

Prohibitions and Restrictions on Bank Companies Functions



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Prohibition of certain forms of trading [U/S. 9]

▶ No banking company shall directly or indirectly deal in the

1. buying,

2. selling or

3. bartering of goods,

▶ **except in connection with the realisation of security** given to or held by it, or or engage in any trade or buy, sell or barter goods for others otherwise than **in connection with bills of exchange** received for collection or **negotiation** or with such of its business as is **approved under section 7.**

Restrictions on use of the Word "Bank" or any of its derivatives [U/S. 8]

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

▶ **But following cases it is not applicable:**

- 1. any subsidiary company of a banking company formed for one or more of the purposes mentioned in subsection (1) of section 26(on subsidiary companies);**
- 2. any association of banks formed for the protection of their mutual interest and registered under section 26 of the Company Act.**
- 3. Government by notification can direct its usages even for any non financial institutions.**

Restrictions on Acquiring Immoveable Property [U/S. 10]

- ▶ Notwithstanding anything contained in section 7, no banking company shall hold any immovable property howsoever acquired, **except such as is required for its own use**, for any period exceeding 7 years from the acquisition thereof or from the commencement of this Act, whichever is later.
- ▶ Notwithstanding anything contained in subsection (1) of section 10, the Bangladesh Bank **may extend the period, not exceeding 5 years** where it is satisfied that such extension would be in the interest of the depositors of the banking company.
- ▶ For the purpose of this section, property a substantial portion of which is used by a banking company for its **own genuine requirements shall be deemed to be property for its own use.**

Prohibitions against employment of Managing Agent and Restrictions on Certain Types of Employment [U/SS.11]

- ▶ No banking company shall employ or be managed by a managing agent.
- ▶ Bank Company shall not employ or continue the employment of any person:
 - i) who is, or at any time has been, adjudicated insolvent, or has suspended payment, or has compounded with his creditors, or who has been convicted by a criminal court of an offence involving moral turpitude;
 - ii) whose remuneration or part of whose remuneration takes the form of commission or of a share in the profit of the company.
 - iii) whose remuneration is excessive in the view of the Bangladesh Bank.

Continued.. (Remuneration explanation)

▶ “**Remuneration**” shall include wages, fees and advantages in addition to the wages given by a banking company to whatever person, but not money or allowances given in order to meet the expenses arising normally from the fulfilment of one’s duties. **(Explanation 1)**

▶ Bangladesh Bank may, in order to decide whether a **remuneration is excessive or not**, take into consideration the following items, namely **(Explanation 2)**:

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

(b) the number of its branches and offices;

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

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

(e) the interest of its depositors;

Continued... (Prohibition & Restrictions)

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

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

(4) No order under subsection (2) shall be made unless the concerned person has been given opportunity of making a representation to the Bangladesh Bank against the proposed order: Provided that it shall not be necessary to give any such opportunity if, in the opinion of the Bangladesh Bank, any delay would be detrimental to the interests of the banking company or its depositors.

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

Restrictions on removal of records and documents [U/S. 12]

- ▶ No banking company shall remove from its **head-office or any of its branches**, whether they are at the time being functioning or not, any of its **records or documents** relating to its business to a place outside Bangladesh, without the prior permission in writing of the Bangladesh Bank.
- ▶ In explanation records and documents included both physical and digital or electronic contents.

Capital Reservation [U/S. 13]

- ▶ Requirement as to minimum Paid-up Capital and it is mandatory for all bank companies to maintain the minimum requirement of paid-up capital and reserve fund.
- ▶ Specialized may be exempted from such obligation as per proper consultation with government.
- ▶ The minimum requirement is declared by the Bangladesh Bank from time to time based on minimum capital requirement of the respective Banks.
- ▶ If the Bank company fails to comply the directions of capital reservation, it will be directed to fulfill the obligation within next 1 year. In case of such failure is considered as offence and be fined for 20 lac to 1 crore taka. If it continues, fifty thousand taka for everyday.

