

# Conclusion of Bank Companies

## Winding-up of banking company ?



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# Acquisition of the undertakings of banking companies [U/S. 58]

- ▶ If a Banking Company failed more than once to comply with the directions given to it in writing under section 29 [Power of the Bangladesh Bank to control the giving of advances] or section 45 [Power of the Bangladesh Bank to give directions ]. Or
- ▶ Any Banking Company is running in such manner that may cause loss to the Depositors.
- ▶ Then Bangladesh Bank sent report to government about this bank , after receiving report if government satisfied, government may by order notified in the official Gazette, acquisition the bank company or one or more branches.

## Management of Acquired Bank:

If the government is so satisfied that the assets and liabilities of acquired bank vested upon any company or corporation, which is established by scheme made under this part.

Hereinafter in this Part referred to as the transferee bank.

# Scheme making Power of the Government [U/S. 59]

The Government may, after consultation with the Bangladesh Bank, make a scheme for any acquired Bank . **Scheme may provide for all or any of the following matters, namely:**

- ▶ the constitution, capital, name and office of the company, or the corporation, to which the undertaking the assets and liabilities of the acquired bank .
- ▶ the continuance of the services of the employees and same terms and conditions of the acquired bank in the Government or in the transferee bank.
- ▶ the continuance of the right of any person who is entitled to or is in receipt of, a pension or compassionate allowance or benefit from the acquired bank.

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- ▶ the manner of payment of the compensation payable in accordance with the provisions of this chapter to the share-holders of the acquired bank.
- ▶ the provision for completing the effectual transfer to the Government or the transferee bank.
- ▶ such incidental, consequential and supplemental matters as may be necessary to secure that the transfer of the business.

# Compensation to be given to the shareholders of the acquired bank [U/S. 60]

- ▶ Every person who, is registered as a holder of shares in the acquired bank shall be given Compensation by the Government, or the transferee bank.
- ▶ If the amount of compensation is not acceptable to any person, such person may, before such date as may be notified by the Government under section 61 [Constitution of the Tribunal].
- ▶ If the Government receives requests from shareholders holding shares not less than one-fourth in value of the paid-up capital of the acquired bank, the Government shall have the matter referred to the Tribunal for decision.
- ▶ If the Government does not receive one-fourth requests, the amount of compensation shall be final and binding on all parties concerned.

# Acquisition of the undertakings of banking companies [U/S. 58]

**(1) If, upon receipt of a report from the Bangladesh Bank, the Government is satisfied that a banking company**

**a) has, on more than one occasion, failed to comply with the directions given to it in writing under section 29 or section 45, in so far as such directions relate to banking policy, or**

**b) is being managed in a manner detrimental to the interests of its depositors, and that in the interest of the depositors of such banking company, or in the interest of banking policy, or for the better provision of credit generally or of credit in any particular area, it is necessary to acquire the undertaking of such banking company, the Government may, after consultation with the Bangladesh Bank, by notified order, acquire the undertaking of such company, hereinafter referred to as the acquired bank, with effect from such date as may be specified in the order, hereinafter referred to as the appointed date:**

## Continued...

**Provided that no undertaking of any banking company shall be so acquired unless such banking company has been given reasonable opportunity of showing cause against the proposed action**



# **Power of the Government to make scheme [U/S. 59]**

**(1) The Government may, after consultation with the Bangladesh Bank, make a scheme for carrying out the purposes of this chapter in relation to any acquired bank.**

**(2) In particular, and without prejudice to the generality of the foregoing power, the said scheme may provide for all or any of the following matters, namely:**

**a) the company, or the corporation, to which the undertaking including the assets and liabilities of the acquired bank may be transferred, and the constitution, capital, name and office thereof;**



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- b) the constitution of the first Board of management, by whatever name called, of the transferee bank, and all such matters in connection therewith as the Government may consider to be necessary or expedient;**
- c) the continuance of the services of the employees of the acquired bank in the Government or in the transferee bank, as the case may be, on the same terms and conditions on which they had been employed at the acquired bank;**
- d) the continuance of the right of any person who, on the appointed date, is entitled to or is in receipt of, a pension or other superannuation or compassionate allowance or benefit from the acquired bank or any provident, pension or other fund or any authority administering such fund, to be paid by the Government or the transferee bank, as the case may be, the same pension, allowance or benefit so long as he observes the conditions on which the pension, allowance or benefit was granted;**

