BANGLADESG LAWS ON BANKS AND BANKING

(SECOND EDITION)



M. ABUL BASHAR BHUIYA

BANGLADESH LAWS

ON

BANKS AND BANKING

(SECOND EDITION)

ABOUT THE AUTHOR

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Government of Bangladesh

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From : Md. Dalil Uddin,
Assistant Secretary (Admn.)

To : Mr. Md. Abul Bashar Bhuiya
Joint Secretary,
Ministry of Law, Justice & Parliamentary Affairs

Sub : Permission for publication of the book named Bangaldesh Laws on Banks and Banking.

Sir,

In response to your application dated 28-05-94 on the above noted subject, I am directed to inform you that the Government has been pleased to grant permission for the publication of the book named Bangladesh Laws on Banks and Banking written by you.

Sincerely yours,

Sd/-
(Md. Dalil Uddin)
Assistant Secretary

BANGLADESH LAWS

ON

BANKS AND BANKING

(SECOND EDITION)

Dedicated to the sweet memory of my beloved late father, mother, father-in-law, mother-in-law, brothers and sisters.

AUTHOR

PREFACE
TO THE
FIRST EDITION

In the present day world, each and every one of us is concerned with the banks and financial institutions in some or the other way. These institutions being the wheels on which industry and commerce run, their co-operation is necessary in every economic activity. This is increasingly being so in the field of agriculture also. In fact, there is hardly any aspect of development activity, whether state inspired or otherwise, where banks and financial institutions do not have a major role to play. Litigations arising out of banking and allied matters have also increased tremendously. Needless to mention that, all such matters are regulated and governed by statute. Naturally, every person dealing with them has to know the concerned laws and the legal aspects in this behalf.

As in the case of any other new and developing nation, the laws of Bangladesh have been subjected to frequent changes and more so in the case of banks, banking and allied matters. But there is hardly any book with up-to-date position of these laws. Besides, the legislative instruments made in quick succession immediately after the successful War of National Independence for the rehabilitation of the war ravaged banking sector of the new born state are almost foregotten laws. But they are of immense national importance for every person interested in acquiring some knowledge of the history of this aspect of our national life. Most of these legislations do not form part of our statute book, because they have either been repealed by now or have become redundant with the changed political and economic conditions of the country. But due to their historical importance, a writer of a standard book must not be oblivious of them. Hence, part to the endeavour of this book is directed towards that requirement.

Unfortunately, the study of banking law is generally neglected by bank officials in our country. But if banking is to be developed on proper lines, it is essential that bankers should know the laws on banks and banking. However, it has been felt that absence of a dependable law book on bank and banking is a

major factor for the negligence referred to above. It is hoped that this book will meet that long felt necessity.

Apart from the legal aspect of banking, the book contains matters relating to non-banking financial institution. They are the most recent development in our financial sector. They will be of much interest for enterprenuers. Some of the other important inclusions of the book are the following, namely:-

(a) Instruments of the Proclamations of Independence;
(b) Discussion on Negotiable Instruments;
(c) Matters relating to Exchange Control;
(d) Specimen Forms used in banking transactions;
(e) Some Articles on Loan, Lending, etc.
(f) Some Legal Decisions.

The book is an outcome of my personal academic interest and my official position has no bearing on it. Over the years of my service, I had many occasions to associate myself in the search and research on banking laws and allied subjects. This had generated in me not only a confidence about my standing on the subject but also an urge for undertaking an endeavour to write a standard book on the subject. But as soon as I started, I discovered that it is not an easy task and I frankly admit that I have not been able to reach the standard I cherished. However, keeping in mind that no one is omniscient, I have tried my best to make the book useful for the readers. I sincerely hope that this humble attempt will prove to be of good assistance to the bankers, industrialists, businessmen, enterprenuers, Judges, legal practitioners, students and teachers of banking law and to all other concerned. The foreign and international organisations having interest in the financial and monetary affairs of Bangladesh shall also find this book a source of instant and working facility.

My grateful thanks are due to those friends who have encouraged me to make this possible. I would like to express my sincere thanks and gratitute in a very special way to Mr. M. Humayun Khadem, Chairman, Rajdhani Unnayan Katripakha for his inspiration and assistance throughout.

Suggestions to improve the book are welcome.

10th July, 1994 M. Abul Bashar Bhuiya

FOREWARD
BY
BANGLADESH BANK GOVERNOR

(FOR FIRST EDITION)

Banking occupies a pre-eminent position in a modern economy. It can be considered as an important instrument of both economic and social change. Banks primarily deal in money and act as an intermediary between the saver and the investor. Increasingly they are offering diversified services to their constituents. Changes and innovations in the banking structure and services they render are taking place continuously.

Legal frame-work is part and parcel of the business of banking. With the emergence of Bangladesh as an independent state, rapid fundamental changes took place in the banking sector. From total nationalisation of the banking industry, Bangladesh now has a mixed structure comprising both public and private sector banks. As a result, new enactments have been made from time to time to suit the requirements of the day.

Mr. Abul Bashar Bhuiya has produced a very useful book on Bangladesh laws on banks and banking. As a legislative drafter, he has proficiency in and knowledge about the laws of Bangladesh in general and banking laws in particular. The book in based on a long and intensive study and research, coupled with the author's wide and first-hand experience, academic and otherwise. It dwels in a clear, cogent and comprehensive manner, on the diverse aspects of banking problems and practices, the laws, rules and regulations governing them. It is indeed a laudable effort in the field of publications on banking in our country.

The book is primarily written for bankers of all levels. I believe that this will be of equal interest and use for judges, lawyers, teachers, consultants and all business concerns. I extend my congratulations to the author and wish his venture all success.

3rd July, 1994. Khorshed Alam

PREFACE
TO THE
SECOND EDITION

The first edition released by the end of 1994 was sold out within a short time. The continuing demand for the book necessitated a quick second edition. I have taken the opportunity to take full account of the amendments which have taken place in the last few years in various banking laws. Some new chapters have been added in the book and the existing chapters have been revised, where necessary.

The success of the first edition is no small measure due to the valuable patronage extended by bankers. I am grateful to them and hope that the support will continue to be available.

I should record my thanks to the various news paper and journals which have published reviews of the book; to the reviewers and friends for their generous compliments, critical comments and useful suggestions.

M. ABUL BASHAR BHUIYA

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CHAPTER- ONE
DIFFERENCE OF ACT, ORDINANCE, ORDER, ETC.

This book deals with legislations on banking and financial institutions in Bangladesh. It contains texts and references of statutory legislations and subordinate legislations. They are Acts of legislature, Ordinances, President's Orders and Rules. There is always a confusion, even among men of legal profession, as respects the difference between the various kinds of legislations mentioned above. Besides, notwithstanding the fact that the Constitution of the People's Republic of Bangladesh speaks of only one kind of permanent law i.e. Acts of legislature, our statute books contain additional two kinds of such laws, namely, Ordinances and President's Orders. An attempt is being made here to remove the confusion, and to present an idea, about the difference between Acts, Ordinances, President's Orders and Rules, etc. The following constitutional position may help in removing the confusion and giving the readers a clear idea about the differences of various kinds of laws referred to above.

The Constitution of Bangladesh provides for two kinds of legislations, namely, Act of Parliament and Ordinance. The power to make Acts vest in Parliament of Bangladesh. Except that the laws made by it in ordinary process must not be repugnant to the fundamental rights embodied in the Constitution, the powers of Parliament are not fettered by any condition. It is sovereign in the field of law making. The power to make and promulgate Ordinances vest in the President. This power and authority of the President is co-extensive with that of Parliament. In exercising this power, the President does not act as a constituent part of Parliament. He himself is a legislative institution when he exercises this power. But his is a qualified power, not as unfettered as that of Parliament. The President can not legislate when Parliament is in session. He can not alter or repeal any provision of the Constitution. He can not continue in force any provision of an Ordinance earlier made by him.

Acts of Parliament are permanent law inasmuch as they continue in force and exist in the statute book until repealed. On the other hand, an Ordinance made and promulgated by the

President is temporary legislation. It looses its effect after a certain given time. It ceases to have effect at the expiration of thirty days after it has been laid before Parliament at its first meeting following its promulgation or earlier if Parliament passes a resolution disapproving it. It is necessary to mention here that, it is the constitutional obligation to lay every Ordinance made and promulgated by the President before Parliament at its first meeting following its promulgation.

It has been said in the above that Ordinances made by the President are temporary legislations. But the statute books of Bangladesh contain some Ordinances which are like laws as Acts of Parliament. These Ordinances are not the Ordinances made and promulgated under the Constitution. Rather they relate to the period when country remained under Martial Law and the legislative authority of the country vested in the President or the Chief Martial Law Administrator. Hence the Ordinances which are permanent laws as those of Acts of legislature and shall continue to exist in the statute book until repealed are not like the Ordinances which are made and promulgated by the President under the Constitution. Besides the Ordinance, the statute books of Bangladesh have some other laws which are called President's Order. This type of legislation has also the like force of law as that of an Act of Parliament. These laws were made by the President of the Republic before the Constitution of Bangladesh came into force. The legislative authority of Bangladesh will not, in future, legislate any law to be called President's Order.

The next kind of legislation is known as subordinate legislation or delegated legislation. Enactments of legislative bodies inferior to the sovereign constitute subordinate legislation. Such legislation is subordinate in that it can be repealed by, and must give way to, sovereign legislation. It may also be, and in many cases is, of a derivative nature, the power to legislate having been delegated by the sovereign to the subordinate. The instruments belonging to this category are Rules, Regulations, Bye-laws, etc. Subordinate or delegated legislations come within the scope of legislation in its wider sense inasmuch as they do carry out the purposes of the statute.

The general principle of the Constitutional law is that a legislature cannot delegate its legislative powers to the executive or to any other outside agency. But the complexity of modern

society has necessitated the delegation, to some extent, of legislative powers to the executive and other agencies. No administration can now a days function without a certain amount of legislative power and the wider the functions of the state the greater is the requirement of such power. In the context of the changing social and economic structure of the society, the courts and even the most rigid advocates of separation of powers have had to concede the necessity of such delegation. The principal reason for such delegation is that the modern legislatures find it increasingly difficult to enact all laws required by the state with all the detail necessary for their effective implementation. The legislatures have neither the time nor the technical competence to do more than discuss and establish general principles and policies of legislation. Hence it is noticed that most of the modern statutes contain provisions for the making of rules, regulations, bye-laws, etc; by the executive or other authorities. The principal factors leading to the growth of delegated legislation, to put them briefly, are the following:

(a) it is a method to economise legislative time in the sense that the legislature confines itself to laying down broad policies and principles and leaves the task of shaping and formulating details to the concerned administrative agency;

(b) since most of the present day legislations, being concerned with socio-economic matters, tend to be technical and complex, there is need for expert knowledge to work out the details to fully implement the policy of the law;

(c) the need to hold consultations with interests affected before the details of the policy of the law are or can be worked out;

(d) the need for and the advantages of flexibility, elasticity and the opportunity for experimentation in effectively implementing the general policy of the law;

(e) the need for constant adoption to unknown future conditions and utilisation of experiences without the formality of enacting amending legislation from time to time.

Because of the increasing delegation of legislative power, delegated or subordinate legislation has assumed as much importance as the legislation proper. The fact that all subordinate legislation is subject to the doctrine of ultra vires must never be lost sight of when making rules. The doctrine can be invoked in so many different circumstances but the principal grounds on which it is invoked are, as Allen putes it, those of scope, of form and of purpose. If the rules assume powers which, in the opinion of the court, exceed those specified by the statute, then it is a clear case of ultra vires. If the statute requires certain formalites to be observed or certain preliminaries to be completed before the powers of delegated legislation are exercised, the failure to comply with those requirement would attract the doctrine. If the provisions of the rules are interpreted to be repugnant to, or in excess of the general purposes of, the statute, the doctrine of ultra vires can also be successfully invoked for annulling those rules. So in making rules, the following principles have always to be borne in mind, namely:

(a) the rules must be within the scope of the power conferred by the statute;

(b) they must be consistent with the provision of the statute;

(c) they must be made in accordance with the procedure laid down by the statute;

(d) they must relate to matters arising under the provisions of the statute;

(e) they must relate to administrative detail and procedure and must not amount to substantive legislation;

(f) they must not trespass unduly on personal rights and liberties;

(g) they must be reasonable and necessary for carrying out the purposes of the statute.

CHAPTER -TWO
INTRODUCTORY

Origin of the word "Bank".- The word "Bank" is said to be derived from the Italian word "banco" i.e. bench. The early bankers, the Jews in Lombardy, transacted their business at benches in the market place. When a banker failed, his banco used to be broken up by the people. From such circumstance, the word "bankrupt" originated. There are others, who are of the opinion that the word "bank" is orginally derived from the German word "back", meaning a joint stock fund, which was, when most of the Italy was under German occupation, Italianised into "banco". This appears to be more reasonable.

What is Bank.- Whoever, being an individual, firm, company or corporation, generally deals in the business of money and credit is called a banker. In our country, any institution which accepts, for the purpose of lending or investment, deposits of money from the public, repayable on demand or otherwise, and withdrawable by cheque, draft, order or otherwise, is called a bank.

The above definitions have similarity with the definition given by Sir John Paget who has put the definition of a bank as an institution or body which accepts money on deposit and current account, issues and pays cheques drawn upon itself and which collects cheques crossed and uncrossed for its customers. In ancient days, keeping in custody other people's money and lending a part of it were the chief functions of a bank. Gradually these functions were extended, and others were added. In the result, the dependence of commerce upon banking has become so great that in a modern money economy, the cessation, even for a day or two, of a bank's activities would completely paralyse the economic life of a nation.

Meaning of banking.- Ordinarily, all functions of a bank in the course of its business may be termed as banking. In the Banking Companies Act, 1991 (Act 14 of 1991), the word "banking" has been defined to mean the accepting, for the purpose of lending or investment, of deposits of money from the public,

repayable on demand or otherwise, and withdrawable by cheque, draft, order or otherwise. But any company which is engaged in the manufacture of goods or carries on any trade and which accepts deposits of money from the public merely for the pupose of financing its business is excluded from being deemed to transact the business of banking. Some other countries have defined the term "banking", partially, if not exhaustively. They are as under:-

USA:-Act of congress defines banking, "as the business of dealing in credit".

Japan:-Act of 1927 in Japan defines Bank as "institutions which carry on operations of giving as well as receiving credit".

Swiss Law: Defines Bank as 'Institution which appeal to the public for deposit."

Sphere of bank activities. Bankers have now a days deal with a large number of matters. They serve as custodian of stocks, shares and other valuables. By introducing medium of exchange, they help economic activities of a country. There is no denying in it that capital formation is the key of development of modern nations. Bankers collect small amount of money from the people and help in the formation of capital and simultaneously help in the development of industry, commerce, trade, agriculture, etc. by providing loans and advances to enterprenuers. Imports into and exports out of a country are financed by banks. They advance money on securities, and issue letters of credit, travellors cheque, credit cards, circular notes, etc. to customers wishing to travel abroad. The ever expanding sphere of bank activities may be presumed from the following list of forms of business, other than business of banking as defined above, which a banking company or bank may engage itself, namely:-

(a) the borrowing, raising, or taking up of money; the lending or advancing of money either upon or without security; the drawing making, accepting, discounting, buying, selling, collecting and dealing in bills of exchange, hundis, promissory notes, coupons, drafts, bills of lading, railway receipts, warrants, debentures, certificates, scripts, participation term certificates, term finance certificates, musharika certificates, mudaraba

certificates and such other instrument as may be approved by the Bangladesh Bank, and other instruments, and securities, whether transferrable or negotiable or not; the granting and issuing of letters of credit, traveller's cheques, credit card and circular notes; the buying, selling and dealing in bullion and species, the buying and selling of foreig exchange including foreign bank notes; the acquiring, holding, issuing on commission, underwriting and dealing in stock, funds, shares, debenture stock, bonds, obligations, securities, participation term certificates, term finance certificates, musharika certificates, mudaraba certificates and such other instruments as may be approved by the Central Bank and investments of all kinds; the purchasing and selling of bonds, scrips or other form of secutities, participation term certificates, term finance certificates, moderaba certificates, musharika certificates and such other instruments as may be approved by the competent authority of a country, the negotiating of loans and advances; the receiving of all kinds of bonds, scrips or valuables on deposit or for safe custody or otherwise; the providing of safe deposit vaults; the collecting and transmitting of money and securities;

(b) acting as agents for the Government or local authority or any other person or persons; the carrying on of agency business of any description including the clearing and forwarding of goods, giving of receipts and discharges and otherwise acting as an attorney on behalf of customers, but excluding the business of a managing agent or treasurer of a company;

(c) contracting for public and private loans and negotiating and issuing the same;

(d) the affecting, insuring, guaranteeing, underwriting, participating in managing and carrying out of any issue, public or private, of Government, municipal

or other loans or of shares, stock, debentures, or debenture stock of any company, corporation or association and the lending of money for the purpose of any such issue;

(e) carrying on and transacting every kind of guarantee and indemnity business;

(f) purchase or acquisition in the normal course of its banking business of any property, including commodities, patents, designs, trade marks and copy rights with or without buy-back arrangements by the seller or for sale in the form of hire purchase or on deferred payment basis with markings or for leasing or licensing or for rent sharing or for any other mode of financing;

(g) managing, selling and realising any property which may come into the possession of the company in sstisfaction or part satisfaction of any of its claims;

(h) acquiring and holding and generally dealing with 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;

(i) undertaking and executing trusts;

(j) undertaking the administration of estates as executor;trustee or otherwise.

CHAPTER -THREE
HISTORICAL BACKGROUND OF BANKING INSTITUTIONS IN BANGLADESH

The territories which now constitute Bangladesh were integral part of Mughal Empire and thereafter British India and then Pakistan. Hence, we have the common historical background of banking and banking institutions as that of Pakistan and India. For the beginning of banking in the territory now comprised Bangladesh, we must go back to the Calcutta Agency Houses. These trading firms started their banking operations for the welfare of their constitutents. The important among those Houses were Messrs. Alexander and Co., and Massers Fargusson and Co. Both the firms started the business of banking with other business, and both were the predecessors of the early Joint Stock Banks in the then India. The Bank of Hindustan was the earliest bank started under the direction of the British ruler in British India.

After the partition of British India into Pakistan and India, the territories now form Bangladesh became integral part of Pakistan and was called East Pakistan. Immediately after independence, as aforesaid, in 1947, an Expert Committee was appointed to study the issue of banking in the then Pakistan. On the recommendation of the Expert Committee, the Reserve Bank of India continued its function in Pakistan up to 30th September, 1948 and thereafter the State Bank of Pakistan, having been established on Ist July, 1948, started functioning and assumed full control of banking and curency. By the date Bangladesh Proclaimed Independence, there were about 14 scheduled banks with about 3042 branches all over the country. Some foreign banks were also functioning in Pakistan on that date.

CHAPTER-FOUR
ORIGIN OF BANKING LEGISLATION

Banking Act of 1694.-In order to ascertain the history of banking legislation, we have to look to the English banking legislation. Banking in general is a part of the law merchant or as it is sometimes known, Lex Mercatoria. Lex Mercatoria began to take its shape in the 13th century, and it was based upon the customs of merchants. Gradually these customs were ratified by courts of law and became part of law. The practice of marking bills of exchange payable to order and transferring them by endoresement dates back to the beginning of the 17th century. The Banking Act of 1694 is the first piece of British banking legislation. This law was a special statute under which the Bank of England was established and governed. But this Act did not define the laws which were to govern the banking business in general. So many doubt in regarding the Banking Act of 1694 as the first piece of banking legislation.

Act of 1844.-After the Banking Act of 1694, an Act was passed to secure monopoly of bank- note issue for the Bank of England by preventing any bank or banking firm from issuing notes. This was followed by Acts passed in 1826 and 1833. But all these legislations dealt with only a few aspects of the banking business. In the meantime, the rapid growth of Joint Stock Banking necessitated the passing of an Act called Peel's Act of1844 with provisions as under, namely:-

(a) subscribed and paid up capital of banks;
(b) permission for establishing new banks;
(c) retirement of Directors;
(d) restriction on re-election of Directors;
(e) prohibition of loans against bank's own share;
(f) publication of balance sheet once in a month, etc.

Influence of rulings and customs in development of banking.- During the post- industrial revolution period, the banking law was mainly judge-made-law. This was the outcome of the recognition of certain customs governing banking and commercial practices by the Judges in giving their decisions. The

The Judges of England, by their ruling, always tried to lay the foundation of English banking and commercial law upon the customs of merchants of the advanced European countries. The ruling of Judges continued to be the law on the subject, and later, whenever the law pertaining to banking or commerce was codified, it was based mostly on the rulings and Judgements of Judges. It may be mentioned that, Lord Mansfield, whose name is considered perhaps the most important in the history of English mercantile law, had the greatest contribution in the rulings and decisions. The condification mentioned above was largely based on the rulings or Judgements of Lord Mansfield. It may be cited for instance that, the Bills of Exchange Act itself was based more or less upon the rulings of Lord Mansfield, which were, in turn, based upon the customs and usages prevalent at the time. Hence, it is established beyond doubt that, the English banking law, which is the origin of banking laws of the sub-continent, is largely based upon the customs of merchants and bankers. The English law of negotiable instruments was applied by courts of British India in a case where the parties were Europeans. In the case of Muslims and Hindus, their respective laws and usage were applicable. In a case where the parties belonged to different communities, the law and usage which governed the dependant ware applicable. As neither the Islamic principles nor the Hindus texts dealt adequately with the hundis, customs prevailing among the merchants of the respective communities were recognised by the courts. Where the hundis were in the form of bills of exchange, English law was applicable though the parties were Muslims and Hindus. The Statutes 9 and 10 William III, c. 17 providing for the protest of bills of exchange, and 3 and 4 Anne, c. 8 declaring promissory notes negotiable, were in force in British India.

First law for bankers.- The first and earliest attempt in British India was the Act VI of 1840, which was enacted to regulate the law relating to bills of exchange and promissory notes. In 1868, a Bill to codify the law regarding negotiable instruments was drafted. The draft underwent changes and amendment several times. The Negotiable Instruments Act, 1881, which is our existing law on negotiable instruments, is the result of the aforesaid drafting and re-drafting.

Second Law for bankers.- After the Negoliable Instruments Act,1881 (XXVI of 1881), the other very important Act made for bankers alone is the Bankers Books Evidence Act, 1891 (XVIII of 1891). It is a special piece of legislation giving certain privileges to banks as regards the mode of proving of entries in their registers and the production thereof in the courts of law. This more than hundred years old Act still is one of the existing laws of Bangladesh.

CHAPTER-FIVE
BEGINNING OF BANKING IN BANGLADESH

The people of Bangladesh, having proclaimed independence by the Proclamation of Independence (APPENDIX-I), established the independent Sovereign People's Republic of Bangladesh. After the surrender of the occupied forces on the 16th day of December, 1971, the Government of the People's Republic of Bangladesh formally took over the charge of the administration of the territiories now constitute Bangladesh. In an attempt to rehabilitate the war devastated banking of Bangladesh, the Government promulgated a law called the Bangladesh Bank (Temporary) Order, 1971 (Acting President's Order No. 2 of 1971) (APPENDIX-XVIII). By this Order, the State Bank of Pakistan was declared to be deemed as Bangladesh Bank and the offices, branches and assets of the said State Bank was declared to be deemed as offices, branches and assets of the Bangladesh Bank. It was also declared by the said Acting President's Order No. 2 of 1972 that all currency notes and coins issued by the said State Bank and Government of Pakistan and were in circulation in Bangladesh shall be deemed to have issued by the Bangladesh Bank or, as the case may be, by the Government of the Bangladesh and continue as legal tender in Bangladesh until otherwise directed. With what has been stated above, the banking life of Bangladesh started with a legal shape.

