

Chapter-3

BANK COMPANIES ACT, 1991 (AMENDED UP TO 2003)

Topics List

	<i>Page No.</i>
1. Introduction	145
2. Types of banks	145
3. Bangladesh Bank Order 1972, Bank Companies Act 1991 and the Financial Institutions Act 1993	146
4. Banking Industry of Bangladesh	146

Questions for discussion

BUSINESS OF BANK COMPANIES

1. Business of bank companies	146
2. Employment of managing agent.....	148
3. Minimum Paid up capital and reserve	149
4. Regulations for various categories of capital	149
5. Restrictions on purchase of shares of bank	150
6. Election of Directors	150
7. Vacation of the post of directors	151
8. Reserve fund	151
9. Subsidiary Companies	151
10. Restrictions on payment of loans and advance	152
11. Power of Bangladesh Bank to regulate advances	153
12. Licence of Bank Companies	154
13. Cancellation of licence	154
14. Maintenance of liquid assets	155
15. Auditor's Report	155
16. Duties of the auditor	156
17. Special audit	156
18. Disqualification of auditor	156
19. Power of Bangladesh Bank to remove Directors	156
20. Power of Bangladesh Bank to dissolve board of directors	157
21. Further powers and functions of Bangladesh Bank	157
22. Alteration of Memorandum of a bank	158

Questions for discussion

SUSPENSION OF BUSINESS AND WINDING UP

	<i>Page No.</i>
1. Procedure for suspension of business	160
2. Wind up by the High Court Division	160
3. Application by Bangladesh bank for winding up	160
4. Bank Company deemed unable to pay debts	161
5. Appointment of liquidator by court.....	161
6. Bangladesh Bank as Liquidator	161
7. Restrictions on voluntary winding up	162
8. Power of high court to decide on claims	162

Questions for discussion

Question for Self Assessment

INTRODUCTION

Section Overview

Various types of banking systems.

Creating reserve fund

Cancellation of licence of Bank Company

Provisions for the appointment of court-liquidator for the winding up of a Bank Company.

1. INTRODUCTION

1. system characterized by a banking system with a network of branches spread through out the country. This system of banking was developed in UK and is in operation in most of the countries of the world including Australia, Canada, India, Pakistan, Bangladesh and so on.
2. **Unit Banking:** Unit banking is a single - office banking business which is characterized by concentration of activities of a bank in a particular area and no branch operates business in its name elsewhere. In order to provide facilities to its customers in remittance and collection of funds, a unit bank resorts to correspondent banking system. Under this system, the unit banks are linked together by a system of correspondent banks. The United States of America is construed as the home of unit banking system.
3. **Group Banking:** Group banking refers to a system characterized by a group of banks which are brought under the control of a holding company. Under this system, each bank retains its separate entity, but all the units in the group are controlled by the holding company.
4. **Chain Banking:** Chain banking is a system where the unit banks are associated by being owned or controlled by one individual or a group of individuals. The main weakness inherent in the system of chain banking is that there remains the possibility of mismanagement by the controlling interests.
5. **Deposit Banking:** Deposit banking refers to a system where the banks involve only in acceptance of deposits repayable on demand and lending money to trade and industry for a short period of time not exceeding one year. This type of bank is similar to that of a commercial bank.
6. **Investment Banking:** Investment banking refers to a system of where banks arrange long-term funds for business and industry and which act both as financiers and as underwriters. This system first developed in Germany in the middle of the nineteenth century.

2. TYPES OF BANKS

Banks can be classified in numerous ways such on the basis of ownership, origin and functions. Among the bases of classification, type of banks by functions is essential to know. On the basis functions performed, banks can be classified into three categories:

1. **Central Bank:** Central bank is the bank of other banks. In Every country, there is a central bank whose function is the formulation of monetary and credit policy, issuing bank notes, development of money market, exchange rate determination etc.
2. **Commercial Bank:** Commercial Banks constitute one of the important segments of the banking structure. They mobilize deposits from individuals, firms, government and non-government organizations and advance credit in various forms to their customers belonging to various categories.

3. **Specialized Banks:** Specialized Banks refer to those banks which aim at providing finance to specific sectors of the economy. Section-5 (m) of the Bank Companies Act 1991 states that 'specialize bank' means a bank established or constituted by or under any law for the time being in force and includes a bank declared by the government by notification in the official Gazette to be a specialized bank for the purposes of this Act.

3. BANGLADESH BANK ORDER 1972, BANK COMPANIES ACT 1991 AND THE FINANCIAL INSTITUTIONS ACT 1993

The Bangladesh Bank Order 1972 set up the central bank (Bangladesh Bank), which regulates the banking activities of bank companies which operate under the Bank Companies Act 1991. The provisions of the Bank Companies Act 1991 are in addition to the provisions of the Companies Act 1994. Similarly, non-banking financial institutions are governed by Bangladesh Bank (BB) in terms of the provisions of the Financial Institutions Act 1993. The latter two legislations delimit the scope of activities of bank companies and non-banking financial institutions, respectively. They provide for the regulatory steps which may be taken by Bangladesh Bank, including powers to license and give directions to such companies in the public interest, in the interest of monetary and/or banking policy, in order to prevent the affairs of such companies being conducted in a manner detrimental to the interest of the companies or depositors, and to ensure their proper management.