## Continued...

- e) the manner of payment of the compensation payable in accordance with the provisions of this chapter to the share-holders of the acquired bank, and where the acquired bank is a banking company incorporated outside Bangladesh, to the acquired bank in full satisfaction of their or as the case may be, its, claims;**
- f) the provision for completing the effectual transfer to the Government or the transferee bank, as the case may be, of any asset or liability which forms part of the undertaking of the acquired bank in any country outside Bangladesh;**
- g) such incidental, consequential and supplemental matters as may be necessary to secure that the transfer of the business, property and liabilities of the acquired bank to the Government or transferee bank, as the case may be, is effectual and complete.**

## Continued...

**(3) The Government may, after consultation with the Bangladesh Bank, by notification in the official Gazette, add to, amend or vary any scheme made under this section.**

**(4) Every scheme made under this section shall be published in the official Gazette. (5) Copies of every scheme made under this section shall be laid before the Parliament as soon as it may be after it is made.**

**(6) The provisions of this part in relation to schemes shall have effect notwithstanding anything to the contrary contained in any other provisions of this Act or in any other law or any agreement, award or other instrument for the time being in force.**

**(7) Every scheme made under this section shall be binding on the Government or transferee bank, and also on all members, creditors, depositors and employees of the acquired bank and of the transferee bank and on any other person having any right, liability or power in relation to, or in connection with, the acquired bank or the transferee bank. [Up to sub section 6 the rules described]**

# **Compensation to be given to the share-holders of the acquired bank [U/S. 60]**

**(1) Every person who, immediately before the appointed date, is registered as a holder of shares in the acquired bank or, where the acquired bank is a banking company incorporated outside Bangladesh, the acquired bank, shall be given by the Government, or the transferee bank, as the case may be, such compensation in respect of the transfer of the undertaking of the acquired bank as is determined in accordance with the prescribed principles.**

**(2) Nothing contained in subsection (1) shall affect the rights inter se between the holder of any share in the acquired bank and any person who may have any interest in such shares; and such other person shall be entitled to enforce his interest against the compensation determined under sub-section (1), but not against the Government, or the transferee bank.**

# **Constitution of the Tribunal [U/S. 61]**

**(1) The Government may, for the purpose of this chapter, constitute a Tribunal consisting of one Chairman and two other members.**

**(2) The Chairman of the Tribunal shall be a person who is, or has been a judge of the Supreme Court, and of the two other members, one shall be a person who, in the opinion of the Government, has had experience in banking and commercial matters and the other shall be a person who is a chartered accountant within the meaning of the Chartered Accountants Order, 1973 (P.O.No.2 of 1973).**

**(3) If, for any reason, a vacancy occurs in the office of the Chairman or any other member of the Tribunal, the Government may fill the vacancy by appointing another person thereto in accordance with the provisions of sub-section (2); and any proceeding may be continued before the Tribunal, so reconstituted, from the stage at which the vacancy occurred.**

**(4) The Tribunal may, for the purpose of determining any compensation payable under this chapter, choose one or more persons having special knowledge or experience of any relevant matter to assist it in any matter whatsoever.**

# **The Tribunal to have powers of a civil Court [U/S. 62]**

**(1) The Tribunal shall have the powers of a civil Court, while trying a suit, under the Code of Civil Procedure, 1908 (Act V of 1908), in respect of the following matters, namely:-**

- a) summoning and enforcing the attendance of any person and examining him on oath;**
- b) requiring the discovery and production of documents;**
- c) receiving evidence on affidavits; d) issuing commissions for the examination of witnesses and documents etc..**

**(2) Notwithstanding anything contained in subsection (1) or in any other Act for the time being in force, the Tribunal shall not compel the Government or Bangladesh Bank,-**