On 16th day of December, 1971, there existed in Bangladesh the following 12 banks, namely:-

1. National Bank of Pakistan.
2. Bank of Bahwalpur Ltd.
3. Premier Bank Ltd.
4. Habib Bank Ltd.
5. Commerce Bank Ltd.
6. United Bank Ltd.
7. Union Bank Ltd.
8. Muslim Commercial Bank Ltd.
9. Standard Bank Ltd.
10. Australasia Bank Ltd.
11. Eastern Marcantile Bank Ltd.
12. Eastern Banking Corporation Ltd.

Due to the sharp political changes, the obvious crisis in the administration of banks, particularly in such banks the Head office of whose were in West Pakistan, demanded immediate action to overcome the crisis. In the background of such circumstances, the Government promulgated the second law to make provisions for the administration of those banks whose Head office were in Pakistan. This law is named as the Bangladesh (Administration of Banks) Order, 1971 (Acting President's Order No. 3 of 1971) APPENDIX-XIX). By this Order, arrangement was made to appoint Administrator for the management and control of such banks. By the same law, further arrangement was made to vest in the Government of Bangladesh all the powers of the Board of Directors of those banks and also to take care of other incidental matters in this respect.

CHAPTER-SIX
NATIONALISATION OF BANKS.

Background.-Immediately after the Government of Bangladesh consolidated its authority, it decided to adopt a socialist pattern of society as its goal. This means a society with wealth distributed as equitably as possible was adopted as the state policy of the Government for the newly created state of Bangladesh. Needless to say that, the banking institutions are the custodians of private savings and a powerful instrument to provide credit. They mobilise the reasources of the country by accepting deposit and channelise them for industrial and national development by granting advances. Hence, in order to implement the above mentioned state policy, the Government of Bangladesh decided to nationalise all the banks of the country. Accordingly, on the 26th March, 1972, the Bangladesh Banks (Nationalisation) Order, 1972 (President's Order No. 26 of 1972) (APPENDIX-IX) was promulgated. All the existing 12 banks viz, the National Bank, the Bank of Bahawalpur Ltd., the Premier Bank Ltd. the Habib Bank Ltd, the Commerce Bank Ltd. the United Bank Ltd, the Union Bank Ltd, the Muslim Commercial Bank Ltd., the Standard Bank Ltd., the Australasia Bank Ltd., the Eastern Mercantile Bank Ltd. and the Eastern Banking Corporation Ltd., (all together called "existing bank") were nationalised and taken over under that President's Order 26 of 1972 (which for the sake of convenience hereinafter referred to as "Nationalising law"). A short discussion of the provisions of the Nationalising law is made in the following paragraphs:—

Main provisions of Nationalising law.- The preamble of the Nationalising law reads as follow; namely:—

"Whereas it is expedient to provide for the taking over of the undertaking of certain banks in Bangladesh and for matters connected therewith and incidental thereto."

The Nationalising law has no long title. The preamble, as quoted above, does not give any reason for nationalisation of the banks. So the Nationalising law speaks nothing about justification for the nationalisation of banks. However, its substantial provisions mainly deal with the following topics, namely:—

(a) the mode and mechanics of transfer of the undertaking of the existing banks i. e. the banks named above;

(b) the constitution of 6 new banks, namely, the Sonali Bank, Agrani Bank, Janata Bank, Rupali Bank, Pubali Bank and Uttara bank;

(c) the management of the new banks;

(d) the payment of compensation to the shareholders for such shares which have not already been vested in the Government.

Besides the above, the Nationalising law contains provisions on authorised capital, functions, accounts and audit of new banks and terms and conditions of service of the employees of existing banks in the new banks, power to make rules and regulations, etc.

Transfer of undertaking of existing banks.- Under Article 4 of the Nationalising law, six new banks have been constituted with all the legal characteristics of body corporates. Each of the new banks has common seal and perpetual succession and subject to the provisions of the law, each new bank is empowered to acquire, hold and dispose of the property, to contract, and to sue and be sued in its own name. The undertakings of existing banks specified in first column of the Table below stands transferred to, and vested in, the new banks mentioned in the second column of the said Table.

TABLE

	Existing Bank	New Bank
1.	National Bank	Sonali Bank
2.	Bank of Bahawalpur Ltd.	
3.	Premier Bank Ltd.	
1.	Habib Bank Ltd.	Agrani Bank
2.	Commerce Bank Ltd.	
1.	United Bank Ltd.	Janata Bank
2.	Union Bank Ltd.	

1.	Muslim Commercial Bank Ltd.	Rupali Bank
2.	Standard Bank Ltd.	
3.	Australasia Bank Ltd.	

1.	Eastern Mercantile Bank Ltd.	Pubali Bank
1.	Eastern Banking Corporation Ltd.	Uttara Bank.

Management of new banks.- The general superintendence, direction and management to the affairs and business of a new bank is vested in a Board of Directors, which is entitled to exercise all powers and do all such acts and things as the new bank is authorised to exercise and do. The Board of Directors of a new bank is consist of seven Directors including the Managing Director to be appointed by the Government.

Undertaking defined.- Article 7(1)of the Nationalising law reads as under:-

"7. (1) The undertaking of each existing bank shall be deemed to include all assets, rights, powers, authorities and privileges and all property, movable and immovable, cash balances,reserve funds, investments and all other rights and interest in, or arising out of, such property as were immediately before the commencement of this Order in the ownership, possession, power or control of the existing bank in relation to the undertaking within the territory to Bangladesh or in relation to the business of such undertaking outside Bangladesh, and all books of accounts, registers, records and all other documents of whatever nature relating thereto and shall also be deemed to include all borrowing, liabilities and obligations of whatever kind then subsisting of the existing bank in relation to the undertaking within the territory of Bangladesh."

By the above quoted provision, anything and everything the 12 existing banks were doing and all the tools, instruments, ways and means by which they were functioning are taken over. The Banks are left with nothing which previously belonged to them.

General effect of vesting of existing banks.- Article 7(4) and 7(5) of the Nationalising law provide for the general effect of vesting of the undertaking of the existing banks to new banks as under:-

"7(4) Unless otherwise expressly provided by this Order, all contracts, deeds, bonds, agreements, powers of attorney, grants of legal representation and other instruments of whatever nature subsisting or having effect immediately before the commencement of this Order and to which the existing bank is a party or which are in favour of the existing bank shall be of as full force and effect against or in favour of the corresponding new bank, and may be enforced or acted upon as fully and effectually as if in the place of the existing bank the corresponding new bank had been a party thereto or as if they had been issued in favour of the corresponding new bank:

7(5). If any suit, appeal or other proceeding of whatever nature in relation to any business of the undertaking which has been transferred under Article 6 is pending by or against the existing bank, the same shall not abate, be discontinued or be, in any way, prejudicially affected by reason of the transfer of the undertaking of the existing bank or of any thing contained in this Order but the suit, appeal or other proceeding may be continued, prosecuted and enforced by or against the corresponding new bank."

CHAPTER-SEVEN
COINAGE AND CURRENCY LAW

After the promulgation of the Nationalising law, Bangladesh entered into a phase of, somewhat, planned banking. Immediately thereafter, legal provision were made for the establishment of Mint and for the issue and putting into circulation of Taka coins of the Government and also for the issue and putting into circulation of one Taka note by the Government by promulgating the Bangladesh Coinage Order, 1972 (President's Order No 83 of 1972) (APPENDIX-XXIII) and the Bangladesh Currency Order, 1972 (President's Order No. 84 of 1972) (APPENDIX-XXIV) respectively.

CHAPTER-EIGHT
CENTRAL BANK

What is central bank.-The central bank of a country controls the currency and credit of that country and mobilizes its reserves. Accordingly, the central bank of a country is that bank on which the responsibilities of controlling and regulating the currency and credit of that country and mobilizing its reserves is vested. In other words, the central bank of a country is that banking institution which stabilises the national credit structure and promotes the economic interest of that country. Broadly speaking, the central banking institution has to stimulate banking enterprises in the country. Issuing of currency notes is the sole authority of the central bank of a country. It works in the national interest without any interest for profit making. The necessity of a central bank for a country can not be over-emphasised. It is the nerve of the economy of a country, which controls its economic activities. As already mentioned, the branch of the State Bank of the then Pakistan was declared to be deemed as Bangladesh Bank. But the necessity of a full fledged and organised central bank was felt all the time. Notwithstanding the feeling and necessity, as aforesaid, the establishment of the central bank was delayed till 31st October, 1972, the day on which the Bangladesh Bank Order, 1972 (President's Order No. 127 of 1972)] (APPENDIX-II) was promulgated making provision therein for the establishment of the the central bank on permanent basis.

Role of Bangladesh Bank as central bank.-The Bangladesh Bank is the central bank of Bengladesh. It is the sole authority for the issue of currency. It issues and regulates the issue of currency of Bangladesh. This power enables the Bangladesh Bank to regulate and contral money supply in the country. The Bankgladesh Bank acts as banker to the Government. As a banker to the Government, the Bangladesh Bank has the obligation to transact the banking business of the Government. It undertakes to accept money on account of the Government and to make payment on behalf of the Government. The Bangladesh Bank

looks after the financial transactions of the Government and manages the public debt of the Government. It also carries out exchange remittance and other banking operations including management of public debt.

The Bangladesh Bank acts as a banker to the commercial banks. Just as the private individuals keep and maintain their accounts with commercial bank, such banks keep and maintain their accounts with the Bangladesh Bank. The commercial banks keep deposits with Bangladesh Bank and they borrow money from Bangladesh Bank when necessary. In case of difficulties, the Bangladesh Bank acts as a lender of the first resort to commercial banks.

The Bangladesh Bank has not only the responsibility to maintain internal value of currency i.e. the Taka, but it has also to maintain the external value of currency. It is always concerned with the organisation of a sound and healthy commercial banking system, ensuring effective co-ordination and control over credit through appropriate monetary and credit policies followed from time to time.

The Bangladesh Bank, as a central bank of our country, has to perform not merely the negative role of controlling credit and currency in the economy to maintain the internal and external value of the Taka to ensure price stability in the economy, but also to act as a promoter of financial institutions in the country so that its policies could be effective in promoting economic growth as per guide lines and policies formulated by the Government. Its first duty is to see that the banking business is carried on sound principles as well as to help the provision of banking facilities all over the country.

Organisation of Bangladesh Bank.- The affairs of the Bangladesh Bank are managed by the Board of Director of the Bank. The Board of Directors is consist of the following Directors, namely:-

(a) the Governor, who is also the Chairman of the Board;

(b) a Deputy Governor to be nominated by the Government;

(c) four Directors to be nominated by the Government from amongst persons who have had experience in

the field of banking, trade, commerce, industry or agriculture;

(d) three Government officials to be nominated by the Goverment.

The Chairman of the Board, that is, the Governor is the chief executive officer of the Bank. He has the power of general superintendence and direction of the affairs and business of the Bank. In his absence, the Deputy Governor nominated by the Government performs the functions of the Governor. Bangladesh Bank has an Executive Committee which is consist of the Directors mentioned at (a) and (b) and one Director from each group at (c) and (d) above.

Relation between Bangladesh Bank and commercial bank.-A commercial bank maintains accounts with the Bangladesh Bank and, if necessary, borrows money from the Bangladesh Bank. The Bangladesh Bank thus provides credit to commercial banks, and commercial banks in turn provide credit to their clients to promote economic growth and development. But in order to avoid the risk of price instablity, Bangladesh Bank controls the activities of the commercial banks in exercise of its power given to it under the Bangladesh Bank Order, 1972 (P.O. No. 127 of 1972). The Banking Companies Act, 1991 (Act No. 14 of 1991) also gives wide power to the Bangladesh Bank to control and supervise the activities of the commercial banks in the country. In accordance with the provisions of this Act, the Bangladesh Bank may issue licence to commercial banks and to open branches. No commercial bank can commence the business of banking without first obtaining licence for each of its branch. It can withdraw or cancel the licence of a commercial bank in case it is found that the affairs of the bank are not managed properly. The Bangladesh Bank has the power to make inspection of commercial banks and take appropriate action against such banks where necessary.

CHAPTER -NINE
BANKING COMPANIES LAW

Banking Companies Ordinance, 1962.-The Banking Companies Ordinance, 1962 (Ord. LVII of 1962) was enacted to consolidate and amend the law relating to banking companies. Prior to the enactment of the said Banking Companies Ordinance, the matters relating to banking companies used to be governed by (i) part XA of the Companies Act, 1913 (VII of 1913), (ii) the Banking Companies (Inspection) Ordinance, 1946 (IV of 1946), (iii) the Banking Companies (Restriction of Branches) Act, 1946 (XXVII of 1946) and (iv) the Banking Companies (Control) Act, 1948 (XXII of 1948). The part and the laws mentioned at (i) to (iv) above were repealed by the Banking Companies Ordinance, 1962,. This Ordinance continued in force in Bangladesh, subject to the consequential changes, on the strength of the Laws Continuance Enforcement Order (APPENDIX-XVII) promulgated on the 10th day of April, 1971, and, thereafter, as an existing law under article 149 of the Constitution of the People's Republic of Bangladesh, which reads as under:-

"149. Savings for existing laws.-Subject to the provisions of this Constitution, all existing laws shall continue to have effect but may be amended or repealed by law made under this Constitution."

Necessity of new Banking Companies law and enactment of Act 14 of 1991.-The provisions of the Banking Companies Ordinance of 1962 were not adequate to the present day needs, particularly in consideration of the socio-economic condition of our new independent country. In realisation of the situation, the Government appointed a Study Committee to suggest amendments and modifications in the said Ordinance of 1962. The Study Committee in the Ministry of Finance (Finance Division) prepared a Draft for the said purpose. An Expert Committee consisting of Finance secretary as Chairman and Managing Directors of Bangladesh Krishi Bank, Bangaldesh Shilpa Rin Sangstha, Sonali Bank, Janata Bank, Rupali Bank, Investment Corporation of Bangladesh, House Building Finance

Corporation, an Executive Director of Bangladesh Bank, Joint Secretaries of Investment Wing and Banking Wing of the Ministry of Finance and the author of this book (representative of the Ministry of Law and Justice) as members examined the Draft of the Study Committee. After threadbare discussion of the Draft prepared by the Study Committee, the expert Committee considered it advisable that the existing law on banking companies of 1962 should be repealed and re-enacted to provide matters to suit the present day socio-economic needs of the country. It was, thus, decided to enact a new law on banking companies. A Draft Committee to prepare the draft of the new legislation on Banking Companies, hereinafter called Draft Committee, was coustituted with the Managing Director of Sonali Bank as Conveor and the Managing Director of Shilpa Bank, Joint Secretaries of Investment wing and Banking Wing of the Ministry of Finance, an Executive Director of Bangladesh Bank and the author of this book as members.

The Draft Committee worked for months and submitted Draft to repeal and re-enact the law relating to banking companies i.e. the Banking Companies Ordinance 1962. The Government, after due consideration of the Draft, approved it for promulgation as an Ordinance. Accordingly, the Banking Companies Ordinance, 1991 (Ord. No. 15 of 1991) was promulgated on 24th February, 1991 by the President of Bangladesh in exercise of the powers conferred on him under article 93 (I) of the Constitution of the People's Republic of Bangaldesh. Thereafter, it was enacted as an Act of Parliament in the name and style of the Banking Companies Act, 1991 (Act 14 of 1991) (APPENDIX-III).

Some salutory provisions of Act 14 of 1991.- The Banking Companies Act, 1991 has brought salutory provisions to streamline the affairs of banking companies in the interest of their depositors in particular and in the country's financial interest generally. Some of the salutory provisions are discussed below:-

(1) Act to be overriding.-By section 6 of the Banking Companies Act, 1991 (Act 14 of 1991), hereinafter referred to as the Banking Companies Act, this Act has been made an overriding law. Its provisions have been made effective notwithstanding anything contrary contained in the memorandum or articles of association of a banking company,

not being a new bank or a specialised bank, or in any agreement executed by it, or in any resolution passed by the banking company in general meeting or by its Board of Directors, whether the same be registered, executed or passed, as the case may be, before or after the commencement of the Act. Any provision contained in the memorandum, articles, agreement or resolution aforesaid shall, to the extent to which it is repugnant to the provisions of that Act, become or be void, as the case may be.

[The banks named in the Banking Companies Act as new bank and specialised bank are such banks which have been established or created under the provision of special law. Such banks are administered, managed or controlled in accordance with the provisions of the law under which each of such bank is established. Hence, memorandum or articles of association, etc, are not relevant as respects new banks and specialised banks. This explains the reason for exclusion of such banks from the provision of section 6 of the Banking Companies Act.]

(II) New sphere of business.-In the forms of business which a banking company may engage, the following have been added as new sphere of business, namely:-

(a) the acquiring, holding, issuing on commission, underwriting and dealing in participation term certificates, term finance certificates, musharika certificates and moderaba cerfificates;

(b) purchase or acquisition in the normal course of banking business of any property, including commodities, patents, designs, trade marks or copy rights with or without buy-back arrangements by the seller or for sale in the form of hire purchase or deferred payment basis with marking or for leasing or licensing or for rent sharing or for any other mode of financing.

(III) "Creditor" defined.-The term "creditor" has been defined for the first time in section 5(7) to include persons from whom deposits have been received on the basis of participation in profit and loss and a lending company or a financial institution from which financial accommodation or facility has been received on the basis of participation in profit and loss, mark-up in finance, hire purchase lease or otherwise.

(IV) Restriction on centralisation of shares among family members.-With a view to restrict the shares of a banking company centralised among family members of a person, the following provisions have been inserted by the Banking Companies (Amendment) Act, 1993 (Act13 of 1993) under section 14A, which is quoted below:-

14A. Restriction on buying shares, etc.-(1) The share of a banking company shall not be centralised among family members and members of a family shall not buy, either individually or collectively or both, share of a bank exceeding five percent of its total share.

(2) The buyer of shares of a banking company shall, at the time of buying such share, make an oath or affirmation to the effect that he is not buying the share as nominee of any other person or on behalf of any other person and that he did not buy benami share before."

(V) Vacation of office of Directors.- The provision relating to the vacation of office of Directors is another salutory provision in the Banking Companies Act, which is quoted below:-

17. Vacation of office of Dircetors.-(1) If any Director of a banking company fails to-

(a) pay any advance or loan received by him or any instalment thereof or interest thereon;

(b) pay any amount due on any guarantee; or

(c) do or perform any act agreed to or undertaken in writing to be done or performed by him;

and such failure continues for a period of two months after notice in writing has been served on him by the banking company through the Bangladesh Bank calling upon him to make the payment or to do or perform the act, his post will fall vacant with the expiry of the said period.

(2) Any person receiving a notice under sub-section (1) may explain his conduct to the Bangladesh Bank, with a copy of the explanation to the banking company which issued the notice, within thirty days from the date of receipt of such notice.

(3) The decision of the Bangladesh Bank on such explanation sent under sub-section (2) shall be final."

(VI) Restriction on loans and advances.-Section 27 prohibits a banking company from granting any loans or advances against the security of its own share, granting unsecured loans or advances on the guarantee of Directors. The section reads as follows:-

27. Restriction on loans and advances.- (1) No banking company shall-

(a) make any loans or advances against the security of its own shares; or

(b) grant unsecured loans or advances to, or make loans and advances on, the quarantee of,-

(i) any of its directors;

(ii) any of the family members of any of its directors;

(iii) any firm or private company in which the banking company or any of the persons referred to in sub-clause (i) or sub-clause (ii) is interested as director, proprietor or partner; or

(iv) any public limited company which is managed by any director of the banking company or by any member of family of any of its directors and in which any of the persons as aforesaid has such share by which he is empowered to vote for 20% or more of the share holding of the company.

(2) No banking company shall make loans or advance to any of its directors or to individuals, firms or companies in which it or any of its directors is interested as partner, director or guarantor, as the case may be, without the approval of the majority of the directors of that banking company, excluding the director concerned.

Explanation: In this sub-section, "director" includes the wife, husband, father, mother, son, daughter, brother, sister, brother-in-law, sister-in-law, sister's husband, father-in-law, mother-in-law, son's wife or daughter's busband.

(3) No banking company shall, without the prior written approval of Bangaldesh Bank, allow, either directly or indirectly, any such facility to any person or institution the value of which-

(a) is more than the value of 15% of the total capital of that banking company;

(b) is more than the value of 25% of the total capital of that banking company, where the facility is secured by easily saleable financial securites:

Provided that the Bangladesh Bank shall not allow facility more than 100% of capital of the banking company to any person or institution owned by the same partners, either directly or indirectly.

Explanation.1:-"Facility" means any loan, advance or any other credit facility, financial guarantee or any such liability a banking company has accepted on behalf of a person or an institution.

Explanation.2:-"Total Capital" means paid-up capital and reserve fund maintained by the concerned banking company under section 13.

(4) The Managing Director of every banking company shall, before the close of the month succeeding that to which the return relates, submit to the Bangladesh Bank a return in the prescribed form and manner, showing particulars of-

(a) all loans and advances granted by it to companies, private as well as public in which it or any of its directors is interested as a director; and

(b) all loans and advances granted by it to public companies in which it or any of its directors is interested as managing agent or quarantor.

(5) If on examination 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 granted to the detriment of the interest of the depositors of the banking company, the Bangladesh Bank may, by order in writing, prohibit the banking company from granting any such further loans or advances or impose such restrictions on the grant thereof as it thinks fit, and may, by like order, direct the banking company to secure the repayment of any such loans or advances within such time as may be specified in the order."

(VII) Power of Bangladesh Bank to control advances.-Specific and wide powers have been given to the central bank to control

advance by banking companies under the provisions of section 29, which is as under:-

29. Power of Bangladesh Bank to control advances by banking companies:-(1) Whenever the Bangladesh Bank is satisfied that it is necessary or expedient in the public interest to do so, it may determine the policy in relation to advances to be followed by banking companies generally or by any banking company in particular, and, when the policy has been so determined, all banking companies or the banking company concerned, as the case may be, shall be bound to follow the policy as so determined.

(2) Without prejudice to the generality of the power conferred by sub-section (1), the Bangladesh Bank may give directions to banking companies either generally or to any banking company or group of banking companies in the following matters namely:-

(a) credit ceilings to be maintained;

(b) the minimum ratio of small loans or other loans to the total advance to be maintained;

(c) the purpose for which advances may or may not be made;

(d) the limit upto which advances may be given to any banking company or group of banking companies, a person or a group of persons;

(e) secured advance and ceiling of interest on advance;

(f) the rates of interest to be charged on advances.

(3) If any default is made by a banking company in complying with the direction given under clause (a) and (b) of sub-section (2), the banking company shall, by order of the Bangladesh Bank, be liable to deposit such amount as may be determined by it and the banking company shall, subject to the conditions specified by that Bank, be bound to comply with the direction:

Provided that Bangladesh Bank shall not order to depost an amount which is higher than the amount in respect of which the default has been made:

(4) The amount deposited with the Bangladesh Bank under sub-section (3) or any part thereof may be released by it to the banking company conditionally or unconditionally by written order."

(VIII) Bar on Court to re-open rates on interest.-The Banking Companies Act provides that the rates of interest charged by banking companies to the debtor shall not be re-opened in a court. The provision reads as under:-

"38. Rates of interest not to be subject to scrutiny by courts.- Notwithstanding anything contained to the contary in any law for the time being in force, a transaction between a banking company and its debtor shall not be reopened by any court on the ground that the rate of interest charged by the banking company in respect of such transaction is excessive."