4. BANKING INDUSTRY OF BANGLADESH

After independence, the banks operating in Bangladesh (except those incorporated abroad) were nationalized through the promulgation of the Bangladesh Banks (Nationalization) Order 1972. These banks were merged and grouped into six commercial banks namely: Sonali Bank, Agrani Bank, Janata Bank, Rupali Bank, Pubali Bank and Uttara Bank with 1116 branches. These banks were turned as National Commercial Banks (NCBs). Nationalized Commercial Banks (NCBs) continued their operations virtually without any competition until 1983 when the GOB allowed operation of private banks in the country. In support of its privatization policy, two of the six NCBs, Uttara Bank and Pubali Bank were subsequently transferred to the private sector with effect from January 1985. Due to the encouragement of private sector, the number of private banks has substantially increased over the years. Presently the number of banks in Bangladesh stood up to 49 with a total number of 6236 branches (Bangladesh Bank Annual Report, 2002-2003). The banking sector comprises of four types of scheduled banks such as Nationalized Commercial Banks (NCBs), Specialized Banks or Development Finance Institutions (DFIs), Private Commercial Banks (PCBs), and Foreign Commercial Banks (FCBs). The distribution of banks included 4 nationalized banks (NCBs), 5 government owned development finance institutions (DFIs), 30 private commercial banks (PCBs) and 10 foreign commercial banks (FCBs) (Bangladesh Bank Annual Report 2002-2003).

QUESTIONS FOR DISCUSSION

1. Explain various types of banking systems.
2. Specify the functions of different types of banks.
3. Write a short note about banking industry of Bangladesh. Do you think that banking industry is performing satisfactorily?

BUSINESS OF BANK COMPANIES

I. BUSINESS OF BANK COMPANIES

Bank companies do banking business, where "Banking business means offering of loan or receiving deposits of money from the public for investment payable on demand or otherwise and deserves withdrawal through cheque, draft, order or otherwise (Section-5 (p) of the Bank Companies Act 1991).

According to section 7 of the same Act, a bank company may engage in all or any of the following business:

- a) The borrowing, collections or taking of money.
- b) Advancing or lending of money either with security or without security.
- c) The drawing, accepting, discounting, buying, selling, collecting and dealing in bills of exchange, promissory notes, coupons, drafts, railway receipts, warrant, debentures, certificates, Participation term certificates, moderate certificates and other like instruments as may be approved from the Bangladesh Bank and other instruments and securities whether transferable or negotiable or not.
- e) The granting and issuance of letter of credit, traveler's cheques, credit card and circular notes.
- f) The purchasing, selling and transaction on Gold, Silver and other metallic coin.
- g) The purchasing and selling of foreign exchange including foreign bank notes.
- h) The achieving, holding, issuing on commission basis, underwriting and dealing in stock funds, shares, debenture stock, bonds, obligations, securities, participating term certificates, musharika certificates and such other instrument as may be approved from the Bangladesh Bank and investment of all types.
- i) The buying and selling of bond, scripts or other form of securities, participating term certificates, musharika certificates and such other instrument as may be approved by the Bangladesh Bank on behalf of sister concerns of Bangladesh Bank or others.
- j) The arrangement of loans and advances.
- k) The receiving deposits of all types of bond and other valuable goods and accepting them for safe custody of keeping otherwise.
- l) The providing of safe deposit vaults.
- m) The collecting and transmitting of money as against certificates of securities.
- n) The working as the agents of the government, or local authority or any other person.
- o) To conduct the agency business of any kinds including the clearing and forwarding of goods, giving of receipts and discharges and acting as an attorney for customers but excepting the business of a managing agent or treasurer of a company.
- p) Negotiating for public and private loans and issuance of the same after performance of contract.
- q) Taking risks in issuance of shares, stock, debenture or debenture stock of any company, corporation or associations, guarantee of liabilities and the lending of money for the purpose.
- r) Conduction and transacting every kind of guarantee and indemnity business.
- s) Buying or acquisition normally, in times of its banking business of any property including commodities, patents, designs, trade marks and copyrights with or without (1) re-purchase arrangements by the seller or (2) for sale by way of hire-purchase or (3) on deferred payment basis or (4) with markings for in lease or licensing or (5) for sharing of income or (6) for any way of financing.
- t) Managing for recovery of possession of any property of the bank company in part or full satisfaction of any of its claims.
- u) Acquiring and holding and generally dealing with any property or any right, title or interest in any such property which may stand against security or part of the security for any loans or advances or which any be related with any such security.

- V) Undertaking and execution of trusts.
- w) Taking the administration of estates as executor, trustee or otherwise.
 - 1. For the benefit of bank company employees or their dependents-
 - 2. Assisting or aiding in establishing associates, institutions, fund, trusts or any other organizations for their establishments;
 - 3. Granting persons and allowances;
 - 4. Payments of insurance premiums;
 - 5. Subscribing for nay exhibitions or for charitable purposes;
 - 6. Ensuring contributions for such purposes.
- x) The acquisitions, construction, maintenance, and alteration of any building or works essential or advantageous for the purpose of the company.
- y) Alienating, improving, managing, developing, exchanging, leasing, mortgaging, depositing or causing into account or otherwise dealing with all or any part of the property and rights if the company.
- Z) Acquiring and taking the whole or any part of the business of any person or company when such business is of nature enumerated or described above.
- aa) Doing all such other things as are relevant or conducive to the promotion or progress of the business of the company.
- bb) Any other kind of business as to which the government may, by notification in the official gazette, make specification as a form of business in which it is legal for a bank company to engage.

2. PROHIBITION OF EMPLOYMENT OF MANAGING AGENTS AND RESTRICTIONS ON SPECIFIC FORMS OF EMPLOYMENT (Sec. 11):

- 1. No bank company shall appoint a Managing Agent for itself or conduct its management by a Managing Agent. Moreover, no company shall appoint or continue the appointment of any person:
 - (i) Who is, or at any time has been declared insolvent or has been convicted by a criminal court of an offence out of moral turpitude.
 - (ii) Any one who receives his remuneration or part of his remuneration on commission basis or as a share in the profits of the company. However, nothing referred to, in this sub-clause shall apply to the payment of bonus by a bank company in view of a settlement or award decided or made under any law with reference to industrial disputes; or any commission to any broker on a contract otherwise than as a regular member of the staff of the company.
- 2. If a person holding the office of chairman or director or manager or chief executive officer has been adjudicated by any court to have infringed the provisions of any law and the Bangladesh Bank is of the opinion that the infringement is of the nature that the association of such person is or harmful to the interests of the bank company.
- 3. Under sub-section (2) it may be provided in an order that the said person shall not without prior permission of the Bangladesh bank in any way directly or indirectly be involved with or take part in the management of the said bank company or any other bank company to a period not exceeding 5 years as referred to, in the said order.