- a) to produce any books of accounts or other documents which the Government, or the Bangladesh Bank, claims to be of a confidential nature, or**
- b) to make any such books or documents parts of the record of the proceedings before the Tribunal, or**
- c) to give inspection of any such books or documents to any party before it or to any other person.**

# **Procedure of the Tribunal [U/S. 63]**

**(1) The Tribunal shall have power to regulate its own procedure.**

**(2) The Tribunal may hold the whole or any part of its inquiry in camera.**

**(3) Any clerical or arithmetical error in any order of the Tribunal or any error arising therein from any accidental slip or omission may be corrected by the Tribunal either of its own motion or on the supplication of any of its parties.**



# **Suspension of business and winding up of banking companies [U/SS. 64-108]**



# Suspension [U/S. 64]

(1) The High Court Division may, on the application of a banking company which is temporarily unable to meet its obligations, make an order staying for a fixed period on such conditions as it may think fit the commencement or continuance of all proceedings against the company, and a copy of that order shall be forwarded to the Bangladesh Bank, and the High court Division may from time to time extend the period. **But the extended period shall not exceed six month.**

(2) No application under subsection (1) shall be receivable unless it is accompanied by a report of the Bangladesh Bank to the effect that the banking company which made the application will be able to pay its debts:

Provided that in the case of an application not accompanied by such report the High Court Division may, if it thinks reasonable, grant remedy under this section to that company, and if such remedy is granted, shall call for a report from the Bangladesh Bank on the affairs of the banking company, on receipt of which it may either rescind its order or pass such further order as it may think fit and proper.

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(3) When an application under subsection (1) is submitted, the High Court Division may **appoint a special officer** who shall forthwith take into his custody or under his control all the assets, books, documents, effects and actionable claims to which the banking company is or appears to be entitled and shall also exercise such other powers as the High Court may confer on him, having regard to the interests of the depositors of the banking company.

(4) Where the Bangladesh Bank is satisfied that the affairs of a banking company in respect of which an order under subsection (1) has been made, are being conducted in a manner **detrimental to the interests of its depositors**, it may make an application to the High Court Division for the winding up of that banking company, and where such application has been made, the High Court Division shall not extend the period of an order to stay proceedings under that subsection.

# Winding up by High Court [U/S. 65]

(1) Notwithstanding anything contained in section 153, 162 and 271 of the Companies Act, and without prejudice to the powers given under subsection (1) of section 64, the High Court Division shall under this section order the winding up of a banking company, if

a) the banking company is unable to pay its debts;

b) the Bangladesh Bank makes an application for its winding up under this section or section [64\[ Suspension \]](#).

(2) The Bangladesh Bank shall make an application under this section for the winding up a banking company if it is directed so to do by an order under clause b) of subsection (5) of section [44 \[Inspection\]](#).

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(3) The Bangladesh Bank may make an application under this section for the winding up of a banking company,- a) if the banking company

i) has failed to comply with the requirements specified under section 13 [Minimum paid up capital and reserves]; or

ii) has by reasons of the provisions of section 31 become disentitled to carry on banking business in Bangladesh;

iii) has been inhibited from receiving fresh deposits by an order under clause a) of subsection (5) of section 44, or under clause b) of subsection (5) of Article 36 [Half Yearly Report] of the Bangladesh Bank Order, 1972 (P.O. No. 127 of 1972); or

iv) has failed to comply with any requirement of this Act other than the requirements laid down in section 13, and after being informed about its failures by a notice in writing, continues so to do;

v) has contravened any provision of this Ordinance and continues such contravention beyond such period as may be specified in that behalf by the Bangladesh Bank from time to time, after notice in writing of such contravention has been conveyed to it; or

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**b) if in the opinion of the Bangladesh Bank**

**i) a compromise or arrangement sanctioned by a Court in respect of the banking company cannot be worked satisfactorily with or without modifications; or**

**ii) the returns, statements or information furnished to it under or in pursuance of the provisions of this Ordinance disclose that the banking company is unable to pay its debts; or**

**iii) the continuance of the banking company is prejudicial to the interests of its depositors.**

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**(4) Without prejudice to the provisions contained in section 163 of the Companies Act, a banking company shall be deemed to be unable to pay its debts if**