(IX) Special power of Bangladesh Bank in respect of dormant accounts.-With a view to enable the central bank to have some idea regarding the credit balances in the accounts that have remained dormant for long ten years or more, a new section (numbered 35) added to the Act. This section enumarates detail provisions on unclaimed deposits and articles of value in twenty sub-sections.

(X) Some other salutory provisions of the Banking companies Act are the following, namely:-

(a) Inspection.-Bangladesh Bank may at any time and shall, when directed to do so by the Government, cause inspection to be made by one or more of its officers of any banking company, and its books and accounts. It may also cause scrutiny to be made by any one or more of its officers of the affairs of any banking company and its books and accounts (section 44).

(b) Power of Bangladesh Bank to remove Directors.- The Bangladesh Bank may remove from office the Chairman, any director, the chief executive or other officer of a banking company if it is satisfied that the association of such person is or is likely to be detrimental to the interests of the banking company or its depositors or otherwise undesirable in the public interest (section 46).

(c) Power of Bangladesh Bank to supersede Board of Directors.- For the reason stated in section 46 referred to at (b) above, the Bangladesh Bank is empowered under section 47 of the Act to supersede the Board of Directors of a banking company.

(d) Power of Bangladesh Bank to call certain information.- Where it appears to the Bangladesh Bank that a company or any other person is transacting in any manner or form whatsoever the business of banking illegally, it may direct the company or such other person or any person who is, or has, at any time, been, dealing, doing business or associated in any manner with the company or such other person, to give or furnish to that Bank such information, documents or records respecting any business carried on by the company, or such other person, when the company or such other person is found transacting banking business illegally, the Bangladesh Bank may take appropriate legal action against such company or person. (section 51).

(e) Prohibition of certain activities.- Obstruction in lawfully entering any office or place of business of a banking company and carrying on any business there, holding demonstration within the office or place of business of any banking company and any act in any manner calculated to undermine the confidence of the depositors in the banking company has been made punishable under section 57 of the Act.

(f) Acquisition of the undertaking of banking companies.-The Government has been given power to acquire the undertaking of any banking company if, upon receipt of a report from the Bangladesh Bank, it is satisfied that, a banking company has, on more than one occasion, failed to comply with the directions given to it in writing relating to banking policy or it is being managed in a manner detrimental to the interest of its depositors (section 58). The Government has further given power to make scheme for the management and administration of the acquired bank either by reconstructing it or by amalgamating it with any other existing bank (section 59). This section also makes provision for giving compensation to the share-holders of the acquired bank.

(g) Stringent penalty.-Penalty for violation of provisions of the Act has been made stringent, specific and deterrant. Bangladesh Bank has been authorised to ask any person to show cause for violation of provisions in the matter of making advances, receiving deposits, failing to produce books, etc., failing to comply any condition or obligation under a scheme sanctioned under this Act and impose fine before instituting suit in the court (section 112).

CHAPTER - TEN
EXISTING BANK, ETC.

The banking business in Bangladesh is now carried on by the following banking companies and their branches following in urban and rural areas as on 30-6-1996 which are as shown below, namely :—

Sl. No	Name of the bank	Urban Area	Rural Area	Total
	A. Nationalised /Government Controlled			
1.	Sonali Bank	420	883	1303
2.	Janata Bank	347	547	894
3.	Agrani Bank	315	588	903
4.	Rupali Bank Ltd.	244	273	517
		1326	2291	3617
	B. Specialised			
1.	Bangladesh Krishi Bank	109	727	836
2.	Bangladesh Shilpa Bank	15	—	15
3.	Rajshahi Krishi Unnayan Bank	27	273	300
4.	Bangladesh Shilpa Rin Sangstha	—	—	—
		151	1000	1151
	C. Private Commercial Bank			
1.	Pubali Bank Ltd	193	161	354.
2.	Uttara Bank Ltd	146	52	198
3.	Arab Bangladesh Bank Ltd	38	16	54
4.	IFIC Bank Ltd	40	10	50
5.	Islami Bank (Bangladesh) Ltd	63	27	90
6.	National Bank Ltd	50	11	61
7.	The City Bank Ltd	56	19	75
8.	United Commercial Bank Ltd	58	19	77
9.	Al-Baraka Bank (Bangladesh) Ltd	26	6	32
10.	Eastern Bank Ltd	14	0	14
11.	National Credit and Commerce Bank Ltd	25	—	25

12.	Bank of Small Industries and Commerce Bangladesh Ltd	18	—	18
13.	Prime Bank Ltd	6	—	6
14.	South East Bank Ltd	5	—	5
15.	Dhaka Bank Ltd	3	—	3
16.	Al-Arafah Islami Bank Ltd	5	—	5
17.	Social Investment Bank Ltd	1	—	1
		747	32	1068
	D. Foreign Commercial Bank			
1.	Americal Express Bank Ltd	2	—	2
2.	Banque of Indo Suez	2	—	2
3.	Grindlays Bank Ltd	9	—	9
4.	Standard Chartered Bank Ltd	3	—	3
5.	Habib Bank Ltd	2	—	2
6.	State Bank of India	1	—	1
7.	National Bank of Pakistan	1	—	1
8.	Muslim Commercial Bank Ltd	1	—	1
9.	City Bank N. A.	1	—	1
		22	—	22
		Total 2246	3612	5858

Kinds of Banks.-Besides the conventional banking, business of the banking of Bangladesh may be classed as Rural Banking, Islamic banking and Co-operative banking, which have been, in brief, discussed separately in this book. The conventional banks may be classified into the following categories, namely:-

(a) Nationalised Banks;
(b) Specialised Banks;
(c) Private Banks;
(d) Co-operative Banks.

In section 5(m) of the Banking Companies Act, 1991 (Act 14 of 1991), "specialised bank" has been defined as a bank establised 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 specialised bank for the purposes of the said Banking Companies Act. There are four banks which have been established under separate law. They are as follows, namely:-

(i) Bangladesh Krishi Bank, established under the Bangladesh Krishi Bank Order, 1973 (President's Order No. 27 of 1973) (APPENDIX-X);

(ii) Bangladesh Shilpa Bank, established under the Bangladesh Shilpa Bank Order, 1972 (President's Order No. 129 of 1972) (APPENDIX-XV);-

(iii) Grameen Bank, established under the Grameen Bank Ordinance, 1985 (Ordinance, No XLVI of 1985) (APPENDIX-XIV);

(iv) Rajshahi Krishi Unnayan Bank, established Under the Rajshahi Krishi Unnayan Bank Ordinance, 1986 (Ordinance LVIII of 1986). (APPENDIX-XIII);

No Bank has so far been declared as specialised bank by the Government in exercise of the power conferred upon it under section 5(m) of the Banking Companies Act, 1991. Therefore, there are, at present, four banks mentioned above, which are specialised banks. The Sonali Bank, Janata Bank and Agrani Bank though have been established under special law, but as they are banks under the Nationalising law, they have been excluded from the class of specialised bank. They are Nationalised Bank.

Privatisation policy- The new banks created under the Nationalising law and all the specialised banks were in the public sector. The Bangladesh Bank is also a public sector Bank. But the progress made by the banking industry since nationalisation was not impressive. The nationalised banks could not play the due role in the implementation of Government programme and policy. Hence a trend of de-nationalisation of banks started from mid-eighty. In order to enable the government to transfer any new bank i.e. nationalised bank to private sector, a new Article was inserted in the Nationalising law by the Bangladesh Banks (Nationalisation) (Amendment) Ordinance, 1977 (Ord. XXVIII of 1977), which is as under:-

27A. (1) Notwithstanding anything contained in this Order, the Government may, if in the national interest it deems it expedient so to do, transfer, by agreement, the entire undertaking of any new bank to any company registered under the Companie

Act. 1913 (VII of 1913), on such terms and conditions as may be settled with such company.

(2) Where the entire undertaking of any new bank has been transferred under clause (1), such new bank shall, on such date as the Government may, by order notified in the official Gazette specify, stand dissolved.

Explanation.- The undertaking of any new bank includes its business, projects, schemes, assets, rights, powers, authorities and privileges, its properties, movable and immovable, reserve funds, investments and desposits and its borrowing, liabilities and obligations of whatever nature.

(3) The Government may, for the purpose of removing any difficulty in relation to the transfer of the undertaking of a new bank under clause (1) or the dissolution of such bank under clause (2), make such order as it considers expedient and any such order shall be deemed to be, and given effect to as, part of the provisions of this Order."

Transfer of nationalised banks to private sector.- After the amendment in the Nationalising law, as above, the Pubali Bank, the Uttara Bank and the Rupali Bank have been transferred to the private sector. These banks have now been re-designated as Pubali Bank Ltd, Uttara Bank Ltd, and Rupali Bank Ltd. Further, in order to accommodate private sector share in Bangladesh Shilpa Bank, suitable amendments have been made in the Bangladesh Shilpa Bank Order, 1972 (President's Order No. 129 of 1972). It is expected that this bank will formally get listed in the private sector in near future.

Spread of banks in rural area.- During Pakistan times, banking and credit facilities remained concentrated in cities. In order to expand the banking and credit facilities, Government felt the necessity of establishing branches of banks in the interior of the country. Accordingly, priority was given for the establishment of branches of banks in the interior of the country. Now there are large number of branches of banks in the interior of the country. Besides, the Grameen Bank has hundreds of branches in the villages of Bangladesh, Grameen Bank has attracted the attention of many underdeveloped and developing countries of the world as a successful financial institution for the rural areas i.e. interior of the counrtry. Where conventional

credit institutions largely failed in reaching the disadvantaged groups, Grameen Bank has succeeded in evolving a delivery system which is designed exclusively for the poorest in Bangladesh. All the works of Grameen Bank springs from and focuses on the activities of the landless group. There is, again, co-operative banks to cater the needs of rural areas of Bangladesh. The role of co-operative banks in our economic development, though limited, but is very important. Such banks are mainly concerned with financing of agriculturists.

CHAPTER-ELEVEN
RURAL BANKING

Rural development priority.-Bangldesh is primarily an agricultural country. About 85% of her population live in rural areas and about 75% of active rural population depend on agriculture as the main source of their livelihood. This sector provides employment to 61.3 percent of the total labour force and contributes about 49 percent to the Gross Domestic Product (GDP) of the country. Export commodities valuing about 60 percent of the total foreign exchange earning of the country originate from agricultural sector. In this agro-economic scenerio of the country, rural development deserves topmost priority. To finance development activities in the rural sector, a number of financial institutions including Bangladesh Krishi Bank (BKB), Grameen Bank and Rajshahi Krishi Unnayan Bank (RKUB) are involved. They are mainly involved in financing agriculture and off- farm activities of the rural population.

Rural banking dates back to the year 1876.-To speak a few words on the background of agricultural and rural banking in this Ganges Deltaic Region, which now comprises Bangladesh, it may be mentioned that the idea of rural banking dates back to the year 1876-78, when an acute famine in British India specially in the region of "Bangla" contributed to the setting up of the Strachey Famine Commission, 1880. This Commission, inter-alia, recommended that Government should advance loan to the rural poor. This situation led the Government of the then British India to enact laws for the purpose. The Land Improvement Loans Act, 1883, the Agriculturists Loans Act, 1884 etc. are the result of the recommendation of the aforesaid Commission. The objectives of these laws were to mitigate the suffering of rural people.The Commission recommended the establishment of mutual credit asociation to deal with the problems of agricultural credit. Such recommendation took the shape of enactment of the Co-operative Societies Act, 1904 and subsequently the Bengal Co-operative Societies Act, 1940, with a view to promoting measures to cater to the credit needs of the

rural people. The policy initiated for rural banking during British regime has been and is being implemented today through wide network of several financial institutions. Now BKB, Grameen Bank and Rajshahi Krishi Unnayan Bank are the main development financial institutions in the field of agricultural banking although Bangladesh Co-operative Bank Limited and Bangladesh Rural Development Board are also involved in financing rural poor to a limited extent. These financial institutions are rendering service among the rural population with a view to-

(a) extending banking services to the rural poor;

(b) eliminating the exploitation of money-lender;

(c) creating opportunities of self -employment of rural people;

(d) bringing the disadvantaged group of people within an institutional framework to meet credit needs.

PART-ONE
BANGLADESH KRISHI BANK

Background of the Bank.-The Bangladesh Krishi Bank has been established under the Bangladesh krishi Bank Order, 1973 (Presidents Order No. 27 of 1973), hereinafter for convenience referred as Krishi Bank law, (APPENDIX-X) as a banking institution in the public sector to cater to the credit needs of agriculture and rural development activities. Krishi Bank is the successor of the Agricultural Development Bank of Bangladesh. It may be pointed out that, in order to make better provision for affording credit facilities to agriculturists and persons engaged in cottage industries in the rural areas, the Agricultural Development Bank of Pakistan was established under the Agricultural Development Bank Ordinance, 1961 (Ord. IV of 1961). This Pakistani Bank had its regional office in Dhaka, which was, after the independence of Bangladesh, re-named as Agricultural Development Bank of Bangladesh. It continued function as a full-fledged bank for the aforesaid purposes till the establishment of the Bangladesh Krishi Bank under discussion.

Management of krishi Bank.- The affairs of the Krishi Bank are managed by a Board of Director consisting of a Chairman and ten Directors including the Managing Director. Of the ten Directors, eight Directors including the Managing Director are officials and the rest two are non-official. The Chairman and the Directors of Krishi Bank are appointed by the Government. The Board is authorised to exercise all such powers and do all acts and things as may be exercised or done by the Bank. The Managing Director is the Chief Executive Officer of Krishi Bank and is resoponsible for formulation and implementation of policies, plans and progress of the Bank.

Executive Committee.-The Krishi Bank has an Executive Committee consisting of the Chairman, Managing Director and one other non-official Director to be elected by the Board of Directors. The Executive Committee may deal with any matter within the competence of the Board of Directors. But this power of the Executive Comittee is, of course, subject to the provisions of

rules made under the Krishi Bank law. In accordance with the requirement of Article 10 (3) of the Krishi Bank law, the minutes of each meeting of the Executive Committee must be laid before the Board in its meeting next following the meeting of the Committee.

Pioneer financial institution in agricultural sector.- Bangladesh Krishi Bank is one of the pioner financial institutions in financing agricultural sector of the country. With a view to develop the overall agricultural sector, the Krishi Bank has policy to finance for crop production, agricultural implements, cash crops, processing and marketing of agricultural products, etc, including various socio-economic development programmes, agro industries and projects. As a result, all the farmers of the country, specially the poorer section of population, small and marginal farmers are beneffitted under the financing programme of the Krishi Bank.

Objectives of the Krishi Bank.- The main objectives of the Krishi Bank may be classified under the following heads namely:-

(a) to provide credit facilities for all kinds of agricultural and agro-based economic activities keeping in view the needs of small and marginal farmers;

(b) to promote cottage and other allied industries in rural and urban areas;

(c) to assist farmers in adopting appropriate technologies;

(d) to ensure availability of agricultural imputs e.g. seeds, agricultural machineries, equipments, fertilizers, etc.

(e) to earn a normal profit for meeting the operational expenses, building of reserve and expansion of activities to cover wider geo-graphical area;

(f) to develop and introduce system of research and development to improve operational efficiency by policy planning and programme review;

(g) to extend counselling and advisory services to the loanees/entrepreneurs, etc. in utilizing credit facilities;

(h) to maintain a motivated work-force through an appropriate system of human resource management, training and development.

Action programme to achieve its objective.- In order to achieve the objectives specified in the preceding paragraph, the Krishi Bank covers the following activities, namely:-

(a) formulates and implements the lending/credit programme in line with Government plans and policies;

(b) undertakes normal banking functions like any commercial bank;

(c) prepares tailored programmes to meet the credit needs of target groups;

(d) motivates farmers to obtain and utilize its credit facilities and repay loans timely;

(e) formulates administrative policies and procedures for facilitating its day to day work;

(f) provides training to its officers and staff for raising efficiency and work skill;

(g) administers and/or manages projects with a view to recover the principal alongwith interest;

(h) undertakes research on its activities and compiles statistical inforamation for operational use.

(i) operates management information system for its smooth and efficient operation;

(j) undertakes welfare and recreational activities for the officers and staff;

(k) maintains library facilities conducive to imparting modern analytical techniques in the areas of identification, formulation and implementation of development programmes and projects;

(l) undertakes activities as may be required, incidental or conducive to the attainment of its broad objectives.

Purpose and terms of loan.- The krishi Bank fixes a target of loan disbursement for every financial year. It gives special emphasis on the disbursement of loan for the purpose of crop./

cattle and agricultural implements. The target is primarily aimed at bringing self-sufficiency in agricultural production in the country. Needless to mention that, agriculture is the pivot of Bangladdesh economy. This sector alone contributes about 49% to our GDP. It is the only source of employment and livelihood for about 85% of our people.Yet attaining food self-sufficiency for even food self-reliance remained an elusive goal. Krishi Bank has always been plying in the rural areas in order to build up the rural Bangladesh. It has 860 branches, out of which 766 have been established in the rural areas. Krishi Bank is expected to asume a major role in the rural development. Its credit facilities includes facilities for minor irrigation, development of inland and marine fisheries, setting up dairy and poultry farms, agrobased industries and cottege industries with special emphasis to the credit needs of small and marginal farms including crop shares.

With the socio-economic objective of employment generation in the rural areas, the Bank finances supervised credit schemes. These are cottage and small scale industries, weaving and handloom factories, rural women enterpreneurs development, etc. Bank's loan portfolio has been classsified under the following major heads:-

Short term

(a) Crop loan;

(b) Socio-economic development projects;

(c) Working capital support for agro-industries;

(d) Export-credit item.

Medium term

(a) Land development;

(b) Agro-based project;

(c) Minor irrigation schemes.

Long term

(a) Farm machineries and equipments;

(b) Tea garden development;

(c) Agro-based industries;

(d) Horticulture;

(e) Storage/Godown for agricultural produce;

(f) Infrastructural facilities for development of agriculture, forest and fisheries;

Short term loan and advances are generally allowed for the following purpose, namely:-

(a) Summer, Autumn and Rabi crop production loan.

(b) Tea plantation loan;

(c) Banana cultivation;

(d) Shrimp culture;

(e) Cottage industries;

(f) Jalmahal management and harvesting;

(g) Silk worm culture;

(h) Cash credit/working capital loan for fish processing for export, marketing of agricultural products and potato preservation in cold storage.

Medium term loan are normally allowed for the purpose of beef fattening, betel leaf orchard, cottage and small scale industries, case culture fishing, draft animal, dairy, farming, fish net making, fish tank, handloom, irrigation equipment, land development, pond fishery, poultry farming, rural electrification, rural transport, sericulture, weaving factory, etc.

Long term loan are given for agro-based industries, deep tubewells, light engineering workshops, power tillers, tractor and implements, tea garden extension and rehabilitation, horticulture, etc. Besides the above, the Krishi Bank grants loan from its own fund or from the fund of international agencies on projects like the following for the economic uplift of rural people:-

(a) Self employment programme for unemployment youth;

(b) Rural transport financing scheme;

(c) Sawnirvar credit programme;

(d) Pilot programme for employment generation for the distressed women;

(e) Credit programme for khas land holder landless farmers;

(f) Rural financing programe.

Meaning of terms of loan.- Bangladesh Krishi Bank Rules, 1983 (APPENDIX-XII) defines the Bank's short, medium and long term loans as under:-

(a) a short term loan is a loan which is required to be fully repaid within a maximum period of eighteen months from the date of disbursement;

(b) a medium term loan is a loan which is required to be fully paid within a maximum period of five years from the date of its disbursement;

(c) a long term loan is a loan which is required to be fully repaid in any period exceeding five years from the date its disbursement.

The Krishi Bank law provides for securing its loan and advances. Rule 10 of the Bangladesh Krishi Bank Rules, 1983 provides security provision for different kinds of loan. The said rule runs as under:-

"10. Security for short, medium and long term loans.- The Bank may advance and lend money and open cash credit upon the security of -

(i) stocks, fund and securities in which a trustee is authorised to invest trust money by any law for the time being in force;

(ii) debentures or other securities for money issued under the authority of any law for the time being in force or under the authority of the Government;

(iii) goods or the documents of title thereto, which are deposited with, or assigned to, the Bank as security for such advances, loans or credit;

(vi) debentures of companies with limited liability, subject to such directions as may be issued by the Bangladesh bank;

(v) shares of companies with limited liability, in accordance with such directions in this regard as may be issued from time to time by the Bagladesh Bank;

(Vi) goods, including tea crops and raw jute or finished jute products, which are hypothecated to the Bank as security for such advances, loans or credits; and

(vii) accepted bills of exchange and promissory notes endorsed by the payees;

Provided that any advance or loan which is guaranteed by the Government may be made without any specified security:

Provided further that a loan for the purchase of cattle for ploughing land or for raising of any specialised crop or to establish any cottge industry when given as a medium term loan for a period not exceeding three yeara may be secured by a bond with one or more securities:

Provided further that where loan is applied for establishment of agro-industries, wharehouses, construction of mechanised vessel for fishing or for any agro-firm, the Bank may grant loan on the security of the project and make payment gradually on the proportionate value accrued in course of implementation."

Loan in kind.-Krishi Bank ordinarily gives loan in kind, preferably through Bank's approved supplier or dealer or the Government sponsored agencies or semi-Government imput supplier. Cash payment of loan is always discouraged. Unless the sanctioning authority satisfies himself regarding the real need of cash money, it is normally not allowed. No disbursing authority is authorised to convert a kind item loan to cash without written authority from the original sanctioning authority.

Use of loan, etc.-It is statutory obligation of the Krishi Bank to see and ensure that a loan given by it is spent for the same purpose for which it was granted and, if this requirement is not complied with by the borrower, the Bank may require the repayment of the loan forthwith. The Krishi Bank may require any of its borrower to pay his debt in full under certain circumstances. Even the bilateral contract between the Bank and the borrower with provisions contrary to the above does not save the borrower from the consequences. The relevant provisions of the Krishi Bank law in this respect is as under:-

"20. Notwithstanding any agreement to the contrary, the Bank may, by notice, require any borrower forwith to pay his debt to the Bank in full, if-

(a) he has failed to comply with any terms of the agreement under which the relevent loan, advance or credit has been granted;

(b) the Bank reasonably apprehends that he is unable to pay his debt;

(c) in the opinion of the Bank, false or misleading information on any material particular has been given in the application for the relevant loan, advance or credit or in any other statement or communication made in connection with any loan, advance or credit granted to him;

(d) the property mortgaged, hypothecated or assigned to the Bank as security for the advance, loan or credit is not kept in proper conditions to the satisfactions of the Bank, or the value as estimated by the Bank has depreciated by more than 20 per cent, and further security to the satisfaction of the Bank is not given within the time specified by the Bank;

(e) without the permission of the Bank, any property pledged, mortgaged, hypothecated or assigned to the Bank is leased or rented to third parties or is, in any way, charged, disposed of or removed from the place where it was at the time the loan, advance or credit was granted;

(f) for any other reason it is necessary in the opinion of the Bank to protect its interest."

