transactions, treasury transactions, etc. It is essential that balances in the two are reconciled to ensure there is no difference. This should be at least a monthly process.

The other type of reconciliation is where bank/ FI maintains nostro account with a bank/ FI (accounts with Bangladesh Bank, other banks locally or overseas) and has a corresponding mirror account in own books. Bank/ FI needs to have approved policy for nostro reconciliation with full detail on how to conduct reconciliation (process, frequency, etc.),

how to address/ resolve exceptions (who has responsibilities for what), how to escalate unreconciled items (significant or long standing, to whom or what committee, etc.) and so on. Weakness in reconciliation process can lead to significant loss of control and funds.

Account reconciliation is the process of confirming that two separate records of transactions in an account are equal. Institutions and individuals perform account reconciliation in balancing cheque books and making sure records match statements.

Account reconciliation can help organizations pinpoint errors in accounting that could indicate mistakes, fraud, miscalculations, or cash leakage. Account reconciliation for individuals can help recognize missed payments, not receiving a refund, being overcharged, or possible theft or fraud. Bank reconciliation statements are effective tools for detecting fraud. For example, if a cheque is altered, resulting in a payment larger than anticipated, measures can be taken to interrupt the unscrupulous activity. Account reconciliation in banks and corporations is a regulatory and compliance function.

Daily activity report is a good tool to manage a branch, a unit, a department, an area/ region, or a bank/FI. The report gives a good view of the activities of the day or the previous ones. Significant transactions and trends can be identified. Managers can use the report to see what is going good or as expected, what is otherwise, what is specific concern, etc. Instead of bringing in each transaction in the daily activity report it can be customized to reflect items of interest so that better actions can be initiated based on the analysis of the report.

The overall management of the general banking operations to be monitored on an ongoing basis for effectiveness of the bank. Monitoring of key risks should be the part of the daily activities of the bank as well as periodic evaluations by the business lines and internal audit. Reporting of the activities is one of the important issues of risk management. It may be treated as the mirror of the organization as to the fact what actually happening in the activities that are being carried out by the bank. Accuracy of the report is a vital one, as because decisions are expected to be made based on reliable, dependable and correctness of the facts. In general banking operations, monitoring and proper reporting by the line business is quite significant to prevent any operational loss. The higher authority as well as the MANCOM is supposed to be very vigilant in this regard also. As such, emphasis to be given by the management on the following issues:

- Policies, Standard Operating process, Manuals, circulars, instructions, system and network Procedures in regard to general banking should be in place and implementation of those are to be regularly monitored.
- Internal Audit & Inspection and Internal Control and Compliance Division of the bank should undertake periodical comprehensive and special audit of branches for review of the general banking related operational procedures and their compliance The Audit Committee of the Board subsequently would have reviewed the reports of the Internal Control and Compliance Division.
- Segregation of duties and multi-tier checking and approval procedure are to be in place
- IT Audit is to be carried out on regular basis
- Data Center for backup of data and information has to be established.
- Regular testing of system's back-up procedure and contingency plan are to be made.

Departmental Control Function Checklist (DCFCL)

DCFCL is the guideline/procedure that deals with matters relating to review/verifications of departmental functions to ensure that prescribed procedures are being followed by each department.

b. All departments are required to check that prescribed controls are being observed and laid down procedures are not overlooked & relaxed.

C. Departmental Managers, Line Managers, Branch Managers will review the DCFCL to ensure that control functions are performed and documented in the control sheets at the prescribed frequencies i.e., Daily, weekly, monthly and quarterly.

d. The DCFCL Checklist should be retained with the branch/departments for future inspection by Internal Control and Senior Management.

Monitoring is an on-going process usually directed by the management to ensure that processes are working as intended. Monitoring is an effective control within a process.

Supervising activities in progress to ensure they are on-course and on-schedule in meeting the objectives and performance targets.

Monitoring Activities and Corrective Measures: The effectiveness of the Bank's internal control should be monitored on an ongoing basis. Key/high risk items should be identified and monitored as part of daily activities.