**a) it has refused to meet any lawful demand made at any of its offices or branches within two working days; or**

**b) such demand is made elsewhere and the Bangladesh Bank certifies that the banking company is unable to pay its debts; or**

**c) the Bangladesh Bank certifies in writing that the banking company is unable to pay its debts.**

**(5) The Bangladesh Bank shall send a copy of any application made under subsection (1) to the registrar of the Supreme Court.**

# **Court liquidator [U/S. 66]**

**(1) When, having regard to the number of proceedings for the winding up of banking companies and the extent of the work involved in such proceedings, the Government is of the opinion that it is necessary and expedient, for the purpose of conducting all proceedings for the winding up of banking companies and performing such other duties in reference thereto as the High Court Division may impose, to attach a court liquidator to the High Court Division, it may, after consultation with the Bangladesh Bank, appoint a court liquidator for such period as it may determine.**

# Appointment of the Bangladesh Bank etc. as liquidator [U/S. 67]

Notwithstanding anything contained in section 50 [Certain provisions of the Act not to apply to certain banking companies ], or in section 175 of the Companies Act, where in any proceeding for the winding up of a banking company the Bangladesh Bank applies to the High Court Division to appoint the Bangladesh Bank or any individual as official liquidator, the application shall ordinarily be granted and the liquidator, if any, functioning in such proceeding shall vacate office upon such appointment.



# **Companies Act to apply to liquidators [U/S.68]**

**(1) All the provisions of the Companies Act relating to a liquidator, and so far as they are not inconsistent with this Act, shall be applicable in the case of liquidators appointed under section 67 or 68.**

**(2) Any reference to the "official liquidator" in this chapter or in chapter 7 shall be construed as including a reference to any liquidator of a banking company.**

# **Restriction on stay of proceedings [U/S. 69]**

**Notwithstanding anything to the contrary contained in section 173 of the Companies Act, the High Court Division shall not make any order staying the proceedings in relation to the winding up of a banking company, unless it is satisfied that an arrangement has been made whereby the company can pay its depositors in full as their claims accrue.**



# Submission of a preliminary report by the official liquidator [U/S. 70]

Notwithstanding anything to the contrary contained in section 177 B of the Companies Act, where a winding-up order has been made in respect of a banking company whether before or after the commencement of this Ordinance, the official liquidator shall submit a preliminary report to the High Court Division within two month from the date of the winding-up order or where the winding-up order has been made before such commencement, within two months from such commencement and that report shall contain the following items, namely:

- a) the information required by the Companies Act so far as it is available to him;
  - b) the amount of assets in cash which are in his custody or under his control on the date of the report;
  - c) the amount which is likely to be collected in cash before the expiry of that period of two month:
- Provided that the High Court Division may, if it thinks fit, in any particular case extend the period of two months by a further period of one month.

# **Notice to preferential claimants etc. [U/S. 71]**

**(1) Within fifteen days from the date of the winding-up order of a banking company or where the winding-up order has been made before the commencement of this Act, within one month from such commencement, the official liquidator shall, for the purpose of making an estimate of the debts and liabilities of the banking company (other than its liabilities and obligations to its depositors), by notice served in such manner as the Bangladesh Bank may direct, call upon every claimant entitled to preferential payment under section 230 of the Companies Act and every secured and every unsecured creditor of the company to send to him within one month from the date of the service of the notice a statement of the amount claimed by him.**

# **Power to dispense with meetings of creditors etc. [U/S. 72]**

**Notwithstanding anything to the contrary contained in section 178 A and 183 of the Companies Act, the High Court Division may, in the proceedings for winding-up a banking company dispense with any meeting of claimants or other creditors of the company or the appointment of a committee if, in order to avoid unjustified delay and expense, it thinks fit so to do.**

# **Restriction on voluntary winding up [U/S. 75]**

**Notwithstanding anything to the contrary contained in section 203 of the Companies Act, no banking company which holds a licence granted under section 31 may be voluntarily wound up unless the Bangladesh Bank certifies in writing that the company is able to pay in full its debts to its creditors; and without prejudice to the provisions contained in section 218 and 220 of the Companies Act, the High Court Division shall, on application of the Bangladesh Bank, order the winding up of the company by the High Court Division if at any state during the voluntary winding up proceedings the company is not able to pay any of its debts.**