Taking over the defaulting concern.- The legal provision of the Krishi Bank law in the matter of recovery of its loan and other dues is very specific and clear. The Krishi Bank law provides a speedier mode of realising its dues which are from their nature undisputed. Acritle 21 of the Krishi Bank law authorises the Bank to take over the management of the concern of the borrowers and sell or realise any property pledged, mortgaged, hypothecated or assigned by the borrower to secure his liability to the Bank. Rule 15,16 and 17 of the Bangladesh Krishi Bank Rules, 1983 deal with the taking over of the management of the defaulting concern, which are reproduced below:-

"15. Taking over the management of the defaulting concern.- Where the Managing Director is satisfied that a borrower who is under a liability to the Bank under an agreement has made any default in repayment or has otherwise failed to comply with the terms of the agreement, the Managing Director may himself or with the approval of the Board, give, through any person

authoried by him in this behalf, notice to such borrower to repay the balance of the loan in full or, as the case may be, comply with the terms of the agreement within seven days next after the receipt of the notice and if the borrower fails to comply with the said notice, the Managing Director or any person authorised by him in this behalf may, by further notice, require the borrower to hand over the management of the concern to which the loan relates to an officer authorised by the Bank.

16. Legal proceeding against defaulting concern.-If any borrower refuses or fails to hand over the management of the concern on receipt of notice under rule 15, an officer of the Bank, duly authorised by the Managing Director, in this behalf, may apply to the competent court for necessary order as regards handing over of the management of the concern to the Bank.

17. Management of concerns taken over.-(1) Where the management of a concern is taken over by the Bank, the Bank shall specify the manner in which affairs of that concern shall be managed taking into consideration the particular circumstances of the concern in each case.

(2) For the purpose of administering the affairs of a concern the management of which is taken over by the Bank, the Bank may appoint an Executive Director, Managing Agent, Director-in-charge or a committee composed of more than one person and may lay down such conditions as it thinks fit taking into consideration the public interest and the interest of the Bank.

(3) The management appointed under sub-rule (2) shall, if the Bank thinks fit in the public interest to do so and if the concern liability to the Bank remains intact and is fully secured, strive, as far as possible, to ensure the continued existence of the concern, and for this purpose, as also for effecting the recovery of its dues against the borrower including to introduce such changes in regard to matters connected with the working of the concern including establishment, administration, production and sale as it may think proper.

(4) The Bank may relinquish the management of the concern if it is satisfied that the cause for taking over the management no longer exists and the borrower shall not be entitled to claim any compensation or damage for taking over management of the concern by the Bank."

Application of Public Demands Recovery Act.- All sums due to the Krishi Bank have been declared to be recoverable as arrears of land revenue by certificate measure in accordance with the provisions of the Public Demands Recovery Act, 1913 (Bengal Act 111 of 1913). But practice of Krishi Bank shows that, where any borrower has deliberately refused repayment of loan and showed difiance of all pursuation of the Bank or otherwise fails to comply with the terms of loan agreement, it either straightway goes to sell his mortgaged property or take over the management of the concern under Article 21 of the Krishi Bank law. The provision of the said Article is as follows, namely:-

"21. (1) Where any agriculturist who is liable to the Bank under any agreement makes default in repayment or otherwise fails to comply with the terms of his agreement with the Bank, such default or failure, not being due to natural calamity, the Bank may, subject to any rules made in this behalf, take over the management of the concern of the agriculturist and sell or realise any property pledged, mortgaged, hypothecated or assigned by the agriculturists to secure his liability to the Bank.

(2) All sums due to the Bank shall be recoverable as arrears of land revenue.

(3) In the application of the Public Demands Recovery Act, 1913 (Bangal Act 111 of 1913), for the purpose of the recovery of the dues of the Bank, the provisions of sections 7, 9, 10, and 13 of that Act shall not apply and the certificates issued under section 6 of the said Act shall be conclusive proof that the amount specified therein is due to the Bank.

(4) Sums due from a co-operative society and recoverable under clause (1) may be recovered in accordance with the provisions of law for the time being in force relating to the recovery of such sums due from a co-operative society to the Government.

(5) Omitted.

(6) An officer (of the rank of Manager or above) of the Bank may exercise all the powers exercisable by a certificate officer under the Public Demands Recovery Act, 1913 (Bangal Act 111 of 1913), within his jurisdiction for the purpose of recovery of the dues of the Bank only."

For sale of any mortgaged property, the procedure as laid down in the Bangladesh Krish Bank (Sale of Mortgaged Property) Rules, 1982 (APPENDIX-XI) are followed. For taking over management of any concern, the procedures as laid down in the Bangladesh Krishi Bank Rules, 1983 are followed.

Conclusion Bangladesh Krishi Bank has emerged as the pioneer financial institution in the field of rural finance and development of agro-based industries. The performance of the Bank proves that operationally as well as financially Krishi Bank has been able to make substantial headway in the desired direction. In view of the huge financial reserves needed for rural development, resource mobilisation is a crucial task of the Bank like any other financial institution. Conscious efforts are, therefore, made to mobilise resources through increased deposits.

PART-TWO
GRAMEEN BANK

Establishment and background of the Grameen Bank.-The Grameen Bank has been established under the Grameen Bank Ordinance, 1983 (Ord. XLVI of 1983) (APPENDIX-XIV) with a view to providing credit to landless persons for all types of economic activities including housing, but excluding business in foreign exchange transaction. The Grameen Bank originates from a Project called the Grameen Bank Project. Section 37 of the Grameen Bank Ordinance, which reads as under, speaks about the project background of the Bank:-

"37. Grameen Bank projects to cease to exist.-(1) Notwithstanding anything contained in any other law for the time being in force or in any agreement or contract or other instrument, upon the establishment of the Bank,

(a) the Grameen Bank Proect, hereinafter referred to as the said project, shall cease to exist;

(b) all assets, rights, powers, authorities and privileges and all properties, movable and immovable, cash and bank balances, reserve funds, investments and all other rights and interests in, or arising out of, such property and all books of accounts, registers, records and all other documents of whatever nature relating thereto, of the said project shall stand transferred to, and vest in, the Bank,

(c) all debts, liabilities and obligations incurred, all contracts entered into and all matters and things engaged to be done by, with or for, the said project before establishment of the Bank shall be deemed to have been incurred, entered into or engaged to be done by, with or for, the Bank;

(d) the loans advanced by the said project before the establishment of the Bank shall be deemed to have been advanced by the Bank and shall be revoverable in accordance with the provisions of this Ordinance.

(2) The Government may, for the purpose of removing any difficulty in relation to the transfer and other matter specified in sub-section (1), make such orders as it may consider expedient and any such order shall be deemed to be, and given effect to as, part of the provisions of this Ordinance.

EXPLANATION.-In this section "Grameen Bank Project"means the Grameen Bank Project sponsored by the Rural Economics Programme of the Department of Economics, University of Chittagong, in 1976 in village jobra, Police station Hathazari, in the District of Chittagong and subsequently adopted by the Bangladesh Bank and participated by new Banks and the Bangladesh Krishi Bank".

Objectives of Grameen Bank Project.-It will appears from the provision of section 37 as quoted above that the Grameen (Rural) Bank Project was launched in December, 1976 under the sponsorship of the Rural Economics Programme of the Department of Economices, University of Chittagong. It was launched from a village named Jobra situated near the campus of the University of Chittagong. The Grameen Bank project was launched from the realisation that the present institutional banking arrangement by-pass the rural poor and it had the following objectives, namely:

(a) to extend the banking facilities to the poor men and women;

(b) to eliminate the exploitation of the money lenders;

(c) to create opportunities for self-employment for the vast un-utilised and under-utilised manpower resource;

(d) to bring the disadvantaged people within the folds of some organisational format which they can understand and operate, and can find socio political and economic strength in it through mutual support;

(e) to reverse the age-old vicious circle of low income, low savings, low investment, low income' into an expanding system of low income, credit, investment, more income, more credit, more investment, more income'.

Status of the Bank.- The Grameen Bank has all legal characteristics of a body corporate having perpetual succession and a common seal with power to acquire, hold and dispose of property, both movable and immovable, and it may, by its name, sue and be sued.

Board of Directors.-The general direction and supervision of the affairs of the Grameen Bank is entrusted to a Board of Directors. The Board is consist of 13 Directors including the Chairman and the Managing Director. Of the thirteen Directors, three are appointed by the Government and the rest nine Directors are elected by the borrower-shareholders of the Bank from amongst themselves. The Chairman of the Board is appointed by the Government from amongst the three appointed Directors. The tenure of elected Directors is three years and those of appointed Directors is such as the appointing authority permits.

Shareholding of paid capital.-The ratio of Directors between the Government and borrower shareholders has been fixed in consideration of the share holding of the capital of the Bank. Section 7 of the Grameen Bank Ordinance states the share-holding provisions as follows:-

"7. Paid-up share capital.-(1) The initial paid-up share capital of the Bank shall be taka seven crore and twenty lac which shall be subscribed as follows:-

(a) 25% by the Government or by any organisation or body set up, managed or controlled by the Government, as may by determined by it; and

(b) 75% by borrowers of the Bank of which 20%preferably by women borrowers.

(2) The Government may increase the paid-up share capital of the Bank from time to time.

(3) Shares held by a borrower may be transferred to another borrower of his class".

Chief Executive.-The Managing Director is the Chief Executive Officer of the Grameen Bank. He is appointed by the Board of Directors with the approval of the Central Bank. In selecting a Managing Director, the appointing authority is under legal obligation to give preference to persons who has knowledge

and experience in rural economy or in the field of grameen banking business .

Evaluation of the Bank.-Grameen Bank has attracted the attention of many quarters as a successful institution. Several independent evaluation team, both national and foreign, assessed the impact of Grameen Bank in the economic condition of the poorest in Bangladesh and confirmed its profound impacts in terms of significant improvement for the Grameen Bank clients.

Borrowers are organised groups.-The Grameen Bank credit programme caters only to the poor. Where conventional credit institutions largely failed in reaching the disadvantaged groups, Grameen Bank has succeeded in evolving a delivery system which is designed exclusively for the poorest in Bangladesh. All the work of Grameen Bank springs from and focuses on the activities of the landless groups and their centres. People organise themselves in primary groups of five persons and federate them into centres. Six groups of above mentioned five members join together to form a centre. The poor who want to become members of the Bank are encouraged to form groups by finding five like-minded people who are in a similar economic conditions and injoy mutual trust and confidence. Whereas group members must be inhabitants of the same village, only one member of a household may be in a group. If several people from a household want to join the Bank, they must take membership in different groups in the centre, or in another centre entirely. Similarly, relatives must not be in the same group. Membership in groups and centres is according to gender. Women comprise their own groups and centres and so do men. This decision is given in the social milieu of Bangladesh which is predominantly Islamic.

Group chairperson, etc. of group.-Each group elects a chairperson and a secretary who hold office for one year only. They cannot be re-elected before all other members have had the same learning experience that accompanies the responsibilities of these positions. The group chairperson is responsible for the discipline in the group. Members conduct their business with the Bank through her or him at weekly meetings. All members are obliged to attend these meeting and to be fully aware of the rules governing the activities and procedures of the group.

Bank goes to the borrowers to give credit.-The centres are the receiving institutions and are functionally linked up with the delivery system of Grameen Bank, whose staff attend the centre meeting regularly every week. Most of the bank transactions are taken place in the weekly meetings of the centres. Thus in the service system of Grameen Bank, the borrowers do not come to the Bank, instead the Bank goes to the borrower.

Collateral security not necessary.- When a new group is formed, it is kept under close observation for a month by Bank workers and other staff to see if the members are conforming to the discipline of Grameen Bank. If satisfactory, two members will receive their loans and be observed for a month or two to ascertain if they pay their instalments regularly. Only then will the next two members be eligible for loans. The fifth member of a group will receive her or his loan when the second set of loanees have established their liabilities. Usually, the group chairperson and secretary are the last to receive their loans. The second set of loans are not approved before the individual accounts of each group member are settled. Thus, the group members interact in a micro-network of mutual accountabilities. The individual is kept in line by a considerable amount of peer pressure. Equally, an individual is sustained by a considerable amount of peer support. This is the whole basis for the singular fact that Grameen Bank can give loans without demanding a collateral surety. Social collateral replaces material collateral. The credibility of the group as a whole and its future benefits in terms of new loans is in jeopardy if one member defaults on loan repayments. In practice, what often happens in the case of financial difficulties is that the group arrives at a private arrangement to pay a member's instalment. This is one of the reasons for the Bank's loan repayment rate to be most satisfactory.

Audit of accounts.-In the usual convention of banking, the audit function is independent and external. This applies to Grameen Bank also. Section 23 of the Grameen Bank Ordinance provides for the audit of the accounts of the Grameen Bank. The provision is as under:

"23. Audit.-(1) The accounts of the Bank shall be audited by not less than two auditors being chartered accountants within the meaning of the Bangladesh Chartered Accountants Order, 1973 (P.O. No. 2 of 1973).

(2) Every auditor appointed under sub-section (1) shall be given a copy of the annual balance sheet and other accounts of the Bank and shall examine it, together with the accounts and vouchers relating thereto, and shall have a list delivered to him of all books kept by the Bank, and shall, at all reassonable times, have access to the books of accounts and documents of the Bank, and may, in relation to such accounts, examine any Director or officer of the Bank.

(3) The auditors shall report to the Board upon the annual balance sheet and accounts, and in their report they shall state whether, in their opinion, the balance sheet contains all necessary particulars and is properly drawn up so as to exhibit a true and correct view of the state of affairs of the Bank and, in case they have called for any explanation or information from the Bank, whether it has been given and whether it is satisfactory.

(4) The Board may, at any time, issue directions to the auditors requiring them to report to it upon the adequacy of measures taken by the Bank for the protection of the interest of the shareholders and of the creditors of the Bank or upon the sufficiency of the procedure in auditing the affairs of the Bank, and may, at any time, enlarge or extend the scope of the audit or direct that different procedure in audit shall be adopted or that any other examination shall be made by the auditors or any other person or persons, if in its opinion, the interest of the Bank so requires."

Besides the external audit under section 23 of the Grameen Bank Ordinance referred to above, the Grameen Bank has developed its own internal extra audit system. This is necessary in response to its many particular requirements and to meet the needs of its rapid expansion. Audits are undertaken according to a programme designed for a two-month period. Once an audit programme is approved by the Managing Director, a team travels to a branch office, spending fifteen to twenty days there. Shortly after his arrival, the senior officer decides which procedures are most appropriate. Normally, he would carry out a sampling audit first. If any irregularities are indentified, he would then proceed to a complete audit.

Largest financial institution with social development programme.-The Grameen Bank today has become the largest

financial institution in the country that gives credit to the rural poor. The Grameen Bank simultaneously has it social development programme for implementation through its borrowers. In March, 1984, a national workshop took place which was a historic occasion to agree upon some 16 decisions, which have become the social development constitution of Grameen Bank. These decisions are in the TABLE annexed hereto. The Grameen Bank's concrete experience proves it without doubt that credit can help the poor to get out of the economic grip of the economically stronger segment of the society. Notwithstanding the spectacular success of the Grameen Bank, there is an undercurrent of apprehensions about its future prospect. It is argued that, at present Grameen Bank covers less than five per cent of total villages and not even two percent of the rural poor. If there is no overall growth in the rural economy, especially agriculture, the demand for the goods and services produced by Grameen Bank members may soon reach its saturation point once it is expanded throughout the country.

TABLE
THE SIXTEEN DECISIONS

1. We shall follow and advance the four principles of Grameen Bank---- Discipline, Unity, Courage and Hard work--- in all walks of our lives.
2. Prosperity we shall bring to our families.
3. We shall not live in dilapidated house. We shall repair our houses and work towards constructing new houses at the earliest.
4. We shall grow vegetables all the year round. We shall eat plenty of them and sell the surplus.
5. During the plantation seasons, we shall plant as many seedlings as possible.
6. We shall plan to keep our families small. We shall minimize our expenditures. We shall look after our health.
7. We shall educate our children and ensure that we can earn to pay for their education.
8. We shall always keep our children and the environment clean.
9. We shall build and use pit-latrines.
10. We shall drink water from tubewells. If it is not available, we shall boil water or use alum.
11. We shall not take any dowry at our sons' weddings, neither shall we give any dowry at our daughters' wedding. We shall keep the centre free from the curse of dowry. We shall not practice child marriage.
12. We shall not inflict any injustice on anyone, neither shall we allow anyone to do so.
13. We shall collectively undertake bigger investments for higher incomes.
14. We shall always be ready to help each other. If anyone is in difficulty, we shall all help him or her.
15. If we come to know of any breach of discipline in any centre, we shall all go there and help restore discipline.
16. We shall introduce physical exercise in all our centres. We shall take part in all social activities collectively.

PART-THREE

RAJSHAHI KRISHI UNNAYAN BANK

Establishment of the Bank. The Rajshahi krishi Unnayan Bank (RKUB) has been established under the Rajshahi Krishi Unnayan Bank Ordinance,1986 (Ord No LVIII of 1986). (APPENDIX-XIII) The operational Jurisdiction of the Bank is limited to the administrative Division of Rajshahi. Prior to the establishment of the RKUB, the said Division was under the working jurisdiction of the Bangladesh Krishi Bank (BKB).The BKB provided credit facilities to agriculturists, persons engaged in cottage industries etc. all over the country till the RKUB started its function with effect from 15th March, 1987. In order to give special attention to the credit needs of agriculture and rural development activities of the Rajshahi Division, Goverement decided to establish a separate krishi Bank for that Division and RKUB is the result of that decision.

Authorised capital.- The RKUB is wholly Government owned Bank.Its authorised capital is one hundred and fifty crore taka. It is subscribed by the Government from time to time according to requirement. The authorised capital may be increased by the Govrenment whenever it is considered necessary by it to do so.

Board and Management. There is a Board of Dircetors for the general direction and administration of the affairs of the RKUB The Board is consist of seven Directors including the Chairman and the Managing Director. All the members of the Board are appointed by the Government for such period and on such terms and conditions as it may determine. The power of the Government to make appointment,as stated above, is subject ot the condition that the Chairman and two other Directors must be from persons who are not in the service of the Republic.

The general direction and administration of the affairs and business of the RKUB is entrusted to its Board of Directors. Board is under legal obligation to act on commercial considerations with due regard to the interest of agriculture and cottage and other allied industries in the rural as well as urban areas. The Board of Directors power and authority is, however,subject to the guidance of the Government on question of policy of the Government.

Execution of policies.-The Managing Director of the RKUB is its chief executive officer. He is responsible for formulation and implementation of the policies, plans and programmes of the Bank to ensure optimum utilisation of its resources. RKUB has an Executive Committee consisting of the Chairman, Managing Director and another Director to be elected by the Board in this behalf. The Executive Committee is competent to deal with any matter within the competence of the Board.

Difference between RKUB and BKB.- A close reading of the RKUB law will show that the objectives of the RKUB is the same as that of BKB in their respective areas of operation. The RKUB started its function with the undertaking and officer and other employees of the BKB falling within the administrative Division of Rajshahi on the date of commencement of RKUB law. All rules and regulations made under the BKB law, unless contrary to the RKUB law, were declared effective for RKUB. These rules and regulations are still in force. All these show that there is virtually no diffreence in the objectives, functioning or otherwise between the two Banks.

The matters discussed in this book under the Bangladesh Krishi Bank in the heading of Objective, Action programme, Purpose of loan, Meaning of terms of loan, Loan in kind, Use of loan,taking over the defaulting concern, application of Public Demands Recovery Act,1913 etc, are also applicable to Rajshahi Krishi Unnayan Bank. These points are not,therefore, discussed here.

Audit of accounts.- The audit to the accounts of the Bank is, as per the RKUB law, made by at least two external auditors who shall be chartered accountant and appointed by the Government. Beside the audit of the accounts in accordance with the provision of the RKUB law, the Bank has its own internal audit programme.

Deposit.- The RKUB has statutory authority of accepting money on deposit like BKB. The deposit mobilization programme of the RKUB is aimed at reducing the dependency on refinancing facilities of the Bangladesh Bank and to credit its own fund for disbursing credit. The RKUB, as on 30th April, 1993, has 295 branches, out of which 271 are in rural areas and the rest are in urban area of Rajshahi Division.

CHAPTER-TWELVE
CO-OPERATIVE BANKING

Background.-The background of co-operative banking in this Ganges Deltaic Region dates back to the year 1901, when the Strachey Famine Commission, 1880 recommended the establishment of mutual credit association to deal with the problems of agricultural credit. It may be mentioned that the acute famine in the region of now Bangladesh during the year 1876-78 contributed to the setting up of Famine Commission, referred to above, by the British India Government. Such recommendations resulted in the enactment of the Co-operative Societies Act, 1904 and subsequently the Bengal Co-operative Societies Act, 1940 with a view to promoting measures to cater to the credit needs of the rural people. After partition of the Sub-continent, the East Pakistan Provincial Co-operative Bank Ltd. was established in 1948 with the same objectives. This Bank is now known as Bangladesh Co-operative Bank Ltd or Bangladesh Samabaya Bank Ltd.

Role of co-operative bank.- Co-operative bank has an important role in the banking system of Bangladesh. The role of co-operative bank in our rural economic development though limited but is very important. It functions mainly to cater the needs of rural areas and small borrowers. Co-operative bank is mainly concerned with the financing of agriculturists.

Difference of co-operative with commercial bank.- There are important differences between commercial banks and co-operative banks. Some of the differences are enumerated below:-

(a) Commercial banks operate through their network of branches and their management and policies are controlled by the head office. Co-operative banks are distinct entities by themselves with separate jurisdiction and independent Board of Directors.

(b) Commercial banks are subject to the bank laws and the control of the central bank i. e. Bangladesh Bank. Co-operative banks, on the other hand, are

organised on a co-operative basis and are governed by their members according to the co-operative laws.

(c) Commercial banks are audited by external auditors, whereas the audit and inspection of co-perative banks is done by the Registrar of co-operative societies.

(d) Commercial banks can invest more freely than their co-operative counterparts, who have to follow the rules of investments laid down by the Registrar of co-operativ societies.

(e) Commercial banks enjoy more discretion in their lending policies, which are determined by their Board of Directors subject, of course, to the regulation of central bank; whereas the co-operative banks are to follow the co-operative law, instruction of central bank and the Co-operative Department in lending matters.

(f) In co-operative banks, borrowers, being members, have some say in the use of the funds, whereas in commercial banks borrowers have no voice in the managements and policies of the banks.

Bangladesh Samabaya Bank Ltd.-The Bangladesh Co-operavtive Bank Ltd, i.e. the Bangladesh Samabaya Bank Ltd. (BSBL) was established in 1948. It conducted credit operation through the Central Co-operative Bank and Primary Multipurpose Co-operative Societies from its own fund till the central bank commenced financing of the Co-operative from 1957-58. The BSBL started with the authorised capital of taka one crore. This has now increased to take ten crores, divisible into one lac share of one thousand taka each. The paid up capital of the BSBL is now taka 350 lacs.

The BSBL is the appex credit institution. It borrows money from the central bank partly against Government guarantee for lending the same to its members. The total strength of BSBL is 447 (as per Annual Report 1991-92) and their beak-up is as under:-

1.	Central Co-operative Bank	71
2.	Thana Central Co-operative Society	51
3.	Central Multi-purpose Co-operative Society	30

4.	Central Sugar-Cane Co-operative Society	13
5.	Fishermen Co-operative Societies	2
6.	Co-operative Land Mortgage Bank	46
7.	Municipal Co-operative Bank and Society	10
8.	Primary Multi-purpose Co-operative Society	148
9.	Government	1
10.	Others	59
11.	Bank and Society declared abolished	16
	Total:-	**447**

Processing of loan application.- The processing of loan application of co-operatives starts at the primary level. The farmer members submit their loan application in the prescribed form to the Primary Co-operative Societies. Firstly the applications are scrutinised by the local Co-operative Assistant Inspector. The consolidated demend for loan of the primary societies is forwarded to the Central Co-operative Bank through the Thana Co-operative Officer with recommendation of the Thana Agricultural Officer. Then the Central Co-operative Bank sends its demand to the BSBL through the District Co-operative Officer. The BSBL submits the demand for loan to the Bangladesh Bank.In addition to the channelisation of credit, these agricultural Co-operatives are engaged in fertilizer business, introduction of irrigation technology and marketing activities.