4. No order under sub-section (2) shall be executed in the matter of the concerned person without giving him an opportunity of giving an explanation to the Bangladesh Bank against the proposed order.
5. Under this section any decision or order made by the Bangladesh Bank shall be final.

3. MINIMUM PAID UP CAPITAL AND RESERVE

Section 13 (2) requires that The paid up capital and reserve fund of a new bank, specialized bank and all bank companies operating in Bangladesh including the banks registered outside Bangladesh shall not be less than one hundred crore taka or equal to risk-based capital fixed by the Bangladesh Bank, whichever is higher. Bangladesh Bank can change the amount of necessary paid up capital and reserve fund for a bank under this subsection.

Sub-section 3 states that in case of Bank Company registered outside Bangladesh, if that bank company does not deposit in Bangladesh Bank in cash or through approved securities without liability or partly in cash and partly through such approved securities or through any such asset fixed by the Bangladesh Bank to be kept in Bangladesh Bank as per sub-section (2), that bank company shall not be deemed to comply provisions of that sub-section.

When the total value of paid up capital and reserve fund is not equal to the amount referred to in this section-

- (a) No bank company in existence since the commencement of this Act, shall after the expiry of two years carry on business in Bangladesh, and;
- (b) No other bank company other than those referred to, in clause (a) shall after the commencement of this Act, start its business.

However, Bangladesh bank may if it deems fit in any special case extend the period referred to, in this sub-section to the extent not exceeding one year.

If the Bangladesh Bank is of the opinion that any bank company is in default to maintain the minimum paid up capital and reserve in compliance with the provision of this section, it shall be liable to pay the fine prescribed by law.

4. REGULATION AS TO PAID-UP CAPITAL, SUBSCRIBED CAPITAL, AUTHORIZED CAPITAL AND VOTING RIGHTS OF SHAREHOLDERS

Section 14(1) of the Bank Companies Act states that no bank company other than a new bank or a specialized Bank incorporated in Bangladesh shall commence business in Bangladesh unless it satisfies the following conditions:

- a) Subscribed capital of the company shall not be less than one-half of the authorized capital.
- b) Paid-up capital of the company shall not be less than one-half of the subscribed capital.
- c) The conditions referred to under clause (a) and (b) shall be complied with within the period not exceeding two years as the Bangladesh Bank may direct if the capital of the company is increased.
- d) The capital of the company consists of ordinary share only.
- e) Subject to the provisions referred to, in clause (f), the voting rights of any one share holder are strictly proportionate to the contribution made by him to the paid up capital of the company.
- f) Voting rights of any one share-holder, except those of the Government, do not exceed five percent of the total voting rights of all the share holders.

According to sub-section (2), every Chairman, Managing Director or Chief Executive Officer by whatever name called of a bank company, shall supply to the Bangladesh Bank through that bank

company returns of full particulars to the extent and value of his holding of shares, whether directly or indirectly in the bank company of any change to the extent of such holding or any variations in the rights related there and such other information relating to those shares as the Bangladesh Bank may, by order, require and in such form and at a such time as may be specified in the order.

5. RESTRICTIONS ON PURCHASE OF SHARES OF BANK

Section 14(A) requires that-

1. The shares of a Bank shall not be centralized to a person, company or among members of the same family and no person, company or members of a family shall purchases more than ten percent share of a bank either personally, jointly or in both.
2. The purchaser at the time of purchasing share of a bank shall submit an oath or declaration that he is not purchasing the share as a nominee or in benami of other person and has not bought any benami (in disguise) share before.
3. If the subject matter of the submitted oath or declaration is proved as false at any time, in that case all shares of the concerned bank of the person submitting oath or declaration, shall be forfeited to the Bangladesh Bank.
4. If any one mentioned in sub-section (1) holds more share than fixed in that subsection immediately before the commencement of the Bank Companies Amendment Act 1995, he within one year of commencement of that Amendment shall be able to sell such share to a person who is not a member of that company or family or to such company or body who has no share in that company.
5. If additional share mentioned in sub-section (4) is not sold within the time limit and conditions mentioned therein, in that case that additional share shall be vested in a body of the government or fixed by the government for this purpose and the government or the concerned body shall pay the face value or marked value of the share whichever is less.
6. Nothing in this section shall be applicable to government.

6. ELECTION OF NEW DIRECTORS

Section 15 lays down the rules regarding the election of new directors:

1. The Bangladesh Bank may by order, direct any bank company other than a new bank or a specialized bank to call a general meeting of the company within two months from the date of the order or within the time extended by the Bangladesh Bank in this behalf to elect new directors and the Bank Company shall be bound to comply with the order.
2. The Director elected under sub-section (i) shall hold the office till the date up to which his predecessor in-office would have held office if the election was not held.
3. Any election duly and properly held under this section shall not be called in question in any court.
4. The Bangladesh Bank may, by general order, make provisions directing every bank company other than a new bank or a specialized bank to take prior approval of the Bangladesh bank before the appointment of Managing Director or Chief Executive Officer by whatever name called and such appointed Adviser, Managing Director or Chief executive officer shall not be dismissed, released or removed without obtaining the prior approval of the Bangladesh Bank.
5. Notwithstanding anything contained in any other act or memorandum of articles of association or rules of association, Bangladesh Bank may appoint not more than two directors in the Board of Directors of the Bank Company following the manner prescribed by law.