Regulation of paid-up capital, subscribed capital, authorized capital and voting rights of shareholders [U/S. 14].

- 1) No banking company except a new bank or a specialized bank incorporated in Bangladesh shall run business in Bangladesh without satisfying the following conditions:
 - a) that the company's subscribed capital shall not be less than one-half of the authorized capital;
 - b) that the company's paid-up capital shall not be less than one-half of the subscribed capital;
 - c) If the time of authorized capital extends, that shall not be for more than 2 years and within this timeframe capital should be paid up.
 - c) That the voting rights of any share-holder, except those of the Government, do not exceed 5(five) percent of the total voting rights of all the shareholders.

Election of new directors & Filling up the post of Chief Executive Officer [U/SS.15-15A]

- ▶ **All banking companies except a new bank or a specialized bank may elect new directors in the Annual General Meeting within 2 months of permission from Bangladesh Bank.**
- ▶ **CEO shall be appointed with due permission and be promoted and disposed as the same way of permission from previous permission of Bangladesh Bank.**
- ▶ **a) The post of Chief Executive Officer has to be filled up by all banking companies as per approval of Bangladesh Bank.**
- ▶ **b) The post of Chief Executive Officer shall not be kept vacant for a consecutive period of more than three months.**
- ▶ **c) If it is not filled in within three months, the Bangladesh Bank may appoint an Administrator for the discharge of the responsibilities of Chief Executive Officer.**

Vacation of the office of Director [U/S. 17].

a) If any director of a banking company fails to repay/adjust bank's loans in time then the concerned banking company may serve notice to the defaulting director through the Bangladesh Bank for full adjustment of the defaulted bank's loans within a specific period. **If such failure of repayment continues for a period of two months even after Bangladesh Bank's Notice, the post of director shall be fallen vacant with the expiry of the period cited in the Notice.**

b) Any person receiving a Notice from concerned bank through Bangladesh Bank may explain his position to the Bangladesh Bank within thirty one days from the date of receipt of such notice with a copy of the explanation to the concerned banking company. The Bangladesh Bank shall give reply of the explanation within 15 days from the date of receipt of the explanation and the decision of the Bangladesh Bank in this regard shall be final.

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Section -18: Certain benefit of the directors:

Any **director** of any banking company **shall not accept pecuniary benefit other than honorarium** for attending the meeting of the Bank's Board of Directors. The amount of honorarium may be determined by the Board of Directors unanimously.

Section -19: Restriction on commission, brokerage, discount etc:

No banking company shall pay out directly or indirectly as commission, brokerage, discount or remuneration by any means in respect of any share issued by it, any amount not exceeding **two and one-half percent of the paid-up capital of the said shares.**

Section -20: Prohibition of charge on unpaid capital

No banking company shall create any charge upon unpaid capital of the company.

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Section -21: Prohibition of floating charge on assets

No banking company shall make a following charge on its undertaking or any property or any part thereof unless the creation of such a floating charge is certified in writing by the Bangladesh Bank as not being determined to the interest of the depositors of such company.

Section -22: Restrictions regarding payment or dividend

- a) No banking company shall pay any dividend on its shares if all its capitalized expenses and other expenses have not been completely written off; or
- b) If it fails maintain paid-up capital and reserve fund as per requirements of section – 13.
- c) If there is provision shortfall.

Section -24: Reserve Fund

To transfer 20% of the profit to the Reserve Fund as long as the accumulated Reserve Fund is below its paid-up capital.

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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.

Section -27: Restrictions on loans and advances

No Banking company shall

- a) make any loans or advances against the security of its own shares
- b) grant unsecured loans & advances

Section -27 Ka Ka: List of Defaulting Borrowers

The Banking companies are allowed to send the list of defaulting borrowers to the Bangladesh Bank from time to time.

Questions Session