Co-operative law.- The Co-operative Societies Ordinance, 1984 (Ordinance 1 of 1985) is the principal existing law relaing to co-operative societies in Bangladesh. A Co- operative Bank is a Co-operative Society, the object of which includes the creation of funds to be lent to other co-operative societies. As already mentioned before, a Co-operative Bank is governed by the co-operative law i.e. the Ordinance I of 1985. Section 3 of the Banking Companies Act, 1991 provides that nothing of that Act apply to a co-operative bank registered under the Co-operative Societies Ordinance, 1984 (1 of 1985), or any other law for the time being in force relating to co-operative banks except that the Bangladesh Bank may carry out inspections of, and issue directions to, co-operative bank as prescribed for the banking companies under section 44 and 45 of the said Banking Companies Act. In accordance with such provisions, Bangladesh Bank may, at any time, on its own motion or, on being directed to

do so by the Government shall, cause an inspection to be made by one or more of its officers of any co-operative bank and its books and accounts. Further, where Bangladesh Bank is satisfied that-

(a) in the public interest, or

(b) in furtherance of monetary and banking policy, or

(c) to prevent the affairs of the co-operative bank being conducted in a manner detrimental to the interests of the members or in a manner prejudicial to its interest,

(d) to secure proper management of the co-operative bank generally,

it is necessary to issue directions. It may, from time to time, issue such directions as it deems fit and the co-operative banks are bound to follow such instructions.

Constitutional obligation.-We have a constitutional obligation to organise the country's means of production and distribution on co-operative basis. The state policy of Bangladesh, as specified in the Constitution of the People's Republic of Bangladesh, lists co-operative as one of the principles of ownership in Article 13 of the Constitution. Credit and finance being the key of success of all co-operative activities, it will not be possible to meet the constitutional obligation unless we must give due importance to co-operative banking. The provision of aforesaid Article 13 reads as under:-

"13. The people shall own or control the instruments and means of production and distribution, and with this end in view ownership shall assume the following forms:-

(a) state ownership, that is, ownership by the state on behalf of the people through the creation of an efficient and dynamic nationalished public sector embracing the key sectors of the economy;

(b) co-operative ownership, that is, ownership by co-operatives on behalf of their members within such limits as may be prescribed by law; and

(c) private ownership, that is, ownership by individuals within such limits as may be prescribed by law."

CHAPTER-THIRTEEN
ISLAMIC BANKING

Establishment of Islamic Bank.-Islamic banking means interest-free and Shariah-based banking business on profit-loss sharing system. With Islamic Bank Bangladesh Limited having been established on the 30th March, 1983 as a multinational banking company, formally started its activites on August 12 of the same year. With the establishment of this Bank, a new chapter opened in the banking history of Bangladesh with the commitment to run interest free and sharia-based banking business.

2. Sponsors of Islamic Bank.- Besides the Bangladesh citizens and organisations, the following international organisations and foreign personalities sponsored the Islamic bank Bangladesh Limited, namely:-

(1) Islamic Development Bank, Jeddah., K.S.A.

(2) Dubai Islamic Bank, Dubai, U. A. E.

(3) Bahrain Islamic Bank, Bahrain;

(4) Kuwait Finance House (KSC)

(5) Islamic Investment and Exchange Corporation, Dohar, Quatar;

(6) Islamic Banking System International Holding S.A Luxemburg;

(7) Jordan Islamic Bank, Jordan,

(8) Ministry of Awkaf and Islamic Affairs, Kuwait;

(9) Public Institution for Social Security, Kuwait;

(10) Ministry of Justice, Department of Minors Affairs, Kuwait;

(11) Al-Rajhi Company for Currency Exchange and Commerce, K.S.A.

(12) Ahmed Salah Jamjoom, K.S.A.

(13) Fouad Abdul Hameed Ali-Khateeb, K.S.A.

Distinguishing features of Islamic Bank.-All banking and investment activities of the Islamic Bank Bangladesh Limited are being conducted on the basis of profit-loss sharing system conforming to the principles of Islamic Shariah. The distinguishing features of the Bank are as follows:-

(i) conducting activities on interest-free system according to Islamic Shariah;

(ii) establishing Bank-clientele relationship participatory instead of the debtor-creditor relationship of the conventional system;

(iii) investing on the basis of profit sharing and risk-bearing system;

(iv) ensuring equity and justice in distribution of investment income between the depositor and the Bank;

(v) introducing a welfare-oriented banking system and also establishing equity and justice in the field of trade and commerce;

(vi) extending co-operation to the poor, helpless and low-income group of the people for their economic upliftment.

Method of operation of the Islamic Bank.- The Islamic Bank Bangladesh Limited carries out its business under the principles of Mudaraba, Musharaka (Partnership), Murabaha (Contract -Sale), Ijara (Leasing Hire-Purchase), Bai-Muajjal (Sale Under Deferred Payment) and Bai-e-Salam (Advance Purchase).

Mudaraba Principle.-Under the Mudaraba Principles, long, medium or short term projects are financed on the following terms:-

(i) administration and management of the projects to be carried out by the Mudarab (Entrepreneur);

(ii) the bank shares in the net profit and loss according to the terms of agreement;

(iii) the bank takes the performance guarantee from the party against any breach of contract.

Musharaka Principles.-Under the Musharaka principles, the Bank-

(i) participates in shariah approved partnership or joint venture projects and undertakings;

(ii) provides funds partly to the entrepreneur and shares in decision making;

(iii) shares in net profit and loss according to the terms of agreement;

(iv) purchases shares of joint stock companies on equity participation basis to earn dividend income like other ordinary shareholders.

Murabaha principles.-Under the Murabaha principles, the Bank purchases certain commodities (halal)for clients as per their request and specification. The cost of the commodity thus purchased is determined in detail including the purchase price, duties and expenses. Where there is a percentage of profit, the price is fixed at an agreed rate. The time, place and mode of delivery of goods and payment is determined earlier.

Ijara Principles.-Under Ijara principles, the Bank-

(i) adopts various forms of leasing and hire purchase of machinery and equipment, transport etc;

(ii) provides finance for housing units and apartments on rent income sharing;

(iii) provides finance for the fixed capital investment of industrial consumers on the basis of leasing.

In Ijara arrangement, the repayment is made by instalment and the purchaser, after completion of the instalment, becomes the owner of the assets.

Bai-Muajjal System.-Bai-Muajjal (Sales under Defferred Payment) System conforms to the Murabaha principles except in deferred payment. Under this arragngement, the Bank-

reasonable mark-up on the total cost of purchase of commodities;

(ii) allows the deferred payment terms, unlike Murabaha;

(iii) determines earlier the quality, quantity, time, place and mode of delivery of goods.

Bai-e-Salam System.-The Bank operates Bai-e Salam (Advance Purchase) System in agriculture, fishery, poultry and dairy product. Under this system-

(i) payments are made to the clients at the time of contract;

(ii) quality, quantity, time, place and mode of delivery are determined when the contract is agreed upon;

(iii) price is also determined at the time of contract.

Shariah Council.- There is a Shariah Council of the Bank consisting of prominent Ulema, reputed bankers, renowned lawyers and eminent economists. The Shariah Council plays a vital role in guiding and supervising the implementation and compliance of Shariah principles in all the activities of the Bank. The Council enjoys a special status in the structure of the Bank. The Council meet frequently and deliberate on different issues confronting the Bank on Shariah matters. They also conduct Shariah inspection of branches regularly so as to ensure that the Shariah principles are implemented and complied with meticulously by the branches of the Bank.

First Bank, Immense responsibility.- Islamic Bank is a new concept in Bangladesh. As such the people in general and the Muslims in particular are not yet fully conversant with its principles and practices. Keeping this point in view, however, the Islami Bank Bangladesh Limited published a number of books, booklets etc, on the mechanisms of the Islamic Banking. In addition, by various publicity campaign, the Islamic Banking principles and practices have been familiarised. People are now enthusiastically accepting and responding to the Islamic Banking system.

Islami Bank Bangladesh Limited is a banking institution which being based on Islamic Shariah is undoubtedly the first of its Kind. Since the people of Bangladesh are familiar with the traditional banking system based on interest for a long time, it may take time to popularise Islamic banking and the profits and benefits accruing therefrom. The traditional banking system is not conditioned in its operation by any religious commandments. On the contrast, Islamic banking has to derive its inspiration from religious edicts of Islam and has to mould its

operations within the framework of the teaching of Islam. Therefore, Islami Bank Bangladesh limited has sacred and arduous task of motivating the people at large so that they may gradually feel attracted to this way of Islamic banking. The responsibility of Islami Bank Bangladesh with its limited resources is, therefore, immense.

Banking in accodance with Shariah is reality.- Banking in accordance with Islamic Shariah is no more a concept. It is now a reality and a dynamic system embodying a set of superior banking machanics. The Islami Bank Bangladesh started operations in 1983 with only one branch in Dhaka. But by 30th June, 1996, the total number of branches comes to 90 including 27 in the rural areas. The establishment of Islami Bank Bangladesh has opened a new chapter in the banking history of Bangladesh. The Bank is committed to extend help and co-operation to the people of the country in exploring for 'Halal' earnings and interest-free 'Halal' investment. Two new banks, namely (1) Al- Arafah Islami Bank Ltd and (2) Social Investment Bank Ltd have recently been established for banking in accordance with Islami Shariah. This really encouraging.

CHAPTER-FOURTEEN
BANGLADESH SHILPA BANK

Background of the Bank.- Since the attainment of independence, Government had taken active steps by starting institution to render financial assistance to industries of large, medium and those in small scale sector. The institution called the Bangladesh Shilpa Bank was established under the Bangladesh Shilpa Bank Order, 1972 (President's Order No. 129 of 1972), hereinafter called BSB law (APPENDIX-XV). It may be mentioned that, prior to the emergence of Bangladesh as an independent and sovereign country, credit facilities and equity support to industries used to be provided by the Industrial Development Bank of Pakistan and the Equity Participation Fund established under the Industrial Development Bank Ordinance, 1961 (Ord. No. XXXI of 1961), and the Equity Participation Fund Ordinance, 1970 (Ord. No. 1 of 1970) respectively. After the 16th day of December, 1971, arrangement was made for the management of the affairs of the said Industrial Development Bank and Equity Participation Fund by promulgating two laws i.e. the Bangladesh (Industrial Development Bank) Order, 1971 (Acting Prisident's Order No. 4 of 1971) and the Bangladesh (Administration of Financial Institutions) Order, 1972 (Acting president's Order No. 3 1972)] respectively. The above mentioned two Orders were repealed by the Bangladesh Shilpa Bank Order mentioned above, whereunder the Bank under discussion was established.

Privatisation of Shilpa Bank.- The Shilpa Bank was originally established as a banking institution in the public sector to cater to the credit needs of industries and was a wholly owned Bank of the Government. It started functioning from 31st October, 1972 and continued accordingly until 1986, when the basic character of the Bank was changed by making amendment in the BSB law. In order to give share to the public in the Shilpa Bank, the Bangladesh Shilpa Bank (Amendment) Ordinance, 1986 (Ordinance, No. LXX of 1986) was promulgated. At present 49% precent of shares of the Shilpa Bank may be owned by

Bangladeshi nationals or by any financial institution, Bangladeshi or foreign.

Management of Shilpa Bank.- The general direction and administration of the affairs and business of the Shilpa Bank is vested in its Board of Directors. The Board in discharging its functions is under legal obligation to act on commercial and banking considerations with due regard to the interests of industry and commerce and to the public interests. The authority of the Board, as aforesaid, is, however, subject to the general policy guidelines as may be given by the Government from time to time. The Board of Directors of the Shilpa Bank is consist of nine Directors including a Chairman and a Managing Director. The relevant Articles of the BSB law on the constitution of Board of Directors and the tenure, resignation, termination etc. of the members of the Board are as under:-

8. (1) The Board shall consist of a Managing Director and eight other Directors to be appointed by Government:

Provided that when there are share-holders other than the Government, such share-holders shall elect, in such manner as may be prescribed, from amongst themselves--

(a) one Director, when the number of shares subscribed for by them exceeds twelve percent but does not exceed twenty-five percent of the total shares;

(b) two Directors, when the number of shares subscribed for by them exceeds twenty-five per cent but does not exceed thirty-five percent of the total shares;

(c) three Directors, when the number of shares subscribed for by them exceeds forty per cent but does not exceed forty-five per cent of the total shares;

(d) four Directors, when the number of shares subscribed for by them exceeds forty-five percent.

(2) No act or proceeding of the Board shall be invalid merely on the ground of existence of any vacancy in, or any defect in the constitution of, the Board.

9. (1) The Managing Director shall hold office for such period, not exceeding five years, and on such terms and conditions as the Government may determine.

(2) An appointed Director shall hold office for such period, not exceeding three years, and on such terms and conditions as the Government may determine.

(3) An elected Director shall hold office for a period of three years from the date of his election on such terms and conditions as the Board may determine.

(4) The Managing Director or any other Director shall be eligible for re-appointment or re-election, as the case may be.

(5) The Government may terminate the appointment of the Managing Director by giving him not less than three months notice or paying him three months pay in lieu thereof.

(6) The Government may terminate the appointment of any other appointed Director at any time without assigning any reason.

(7) The share-holders may, by a resolution passed in a general meeting, remove any elected Director from his office.

(8) The Managing Director or any other Director may, at any time, resign his office by a notice in writing addressed to the Board:

Provided that no resignaion shall take effect until it has been accepted by the Government.

(9) The Government, in determining the terms and conditions on which the Managing Director or any other Director shall hold office, shall obtain the views of the share-holders, other than the Government, if any, in such manner as may be determind by it."

Nature of loan, etc. allowed by BSB.-The Bangladesh Shilpa Bank, hereinafter called BSB, provides long term loan, both in foreign and local currencies, for setting up industrial projects and also for balancing, modernisation, replacement and expansion of the existing industrial projects in private and public sectors. The industrial policies and the industrial investment schedules formulated by the Government from time to time are the broad guide-lines of investment of BSB. It also provides financial assistance on limited scale in the form of guarantees for credit, loan, equity-support and working capital loans to such projects as are financed by itself.

Preferential projects for loan, etc.- Subject to industrial policy and industrial investment schedules of the Government,

projects having the following characteristics are given preference by BSB:-

(a) export oriented and import-substituting project;

(b) local raw material based project;

(c) less developed areas project;

(d) such project the foreign currency cost of which will be met by non-repatriable capital of Bangladeshis living or working abroad;

(e) joint-venture project with equity participation of foreign investors;

(f) such project whose resource, skill and know-how will be local;

(g) labour intensive project.

Applicaion for loan .-The applicaion for loan of BSB must be made in prescribed form. Where the project involves expenditure exceeding the amount fixed by the Bank, the application must accompany a feasibility report of the project, prepared by a consultant, whose name appears in the list of consultants maintained by the BSB in this behalf or, subject to the clearance of the BSB, by any other consultant.

Terms and conditions for loan.- BSB does not sign loan agreement unless the sponsors undertakes to the effect that-

(a) pre-shipment inspection of machinery to be imported will be made by Surveyor of international repute and to the satisfaction of BSB;

(b) the shares held by them shall not be transferred without prior approval of the BSB in writing;

(c) the company will arrange necessary banking facilities for meeting the working capital requirement by the time the project is about to go into commercial operation;

(d) the company shall have a meeting of its Board of Directors at least once in each quarter of the year, if not monthly, to discuss the affairs of the company and submit the minutes of such meetings to the Bank regularly;

(e) before opening the letter of credit, the company shall deposit an amount to be determined at the appraisal stage as letter of credit margin, which is re-determinable on account of exchange fluctuations or any other rate at the time of actual opening of letter of credit;

(f) the company shall submit the lay out plan of the building including machinery plan to the Bank for scrutiny and approval.

The following are some of the other terms and conditions on the sponsors of project for BSB loan or financial assistance, namely:-

(a) the shortfall in meeting the cost of the project shall be borne out of the sponsor's own resources;

(b) the paid-up capital of the company determinable at the appraisal stage will be raised by the time the project is scheduled to be completed,

(c) the project has to be completed and commissioned within such period from the date of opening of the letter of Credit for the import of machinery as may be determined at the appraisal stage;

(d) a signboard at a couspicuous place at the project site indicating that the project is the BSB financed one will be displayed;

(e) the rules and regulations of the Environmental Pollution Control Board shall be strictly followed;

(f) a loan redemption fund, particularly for servicing the company's loan liabilities to the BSB, shall be created;

(g) all books of accounts shall be properly maintained for inspection by the BSB or any other person or agency, either national or foreign;

(h) quarterly progress report on the project shall be submitted regularly to the Bank in the prescribed proforma;

(i) the audited balance sheet, together with the profit and loss accounts, of the company shall be

submitted for every funancial year within a specified period;

(f) other data on the project as may be required by the Bank from time to time shall be furnished.

Security for loans.-Loans are usually secured by mortgage and hypothecation of the existing and future assets of the projects, viz. land, building, machinery, etc. created or to be created with sponsor's equity and BSB's loans. Share certificates issued by the borrowing companies during implementation of the projects remain deposited with the Bank generally until the start of commercial operation as collaterals. In order to ensure undivided attention of the borrowers to the affairs of the project, personal guarantees of the Directors are also obtained in each case. Further collateral securities may also be asked for in appropriate cases.

Insurance of projects.- All insurable project assets, including those in the form of tangible collateral securities, are to be insured for appropriate amount in the joint names of the BSB and the borrowers as mortgagees and mortagagors respectively at the borrower's costs covering all such risks as may be determined by the Bank. Marine insurance is required to be obtained for machinery under import against BSB loans.

Repayment of loans etc.- Foreign currency loans are to be repaid in accordance with the amortisation schedules agreed to between BSB and Government and Donor Agencies. Repayment generally commences thirty months after opening of L/cs. Repayment of local currency loans generally starts twenty four months after disbursement of the first instalment of the loan. A repayment schedule is, however, drawn up taking into account the nature of the project gestation period and its debt-servicing capacity. Interest is payable on half-yearly basis except in the cases of service industries where it is computed on quarterly basis.

Instant repayment of loan. -The BSB may require any industrial concern to which or any person who is liable for payment of such loan to repay it forthwith under certain circumstances. Even the bilateral contract between the BSB and the borrower concerned with provisions prohibiting such requirement cannot save the borrower from the consequences.

The relevant Article of the BSB law in this respect is reproduced below:-

"32. Notwithstanding any agreement to the contrary, the Bank may, by notice, reqire any industrail concern to which it has granted any loan or any person who is liable for payment of such loan forthwith to repay the loan in full, if -

(a) it appears to the Bank that information, false or misleading in any material particular, has been given in the application for the loan; or

(b) the industrial concern has failed to comply with the terms of any agreement with the Bank in the matter of loan; or

(c) there is a reasonable apprehension that the industrial concern is unable to pay its debts or may go into liquidation; or

(d) the property pledged, mortgaged, hypothecated or assigned to the Bank as security for the loan is not insured or kept insured by the industrial concern to the satisfaction of the Bank or has, in the opinion of the Bank, depreciated in value by more than twenty per cent, and further security to the satisfaction of the Bank is not given, or

(e) without permission of the Bank, machinery or other equipment or any asset is removed from the premises of the industrial concern without being replaced; or

(f) without permission of the Bank, any property of the industrial concern is sold, transferred, exchanged or alienated in any manner; or

(g) without prior approval of the Bank in writing, the management of the industrial concern has been changed or altered; or

(h) without any satisfactory reason, the industrial concern or the person responsible for payment of the loans has failed to attend or reply to the enquires made by the Bank or failed to supply the papers or documents asked for by the Bank; or

(i) for any other reason, it is necessary, in the opinion of the Bank, to protect the interest of the Bank or of the industrial concern.

Taking over of Industry for default of repayment of loan.- Where any industrial concern which is under a liability to the Bank makes any default in payment or otherwise fails to compply with the terms of the agreement with the Bank, the Bank may, in accordance with the provision of the Shilpa Bank Law (Article 34), take over the management and administration of the industrial concern, and may sell or realise any property pledged, mortgaged, hyfothecated or assigned by the industrial concern to secure its liability to the Bank.

CHAPTER-FIFTEEN
BANGLADESH SHILPA RIN SANGSTHA

Background - Bangladesh Shilpa Rin Sangstha, hereinafter in this Chapter referred to as Sangstha or BSRS, was established on October 31, 1972, under the Bangladesh Shilpa Rin Sangstha Order, 1972 (President's Order No. 128 of 1972) (APPENDIX-XVI). The object and purpose of the establishment of the Sangstha was to provide credit facilities and other assistance to industrial concerns and encourage and broaden the base of investment in Bangladesh and to provide for the vesting in the Sangstha such of the undertaking of the following organisations as were situated or available within the territories now comprised in Bangladesh, namely:-

(a) the Pakistan Industrial Credit and Investment Corporation Limited which, after the 16th day of December, 1971, was called the Bangladesh Industrial Credit and Investment Corporation Limited;

(b) the Investment Corporation of Pakistan which, after the 7th day of January, 1972, was renamed as the Investment Corporation of Bangladesh;

(c) the Pakistan National Investment Trust Limited which, after the 16th day of December, 1971, was known as National Investment Trust Limited.

Status of the Sangstha.-The Sangstha has all legal characteristics of a body corporate having perpetual succession and a common seal with power to acquire, hold and dispose of property, both movable and immovable and it may, by its name, sue and be sued.

Authorised capital. - The Sangstha is wholly a Government owned financial institution with authorised capital of two thousand million taka to be subscribed by the Government from time to time according to the requirement of the institution.

Management. - There is a Board of Directors for the general direction and administration of the affairs and business of the Sangstha which may exercise all such powers and do all such acts and things as may be exercised or done by the Sangstha. The

Board is consist of a Managing Director and eight other Directors to be appointed by the Government. One of the Directors so appointed may be appointed to be the Chairman of Sangstha.

Main function.-The functions of the Sangstha are reflected by the two important facets of development banking industrial financing and promotional activities.

BSRS extends medium and long-term credit facilities in both foreign and local currencies to medium and large industrial ventures. Besides, it provides underwriting, bridge financing, debenture financing assistances to public limited companies. The Sangstha also guarantees, under certain conditions, the deferred payment for machinery imported from abroad. It encourages long-term investment in industrial projects under co-financing arrangement with foreign lending agencies as well as local banks and institutions. Apart from extending financial assistance, BSRS assists prospective entrepreneurs in indentification of projects and formulation of project proposals. It counsels and advise on the issues of project development and finance.

Resources. - The source of foreign exchange funds for BSRS is normally the lines of credit available from various international lending agencies and Government. The local currency funds for the operation of the Sangstha are raised from its own reserves, recovery process and borrowings from the Government and different banks.

Purpose of loans. - Assistance from BSRS severally or jointly with other financial institutions is available for setting up new industrial projects, expansion of the facilities of existing industrial units and balancing, modernisation and replacement of the existing units. It does not grant assistance for the purposes of working capital only. However, while financing the capital cost of a project, a portion of working capital is provided by the Sangstha as margin and it allows creation of second charge on the fixed assets of the mortgaged properties for availing of cash credit and balance working capital from the commercial banks.

BSRS does not allow its funds to be utilised for meeting existing liabilities of the industrial concerns or for acquisition of capital goods for commercial or trading purposes. Likewise foreign exchange loans are sanctioned only for the import of capital goods and not for financing import of raw materials or maintenance spares or payment of royalties, dividends, etc.