7. VACATION OF THE POST OF DIRECTOR (Sec. 17):

1. If any Director of a Bank Company fails to:
 - (a) pay any advance or debt or any loan or any installment of that advance of loan or interest therein;
 - (b) pay any amount due on him, for any guarantee paid by himself; or
 - (c) perform any act to be done by himself, whose liability he has undertaken in writing to perform ; and such failure continues for a period of two months after notice in writing had been served on him by the concerned Bank Company or Financial Institution through the Bangladesh Bank Calling upon him to make the payment;

Any person receiving a notice under the sub-section- (2) May explain his tatter or conduct if any, to the Bangladesh Bank within 30 days from the date of receipt of such notice and a certified copy of it shall be sent to the Bank Company or Financial institution, as the case may be.
2. Within 15 days from the receipt of his explanation under the sub-section (2), the Bangladesh Bank will pass its decision.
3. The decision under Sub-section (2) of the Bangladesh Bank shall be final.
4. If there is any vacation of the post of a Director, the amount due on him to the concerned Bank Company of Financial Institution shall be realized by adjusting the share value of the Director whose post has fallen vacant and the amount which shall be due after adjustment, shall be treated as public Demand and shall be recoverable under Public Demands recovery Act, 1913 (Beng. Act. III of 1913).
5. The Director whose post has fallen vacant under this section, within one year from the date of payment of amount in full, due to Bank Company and Financial institution, shall not be competent to be the Director of that Bank Company or Financial Institution or any other Bank Company or Financial Institution.

8. RESERVE FUND

According to section 24,

1. Every bank company incorporated in Bangladesh shall create a reserve fund and till the amount in such fund including the amount if any, in the share premium account is less than its paid up capital of such sums as may be determined by Bangladesh Bank off and on in case of a bank company shall, out of the balance of profit of each year as exhibited in the profit and loss account prepared under section 38 and prior to an amount is transferred to Government or dividend is declared, transfer to the reserve fund a sum equivalent to not less than twenty percent of such profit.
2. Any bank company appropriating any sum or sums from the reserve fund or the share premium account, it shall within twenty one days since date of such appropriation inform the same to the Bangladesh Bank explaining the portion in respect of such appropriation. Bangladesh Bank in any special case extend the period of twenty one days by such period as it deems fit or condone any delay in the making of such report.

9. SUBSIDIARY COMPANIES

According to section 26(1), a bank company shall not form any subsidiary company except a subsidiary company for the purpose referred to below:

- a) The undertaking and executing of trusts;
- b) To take the responsibility of the administration of estates as executor, trustee or otherwise;

- c) Ensuring the arrangement of safe deposit vaults:
- d) Carrying on banking business according to the principles of sharia;
- e) With the prior permission in writing of the Bangladesh Bank.
 - i. The carrying on the banking business exclusively outside Bangladesh;
 - ii. The carrying on the banking business based on the transfer of deposits in foreign currency acquired from non-residents;
- f) Taking initiatives for those businesses which are according to Bangladesh Bank helpful for expansion and development of bank-business in Bangladesh or necessary for public interest or deems to be helpful in any other way.

Sub-section (2) states that except as provided in sub-section (1) no bank company shall hold shares in any company whether as pledge or mortgage or exclusive owner of an amount exceeding such as:

- a) Thirty percent of its paid up share capital and reserves or
- b) Thirty percent of the paid up capital of that company. Provided that, any bank company which on the date of introduction of this Act holding any shares in contravention of the provisions of this sub-sections shall not be liable to any penalty there for if that bank companies-
 - i. Informs the Bangladesh Bank of the mater without delay and
 - ii. Lessens its holding of shares in accordance with the approved limits of this sub-section within the period not exceeding two years as the Bangladesh Bank may fix for this purpose.

Provided further that no bank company shall hold shares in aggregate exceeding 10% of its total liabilities.

According to sub-section 3, notwithstanding anything contained in sub-section (2) if any Managing Director of a Bank Company remains involved in operation of a company or if there is any interest in that case after expiry of one year from the commencement of the Act, concerned Managing Director or Manager of that company shall not hold any share in that company.

10. RESTRICTIONS ON PAYMENT OF LOANS AND ADVANCES

The primary function of a bank is to collect money from one group of people in the form of deposit and to grant advance and loans to other groups of people. However, there are certain restrictions on granting loans and advances. According to section 27(1) no bank company shall pay any loans or advances against the security of its own share, or sanction unsecured loans or advances to, or make loans and advances on the guarantee of following persons or organizations:

- (i) Any of its directors
- (ii) Any of the family members of its directors.
- (iii) Any firm or private company wherein the banking company or any of the persons are interested as director, proprietor or partner or
- (iv) Any Public Ltd. Co. managed by any director of the bank company or by any member of family of any of its directors and wherein any of the persons referred to above has such share on the strength of which he is empowered to vote for minimum 20% of the share holding of the company.

According to sub-section (2), no bank company shall pay loans or advance without the approval of the majority of the directors of that bank company excluding the director concerned:

- (a) to any of its directors or

- (b) to individuals, firms or companies wherein it or any of its directors is interested or partner, director or guarantor as the case maybe.

Sub-section (4) states that the Managing Director of every bank company before the end of the month succeeding that to which the return relates submit to the Bangladesh Bank a return in the prescribed form and manner showing the particulars of:

- (a) all loans and advances sanctioned by it to companies private as well as public in which it or any of its directors is concerned as a director and
- (b) all loans and advances sanctioned by it to public companies in which it or any of its directors is concerned as managing agent or guarantor.

If on verification of any return submitted under sub-section (4) it appears to the Bangladesh Bank that any loans or advances referred to in that sub-section have been sanctioned adversely to the interest of the depositors of the bank company, the Bangladesh Bank may by order in writing prohibit the bank company from sanctioning any such further loans or advances on the grant there of as it thinks fit and may by like order direct the bank to secure the payment in advance of any such loans or advances within such time as may be specified in the order [section 27(5)].

