

# Bank in Concept & Its Function



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# Definition of Bank

A Bank is an establishment, office, and a company, which deals in money. A bank receives money in deposit accounts of its customers on certain conditions in different type of deposit accounts. The conditions of these accounts differ from the nature of accounts.

In deposit accounts banks also pay interest to its customers as per the nature and conditions of the account. A bank also lends money to its customers as per decided guideline.

► No statutory definition of a bank is given anywhere but as per section 5(o) the Bank Companies Act, 1991 "banking company" means any company transacting the business of banking in Bangladesh, and **includes all new banks and special banks.**

# Definition of Bank

**New Bank:** As per section 5(h) "new bank" means any bank denominated in the Bangladesh Banks (Nationalisation) Order, 1972 (P.O. No. 26 of 1972);

**Special Bank:** Under section 5 of sub section defines (m) "special bank" means any bank established or formed by or under any Act in force for the time being and includes such banks as the Government may, by notification in the official Gazette, declare special banks for the purpose of this Act;

There are total 3 public specialized banks, those banks are operating their services with high reputations in Bangladesh.

1. Bangladesh Development Bank Ltd. (BDBL)
2. Bangladesh Krishi Bank (BKB)
3. Rajshahi Krishi Unnayan Bank (RAKUB)

# Definition of Bank

- ▶ Under Section 5(f) "scheduled bank" has the same meaning as in the Bangladesh Bank Order ( P.O. NO. 127 of 1972) Article 2 (j).
- ▶ The Bangladesh Bank Order, 1972 defines "Scheduled Bank" means a bank for the time being included in the list of banks maintained under sub-clause (a) of clause (2) of Article 37;
- ▶ Under the Bangladesh Bank Order, 1972 of section 37 (2) The Bank shall, by notification, in the Official Gazette— (a) declare any bank to be scheduled bank which is carrying on the business of banking in Bangladesh and which— (i) is a banking company [\* amended 2003 the specific law] or a co-operative bank, or a corporation or a company incorporated by or established under any law in force in any place in or outside Bangladesh;



# Functions of Bank Company

The functions of any Banking Company can be divided into **two parts** the **main functions** and the **allied functions**.

▶ The main function as already stated above is accepting money as deposits and lending and investing such deposited money. Although banks accept deposits from public but each bank is free to formulate their own schemes of deposits to attract maximum number of customers in order to be able to mobilize maximum deposits (the raw material) of banking industry.

▶ Another main function of banks is to provide loans. It may be for Industries, trade, Retail business, Agriculture, Housing Finance, Education or for personal needs of customers. Like deposits banks also prepare different kind of schemes to attract more and more borrowers but each scheme is required to be framed within banking regulations.

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In addition to main functions of accepting deposits and lending banks also performs many type of other functions which can be nomenclature as Non-fund based functions like

- ▶ Issuing of Letter of Credits,
- ▶ Letter of Bank guarantees,
- ▶ Safe custody vaults.
- ▶ Locker Facilities,
- ▶ Issuing of credit worthy certificate,
- ▶ Collection of cheques,
- ▶ Bills, Local taxes,
- ▶ Agency functions for Govt. and local bodies,
- ▶ Collection of payments for govt. agencies. And so on.

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**In brief** we may sum up the products and services offered by banking company:

- a. Deposits like Current Account, Saving Account, Term or Fixed Deposits, Recurring Deposits (saving cum investment), PPF (Public Provident Fund) Accounts and all other deposit accounts.
- b. Payment Services: such as pension, payment orders, remittances by way of Demand Drafts and wire services.
- c. Banking services related to Government transactions.
- d. Demand accounts, equity, government bonds.
- e. National currency notes exchange facility.
- f. Collection of cheques, Safe Custody services, Safe deposit locker facility.
- g. Loans and Overdrafts.

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h. Foreign Exchange services including money changing.

i. Third party insurance and investment products.

j. Card products including Credit Cards, Debit Cards, ATM Cards etc.