Eligibility for loan. -The industrial concerns or projects which require financial assistance from BSRS must be private or

public limited companies incorporated in Bangladesh. They must be economically viable, technically feasible and socially desirable as per BSRS acceptance criteria. Loan proposals by sponsors who are in default against existing loans are generally ineligible for sanction of loan until such liabilities are discharged.

Sanctioning procedure. - Applications received by BSRS are generally reviewed and processed on a first-come first-served basis. However, priority ranking criteria set by BSRS from time to time is followed. The time required for sanction of loan depends on the completeness and accuracy of the information provided. Normally fully documented applications are processed and the sanction is communicated within 10-12 weeks. To arrive at an investment decision BSRS as a development bank is to ensure that the project is technically feasible, financially sound, economically viable and socially desirable.

Terms and conditions of loan. Loans are accorded on the basis of Sangstha's standard terms and conditions which are communicated to the applicants for acceptance before their proposals are approved. Some of the terms and conditions are with respect to interest, commitment charge, security, letter of credit, margin, repayment, etc.

Disbursement procedure.-Disbursement of foreign currency loans is effected as soon as the shipment of machinery is made by the foreign suppliers. The local currency loan are normally made available to the project proponents after satisfactory utilisation of substantial portion of sponsors' investment and creating physical facilities required for the projects. There is, of course, flexibility in the disbursement procedure and short disbursement are also made in the name of interim disbursement.

BMR & E.-Pursuant to a memorandum of understanding between Government of Bangladesh and concerned development partners, signed on March 2, 1985, BSRS has been limited to providing financial assistance mainly for balancing, modernisation, replacement and expansion of the industrial units in its portfolio.

Privatisation of BSRS. - The Government of Bangladesh has decided to privatise the BSRS. To this end, the BSRS law ie. President's Order No. 128 of 1972 has been amended by the Bangladesh Shilpa Rin Sangstha (Amendment) Act, 1993 (Act 4 of 1993), whereunder the following new Article 39A was, among others, inserted in the said President's Order in order to enable the Government to privatise the BSRS, namely:-

Stringent penalty provision.- Penalty for violation of provisions of the Act has been made stringent and deterrent. Bangladesh Bank has also been authorised to impose fine without instituting case against the offenders in some specific offence. The relevant section of the Act in this respect is as under:-

"43. Power of Bangladesh Bank to impose penalty.- (1) Whoever commits an offence punishable under section 31, 33, 34, 35, 36, 37, 38, 39 or 42, the Bangladesh Bank may, without instituting case against him, ask him to show cause why he should not be punished with fine, and if that Bank is not satisfied with the causes shown or if he does not show any cause, the Bangladesh Bank may punish him with fine of such amount not exceeding the amount determined by it in this behalf from time to time.

(2) If the concerned person pays the amount within 14 days of the imposition of the fine, no legal proceeding shall be taken against him; but if he fails to pay the amount within the period aforesaid, the Bangladesh Bank shall institute the case in the court for the offence committed by the person concerned".

CHAPTER- SIXTEEN (A)
EXISTING NON-BANKING FINANCIAL INSTITUTIONS

The new banking financing business in Bangladesh is now carried on by the following no-banking financial institutions as on 30-6-1996.

Sl. No.	Name of Institution
1.	United Leasing Company Ltd.
2.	Industrial Development Leasing Company of Bangladesh Ltd.
3.	Industrial Promotion and Development Company of Bangladesh Ltd.
4.	Soudi-Bangladesh Industrial and Agricultural Inves tment Company Ltd.
5.	Phoenix Leasing Company Ltd.
6.	Parigrain Capital Ltd.
7.	Uttara Finance and Investment Ltd.
8.	UAE-Bangladesh Investment Company Ltd.
9.	International Leasing and Finance Services Ltd.
10.	GSP Finance Company Bangladesh Ltd.
11.	Prime Finance and Investment Ltd.
12.	Bahrain-Bangladesh Fnance and Investment Ltd.
13.	Bay Leasing and Investment Ltd.
14.	Bangladesh Industrial Leasing Corporation Ltd.

CHAPTER-SEVENTEEN
MONEY LOAN COURT

Objective of Act 4 of 1990. - The default in repayment of loan has become a kind of culture in affluent society. Inefficient management on the part of the banks and other financial institutions as well as dishonesty of the borrowers are the main reason for the default in repayment of loan in most cases. This necessitated the enactment of the Money Loan Court Act, 1990 (Act 4 of 1990), hereinafter referred to as the Act, (APPENDIX-VIII). This is an important piece of special legislation made for banks and some other financial institutions defined in clause (a) of section 2 of the Act, hereinafter referred to as financial institutions. Establishment of exclusive Courts for disposal of cases filed for realisation of loans of financial institutions is the objective of the Act.

Institution of suits in the Money Loan Court mandatory. As per provision of the Act, all suits relating to recovery of loans of financial institutions shall have to be instituted in the Money Loan Court of appropriate jurisdiction. This mandate is, however, subject to the condition that, where a financial institution has been established by any special law and there is special provision or procedure in that law for the recovery of the loan given by it, the financial institution may follow such provision or procedure in lieu of the facilities available under this Act for such recovery. Every financial institution, other than the Bangladesh Shilpa Bank (BSB), Bangladesh Krishi Bank (BKB), Rajshahi Krishi Unnayan Bank (RKUB) and the Bangladesh Shilpa Rin Sangstha (BSRS), must institute suit for the recovery of loan in the Money Loan Court of appropriate jurisdiction. BSB, BKB, RKUB or BSRS may, however, have option either to follow the provision or procedure specified in the statute under which it has been established or to institute suit in the Money Loan Court established under the Act for the recovery of loan.

Definitions of "financial institution" and "loan". -The are two definitions in the Act which are necessary to understand the

Those provisions proved to be most insufficient to the need of the time and circumstances. The non-banking financial institutions allowed by the Bangladesh Bank under the authority of the said Chapter V were found engaged in illegal activities and business. But due to want of sufficient and effective legal provision to regulate and control them, it was found to be difficult to take legal action against them and thereby to safeguard the interests of their customers. Such situations and circumstance necessitated the enactment of the Act 27 of 1993 with a view to effectively organise, control and regulate non-banking financial institutions licensed for such financing business as specified in the first paragraph.

Main provisions of the Act. - The provisions of the Act have been divided into several parts. The main provisions deal with licensing, reserve fund, regulation of business, liquid assets, inspection, audit, moratorium, offences and penalties, etc. of non-banking financial institutions.

Licensing etc., of non-banking financial institutions.- In the provisions dealing with licensing, it has been laid down that no person shall carry on the function of a non-banking financial institution (called financing business) unless he holds a licence of non-banking financial institution issued by the Bangladesh Bank, the minimum capital of which shall be such as that Bank determines and the issued and paid up capital of which must not fall short of the minimum capital.

Restriction on payment of dividends. - Section 10 of the Act prohibits a non-banking financial institution from paying dividends on its share until all its capitalised expenditure including preliminary expenses, organisation expense, share selling commission, brokerage, losses incurred and any item of expenditure not represented by tangible assets has been completely written off.

Restriction on acceptance of deposits, etc. - Section 14 of the Act provides restriction on a non-banking financial institution in respect of the following matters, namely: -

(a) accepting any deposit which is payable on demand by cheque, draft or order drawn by the depositor;

(b) dealing in gold or foreign exchange of whatever kind;

(c) granting to any person, firm, corporation or company or to any group of companies or persons which such person, firm, corporation or company is able to control or influence any credit facilities in excess of 30% of the capital funds or, with the approval of the Bangladesh Bank, in excess of 100% of the capital funds of the non-banking financial institution;

(d) granting loans which exceed 30% of its total credit facilities or such other percentage as the Bangladesh Bank may, from time to time, determine;

(e) granting unsecured advances, unsecured loans or unsecured credit facilities which in the aggregate and outstanding at any one time exceed 10% of the paid up share capital and reserves of the non-banking financial institution to any firm in which any of its directors (which includes wife, husband, father, mother, son-in-law, son's wife, father-in-law and mother-in-law of the Director) whether jointly severally, has any interest.

(f) advancing loan or credit facilities as mentioned in clause (e) to any persons or group of persons referred to in that clause exceeding five lacs taka.

Restriction on trade, etc.-The other restrictions on a non-bakning financial institution under the Act are on trade, investments and holding of immovable property. According to section 15 of the Act, no non-banking financial institution can engage, whether alone or with others, in the wholesale or retail trade including the import or export trade, except for the purpose of carrying on its financing business. Section 16 thereof provides that no non-banking financial institution shall acquire or hold any part of the share capital of, or otherwise have a direct interest in, any financial, commercial, agricultural, industrial or other undertaking exceeding 25% of the paid-up share capital reserves of that non-banking financial institution. Section 17 restricts holding of immovable property by a non-banking financial institution of value exceeding 25% of its paid-up share capital and reserves.

Power of central bank to determine the rate of interest etc.- Under section 18 of the Act, the central Bank has been empowered to determine the following matters, namely:-

(a) the maximum rates of interest that non-banking financial institutions shall pay on different types or classes of deposits;

(b) the maximum amount that non-banking financial institutions may receive from any person;

(c) the maximum repayment periods for loans that may be granted by non-banking financial institutions;

(d) the maximum rates of interest on different types or classes of loans or advances granted by non-banking financial institutions and the methods of computing such interest;

(e) the maximum amount of loans or advances which non-banking financial institutions may grant to any person or class of persons;

(f) the reserves to be maintained with the Bangladesh Bank; and

(g) any other matter of public interest or financial policy.

Central bank's power to determine liquid assets. - Section 19 of the Act empowers the Bangladesh Bank to determine the liquid assets that a non-banking financial institution shall have to be maintained from time to time.

Inspection. - Under section 20 of the Act, the Bangladesh Bank may at any time cause an inspection to be made by one or more of its officers of any non-banking financial institution and its books, accounts and transactions. Besides, whenever the Bangladesh Bank has reason to believe that any non-banking financial institution in carrying on its business in a manner detrimental to the interests of its depositors and other creditors, or that the assets of any non-banking financial institution is insufficient to cover its liabilities, or that it is contravening the provisions of the Act, it may cause a scrutiny to be made into its affairs in the same manner as aforesaid.

Action of central bank in case of failure of non-banking financial institution. -The central Bank may take certain actions against a non-banking financial institution which is found to be conducting its affairs to the detriment of the interests

of the depositors, has become insolvent or is likely to become unable to meet its obligations, or has contravened or failed to comply with any conditions of its licence. The actions are as follows, namely:-

(i) requiring non-banking financial institution concerned to do or not to do any act in relation to its financing business;

(ii) appointing a person to conduct its business properly at the cost of the non-banking financial institution concerned.

(iii) assuming control of and carrying on the business of the non-banking financial institution or directing some other person to assume control of and carry on the business of that non-banking financial institution.

Power of central bank to remove Board of Directors, etc.-The central Bank's power to remove the Board of Directors, Directors, etc, of a non-banking financial institution is a unique provision to safeguard the interest of depositors, etc. of a non-banking financial institution. Under section 26 of the Act, whenever the Bangladesh Bank is satisfied that in order to prevent the affairs of a non-banking financial institution being conducted in a manner detrimental to the interest of its depositors or to ensure the proper management of a non-banking financial institution, it is necessary to remove its Chairman, Director, Chief Executive or Board of Directors, it may do so after giving the person or the body an opportunity of being heard in this respect.

Moratorium, reconstruction, etc. of non-banking financial institutions.- The Act provides for making order of moratorium of the business of a non-banking financial institution if the central Bank considers it expedient in the interest of its depositors for a limited period. Where the Bangladesh Bank is satisfied that in the public interest or in the interest of its depositors or in order to secure the management of the non-banking financial institution concerned or in the interest of the financial system of the country as a whole, it is necessary to do so for the reconstruction of a non-banking financial institution, or for the amalgamation of one non-banking financial institution with any other non-banking financial institution, it may prepare scheme to achieve that objective and may implement it.

"39A. (1) Notwithstanding anything contained in this Order, the Government may, if in the national interest it deems it expedient so to do, transfer, by agreement, the entire undertaking of the Sangstha to any company registered under the Companies Act, 1913 (VII of 1913), on such terms and conditions ad may be settled with such company.

(2) Where the entire undertaking of the Sangstha has been transferred under clause (1), the Sangstha shall, on such date as the Government may, by order notified in the official Gazette, specify, stand dissolved.

Explanation.-The undertaking of the Sangstha includes its business, projects, schemes, assets, properties, movable and immovable, cash balance, reserved funds,investments, rights, powers, authorities and privilege including rights and interests in, or arising out of, such properties and all books or accounts, registers, records and all other documents of whatever nature relating thereto and its borrowing, liabilities and obligations of whatever nature.

(3) Where the undertaking of the Sangstha has been transferred under clause (1),-

(a) all contracts entered into and all matters and things engaged to be done by, with or for, the Sangstha shall be deemed to have been entered into or, as the case may be, engaged to be done, with or for the company;

(b) all suits and other legal proceedings instituted by or against the Sangstha shall be deemed to be suits and other legal proceedings by or against the company.

(4) The Government may, for the purpose of removing any difficulty in relation to the transfer of the undertaking of the Sangstha under clause (1) or the dissolution of the Sangstha under clause (2), make such order as it considers expedient and any such order shall be deemed to be, and given effect to as, part of the provisions of this Order."

In order to build a market oriented competitive economic system, the Government has initiated various reforms. As a result, economic activities have broadened and are now gaining momentum. The Government decision to privatise the BSRS is also a measure to advance the reforms initated by the Government.

CHAPTER-SIXTEEN
NON-BANKING FINANCIAL INSTITUTIONS

Law on non-banking financial institution.- The Financial Institutions Act, 1993 (Act. 27 of 1993), hereinafter referred to as the Act, (APPENDIX-IV), has been enacted to make provision for licensing and control of such non-banking institutions which-

(a) gives loans or advances for industry, commerce, agriculture or housing; or

(b) carries on business of the underwriting or acquisition of, or the investment or reinvestment in, shares, stocks, bonds, debentures or debenture stock or securities issued by the Government or any local authority; or

(c) carries on business of hire purchase transactions including leasing of machinery or equipment; or

(d) finances venture capital;

(e) gives loan for house building and property purchases;

(f) uses its capital to invest in companies.

Necessity of the Act.-Needless to mention that, the activities of non-banking financial institutions has considerable influence over the stability of money-market of the country. Prior to the enactment of the Act, we had no specific law for licensing, control of, or to deal with, non-banking financial institutions. Bangladesh Bank Order, 1972 (P.O. No. 127 of 1972) contained some provisions in its Articles 49 to 58 (Chapter V) respecting companies, corporations, cooperative societies or firms receiving deposits, and certain non-banking institutions which used to-

(i) carry on as its business or part of its business the financing, whether by way of making loans or advances or otherwise, or trade, industry, commerce or agriculture; or

(ii) carry on as its business or part of its business the acquisition of shares, stock, bond, debentures or debenture stock or securities issued by a Government or local authority or other marketable securities of a like nature; or

(iii) carry on as its principal business hire purchase transactions or the financing of such transactions.

provision, extent and scope of the Act. One such definition is of "financial institution" as given in section 2(a) of the Act, which is as-under:

"(a) "financial institutions" means-

(1) a bank constituted under the Bangladesh Banks (Nationalisation) Order, 1971 (P.O. No. 26 of 1972);

(2) a banking company as defined in clause (o) of section 5 of the Banking Companies Act, 1991 (Act 14 of 1991);

(3) the House Building Finance Corporation established under the Bangladesh House Building Finance Corporation Order, 1973 (P.O. No. 7 of 1973)

(4) the Bangladesh Investment Corporation established under Investment Corporation of Bangladesh Ordinance, 1976 (XL of 1976);

(5) the Bangladesh Shilpa Rin Sangstha and the Bangladesh Shilpa Bank;

(5A) the Bangladesh Krishi Bank and the Rajshahi Krishi Unnayan Bank;

(6) a financial institution as defined in clause (g) of section 2 of the Financial Institutions Act, 1993 (Act XXVII of 1993);

(7) a bank governed in accordance with Islamic Shariah;

(8) a leasing company established for the purpose of leasing of machinery given for the development of any industrial enterprise;

(9) International Financial Institutions,

(10) Commonwealth Development Corporation;

(11) Asian Development Bank;

(12) any other international financial loan giving institution."

The other definition is that of "loan" given in section 2(b), which is as under:

"(a) "loan" means-

(1) advance, loan, cash credit, overdraft, banking credit, discount bill or any other financial assistance or facilities, by whatever named called;

(2) guarantee, indemnity, letter of credit or any other financial facility which a financial institutions gives or issues or accept as liability on behalf of borrower."

Certain Procedure different from C.P.C. The Act provides certain special procedure which are different from those specified in the Code of Civil Procedure, 1908 (Act V of 1908), for the speedy trial of loan cases. They are in respect of service of summons, adjournment, time limit for disposal of cases and restrictions on appeal.

Positive impact of the Act - The Act has been proved to be salutary legislation. It has brought about momentum in the trial and disposal of loan cases. It made definite and positive contribution to the financial well being of the country. The provision for depositing certain percent of decretal amount for revival of an experte decree under Order 9, rule 13 of Civil Procedure Code and for preferring appeal is a unique feature of the law with salutary effects. The Act does not only ensure speedy trial and disposal of loan cases, it also warns the dishonest borrowers that legal process will not be evasive any further. It also tends to make borrowers responsible and conscious about repayment of borrowed loans. In fine, the Act has put an overall positive impact on the society as a whole.

CHAPTER- EIGHTEEN
FOREIGN EXCHANGE

Every nation owns distinctive currency.-Any community which forms into a nation for the purpose of self Government introduces its own distinctive currency or money.The owner of one kind of money expressed as a particular currency unit should exchange it for another kind of money expressed as a different currency unit. The means and methods by which right to wealth expressed in terms of the currency of one country are converted into rights to wealth in terms of the currency of another country are known as "foreign exchange". The terms cover the methods by which the currency of one country is exchanged for that of another, the causes which render such exchange necessary, the forms in which such exchanges are conducted and the ratio or equivalent values at which they are effected.

First Exchange Control Law.-Incidentally it was Germany that first established "monetary concentration camps". Until 1914, paper money was based on gold stocks. This Gold normally represented 25 to 35 percent of the paper in circulation, and thus to that extent guaranteed the value of the paper. People with paper money could get gold at the bank. Few actually asked for it, gold being too bulky to handle. The knowledge that they could have it, if they wanted it, sufficed to keep them confident. When war broke out, the German Secretary of Finance, Karl Helfferich., formulated the first foreign exchange regulations. German citizen were ordered to surrender to the Reichsbank all assets they held abroad, as well as all precious metals in Germany. The object, they were told, was "the protection of the natural currency".

Law prior to the Foreign Exchange Regulation Act.-The Foreign Exchange Regulation Act, 1947 (Act VII of 1947) (APPENDIX-V) is the first Exchange Control law of the British India (now India, Pakistan and Bangladesh). The Act was enacted in March, 1947. Prior to the coming into force of this Act, there were various restrictions imposed by the Defence of India Rules, which were made under the Defence of India Act in respect of

export of money and gold, dealings in bullion, purchase of foreign exchange and restrictions on payments. The Defence of India Act and the Rules made thereunder remained in force during the continuance of the emergency and for a period of six months thereafter. This period expired on 30th September, 1946. However, under the Emergency Provisions (Continuance) Ordinance, 1946 (Ordinance XX of1946), the aforesaid provisions of the Defence of India Rules, which dealt with restrictions on import of gold, purchase of foreign exchange, blocked accounts and other analogous provisions continued in force till 25th March, 1947, on which date the present Act came into operation.

Objective of exchange control in Bangladesh.-The objectives of the exchange control in Bangladesh are mainly the follwing:-

(a) to ensure that receipt from export of goods and service from Bangladesh are surrendered to a central pool;

(b) to oversee the use of exchange resources in accordance with priorities determined by the Government.

Bangladesh Bank to counteract the incidence of transfer of capital.-The operation aims at containing demand for foreign exchange within the available supplies through what could be called a system of rationing. Bangladesh Bank, which is responsible for the day to day administration of exchange control in Bangladesh, has to work on a system which may effectively counteract the incidence of transfer of capital from the country and misuse of foreign exchange.

Current Exchange Control Regulations.-The exchange control regulations emanate from the Bangladesh Bank under the statutory authority vested in them through the Foreign Exchange Regulations Act, 1947, as adopted in Bangladesh. Bangladesh Bank issues foreign exchange instructions which are called Exchange Control Regulations.They are codified and mantained in the Bangladesh Bank Exchange Control Mannual. This is the Bible of bankers operating on the foreign business and its study and comprehension is inevitable for them. The current regulations, besides being logical, are all-embracing and very comprehensive. Besides licensing of authorised dealers, these cover the following, namely:-

(1) Authorised Rates of Exchange;

(2) Foreign Currency Accounts of Authorised Dealers and Purchase and Sale of Foreign Currency;

(3) Non-Resident Taka Accounts of Foreign Bank Branches and Correspondents;

(4) Forward Exchange Facilities;

(5) Outward Remittances;

(6) Inward Remittances;

(7) Dealing in Foreign Currency Notes and Coins etc.

(8) Private Foreign Currency Accounts and Operations in Securities;

(9) Foreign Currency Accounts under the Wage Earners' Scheme;

(10) Non-Resident Foreign Currency Deposit Account;

(11) Education Foreign Currency Account;

(12) Convertible and Non-Convertible Taka Accounts;

(13) Private Non-Resident Taka Accounts;

(14) Non-Resident Blocked Taka Accounts;

(15) Imports;

(16) Letters of Credit and Remittances against Imports;

(17) Deposit of Counterpart Fund in respect of Imports under Non-Project Commodity Loans/ Credits/Aids;

(18) Payments through Asian Clearing Union.

(19) Clearing Arrangement for settlement of Inter Bank payments in foreign exchange under WES/SEM Scheme;

(20) Commercial Remittances (Other than for Imports);

(21) Insurance Business and Re-Insurance;

(22) Private Remittances;

(23) Travel;

(24) Import and Export of currency Notes and Coins, Foreign Exchange, Gold, Silver, Jewellery and Securities, etc;

(25) Exports;

(26) Export Processing Zone;

(27) Pay-As-You-Earn Scheme;

(28) Opening of Office and Appointment of Agents in Bangladesh by Non-Residents, Repartriation of Earnings of Commission Fees etc.

(29) Loans, Overdrafts and Guarantees;

(30) Credit Facilities to Industries of EPZ.

(31) Returns of all Foreign Exchange Transactions.

Exchange Control Department.- As already stated, the Bangladesh Bank is responsible for the day to day administration of exchange control in Bangladesh and this is exercised by the Bangladesh Bank through its Exchange Control Department. The principal office of the Department is situated in Dhaka. The Department has offices in also in Chittagong, Khulna, Sylhet, Rajshahi and Bogra.

Enlistment of Authorised Dealers. - In administering exchange control, the Bangladesh Bank enlists the co-operation of the vast network of commecial banks located all over the country. They are known as authorised dealers. The Bangladesh Bank is empowered under the Foreign Exchange Regulation Act, 1947, hereinafter referred to Foragin Exchange Act, to authorise in writing, on application made to it, any person to deal in foreign exchange. In exercise of power of that authority, the authorised dealers are appointed by the Bangladesh Bank. Although the expression used in the said Act is "authorised dealer", there are two types of dealers who are consituted under the Act, viz (a) authorised dealers and (b) authorised money changers. Authorised dealers are empowered to deal in foreign currencies, whether sterling or otherwise, whereas authorised money changers are only empowered to purchase foreign currency of such description as they may be empowered by the authorisation in writing. No authorised money changer can sell any foreign currency. He has, after purchase, to surrender the same to an authorised dealer or to the Bangladesh Bank.