11. POWER OF THE BANGLADESH BANK TO REGULATE ADVANCES BY THE BANK COMPANIES

Section 29 of the Bank Companies Act provides the following powers to Bangladesh Bank for regulating the advances of the bank companies:

1. Whenever the Bangladesh Bank is satisfied that it is necessary in the interest of the public to do so it may formulate the policy related to advances to be adopted by the bank companies in general or by any bank company in particular and when the policy has been so determined, all bank companies or their bank company conceded as the case may be- shall be bound to follow the policy as so determined.
2. Without prejudice of the power in general conferred by sub-section. (1), the Bangladesh Bank may direct the bank companies either in general or any specialized bank - or special class of bank companies in the following matters:
 - a) the credit ceilings to be followed.
 - b) the minimum ratio of petty loans or other loans to the total advances to be followed:
 - c) the motive for which advances may or may not be made;
 - d) the maximum limit of advances which may be given to any bank company or special group of bank companies or a person or community of persons.
 - e) secured advance and ceiling of interest on advance.
 - f) the rates of interest to be fixed on advances.
3. If any bank company is in default in complying with the direction referred in clause (a) and (b) of sub-section (2), the bank company shall by order of the Bangladesh Bank be held to be liable to deposit such amount as may be determined by it and the bank company shall subject to the condition specified by that bank under compulsion to comply with the direction. However, the Bangladesh Bank shall not direct the said Bank Company to deposit an amount not higher than the amount of which the default has taken place.
4. The amount deposited with the Bangladesh Bank under sub-section (3) or any part thereof may be remitted by it to the -bank company conditionally or unconditionally by order in black and white.

12. LICENCE OF BANK COMPANIES

Section 31 states that -

1. Except the circumstances laid down in this section, no Bank company shall carry on banking business in Bangladesh without banking license issued in that behalf by the Bangladesh Bank.

However, nothing shall be deemed to prohibit Bank Company already in existence on the commencement of this Act from carrying on banking business if (a) its application is under consideration for sanctioning a licence; or, (b) it is not intimated by the Bangladesh Bank by notice that a licence shall not be sanctioned to it. Moreover, the Bangladesh Bank shall not give a notice referred to above to a bank company already in existence on the commencement of this Act prior to the expiry of two years in the case of bank companies registered in Bangladesh and of six months in the case of bank companies incorporated outside Bangladesh confined to in sub-section (1) of section 13 or of such further period as the Bangladesh Bank may under the provision to that sub-section think fit to sanction.

2. While issuing a licence under sub-section (1) the Bangladesh Bank may impose any condition as it may think fit and proper.
3. Every bank company already existing on the commencement of this Act prior to the expiry of six months from such commencement and any other bank company prior to commencing banking business in Bangladesh shall apply in black and white to the Bangladesh Bank for a licence under this section.
4. Prior to granting any licence under this section, the Bangladesh Bank is to be satisfied by an inspection of the books of the bank companies or otherwise that all or any of the following conditions are complied with ; namely-
 - (a) that the company is to be in a position to meet the claims of the present or future depositors.
 - (b) that the activities of the company are not being or are not likely to be conducted detrimental to the interest of its present or future depositors.
 - (c) that in the case of bank company incorporated outside Bangladesh, the government or law of the country where it is registered provides the same facilities to bank companies registered in Bangladesh as the Government or law of Bangladesh sanctions to bank companies incorporated outside Bangladesh and the company complies with all the provisions of this Act applicable to bank companies incorporated outside Bangladesh.

13. CANCELLATION OF LICENCE OF BANK COMPANY

According to section 31(5), The Bangladesh Bank may cancel licence granted to Bank Company:

- (a) if the company stops to carry on banking business in Bangladesh ; or,
- (b) if the company on any occasion fails to comply with any condition referred to under sub-section (2) of section 31 ; or
- (c) if the company on any occasion fails to comply with any of the conditions referred to under sub-section (4) of section 31.

Provided that prior to cancelling a licence under clause (b) or clause (c) of this sub-section if the Bangladesh Bank is satisfied that the delay will not be prejudicial to the interest of its depositors, shall sanction to the company on such terms it may specify an opportunity of taking the necessary steps for complying with such condition.

According to sub – section (6), any banking company dissatisfied by the decision of the Bangladesh Bank in canceling a licence under this section may within thirty days since the date of communication of such decision to it may prefer appeal to the Government.

14. MAINTENANCE OF LIQUID ASSETS

Section 33 sets the following provisions relating to holding of liquid assets:

Every bank company shall preserve in Bangladesh in cash, gold or unencumbered approved securities (unencumbered approved securities of bank company shall include its approved securities lodged with another institution for an advance or any other credit arrangement to the extent to which such securities have not been drawn against or availed of) the value of which shall not at the end of any business be less than such percent of the total time and demand liabilities in Bangladesh as the Bangladesh Bank determine from time to time.

In calculating the amount provided for in sub-section (1), any deposit required under the provision to sub-section (3) of section 13 to be made with the Bangladesh Bank by a bank company incorporated outside Bangladesh and any balance preserved in Bangladesh by a bank company in current account with the Bangladesh Bank or its agent or both or in profit and loss sharing term, deposit account with the Bangladesh Bank shall be deemed to be cash maintained.

The manner of maintaining assets and liabilities and the ratio of class wise maintainable assets shall be fixed by the Bangladesh Bank.

15. AUDITOR'S REPORT

Audit means independent examination of books of accounts by qualified persons to see whether they represent a true and fair view of the state of affairs of the company. Section 39(1) of the Bank Companies Act requires that financial statements of a Bank Company shall be audited by a person duly qualified under the Bangladesh Chartered Accountants Order, 1973 (P. O. No 2 of 1973) or by any other law for the time being in force to be an auditor of companies provided the auditor is approved by the Bangladesh Bank.

The auditor shall have the powers to exercise the functions vested in and discharge the duties and be subject to the liabilities and penalties imposed on auditors of companies by [section 213] of the Companies Act 1994.