▶ Whatever functions or business of a bank performs is subject to restrictions and controls as provided [under the section 7 of the Bank Companies Act, 1991.](#)



# Business of Banking Companies [U/S.7]

In addition to the business of banking, a banking company may engage in all or any of the following forms of business, namely:-

- (a)** the borrowing, raising or taking up of money;
- (b)** the lending or advancing of money either upon or without security;
- (c)** the drawing, making, accepting, discounting, buying, selling, collecting and dealing in bills of exchange, hundees, promissory notes, coupons, drafts, bills of lading, railway receipts, warrants, debentures, certificates, participation term certificates, term finance certificates, musharika certificates, modareka certificates, such other instruments as may be approved by the Bangladesh Bank, and such other instruments and securities whether transferable or negotiable or not;
- (d)** the granting and issuing of letters of credit, traveller's checks, and circular notes;

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

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

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

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

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- i) the negotiating of loans and advances;**
- j) the receiving of all kinds of bonds or other valuables on deposit or for safe custody or otherwise;**
- k) providing vaults for the safety of the deposits;**
- l) the collecting and transmitting of money against securities;**
- m) acting as agents for the Government, local authorities or any other person;**
- n) the carrying on of agency business of any description including the clearing and forwarding of goods and acting as a law agent on behalf of customers, but excluding the business of a managing agent or treasurer of a company;**
- o) contracting for public and private loans and negotiating and issuing the same;**

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

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

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

1) repurchase by the seller, or

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

3) repayment of outstanding rates, or

4) leases, or

5) sharing out of revenues, or

6) financing in any other way;

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- s) bringing into possession any property which may satisfy or partly satisfy any of the claims of the banking company and the managing and borrowing of such property;**
- t) acquiring, holding and managing of any property or any right, title or interest in any such property which may form the security or part of the security for any loans or advances or which may be connected with any such security;**
- u) undertaking and executing trusts;**
- v) undertaking the administration of movable and immovable property as executor, trustee or otherwise;**



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

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

**2) granting pensions and allowances;**

**3) making payments toward insurance;**

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

**5) guaranteeing money for all these purposes**

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

y) selling, improving, managing, exchanging, leasing, mortgaging or otherwise transferring or turning into account or otherwise disposing of all or any part of the property or rights of the banking company;

z) acquiring and undertaking the whole or any part of the business of any person or company, when such business is of a nature enumerated or described in this subsection;

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

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

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**Gazette, specify as a form of business in which it is lawful for a banking company to engage.**

**(2) No banking company shall engage in any form of business other than those referred to in subsection (1).**

# Philip Thomas & anr v Triodos Bank NV ([2017] EWHC 314 (QB))

**Background:** The claimants were farmers who took out a number of loans. The claimants switched a portion of their borrowing from a variable rate to a 10-year fixed rate. They asked the bank whether early redemptions of the fixed rate loans would incur penalties of £10,000-20,000 but the bank did not answer or correct this even though the figure would be around £95,000. This became apparent when interest rates began to fall and the claimants wished to redeem early and restructure their debt. The claimants alleged that the bank had a duty to explain the financial consequences of redemption before the expiration of its term (an “information duty”), and that the bank misrepresented the financial consequences by failing to correct the claimants’ figures when asked.

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## The Judgment:

Traditionally the position is that where a bank is providing information only, and not advice, then only a Hedley Byrne type of duty (not to misstate) applies. In this case it was found that there had been no assumption of an advisory role on the part of the bank. However, the Court held that there was nothing in previous case law precluding a finding of an intermediate duty of care in certain circumstances where no advisory role had been assumed. The Court considered that there were circumstances that suggested that an intermediate duty should be owed. The bank had signed up to a voluntary code of conduct known as the BBC (Business Banking Code) and had advertised accordingly to their customers. The BBC contained a provision which stated that “if the bank was asked about a product, it would give the customer a balanced view of the product in plain English with an explanation of its financial implications.” There were no exclusion clauses that would indicate that the bank was not willing to assume responsibility for promises contained in the BBC.



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The Court decided that because of this fairness commitment, the bank had assumed a higher duty of care with regard to the provision of information. This led the Court to conclude that “when the claimants inquired about the fixing rate the bank owed them more than a duty not to mislead or misstate. The duty of care that the bank owed was to explain the financial implications of fixing the rate.” duty was a duty Tempering the duty somewhat, the Court held that the bank’s “only owed in response to the claimants’ inquires because that is what the bank had signed up to in the BBC. It was not a duty to volunteer information if not Comment asked. ”



# Questions Session