Conditions for licence to deal in foreign exchange issued.- The condition subject to which Bangladesh Bank issues licence to deal in foreign exchange are normally the following:-

(a) Licences are normally granted only to scheduled banks in respect of whom the Bangladesh Bank is

satisfied that they have adequate trained staff and have made other arrangements to ensure that they will be able to conduct their dealings in foreign exchange to the satisfaction of the Bangladesh Bank and will be able to comply fully with the requirements of the administration of Exchange Control;

(b) The Bangladesh Bank may, without assigning any reason, refuse to grant or may withdraw, if already granted, any authorisation to deal in foreign exchange if, in its opinion, adequate arrangements do not exist to secure proper compliance with the Exchange Control Regulations or if there has been failure to secure compliance with the Regulations.

List of authorised dealers.- The Bangladesh Bank has, so far, authorised the following banks to act as authorised dealers in foreign exchange in Bangladesh; namely:

1. Agrani Bank.
2. Janata Bank.
3. Sonali Bank.
4. Arab Bangladesh Bank Ltd
5. International Finance Investment and Commerce Bank Ltd.
6. Islamic Bank Bangladesh Ltd.
7. National Bank Ltd.
8. Pubali Bank Ltd.
9. Rupali Bank Ltd.
10. City Bank Ltd.
11. United Commercial Bank Ltd.
12. Uttara Bank Ltd.
13. American Express Bank Ltd.
14. Banque Indosuez.
15. Grindlays Bank Ltd.
16. Habib Bank Ltd.
17. Standard Chartered Bank

18. State Bank of India.
19. Bangladesh Krishi Bank.
20. Bangladesh Shilpa Bank.
21. Bangladesh Shilpa Rin Sangstha;
22. Eastern Bank Ltd.
23. National Credit and Commerce Bank Ltd.

Authorised Money Changers.- Licences to persons or firms to exchange foreign currency notes, coins and travellers' cheques are granted in places where money changing facilities are required. The authorisations are granted only to such persons or firms of adequate means and status who, in the opinion of the Bangladesh Bank, will conduct their dealings strictly in accordance with the Exchange Control Regulations. The Bangladesh Bank may, without assigning any reason, refuse to grant, or may withdraw, if already granted, authorisation to any person or firm to deal in foreign currency notes, coins and travellers' cheques. The following is the list of Authorised Money Changers in Bangladesh:-

Commercial Banks

1. Sonali Bank, Hotel Sonargaon, Dhaka.
2. Agrani Bank, Hotel Sonargaon, Dhaka.
3. Pubali Bank Ltd., Hotel Sonargaon, Dhaka.
4. American Express Bank Ltd., Hotel Sonargaon, Dhaka.
5. Uttara Bank Ltd., Hotel Sheraton, Dhaka.
6. Janata Bank, Hotel Sheraton, Dhaka.
7. Agrani Bank, Hotel Sheraton, Dhaka.
8. Janata Bank, Zia International Airport, Dhaka.
9. Sonali Bank, Zia International Airport, Dhaka.
10. Pubali Bank, Zia International Airport, Dhaka.
11. Agrani Bank, Zia International Airport, Dhaka.
12. Arab Bangladesh Bank, Zia International Airport, Dhaka.
13. Agrani Bank, ICDDR Branch, Mohakhali, Dhaka.
14. Sonali Bank, BARRI Branch, Joydebpur, Dhaka.

15. Janata Bank, Port Branch, Chittagong.
16. Pubali Bank Ltd., Port Branch, Chittagong.
17. Agrani Bank, Air Base Branch, Chittagong Airport.
18. Sonali Bank, Sylhet Airport.
19. Uttara Bank Ltd., Tourist Bureau Motel, Cox'z Bazar.
20. Agrani Bank, Jessore Airport.
21. Sonali Bank, Benapole Branch.

Hotels:

22. Hotel Sonargaon, Dhaka.
23. Hotel Sheration, Dhaka.
24. Hotel Purbani International, Dhaka.
25. Dhaka Hotel, Dhaka.
26. Hotel Green, Mymensingh Road, Dhaka.
27. Hotel de-palace, Moghbazar, Dhaka.
28. Hotel Purbarag, Motijheel, Dhaka.
29. Hotel Metropolitan, Dhaka.
30. Hotel Kanika, New Eskaton, Dhaka.
31. Hotel Eram & Bar, Maghbazar, Dhaka.
32. Hotel Golden Gate, Mirpur Road, Dhaka.
33. Hotel Zakaria International, 35, Mohakhali, Dhaka.
34. Hotel Park International, Kakrail, Dhaka.
35. Hotel Platinum Peacock Ltd. Gulshan, Dhaka.
36. Hotel Lords International, New Eskaton Road, Dhaka.
37. Tourist Hotel, 86/1, Inner Circular Road, Dhaka.
38. Sundarban Hotel, Sonargaon Road, Dhaka.
39. Balaka Restaurant, Zia International Airport, Dhaka.
40. Hotel Agrabad, Chittagong.
41. Hotel Shahjahan, Chittagong.
42. Eastern Hotel, K. C. Dey Road, Chittagong.
43. Hotel Al-Prince, Khulna.
44. Hotel Safina, Chittagong.

45. Hotel Rupsa International, Khulna.
46. Hotel Prince, Chittagong.
47. Bangla Hotel, Chittagong.

Corporations/Public Sector Organisations/Club /Association etc:

48. Biman Bangladesh Airlines, Dhaka/Chittagong/ Sylhet/ Jessore/ Cox's Bazar/Ishurdi/ Takurgaon.
49. Bangladesh Parjatan Corporation, Dhaka and other Bonded Stores at different places.
50. Bangladesh Jute Mills Corporation, Dhaka.
51. Bangladesh Railway, Dhaka.
52. Export Promotion Bureau, Export Emporium, Dhaka.
53. Bangladesh Food & Allied Corporation. Bonded Store at Kushtia.
54. Kurmitola Golf Club, Dhaka Cantonment, Dhaka.
55. Bangladesh Handicrafts Co-operative Federation Ltd. Dhaka.

Shops/Stores:

56. Dhaka Ware House, Motijheel, Dhaka.
57. Eastern Diplomatic Services, Dilkusha Com. Area, Dhaka.
58. Tutelar Oil Services Co. Ltd. Dhaka.
59. Corolla Corporation Ltd. Dhaka.
60. Kumudini Handicraft Shop, Dhaka.
61. Kanika, DIT Super Market, Dhaka.
62. Kanika, O. R. Nizam Road. Chittagong.
63. Aries Traders, Court Road, Chittagong.
64. Herbertsons (Bangladesh) Ltd. Sadarghat Road, Chittagong.

Foreign Exchange Transactons.-Conversion of currencies or exchanges is known as foreign exchange transactions. The conversion may arise for a transaction between a bank and its customer or between a bank and another bank at home or abroad. The transaction involves atleast two currencies. For a bank in

Bangladesh, the process of conversion frequently involves conversion of Bangladesh Taka into foreign currency or vice versa.

Transactions affected by the Foreign Exchange Act.-The Foreign Exchange Act affects in general all those transactions having international financial implications. No person in or resident of Bangladesh can, without permission of the Bangladesh Bank or, as the case may be, Government,-

(a) sell, buy, lend, borrow, exchange or otherwise acquire foreign exchange except foreign exchange obtained from an authorised dealer;

(b) make any payment to a non-resident;

(c) take any loan, overdraft or other credit facilities from a non-resident;

(d) transfer any security, such as, shares or debentures to a non-resident;

(e) issue any security to a non-resident;

(f) acquire, hold or dispose of any foreign security;

(g) settle any property so as to create an interest in favour of a person who, at the time of the settlement, is resident outside Rangladesh;

(h) refrain from or defer collecting any debt due from a non-resident;

(i) export currency, cheques, drafts, travellors Cheques, insurance policies or securities;

(j) import gold or silver in any form.

(k) export gold, jewellery or precious stones.

Direction to surrender foreign currency, etc.- A person in or resident of Bangladesh may be required by notifications to-

(i) surrender to an authorised dealer existing holdings of foreign currency;

(ii) deposit with authorised depositories any foreign securities;

(iii) sell foreign securities and repartriate the proceeds to Bangladesh;

(iv) make a return to the Bangladesh Authorities of all holdings of foreign currency and securities;

(v) use any powers they possess to make foreign companies controlled by residents to declare dividends, surrender currency and to do any of the other acts the Bangladesh residents may be called upon to do.

Restrictions on payments.- Some restrictions have been imposed by Foreign Exchange Act on (a) persons in Bangladesh and (b) persons resident in Bangladesh on payment and, unless a general or special exemption is given either conditionally or unconditionally by the Bangladesh Bank these restrictions continue. The restrictions are on.-

(a) making of any payment to or for the credit of any person resident outside Bangladesh;

(b) drawing, issuing or negotiating any bill of exchange or promissory note, or aknowledging debt so that a right, whether actual or contingent, to receive a payment is created or transferred in favour of any person resident outside Bangladesh;

(c) making any payment to or for the credit of any person by order or on behalf of any person resident outside Bangladesh;

(d) placing any sum to the credit of any person resident outside Bangladesh;

(e) making any payment to or for the credit of any person as consideration for or the association with the receipt of any person of a payment or the acquisition by any person of property outside Bangladesh or the creation or transfer in favour of any person of a right, whether actual or contingent, to receive a payment or acquire the property outside Bangladesh;

(f) drawing, issuing, negotiating any bill of exchange or promissory note or transferring any security or acknowledgement of any debt by which a right, whether actual or contingent, to receive a payment is created or transferred in favour of any person as consideration for or in association with any matters referred to in clause (e) above.

The restriction mentioned above do not, however, render unlawful the following, namely:-

(a) the making of any payment already authorised, either with foreign exchange obtained from an authorised dealer or with foreign exchange retained by a person in pursuance of an authorisation granted by the Bangladesh Bank;

(b) the making of any payment with fireign exchange received by way of salary or payment for services not arising from business in, or anything done while in Bangladesh.

Restrictions on import and export of currency, etc.-The provisions relating to restriction on import and export of certain currency as contained in the Foreign Exchange Act are quoted below:-

"8 Restrictions on import and export of certain currency and billion.-(1) The Government may, by notification in the official Gazette, order that, subject to such exemptions, if any, as may be contained in the notification, no person shall, except with the general or special permission of the Bangladesh Bank and on payment of the fee, if any, prescribed bring or send into Bangladesh any gold or silver or any currency notes or bank notes or coin whether Bangladesh or foreign.

Explanation.- The bringing or sending into any part or place in the territories of Bangladesh of any such article as aforesaid, intended to be taken out of the territories of Bangladesh without being removed from the ship or conveyance in which it is being carried shall nonetheless be deemed to be bringing or, as the case may be, sending into the territiories of Bangladesh of that article for the purposes of this section.

(2) No person shall, except with the general or special permission of the Bangladesh Bank or the written permission of a person authorised in this behalf by the Bangladesh Bank, take or send out of Bangladesh any gold, jewellery or precious stones, or Bangladesh currency notes, bank notes or coin or foreign exchange.

(3) The restrictions imposed by sub-section (1) and (2) shall be deemed to have been imposed under section 10 of the Customs Act, 1969 without prejudice to the provisions of section 23 of this

Act, and all the provisions of that Act shall have effect accordingly".

This above mentioned section authorises the Government to order by notification in the official Gazette that no person shall bring or send into Bangladesh gold or silver or any currency or bank notes or coin, Bangladesh or foreign. The rule may, however, be subject to such exceptions as may be notified by the Government. Similarly, it will be open to the Bangladesh Bank to relax the rule in certain cases by granting general or special permission on payment of the prescribed fee, if any. Similarly taking or sending out of Bangladesh any such things, as aforesaid, is forbidden except when done with general or special permission of the Bangladesh Bank or of a person authorised by the Bangladesh Bank in this behalf.

CHAPTER- TWENTY
NEGOTIABLE INSTRUMENTS

Introduction.- Negotiable instruments are now a days regarded as essentials element in the modern busines world. The mechanism of negotiable instruments has grown up to meet the necessity of the rapidly increasing and expanding trade and industry that developed after the commercial and industrial revolution in western Europe in the 13th and 14th centuries. The sources of law relating to negotiable instruments are the following, namely:-

(a) the principle of English common law as applicable to contracts;

(b) the principle of law merchants, as applied and used by 'Market and Fair Courts' which have ultimately been recognised by the judges in deciding cases on this subject.

The Negotiable Instruments Act, 1881 has included in its fold only three types of instruments viz. (i) bill of exchange, (ii) promisory notes, and (iii) cheque. In point of time, bill of exchange was the first to come in use in business field probably in the 13th century by the merchants engaged in business in the Mediterranean countries. The bill of exchange was originally used to transter money in payments of debt of trader of different countries. The promissory note appeared in the business field shortly after the bill of exchange. The promissory notes had to struggle hard for recognigion in the market as a negotiable instrument. The latest innovation in this field is the cheque, which came with the introduction of banking business in England in the 17th century.

The Negotiable Intruments Act, 1881, (Act XXVI of 1881) (APPENDIX-VI), though mentions only three instruments- promissory note, bill and cheque, but in actual practice, many other instruments come under the category of negotiable instruments. They are accepted in dealing as well as by the courts. Section 137 of the Transfer of Property Act, 1882 (Act IV of 1882) speaks of "instruments which are for the time being, by law or

custom, negotiable," implying thereby that the courts keep on extending the character of negotiability of instruments other than those enumerated in the Negotiable Instruments Act. The following are some of the instruments which possess the characteristics of negotiability, namely:-

(a) [illegible] Notes;
(b) Bills of Exchange,
(c) Cheques;
(d) Government Securities;
(e) Divident Warrants;
(f) Hundis;
(g) Bank Drafts;
(h) Share Warrants, etc.

Definition of Negotiable Instruments:- According to section 13 of the Negotiable Instruments Act, "a Negotiable Instrument" means Promissory Note, Bill of Exchange or a Cheque payable either to order or to bearer. It is clear from this definition that it has not described the nature i.e.what are its actions and function but has described what it includes. Further, it makes no reference to 'Hundis' which is a very common and important form of negotiable instruments used in the country. Judge wills has defined and described a negotiable instrument as "one the property in which is acquired by any one who takes it bonafide and for value, notwithstanding any defect of the title in the person from whom he took it; from which it follows that an instrument can not be negotiable unless it is such and in such a state that the true owner could transfer that contract or engagement contained therein by simply delivery of the instrument".

Characteristics of negotiable instruments.-From the above definition, the following characteristics of the negotiable instruments are found:-

(i) property in it passes from hand to hand by mere delivery;

(ii) the holder in due course is not affected by the defects in title of its transferor or prvious holders;

(iii) the holder in due course can sue in his own name;

(iv) the holder in due course is not affected by certain defect, which might be available against previous holders, e.g, fraud to which he is no party,

(v) it passes from hand to hand like cash and can be conveniently assigned in discharge of debts.

Presumptions regarding Negotiable Instrument.-Certain facts appearing on a negotiable instrument are considered to be true unless they have been proved to the contrary. The burden of proving the contrary rests to the person who challenges it. These are called presumptions and are provided in sections 118 to 122 of the N.I. Act. These presumptions are:-

(1) That every negotiable instrument was made or drawn for consideration;

(2) That every negotiable instrument bearing a date was made or drawn on that date;

(3) That every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity;

(4) That every transfer of a negotiable instrument was made before its maturity;

(5) That the indorsements appearing upon a negotiable instrument were made in the order in which they appear thereon;

(6) That a lost promissory note, bill of exchange or cheque was duly stamped;

(7) That the holder of a negotiable instrument is a holder in due course;

(8) In a suit upon an instrument which has been dishonoured, the court shall, on proof of the protest, presume the fact of dishonour, unless and until such facts is disprpved;

(9) No maker of a promissory note, and no drawer of a bill of exchange or cheque, and no acceptor of a bill of exchange by a holder in due course be permitted to deny the validity of the instrument as originally made or drawn;

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

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

CHEQUES

What is cheque.-A cheque, as has been defined in section 6 of the Negotiable Instruments Act, 1881 (XXVI of 1881), hereinafter called N.I.Act, is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand. Section 5 of N.I.Act defines a bill of exchange as an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay on demand or at a fixed or determinable future time a certain sum of money only to, or to the order of, a certain person or to the bearer of the instrument. By combining these two definitions, a cheque may be defined as an unconditional order in writing drawn on a banker signed by the drawer, requiring the banker to pay on demand a sum certain in money to or to the order of a specified person or to bearer and which does not order any act to be done in addition to the payment of money. From this definition, it will be seen that there are three parties to a cheque. They are (i) the drawer i.e. the party by whom or by whose authority the cheque is signed, (ii) the drawee i.e. the party authorised to pay out the money (banker), and (iii) the payee i.e. the party to whom or to whose order the money is to be paid. The definition also states the following conditions which must be fulfilled if the document is to be rightly called a cheque, namely:-

(a) the order to pay must be unconditional so far as the banker is concerned;

(b) a cheque must be in writing either by printed characters or a type-writer or pen or pencil;

(c) the order to pay must be addressed by one person to another and that another must be a banker;

(d) the sum named in the cheque must be payable on demand;

(e) the cheque must be payable to or to the order of a specified person or to bearer.

Anti-dated and post-dated cheque.-A cheque can be dated with a date earlier or later than the one on which it is actually drawn. A cheque which bears a date before the date of issue is ante-dated and a cheque which bears a date later than the date of issue is post-dated. A post-dated cheque is not an instrument payable on demand, but when it is presented on or after the date given on it, the paying banker cannot refuse to honour it merely on the ground of its being originally post-dated. A post-dated cheque is as much a negotiable instrument as a cheque for which payment is due immediately on presentation.

Crossed cheque.-The legal definition of a crossed cheque as given in section 123 and 124 of N.I. Act are as follows, namely:-

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

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

Persons authoried to cross.-Section 125 of the N.I. Act defines the powers of the drawer and holder as follows:-

(1) A cheque may be crossed generally or specially by the drawer;

(2) Where a cheque is uncrossed, the holder may cross it specially;

(3) Where a cheque is crossed generally, the holder may cross it specially;

(4) Where a cheque is crosed generally or specially, the holder may add the words "not negotiable";

(5) Where a cheque is crossed specially, the banker to whom it is crossed may again cross it to another banker;

(6) Where an uncrossed cheque, or a cheque crossed generally is sent to a banker for collection, he may cross it specially to himelf.

Crossing a material part of cheque.-Section 125-A of the Negotiable Instruments Act states that " a crossing authoried by this Act is a material part of the cheque; it shall not be lawful for any person to obliterate or except as authorised by this Act to add to or alter, the crossing". Where the crossing has materially altered as, for instance, the words "Not Negotiable" ruled through and not confirmed by the drawer, the banker on whom the cheque is drawn should refuse payment pending confirmation.

Collection of Cheque.-One of the principal functions of a banker is to receive instruments from his customer in order to collect the proceeds and credit them to his customer's account. When acting in this capacity, he is called a collecting banker. In acting as his customer's agent in the collection of cheques, a banker will be expected to bring reasonable care and diligence to bear in presenting the effects for payment, in obtaining payment and in crediting in his customer's account. If the customer suffers any loss through the negligence of the banker in any of these matters, the banker will be liable to the customer to the extent of the loss.

Banker is a holder for value.- In the case of collcetion of cheque, a banker becomes a holder for value. The following are some of the situations in which the banker becomes a holder for value; namely:-

(a) when he gives cash in exchange for a cheque drawn on another banker;

(b) when he credits his customer with the amount of cheque as soon as it is paid in and allows him to draw at once against the amount; and

(c) when the cheque is expressly paid to reduce the amount of an overdraft.

Banker is an agent.- A banker, while collecting a cheque for a customer, cannot assert any right of a holder for value, for he is acting only as an agent. In doing so, he gets the same title on the

cheque as that of his customer. Thus, a banker who is collecting for his customer a cheque belonging to another person may be held liable for conversion, unless he can prove that he acted in good faith and without negligence, and that the cheque was crossed before it came into his hands. A banker performs the function of collcetion of cheques as an agent of the customer as a holder for value. As long as the title of the customer is good, the banker incurs no risk. But if the title of the customer is defective and, after collection, he withdraws the amount of the cheque from the bank, the banker may be held liable to pay the money to the true owner of the cheque.

Statutory protection of banker.- According to section 131 of the N.I. Act, "a banker, who has in good faith and without negligence received payment for a customer on a cheque crossed generally or specially to himself, shall not, in case the title to the cheque proves defective, incur any liability to the true owner of the cheque by reason only having received such payment". This section, no doubt, gives ample protection, in normal cricumstances, to the banker who collects cheques on behalf of his customers so long as a cheque happens to be crossed generally or specially to himself when he receives it. He will, however, not get any protection if the cheque is received uncrossed and the banker puts the crossing himself. In other words, this statutory protection is available to a banker only in the case of a "crossed" cheque. In the case of an "uncrossed" or "open" cheque, the collecting banker's position is that of any other holder for value or holder in due course. Again, a banker will be protected only if the collection of the cheque is made on behalf of a customer; in the case of collection for a person who is not a customer of the bank, he will not be protected.

The onus of proving good faith and absence of negligene is on the banker claiming protection under section 131. The explanation to section 131 lays down that the position of the banker is the same, notwithstanding that "he credits his customer's account with the amount of the cheque before receiving payment thereof. "The net result is that if a banker receives a crossed cheque for collection, he will be protected under section 131 of the Negotiable Instruments Act, 1881, as an agent for collection, whether he first credits and then collects or first collects and then credits the cheque, as long as he acts (i) in

good faith (ii) without negligence, and (iii) on behalf of a customer.

Condition for honour of cheque.- The paying banker is the banker to whom the order to pay, where the order takes the form of a cheque, is addressred. It is the duty of the banker to honur his customer's cheque provided-

(a) the balance standing to the credit of his customer is sufficient to pay them;

(b) the cheques are drawn in the proper form;

(c) there is no legal bar prohibiting payment.

The condition which must be fulfilled before a banker is justified in honouring his customer's cheque are given below more elaborately:-

(a) Sufficiency of fund.-This does not require any elaboration.

(b) Proper form.-The cheque as drawn must-

(i) be signed by the drawer himself or by his authority;

(ii) be due for payment i.e. not post-dated;

(iii) have the sum to be paid expressed in words. or in words and figures, which should agree;

(iv) purport to be properly indorsed, if an indoresement is required;

(v) bear the drawer's confirmation of any material alterations.

Justification for not paying cheque.-The following are sufficient cause to justify a banker in not paying a cheque, namely:-

(i) notice from the customer to stop payment;

(ii) knowledge of any defect in the title of the person presenting the cheque;

(iii) notice of the presentation of a bankruptcy petition by or against his customer;

(iv) notice of a customer's death;

(v) notice, in the case of a company customer, of the commencement of winding up;

(vi) notice, in the case of a company customer, of the appointment of a receiver;

(vii) knowledge that the customer contemplates a breach of trust in cases where it is known that funds credited to the account are trust fund;

(viii) notice of an injunction or other order from a court restraining his customer from operating on the account.