## Restriction on compromise or arrangement between banking companies and creditors [U/S. 76]

- (1) Notwithstanding anything contained in any other Act for the time being in force, the High Court Division shall not sanction any compromise or arrangement between a banking company and its creditors or any class of them or between such company and its members or any class of them, or any amendment in such compromise or arrangement, unless the Bangladesh Bank is of the opinion that the compromise, arrangement or the amendments therein are capable of being worked out and are not detrimental to the interests of the depositors of the banking company concerned.
- (2) Where an application under section 230 of the Companies Act is made in respect of any banking company or in respect of the conduct of any of its directors, the High Court Division may direct the Bangladesh Bank to make an inquiry in relation to the affairs of the banking company and the conduct of its directors; and when such a direction is given, the Bangladesh Bank shall make such inquiry and submit its report to the High Court Division.

# **Moratorium in respect of a banking company and reconstruction or amalgamation of banking companies**

## **[U/S. 77]**

**(1) Notwithstanding anything contained in the forgoing provisions of this chapter or in any other Act or any agreement or any other instrument, for the time being in force, where it appears to the Bangladesh Bank that there are reasons to make an order of moratorium in respect of a banking company, it may apply to the Government for the making of such order.**

**(2) The Government, after considering and approving an application made under subsection (1), may make an order of moratorium staying the commencement or continuance of all actions and legal proceedings against the company, including the suspension of its business, for for a fixed period of time and on such conditions as it thinks fit: Provided that the Government may extend the period so however that the total period does not exceed six month.**



# **Chapter seven to override other Acts [U/S.78]**

**The provisions of this chapter and the rules made thereunder shall have effect notwithstanding anything contained in the Companies Act or any other Act for the time being in force or in any instrument made in accordance with, or having effect under the powers given by any other Act. But the provisions of that Act or of any other Act or instrument shall apply to all proceedings under this chapter or any rule made thereunder in so far that they are not varied by, or inconsistent with, this chapter or the rules made thereunder.**

# **Power of the High Court Division to decide all claims in respect of banking companies[U/S.79]**

**The High Court Division shall, save as otherwise expressly provided in section 80, consider and decide any of the following subjects, whether they arise before or after the date of the order for the winding up of a banking company or before or after the commencement of this Act, namely**

- a) claims made by or against a banking company which is being wound up including its branches in Bangladesh;**
- b) any application submitted under section 153 of the Companies Act by or against a banking company which is being wound up;**
- c) any question of priorities or any other question, of law or of fact, which may relate to a banking company which is being wound up or arise in the course of a proceeding for the winding up of a banking company.**

## **Transfer of pending suits [U/S.80]**

**(1) Where a winding up order has been made in respect of a banking company, no proceeding or suit filed by or against the banking company immediately before the commencement of this Act or before the date of the winding up order where the order has been made after such commencement shall, if in respect of that suit or proceeding the High Court Division has exclusive jurisdiction under this Act, be proceeded with except in the manner hereinafter provided .**

# **List of the debtors [U/S.81]**

**(1) Notwithstanding anything contained in any other Act for the time being in force, the High Court Division may settle in the manner hereinafter provided a list of the debtors of a banking company which is being wound up.**

**(2) Subject to the rules made under section 120, the official liquidator shall, within six month from the date of the winding up order or the commencement of this Act, whichever is later, or within such further time as the High Court Division may allow, from time to time, submit to the High Court Division lists of the said debtors containing such particulars as are specified in the second schedule.**

# **Documents of banking company to be evidence[U/S.83]**

**(1) Entries in the books of account or other documents of a banking company which is being wound up shall be admitted in evidence in all proceedings by or against the banking company.**

**(2) All entries contained in the account books or other documents of a banking company may be proved by production of those account books and documents or copies thereof:**

# **Examination of directors and audit of accounts [U/S.84]**

**(1) Where an order has been made for the winding up of a banking company, the official liquidator shall submit to the High Court Division a report whether in his opinion any loss has been caused to the banking company since its formation by any act or omission of any person involved in its formation or of any of its directors or auditors.**