Internal control deficiencies, whether identified by business lines, internal auditors, or other control personnel should be reported in a timely and prompt manner to the appropriate management level and addressed immediately.

Objectives of Audit Monitoring and Controlling Division is to conduct effective monitoring on the proper implementation of various control tools; DCFCL, QOR, LDCL and Self-Assessment Anti-Fraud Internal Control Checklist in all branches and divisions/departments at head office of the bank to strengthen internal check and internal control system of the bank; and to update various control tools (DCFCL, QOR, LDCL and Self-Assessment Anti-Fraud Internal Control Checklist, etc.) as and when required by Bangladesh Bank.

Management and Preservation of records

- Records- ledgers, day book, cash book, account books etc. done through IT or electronically.
- Documents- vouchers, cheques, bills, P.O etc. or any other records maintained through IT.

Management of records mean proper retention of document. Knowing which of your records to keep, and for how long, is essential for ensuring legal and regulatory compliance. It also includes Indexing and Categorization of records and documents, Securing storage of these, and also final disposition and reviews.

Filing and Storage of Account Records

Filing of Accounting Records: Filing is an art and every accountant must understand this art properly. All accounting records must be filed in such a

manner so that they can be traced any time without wasting extra time. Before the accounts records are filed' following points must be kept in mind:

- All records and vouchers must be filed date wise.
- Separate files must be kept for different types of vouchers, sales invoices, receipts, purchase invoices etc.
- Proper serial numbers should be given on all the vouchers.
- All bank statements, party's statements should be filed in separate files.
- Separate files must be maintained relating to different tax matters.

Storage of Accounts Records

As we know that the accounts records are kept for a long period. Every account and financial decision depend on accounts records only. These records may be required to deal with various tax authorities for tax assessment purpose or suppliers and customers to settle the accounts with them. Some time in court cases, these records are given top priorities as proof. So, it is very important for all business firms to keep their records very carefully. Following are few methods to keep the account records for a longer period in safe manner:

- All the accounts records must be kept in good bindings.
- Good quality of paper should be used for all vouchers, sales bills, delivery challans etc.
- Good quality of files must be used to keep all the vouchers, sales bills, purchase bills etc.
- Proper care should be taken to protect these records from rats and other insects.
- Filing of all records must be done in good manner.
- All the supporting documents must be properly attached with vouchers.
- In case of accounting data lying in computer, proper backup should be taken in floppies or pen drives. Hard copy of all computer records must be taken.
- There should be a responsible person who can look after all records properly and he/she should be responsible to keep the records in proper way.

- Proper and separate store room should be given to accounts department to keep their records.

The banking industry has changed the way they provide services to their customers and process information in recent years. Information and Communication Technology (ICT) has brought about this momentous transformation. Security of Information for a financial institution has therefore gained much importance, and it is vital for us to ensure that the risks are properly identified and managed. Moreover, information and information technology systems are essential assets for the banks as well as for their customers and stakeholders. Information assets are critical to the services provided by the banks to their customers. Protection and maintenance of these assets are critical to the organizations' sustainability. Banks must take the responsibility of protecting the information from unauthorized access, modification, disclosure and destruction. Bangladesh Bank has prepared a Guideline for ICT Security for banks & FIs to be used as a minimum requirement and as appropriate to the level of computerization of their operations.

The locations for which the ICT Security Guideline is applicable i.e., the Head Office, Zonal Office, Branch and/or Booth/Unit of a bank or FI may be categorized into three tiers depending on their ICT setup and operational environment/procedures as:

Tier-1: Centralized ICT Operation through Data Center (DC) including Disaster Recovery Site (DRS) to which all other offices, branches and booths are connected through WAN with 24x7 hours attended operation.

Tier-2: Head Office, Zonal Office, Branch or booth having Server to which all or a part of the computers of those locations are connected through LAN.

Tier-3: Head Office, Zonal Office, Branch or booth having standalone computer(s).

This ICT Security Guideline will be applicable for all the three tiers if not mentioned otherwise.