Sub-section (3) of section 39 of Bank Companies Act states that in addition to the affairs which are under the Companies Act, the auditor of a Bank Company is required to state the following in his report:

- (a) whether or not the financial statement shows a true picture of profit and loss for the period concerned.
- (b) whether or not the financial statement has been prepared accurately in accordance with the general accounting procedure.
- (c) whether or not the financial statement has been prepared according to the provisions of relevant existing laws or rules and the instructions issued by the Bangladesh Bank relating to accounts.
- (d) whether or not sufficient provisions have been made for realization of doubtful advance or doubtful assets.
- (dd) whether or not the limit or repayment of advance or loan fixed by the Bangladesh Bank from time to time is satisfactory or not.
- (e) whether or not the financial statement has been prepared in accordance with the statement issued by the Bangladesh Bank in consultation with the professional accountants of Bangladesh.
- (f) whether or not the bank company has properly maintained and consolidated all records and accounts received from its branches.

- (g) whether or not the information and explanations asked by the auditor have been found to be satisfactory.
- (h) any other matter which the auditor considers essential to be brought to the notice of the share holders of the Bank company.

16. DUTIES OF THE AUDITOR

Section 39(4) states that if an auditor in the course of the performance of his duties as an auditor of any bank company is satisfied that-

- (a) there has been serious violation of this Act or serious irregularities have taken place in the observance of it;
- (b) out of fraud or dishonesty a criminal offence has been committed;
- (c) due to loss the capital of the bank company has fallen below 50%.
- (d) serious irregularities have taken place comprising the irregularities jeopardizing the security of the creditors in payment of debts or;
- (e) there is doubt whether the assets of the company is sufficient to meet the claims of the creditors.

If so happens, he shall without delay report the matter to the Bangladesh Bank informing the same.

17. SPECIAL AUDIT

Section 39(A) states that if, after considering the audit or inspection report under section 39 or 44 respectively or of any other report received otherwise, the Bangladesh Bank is satisfied that it is vital to audit the activities or part of the activities of any bank company, the Bangladesh Bank may cause the activities or part of the activities of that bank company to be audited by persons referred to in section 39 (1)].

18. AUDITORS TO BE DECLARED DISQUALIFIED

According to section [39(B)(1)] where there is reasonable ground for the Bangladesh Bank to be satisfied in this behalf that, any auditor engaged in auditing any bank company has failed in discharging his responsibilities or the auditor has failed in discharging the responsibilities entrusted on him, then Bangladesh may, on the recommendation and inquiry of Bank the committee constituted by it in this behalf, declare the auditor disqualified to audit any bank company for a period not exceeding two years. Before the giving of any such declaration, the auditor shall be given an opportunity of being heard.

Sub - section (2) states that any person aggrieved by any declaration under sub-section (1) may, within fifteen days from the date of declaration under that sub-section, appeal to the Board of Directors of the Bangladesh Bank and the decision of the Board shall be final in this behalf.

19. POWERS OF THE BANGLADESH BANK TO REMOVE THE DIRECTORS

According to section 46 (1) in a case where the Bangladesh Bank is satisfied that it is inevitable to remove the chairman, director, or chief executive by whatever name called of a bank company in the interest of the public or to prevent the affairs of a bank company detrimental to the interest of its depositors or to ensure the proper management of the bank company, the Bangladesh Bank may for reasons to be recorded in black and white by order remove from office such chairman or director or the Chief Executive of the bank company.

No person removed from office under sub-section (1) shall be entitled to claim any compensation for the loss or termination of office (sub-section 5).

However, according to sub – section (2), before an order is given, the concerned person or persons shall be given a reasonable opportunity for explanation against the proposed order. But if according to

the opinion of the Bangladesh Bank any delay would be prejudicial to the public interest or the interest of the bank company or its depositors, the Bangladesh Bank may direct that the aforesaid chairman or director or chief executive shall not with effect from the date of the order, act as such chairman or director or chief executive of the bank company or in any way shall not be concerned with the management of the bank company. Any person appointed by the Bangladesh Bank in this behalf shall act as such chairman or director or chief executive of the bank company.

Sub-section (4) states that any person appointed as chairman or director or chief executive under sub-section (2) shall hold office during the pleasure of the Bangladesh Bank subject to such conditions as may be specified in the order of his appointment and for such period, not exceeding one year as the Bangladesh Bank may specify; and shall not incur any obligation nor liability for anything which is done in his capacity in the course of discharge of his duties.

Nothing in this Act shall be applicable to a Chairman, Director, Chief Executive in whatever name is called nominated by the government (sub-section 6).

20. POWER OF BANGLADESH BANK TO DISSOLVE BOARD OF DIRECTORS OF A BANK COMPANY

Section 47 lays down the following rules relating to dissolution of board of directors of a bank:

1. Where the Bangladesh Bank is satisfied that-
 - (a) the activities of the board of directors, by whatever name called, of a bank company is or is likely to be detrimental to the interest of the bank company or its depositors or otherwise undesirable ; or
 - (b) for all or any of the reasons mentioned in sub-section (1), of section 46, it is necessary to do so, the Bangladesh Bank may, for reasons to be recorded in writing by order, dissolve the Board of directors of a bank company with effect from such date and for such period as may be specified in the order.
2. The period of dissolution specified in and order under subsection (1) may from time to time be extended by the Bangladesh bank so, however, that the total period of suppression does not exceed two years.
3. All powers and duties of the Board of directors shall during the period of dissolution, be exercised and performed by such person as the Bangladesh Bank may from time to time appoint in this behalf.
4. The provisions of sub-section (2), (3), (4) and (5) of section 46 shall, with the necessary modifications, apply to an order made under this section.