# Appeals [U/S.90]

**(1) An appeal shall lie from any order or decision of the High Court Division with the Appeal Division when the value of the subject-matter of the claim in a civil proceeding under this Act exceeds fifty thousand Takas.**

**(2) The High Court Division may by rules provide for an appeal against any order made under section 87 and the conditions subject to which any such appeal would lie.**

**(3) Notwithstanding anything contained in any other Act for the time being in force and subject to the provisions of sub-section (1) and (2), every order or decision of the High Court Division shall be final and binding for the banking company and all other parties concerned and all persons claiming through or under them.**

## **Special period of limitation [U/S.91]**

**(1) Notwithstanding anything contained in the Limitation Act, 1908 (IX of 1908) or in any other Act for the time being in force, in computing the period of limitation for a suit or application by a banking company which is being wound up, the period commencing from the date of the presentation of the application for the winding up of the banking company shall be excluded.**

**(2) Notwithstanding anything contained in the Limitation Act, 1908 (IX of 1908) or in the Companies Act or in any other Act for the time being in force, there shall be no period of limitation for the recovery of arrears of shares from any director of a banking company which is being wound up or for the enforcement by the banking company against any of its directors of any claim based on a contract, express or implied; and in respect of all other claims of any company against its directors, the period of limitation shall be twelve years from the date of the accrual of such claims or five years from the date of the first appointment of the liquidator, whichever is longer.**



# **Bangladesh Bank to tender advice in winding up proceedings [U/S. 92]**

**Where in any proceeding for the winding up of a banking company in which any person other than the Bangladesh Bank has been appointed as the official liquidator and the High Court Division has directed the official liquidator to obtain the advice of the Bangladesh Bank on any matter in that proceeding, the Bangladesh Bank may examine the record of that proceeding and tender advice on the matter.**

# **Power to inspect [U/S.93]**

**(1) The Bangladesh Bank may, on being directed so to do by the Government or the High Court Division, cause the inspection by its officers of a banking company which is being wound up in total or of the balances of any of its books and accounts.**

**(2) After an inspection under sub-section (1), the Bangladesh Bank shall submit a report of that inspection to the Government or, as the case may be, to the High Court Division.**

**(3) If the Government, on consideration of the report of the Bangladesh Bank, is of opinion that there has been a substantial irregularity in the winding up proceedings, it may bring such irregularity to the notice of the High Court Division for such action as the High Court Division may think fit.**

# **Power to call for returns and information [U/S. 94]**

**The Bangladesh Bank may, at any time by notice in writing, require the liquidator of a banking company to furnish it, within such time as may be specified in the notice or such further time as the Bangladesh Bank may allow, any statement or information relating to the winding up of the banking company and it shall be duty of the liquidator to comply with such requirements.**

# **Enforcement of orders and decisions of High Court Division [U/S. 96]**

- (1) All orders or decisions made in any civil proceeding under this Act by the High Court Division shall be enforced in the same manner in which decrees and orders made by the High Court Division in civil proceedings are enforced.**
- (2) Notwithstanding anything contained in the Code of Civil Procedure, 1908 (Act V of 1908), a liquidator may apply for the execution of a decree by a Court other than the one which made it, on production of a certificate of granted under sub-section (6) of section 81 and on his certifying in writing the amount remaining due in accordance with that decree or the relief being approved but remaining unenforced under that decree.**
- (3) Without prejudice to the provisions of sub-section (1) or (2), any amount due by an order or decision of the High Court Division may, with the leave of the High Court Division, be recovered in the same manner as an arrear of land revenue.**

# **Unacceptability of claims of other persons on articles deposited in lockers [U/S. 108]**

**Notices of claims on articles deposited in lockers by persons other than those in the name of which the articles have been deposited in the lockers of the banking company shall not be acceptable for that company, nor shall that company be bound to take measure in accordance with any such notice: Provided that nothing contained in this section shall be prejudicial to the authority of any court having jurisdiction on the said articles and the company shall give adequate importance to any decree, order, certificate or any other such document the court may submit.**



# Questions Session