ICT Security Management must ensure that the ICT functions and operations are efficiently and effectively managed. They should be aware of the capabilities of ICT and be able to

appreciate and recognize opportunities and risks of possible abuses. They have to ensure maintenance of appropriate systems documentations, particularly for systems, which support financial reporting.

Business Continuity Plan (BCP) is required to cover operational risks and takes into account the potential for wide area disasters, Data Center disasters and the recovery plan. The primary objective of BCP is to enable a bank to survive a disaster and to re-establish normal business operations. In order to survive, bank shall assure that critical operations can resume normal processing within a reasonable time frame. The contingency plan shall cover the business resumption planning and disaster recovery planning. BCP shall also address the backup, recovery and restore process.

Bank must have a Business Continuity Plan addressing the recovery of disaster to continue its operation. Documents related to BCP must be kept in a secured off-site location. One copy shall be stored in the office for ready reference.

Documents and Vouchers

Vouchers, cheques, bills, P.O etc. or any other records maintained through IT are termed as documents.

Voucher is first account record which is to be prepared by the accountant with the help of source document. Every voucher has debit and credit part. It means that according to the nature of transaction one account is to be debited while other account is to be credited. Voucher is the very primary record to show the authenticity of the transactions.

Voucher is the base of the accounting records. At the time of preparation of voucher, the accountant must assign the correct account head otherwise everything will be wrong and will result into wrong information. Therefore, every voucher is checked by some supervisor to avoid the mistakes. Every voucher must be signed by the accountant and the supervisor and must be supported with proof of transaction.

Voucher may be of cash voucher and non-cash voucher or transfer voucher. Cash voucher again may be of debit cash voucher or credit cash voucher.

The Preparation of Vouchers is an essential part of any business. It acts as evidence for a transaction between two parties and is necessary, especially during audits. It also prevents misconduct from the employees as a voucher creates a paper trail for every transaction.

Checking of daily statement of affairs/income and expenditure related statement

Daily statement of affairs gives numbers from a different perspective than the daily activity report as it gives a balance sheet and income statement view. While audience of the activity report is relatively junior officials and relationship/ account managers, statement of affairs is targeted towards branch/ unit managers and seniors who can see the status of the books under his/ her control, supervision, or oversight. It helps them manage their teams better by assessing outcomes of initiatives and actions, devising strategies and plans, focusing on specific areas of improvement, allocating resources to achieve desired results, etc.

A statement of affairs is similar to a balance sheet and helps us determine profit or loss for a period of time. It is designed to provide an overview of the bank's financial position. A statement of affairs is a statement which shows assets on one side and the liabilities on the other, just as in case of a balance sheet. Statement of Affairs is a statement of assets and liabilities prepared to ascertain the amount of change in the capital. The purpose of statements of affairs is to show the current financial position of the company.

The income statement presents revenue, expenses, and net income. The components of the income statement include: revenue; general and administrative expenses; other operating expenses; non-operating income and expenses; gains and losses; non-recurring items; net income; and EPS.

Each component of statement of affairs/Income and Expenditure related statements to be checked properly so that it reflects the true picture of the affairs of the bank at a given date/period. If, there is any deviations it should be viewed cautiously.

Balancing of all heads of general ledger (GL)

A general ledger, or GL, is a means for keeping record of a bank's total financial accounts. Accounts typically recorded in a GL include: assets, liabilities, equity, expenses, and income

or revenue. Transactions that first appear in the journals are subsequently posted in general ledger accounts. Balancing a general ledger involves subtracting the total debits from the total credits. All debit accounts are meant to be entered on the left side of a ledger while the credits are on the right side. For a general ledger to be balanced, credits and debits must be equal. General ledger reconciliation is the process of comparison between accounts and data. Those tasked with the process will have to verify the books against other financial documents like statements, reports, and accounts.

Model questions:

1. What is reconciliation of accounts? Why it is important in banks?
2. Why checking of daily activity report required to be done?
3. The overall management of general banking operations need to be monitored on an ongoing basis. Why? How it can be done?
4. Write short notes on:
 - a) DCFCL
 - b) Documents and vouchers
 - c) Management and preservation of records
 - d) General Ledger

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