21. FURTHER POWERS AND FUNCTION OF THE BANGLADESH BANK

According to section 49 (1), the Bangladesh Bank may-

- a) make caution or prohibit bank companies generally, or any bank company in particular, against entering into any particular transaction or class of transactions;
- b) require bank companies generally, or any bank company in particular, to refrain from taking such actions as it may specify in relation of any matter relating to the business of such bank company or companies, or to take such action in relation thereto as the Bangladesh Bank thinks fit;
- c) on a request from the bank companies concerned and subject to the provisions of section 76, assist as intermediary or otherwise, in proposals for the amalgamation of such bank companies;
- d) during the course, after the completion, of any inspection of a bank company under section 44, by order in writing and on such terms and conditions as may be specified therein-

- i. require the bank company to call a meeting of its directors for the purpose of considering any matter or may direct any officer of it to discuss such matter with an officer of the Bangladesh Bank,
- ii. depute its officer to observe the proceedings at any meeting of the Board of directors of the bank company or of any committee or of any other body constituted by it and require the bank company to give an opportunity to the officer so deputed to be heard at such meetings and also require such officer to send a report of such proceedings to the Bangladesh Bank,
- iii. require the Board of Directors of the bank company or any committee or any other body constituted by it to give in writing to any officer specified by the Bangladesh Bank in this behalf to his usual address all notice of, meeting of the board, committee or other body constituted by it;
- iv. appoint its officer to observe the manner in which the affairs or the bank company or its branches are being conducted,
- v. require the bank company to make within such time as may be specified in the order, such changes in the management as the Bangladesh Bank may consider necessary in consequence of the state of affairs disclosed during or by the inspection.

Sub-section (2) requires that the Bangladesh Bank shall make an annual report to the Government on the trend and progress of banking in the country and in that report suggestion for the strengthening of banking business throughout the country and the steps required to be taken in that behalf shall be stated.

22. ALTERATION OF MEMORANDUM OF A BANK COMPANY

According to section 117, notwithstanding anything contained in the Companies Act, no application for the alteration of the memorandum of articles of a bank company shall be maintainable unless the Bangladesh Bank certifies that there is no objection to such alteration.

QUESTIONS FOR DISCUSSION

1. Explain section 7 of Bank Companies Act highlighting the businesses a bank company can perform.
2. Explain the provision of Bank Companies Act regarding restrictions on different types of appointment.
3. Explain the provision of Bank Companies Act regarding paid up capital and reserve.
4. What restrictions are there about the purchase of shares of a bank?
5. Explain section 15 of Bank Companies Act regarding election of new directors.
6. Under what circumstances the post of director of a bank becomes vacated?
7. Explain the requirement of maintaining reserve fund under the Bank Companies Act 1991.
8. What are the restrictions on payment of loans and advances as provided in the Bank Companies Act 1991?
9. State the provisions of Bank Companies Act 1991 regarding holding of liquid asset by a bank company.
10. Under what grounds Bangladesh Bank can cancel the licence of a bank company?
11. Explain the power of Bangladesh Bank to dissolve Board of directors of a bank.
12. Make a summary of powers conferred to Bangladesh Bank under the Bank Companies Act 1991.
13. Explain the provisions and contents of auditor report of a bank.

I. PROCEDURE FOR SUSPENSION OF BUSINESS

Section 64 lays down the following provisions relating to suspension of business of a bank company:

1. When a bank company is temporarily unable to meet its obligations, it can apply to The High Court Division which may make an order, staying the commencement or continuance of all actions and proceedings against the company for a fixed period of time on such terms and conditions as it shall think fit and proper, and may extend the period so that the total period of moratorium does not exceed six months.
2. A copy of the order of The High Court Division shall be forwarded to the Bangladesh Bank.
3. When an application is made, the High Court Division may appoint a special officer who shall take under his control all the assets, books, documents, effects and realizable claims to which the bank company is entitled and shall also exercise such other powers as the High Court Division may deem fit to confer on him having regard to the interest of the depositors of the bank company.
4. Where the Bangladesh Bank is satisfied that the affairs of bank company in respect of which an order has been made, are being conducted in a manner detrimental to the interest of the depositors, it may make an application to the High Court Division for the winding up of the company, and where any such application is made, the High Court Division shall not make order extending the period for which the commencement or continuance of all actions and proceedings against the company were stayed.

2. WIND UP BY THE HIGH COURT DIVISION

The winding up or liquidation of a bank company means the termination of the legal existence of the bank by stopping its business, collecting its assets and distributing its assets among the creditors and shareholders. There are different modes of winding up and one of them is winding up by Court. Section 65 (1) states that the High Court Division shall order the winding up of a bank company if

- (a) the bank company is unable to pay its debts or
- (b) an application for its winding up has been made by the Bangladesh bank.

3. CIRCUMSTANCES FOR APPLICATION MADE BY THE BANGLADESH BANK FOR WINDING UP OF A BANK

Sub- section [(3) (a)] of section 65 states that The Bangladesh Bank may make an application under this section for the winding up of a bank company if the bank company:

- (i) has failed to comply with the requirements under section 13, or
- (ii) has by reason of the provisions of section 31, become disentitled to carry on banking business in Bangladesh, or
- (iii) has been prohibited from receiving fresh deposits by an order under clause (a) of sub-section (5) of section 44 or under sub-clause (b) of clause (5) of Article 36 of the Bangladesh Bank Order, 1972 (P.O. No. 127 of 1972), or
- (iv) having failed to comply with any requirement of this Act, other than the requirement laid down in section 13, has continued such failure, after notice in writing of such failure has been conveyed to it; or
- (v) contravened any provision of this Act and continue such contravention after the Bangladesh Bank conveys the bank company about the contravention by notice in this behalf.

Sub- section [(3) (b)] of section 65 further states that The Bangladesh Bank may make an application under this section for the winding up of a bank company if in the opinion of the Bangladesh Bank-

- (i) a compromise or arrangement sanctioned by a court cannot be implemented satisfactorily with or without modification, or,
- (ii) the returns, statements or information furnished to it under disclose that the bank company is unable to pay its debts, or,
- (iii) the continuance of the bank company is prejudicial to the interest of its depositors.

4. BANK COMPANY DEEMED TO BE UNABLE TO PAY ITS DEBTS

According to [65(4)] of the Bank Companies Act, without prejudice to the provisions contained in [section 42] of the Companies Act. 1994, a bank 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 the company's offices or branches within two working days, or
- (b) such demand is made else where and if Bangladesh Bank certifies that the bank company is unable to pay its debts, or
- (c) Bangladesh Bank certifies in writing that the bank company is unable to pay its debts.

5. APPOINTMENT OF COURT-LIQUIDATOR

Section 66 sets the following provisions for the appointment of court-liquidator for the winding up of a bank company:

1. When, having regard to the number of proceedings for the winding up of bank companies or the extent of the work involved in such proceeding the Government is of the opinion that it is necessary or expedient to attach a court liquidator to the High Court Division, it may, in consultation with the Bangladesh Bank, appoint a court liquidator for such time as the Government may think fit for the purpose of conducting all proceedings for the winding up of bank companies and performing such duties in reference thereto as the High Court Division may impose.
2. Where there is a court liquidator appointed under subsection (1) and an order is passed by the High Court Division for the winding up of any bank company, then the court liquidator shall become the official liquidator of the bank company.
3. Where there is a court liquidator attached to the High Court Division and any proceedings for the winding up of a bank company, in which any person other than the Bangladesh Bank or the court liquidator has been appointed as official liquidator, is pending before the High Court Division immediately before the commencement of this Act or the date on which the court liquidator is so attached to the High Court Division, whichever is later, then the person appointed as official liquidator shall, on such commencement or, as the case may be, on the aforesaid date, be deemed to have vacated his office, as such and the vacancy so caused shall be deemed to be filled in by the appointment of the court liquidator as the official liquidator.

However, where the High Court Division, after giving the court liquidator and the Bangladesh Bank an opportunity of being heard, is of the opinion that the appointment of the court liquidator would be detrimental to the interest of the depositors of the bank company, it may direct the person appointed as the official liquidator to continue to act as such.

6. BANGLADESH BANK AS OFFICIAL LIQUIDATOR

According to section 67, where in any proceeding for the winding up of a bank company by the High Court Division, the Bangladesh Bank applies for an order appointing the Bangladesh Bank or any individual as the official liquidator of the bank company in that proceeding, the application shall ordinarily

be granted and the liquidator, if any, functioning in such proceeding shall vacate office upon such appointment.

7. RESTRICTION ON VOLUNTARY WIND UP

According to section 75 of the Bank Companies Act 1991, notwithstanding anything to the contrary contained in [section 286] of the Companies Act 1994, no bank company which holds a licence granted under section 31 may voluntarily wound up unless the Bangladesh Bank certifies in writing that the company is able to pay in full all its debts to its creditors as they accrue, and without prejudice to the provisions contained in [section 314 and 315] of that 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 stage during the voluntary winding up proceedings, the company is not able to meet such debts as they accrue.

8. POWER OF HIGH COURT DIVISION TO DECIDE ALL CLAIMS IN RESPECT OF BANK COMPANIES

Section 79 states that The High Court Division shall have exclusive jurisdiction to entertain and decide on the following cases, whether such cases have arisen or arises before or after the date of the order for the winding up of the bank company or before or after the commencement of this Act:

- a) any claim made by or against a bank company which is being wound up, including claims by or against any of its branches in Bangladesh;
- (b) any application made under [section 228] of the Companies Act, 1994, by or in respect of a bank company;
- (c) any question of priorities or any other question whatsoever, whether of law or fact, which may relate to or arise in the course of the winding up of a bank company.

QUESTIONS FOR DISCUSSION

1. State section 64 of Bank Companies Act relating to suspension of business of a banking company.
2. Under what circumstances Bangladesh Bank can apply for the winding up of a bank?
3. When a bank is considered unable to pay its debts?
4. State the provisions for the appointment of court-liquidator for the winding up of a bank company.
5. What restrictions are there in the Act regarding voluntary winding up of a bank?

Question for Self Assessments

1. "Demand Liabilities" and "Banking companies"
2. Conflict or inconsistencies between the Memorandum of Association and Article of Association and the Banking Companies Act.
3. 5 vital forms of business in which a banking company may engage in.
4. Financial year of banking companies.
5. Requirement of Paid up capital & Reserve fund of a banking company.
6. Paid up capital & Reserve fund of a B/C incorporated outside Bangladesh.
7. Restriction of family holding of shares of a Banking Company.

8. Election of new directors & the question in court.
9. Chief Executive of a Banking Company and Bangladesh Bank.
10. Circumstances that would lead to vacating of the Directors' office.
11. The Vacating director to hold the office of director in Banking Company
12. Restriction on Commission, brokerage & discount etc
13. Payment of dividend by a banking company.
14. Common directorship of a person.
15. Provision regarding Reserve Fund
16. Cash reserve requirement of a B/C.
17. Restrictions on loans & advance. 27(a+b)
18. When Bangladesh Bank may cancel license granted to B/C.
19. Signing of the B/S + P/L of a B/C
20. A part from companies Act, auditors are required for additional reporting, what are those?
21. Events of the B/C on which the auditors are to report to Bangladesh Bank.
22. Desecration of Bangladesh Bank to disqualify auditors appointed by Shareholders.
23. Grounds to empower BDB to give direction (45)
24. When BDB can propose taking over a Banking Company by the Govt. of Bangladesh.
25. Tribunal for compensation to shareholders of acquired bank.
26. Referential payment to depositors.
27. Restrictions of voluntary winding up.
28. Suspension of business of B/C by the Govt. of Bangladesh.
29. Liquidators report and public examination of directors & audit.
30. Assessing damages against delinquent directors.
31. Advice of BDB in winding up proceedings.
32. NOC for changing Memorandum of Association & Article of Association of Bank.
33. Consultation with BDB by Govt. of Bangladesh to make rules.