Liability in case of dishonour of cheque.-In case the banker dishonours the cheque of customer inspite of sufficient funds of the csutomer, the banker is liable to pay damage for breach of the banker's implied contract to honour such cheques. The banker is liable for non-payment of cheque if, although there are insufficient funds of the customer in account, he has otherwise contracted to honour them e.g. by an arrangement with his customer for an overdraft or by a direct promise to pay the cheque. The banker is also liable if he dishonours a cheque after misleading the customer into believing that there were sufficient funds to meet the cheque. In Holland vs Manchester and Liverpool District Banking Co. 1909, it was held that entries by a banker in his customer's pass book, although they are subject to adjustment, are prima facie evidence against the banker of the amount to the credit of the customer's account and the customer who draws a cheque relying on such entries can recover damages, in the absence of fraud, for the dishonour of such a cheque. The customer's right of action in such a case is not upon the cheque itself but is either for negligence on the part of the banker or for damages for breach of his implied contract to honour cheques.

Risks of banker.- A banker's position in regard to payment of cheques is full of risk. If he honours a cheque through oversight, when there are no funds in the customer's account, he may loss his money; and if he dishonours it through inadvertence, he may be called upon to pay damages for wrongful dishonour. Moreover, he must either honour the cheque or refuse its payment at once.

without even a check to consult his legal adviser, customer or any one else.

Forgery of drawer's signature.- A cheque with the forged signature of a drawer must not be paid by the banker. The payment of such a cheque is deemed as payment without the authority of the customer and hence a breach of the implied contract between banker and customer. The paying banker is not given any protection under law on the payment of a forged cheque. The banker's liability remains, even if the signature is cleverly forged and it is difficult to detect it with reasonable care, or if the customer is negligent about keeping the cheque book under lock and key as required by the rules of the bank.

In case of forged cheques, the banker cannot escape from liability, even if the customer was negligent in keeping the cheque book under the lock and key as required by the rules of the bank. It was held by Allahabad High Court in Lala Prabhu Dayal Vs. Jwala Bank Ltd. (AIR 1938 All 374) that "it is the duty of the employees of the bank to be able to identify the signature of the customers and if they fail to discharge their duty and thereby suffer loss, there is no reason why the customer should make good that loss".

Castomer also has some responsibility in this regard and he should take the necessary precaution to save the banker from any loss which may arise because of his own acts. For example, if a banker seeks confirmation from the customer about the genuineness of his signature and the cutomer confirms the signature to be his own, then later on the customer will be estopped from denying the validity of his signature. Similarly, if a customer believes or has a reasonable doubt that a cheque with his forged signature is likely to be presented for payment, he should inform the banker, otherwise he will be estopped, later on, from denying the validity of the cheque.

In case of joint accounts, the signature of all the account holders must be genuine. The banker should not make payment if any of the signature is forged. It was decided in Nihta Co-operative Development and Cane Marketing Union Ltd. and others vs. Bank of Bihar and others (AIR 1967, Supreme Court, 389), that if one of the joint account holders forges the signatures of the other one, and the banker makes payment of the cheque, he will be liable to the other one. In the above case a sum of Rs 11,000

was withdrawn by cheque on which the signature of the Joint Secretary of the co-oprative union was genuine but the signature of Treasurer was forged. It was held by the Supreme Court that since one of the signature on the cheque was forged, there was no mandate to the bank at all. The bank was negligent in ascertaining whether the signature on the cheque is genuine.

BILLS OF EXCHA NGE

Introduction.-Owing to the great development of banking, the cheque has become the most popular instrument of payment. The bill of exchange, however, still plays some part in financing the internal trade of the country. For trade purposes, the bill of exchange has several important advantages over the cheque. The wholesale trader or manufacurer wants to get payment for his goods as soon as posible, in order that he may use the money to finance further transactions. On the other hand, the retailer in many instances does not want to pay for the goods until he has sold them. The bill of exchange possesses the qualities necessary to satisfy, in certain circumstances, both of these requirements. The wholesale trader draws a bill of exchange on his debtor, the retail trader, who "accepts" it thereby engaging to pay it at a fixed future time. The bill is then returned to the wholesale trader, who has a document which he can discount with his banker, provided that both parties are of good financial standing. And the retailer has the term for which the bill is to run to sell his goods and thus provide himself with the requisite funds to meet his acceptance.

Bills of exchange offer further advantages to the business community. The creditor who takes a bill from his debtor has an instrument which (i) fixes definitely the date at which he is to receive payment, (ii) affords written evidence of his debt in a convenient form, and (iii) the creditor has an immediate right of recourse against the parties liable on the bill if it is dishonoured on its maturity. Though bills of exchange (other than cheques) are used for the purposes of internal trade, they are more commonly used in foreign trade, when accompanied by the documents of title to the goods for the cost of which they are drawn, they come into the banker's hands for collection or negotiation or for payment under a letter of credit. They are also used for financing under acceptance credits.

Definition of bill of exchange.- A bill of exchange, as defined by the N.I Act, is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay on demand or at a fixed or determinable future time a certain sum of money only to, or to the bearer of, the instrument. An instrument which does not comply with the above mentioned conditions or which orders any act to be done in addition to the payment of money, is not a bill of exchange.

The person giving the order in a bill is called the "drawer", who is said to "draw" the bill. The person to whom the order is addressed is called the "drawee", and the person to whom or to whose order the money is to be paid is called the "payee".

Inland and Foreign Bill.-A bill which is drawn in Bangladesh and which is either payable in Bangladesh or is drawn on a person resident in Bangladesh is known as an inland bill and all bills other than inland bills are foreign bills (Sections 11 and 12 of N.I. Act). An inland bill does not cease to be such because it is endorsed in a foreign country or is in circulation therein. Thus, a bill drawn in Dhaka payable in Chittagong on a person in London is an inland bill. Likewise, a bill drawn in Dhaka on a person in Chittagong but payable in London is also an inland bill. On the other hand, a bill drawn in London on a person in Dhaka payable at Chittagong is a foreign bill.

Documentary Bill.-These are bills (usually, but not necessarily, foreign bills) to which shipping documents (such as bill of lading or railway receipt, invoice, certificate of origin, consular invoice, insurance policy) etc., are attached. Such bills are usually drown in triplicate, or at least in duplicate, and are, usually, negotiated through a bank which is instructed to deliver the documents to the consignee, either against payment of the bill (Documents against Payment D/P) or against acceptance of the bill (Documents against Acceptance D/A).

Usance of Time Bills.-"Usance" denotes the time fixed by customer within which bills drawn in one country and made payable in another country are to be paid. This period varies in different countries. In a majority of the Continental countries, the period is generally three months.

Accommodation Bills.-A bill of exchange, which does not originate in pursuance of a commercial transaction like sale of

goods or lending of money and is drawn, accepted or endorsed without consideration merely to help a business associate, is referred to as an accommodation bill. In this case, the acceptor just lends out his name to the other so that the later may obtain credit. The party accommodating is described as the "accommodating party", and the party accommodated as the "accommodated party". The accommodating party is liable to a holder of the instrument for value even though the holder may have known that the party was only an accommodating party. If the accommodating party is called upon to pay the bill, he can claim to be reimbursed by the accommodated party (Section 43 of the N.I. Act).

PROMISSORY NOTES

Definition.- A promissory note is an unconditional promise in writing made by one person to another, signed by the maker, engaging to pay on demand or at a fixed or determinable furture time, a sum certain in money to, or to the order of, a specified person, or to bearer. No precise form is necessary to constitute a promissory note, but there must be a definate unconditional promise in writing to pay a sum certain in money, and the note must not be payable in a contingency. Thus an instrument reading "On A's marriage to B, I promise to pay ten thousand taka" would not be a promissory note, and the happening of the event does not cure the defect.

Essentials of promissory Note.-The essential characteristics of promissory notes are noted below:

(a) it must be in writing;

(b) it must contain an unconditonal promise to pay;

(c) it must merely contain an acknowlegement of a debt in writing but must also contain a promise to pay;

(d) the amount promise to be paid must also be a certain and definite sum of money;

(e) it must be signed by the maker;

(f) the person to whom the promise is made must also be a certain and definite person;

(g) the amount payable must be paid in legal money of the country;

(h) the amount to be paid must also be certain.

If the above conditions are present, a document becomes a promissory note, A statement of consideration for the promise is not detrimental to the character of an instrument as a promissory note. Such a statement does not affect its essential character as the vehicle of a simple promise to pay. But whether what is stated is only the consideration or something more and whether it is such as to affect the essential character of the instrument, must be determined on the language of each instrument and the facts and circumstanes of the case. The test in each case is to see what is the dominant substantial effect of the instrument. The question whether an instrument is a promissory note or not should be judged by the words used. A document promising to pay on demand a sum for the price of cloth is a promissory note.

Post-dating of promissory note.-There is no prohibition in the Negotiable Instrument Act against post-dating and a promissory note which is post dated is an effective negotiable instrument though it can not be sued upon till after that date passes.

DIFFERENCE BETWEEN INSTRUMENTS

Difference between Cheque and Bill of Exchange.-Cheque and Bill of Exchange are governed in many respects by the same rules and principles. As a general rule, the provisions applicable to Bill of Exchange payable on demand apply to cheques also; but still there are the followi8ng differences:-

(a) a cheque is always drawn on a bank but a bill can be drawn on any person;

(b) a cheque is always payable on demand without any days of grace, whereas a Bill a Exchange is entitled to days of grace;

(c) a cheque requires no acceptance and is intended for immediate payment, but a bill after sight must be accepted by the drawee beore it is presented for payment and in default of such presentment, holder of the bill cannot make any party liable thereon;

(d) notice of dishonour is required when a Bill of Exchange is dishonoured but in case of a cheque no such notice is necessary; want of inadequate fund in the hands of the banker is a sufficient notice;

(e) a cheque need not be protested for dishonour but in case of bills it is advisable to do so;

(f) the provisions as to crossings are peculiar features of cheques only.

Difference between Bill of Exchange and Promissory Note.- The following are the differences between Bill of Exchange and Promissory Notes:-

(1) A bill of exchange contains an order to pay, whereas a promissory note contains a promise to pay.

(2) In the case of a bill of exchange, the primary liability is that of the drawee after he has acceped the bill; the drawer's liability is secondary. In the case of a promissory note, the primary liability is that of the maker who signs the note.

(3) A bill can be drawn payable to bearer, provided it is not payable on demand. A promissory note cannot be made payable upon it.

(4) In the case of promissory note, the necessity for acceptance does not arise since the maker of the note is already liable upon it.

(5) Bills of exchange are sometimes drawn in sets; the position is not the same in the case of promissory notes.

(6) A bill of exchange connot be drawn conditionally but it can be accepted conditionally with the consent of the holder. A promissory note can never be conditional.

(7) In the case of a bill of exchange notice of dishonour, noting and protesting are required to prove dishonour, but these are unnceessary in respect of a promissory note.

INDORSEMENTS

Indorsement defined.-When the maker or holder of a negotiable instrument signs the same otherwise than as such maker, for the purpose of negotiation, on the back or face thereof or on a slip of paper annexed thereto, he is said to indorse the

same and is called the endorser. Although the validity of an indorsement on the face of an instrument can not be questioned in law, by reason of the provision made in section 15 of the N.I. Act, it is expedient in view of time honoured practice that all instruments should be endorsed on their back.

The endorser should have signed the instrument in a capacity other than that of a maker. He should make the endorsement for the purpose of negotiation. Hence a person who has merely signed the instrument without any intention to negotiate is not an endorser. An endorsement may be made after completion of the instrument or even beore such completion. It is hardly likely, in pratice, that a cheque is endorsed before it is drawn and issued.

Requisities of a valid endorsement.- An indorsement in order to operate as a negotiation must comply with the following conditions, namely:-

(1) It must be written on the bill itself and be signed by the indorser. The simple signature of the indorser in the bill, without additional words, is sufficient. An indorsement written on an allonge, or on a 'copy' of a bill issued or negotiated in a country where 'copies' are recognised, is deemed to be written on the bill itself.

(2) It must be an indorsement of the entire bill. A partial indorsement, that is to say, an indorsement which purports to transfer to the indorsee a part only of the amount payable, or which purports to transfer the bill to two or more indorsees severally, does not operate as a negotiation of the bill.

(3) Where a bill is payable to the order of two or more payees or indorsees who are not partners, all must indorse, unless the one indorsing has authority to indorse for the others.

(4) Where, in a bill payable to order, the payee or indorsee in wrongly designated, or his name in misspelt, he may indorse the bill as therein described adding, if he think fit, his proper signature.

(5) Where there are two or more indorsements on a bill, each indorsement is deemed to have been made in the order in which it appears on the bill, until the contrary is proved.

(6) An indorsement may be made in blank or special, it may also contain terms making it restrictive.

Kinds of endorsment.- Endorsements are of various kinds, such as, endorsement in blank, special endorsement, conditional endorsement, restrictive endorsement and endorsement sans recourse, which are discussed, in short, below:-

(a) Endorsement in blank.- The mere signature of the endorser on the back of an instrument without mentioning the name of any specified person in whose favour the endorsement is made, is said to be an endorsement in blank. Such an endorsement makes it payable to bearer and consequently, the instrument thus endorsed can be negotiated by mere delivery.

(b) Special endorsement or full endorsement:- If the endorser adds a direction to pay the amount specified in the instrument, it is called special endorsement. When a bill has been endorsed in blank, any holder may convert the blank endorsement into a special endorsement by writing above the indorse's signature a direction to pay the bill to or to the order of himself or some other person.

(c) Conditional endorsement.- A conditional endorsement is one which makes the transfer of the property in a bill from the indorser to the indorsee dependent on the fulfilment of stated condition. Where a cheque bears an endorsement making the payment thereof subject to a condition, the banker can not make payment in respect of it until the condition is fulfilled. This is a difficult position for banker, for, by its definition a cheque is an unconditional order payable on demand. It is curious that, while a cheque could thus neither be drawn conditionally nor the payment thereof could be otherwise than on demand, the paying banker should be required to see to the fulfilment of the condition given on an endorsement before making the payment.

(d) Restrictive indorsement.- An indorsement is restrictive which prohibits the further negotiation of the bill or which expresses that it is a mere

authority to deal with the bill as thereby directed and not a transfer of the ownership thereof, as, for example, if a bill be indorsed 'Pay D only', or "Pay D for the account of X'.

A restrictive endorsement gives the indorsee the right to receive payment of the bill and to sue any party thereto that his endorser could have sued, but gives him no power to transfer his rights as indorsee unless it expressly authorises him to do so. Where a restrictive indorsement authorises further transfer, all subsequent endorsees take the bill with the same rights and subject to the same liabilities as the first indorsee under the restrrictive indorsement.

(e) Endorsement sans recourse.-In the case of a sans recourse indorsement, the indorser removes himself from his liability to the endorsee by making clear that the endorsee, or any subsequent holder, should not look to him for payment in case the bill is dishonoured. The indorser can endorse the instrument in such a way as to escape his liability. For instance, an endorser can add the words "without recourse to me" in his endorsement and exclude his liability on the instrument.

Liability of the endorser.- Section 35 of the N.I. Act defines the liability of the endorser as follows:-

"In the absence of a contract to the contrary, whoever endorses and delivers a negotiable instrument before maturity without, in such endorsement, expressly excluding or making conditional his own liability, is bound thereby to every subsequent holder, in case of dishonour by the drawee, acceptor or maker to compensate such holder for any loss or damage caused to him by such dishonour, provided due notice of hishonour has been given to or reecived by such endorse".

PRESENTMENT

What presentment means.- Presentment means presenting a bill or negotiable instrument to the drawer, acceptor or maker thereof for the purpose of getting the payment.

Rules of Presentment.- Sections 62 to 75 of the N.I. Act lay down the rules for presentment of a negotiable instrunment for payment.

A promissory note, payable at a certain period after sight, must be presented to the maker thereof for sight (if, after reasonable search, he can be found) by a person entitled to demand payment, within a reasonable time. In default of such presentment, no party thereto is liable thereon to the person making such default.

As provided under section 64, all promissory notes, bill of exchange and cheques must be presented for payment to the maker, acceptor or drawer thereof respectively, by or on behalf of the holder. In default of such presentment, the maker, acceptor or drawee, as the case may be, is not liable to pay. Where authorised by agreement or usage, a presentment through the post by means of a registered letter is sufficient.

Under section 72, the holder must present the cheque before the relation between the drawer and banker is altered to the prejudice of the drawer. A cheque must be presented by the holder at the bank on which it is drawn. In default of such presentment, the holder cannot make the drawer liable. For instance, A draws a cheque for Tk. 10,000.00 in favour of B. B, hears from the manager privately that A has no fund in the bank. B thereupon sues A for the money. B cannot succeed as he never presented the cheque at the bank.

Reasonable time.- Section 73 of the N.I. Act states that a cheque must, in order to charge any person except the drawer, be presented within a reasonable time after delivery hereof by such person. A delay in the presentment for acceptance or payment is excused if the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct or negligence when the cause of delay ceases to operate, the presentment must be made within a reasonable time.

Thus, in order to charge the endorser, presentment for payment is essential. That the cheque would not have been honoured had it been presented is no excuse for non-presentment. It would appear that even notice of drawer's instructions countermanding payment or notice of drawer's insolvency or death would not excuse non-presentment. Where the cheque is

lost, there could be bo presentment; perhaps the endorser would be discharged unless he makes a fresh endorsement on the duplicate, if any.

The cheque should be presented to the drawee bank within business hours on any working day.

Presentment should be made within a reasonable time. This is so because a cheque is generally not intended for circulation but is meant for speedy presentation. In determining reasonable time for presentment for payment, regard shall be had to the nature of the instrument and the usual course of dealing with respect to similar instruments and that in calculating such time public holidays shall be excluded. Thus what is reasonable time depends upon the facts.

In terms of section 73, reasonable time for presentment, in order to charge an indorser, should be calculated from the time of delivery of the instrument by the endorser. The cheque is treated differently from other bills payable on demand under the N.I. Act in this respect inasmuch as in the case of such bills reasonable time for presentment for payment is to be computed from the time of receipt of the in. ument by holder.

Although no rules have been laid down by the N.I. Act determining what is reasonable time for presentment, the following principles based on certain legal decisions would seem to be applicable:-

(a) If the holder and the drawee bank are in the same place, the cheque must be presented on the day next after the day of its receipt by the holder.

(b) If the holder and the drawee bank are in different places, the cheque should be forwarded for presentment on the day next after the day of its receipt by the holder and the agent of the holder should likewise present or forward the cheque on the day next after he receives it.

(c) Public holidays under the N.I. Act will be excluded in calculating what is reasonable time and the delay, if any, caused by presenting the cheque according to the crossing, if any, thereon is probably excluded.

The holder is not precluded, however, from presenting or forwarding the cheque on the very day of its receipt.

It may noted that the fact that a cheque was presented for payment within a reasonable time as between immediate parties would not be sufficient to hold a prior endorser liable to the holder. The prior endorser would be liable only if the cheque had been presented within a reasonable time after delivery by him. Thus, where A endorses a cheque to B, B to C and C to D, and D presents the cheque on the day of its receipt and it is dishonoured, D may be able to hold only C liable and not A or B, if C had kept the cheque with himself for an unduly long time.

Section 40 of the N.I. Act, which provides for the discharge of the endorser from his liability, states that, where the older of a negotiable instrument, whithout the consent of the indorser, destroys or impairs the indorser's remedy against a prior party, the indorser is discharged from liability to the holder to the same extent as if the instrument had been paid at maturity.

The illustration given under the section are noted below:

"A is the holder of a bill of exchange made payable to the order of B, which contains the following endorsements in blank:

First indorsement, 'B'

Second indorsment, 'Peter Williams'

Third indorsement, 'Wright & Co',

Fourth indorsement, 'John Bozario',

This bill A puts in suit against john Rozario and strikes out without john Rozario's consent the indorsement by Peter Williams and Wright & Co. A is not entitled to recover anything from john Rozario.

It is not clear what would be the position if in the above illustration the endorsment had been cancelled by mistake and not intentionally.

Presentment is not necessary in terms of section 76 of the N.I.Act, so as to charge the endorser, if the endorser has engaged to pay notwithstanding non-presentment, or makes a part payment on account of the amount due on the instrument, or promises to pay the amount due thereon in whole or in part, or otherwise waives his right to take advantage of any default in presentment for payment.

When presentment unnecessary.-Under section 76 of N.I.Act, a negotiable instrument need not be presented for payment in the following cases, namely:-

(i) where a promissory note is payable on demand;

(ii) where the maker of a promissory note or drawee or acceptor of a bill intentionally prevents the presentment of the instrument;

(iii) where the instrument being payable at his place of business or at some other specified place, the maker, the drawee or acceptor closes such place on a business day during the usual business hours or cannot be found at some other specified place.

(iv) where the maker, drawee or acceptor has agreed to pay even if there is no presentment;

(v) where the maker, drawee or acceptor makes a part payment or promise to pay in part after knowing that instrument has not been presented although it has become mature or in any other way waives his right of presentment.

(vi) where the drawer could not suffer damage for non-payment, any holder can make the drawer liable without presentment i.e. where drawer draws the bill on himself or where drawee is a fictitious person.

In case of (ii), (iii), (iv), (v) & (vi) above, the instrument is regarded as dishonoured and the holder can avail himself of the remedies open to him in case of dishonour.

DISHONOUR OF NEGOTIABLE INSTRUMENT

A negotiable instrument is said to be dishonoured when the drawee either refuses to accept it or refuses to pay. If an instrument is dishonoured, the holder must give notice of dishonour to the drawer or to previous holders if he wants to make them liable.

Dishonour by non-acceptance.-Under section 91 of N.I. Act, a bill of exchange is said to be dishonoured by non-acceptance in any of the following ways:-

(a) when the drawee or one of the several drawees, not being partners, fails to accept the bill within 48 hours of its due presentment for acceptance;

(b) where the presentment is excused and the bill remains unaccepted;

(c) at the instance of holder, when the drawee or one of several drawees, not being partners, gives a conditional acceptance.

Dishonour by non-payment.-Under section 92 of the N.I.Act, a promissory note, bill of exchange or a cheque is said to be dishonoured by non-payment when the maker of the note, acceptor of the bill or drawee of the cheque makes default in payment upon being duly required to pay the same.

Difference between the two.- In both the cases, the holder can make the drawer and all previous holders of the bill liable provided he gives notice of such dishonour. But in case of dishonour by non-acceptance, the holder has no right against the drawee as the latter is no party to the bill. He can proceed only against the drawer or all other previous endorsers. In the case of dishonour by non-payment, however, the holder can sue the drawee as, by his acceptance, drawee has already become a party to the bill.

Notice of dishonour.- Under section 93, it is provided that when a promissory note, bill of exchange or cheque is dishonoured by non-acceptance or non-payment, the holder thereof must give notice to all other parties whom he seeks to make liable thereon. For example-A draws a bill on B for Tk. 1000.0. A endorses it to X.X. to Y.Y to Z.Z presents the bill to B for acceptance and B refuses. Z must notify A, X and Y if he wants to make them liable. If Z wants Y to be liable, he must notify Y, in turn Y to A & X.

When notice of dishonour to be given.-Under section 94 of N.I.Act, the notice of dishonour must be given within a reasonble time so as to reach him at least on the day after dishonour if both live in same place; if they live in different places, the notice must be posted not later than the day after dishonour. If the notice is duly directed, sent by post and miscarried and such miscarriage

does not render the notice invalid. Failure to give notice within a reasonable time to all parties entered would release all previous endorsee including drawer from liability on the bill.

How and to whom notice of dishonour to be given.- Section 94 of the Negotiable Instruments Act lays down that notice of dishonour may be given to duly authorised agent of the person to whom it is required to be given or where he has died, to his legal representatives, or where he has been declared an insolvent, to his assignee. It may be oral or written and may, if written, be sent by post and may be in any form, but it must inform the party to whom it is given either in express terms or by reasonable intendment, that the instrument has been dishonoured and in what way, and that he will be held liable thereon, and it must be given within a reasonable time after dishonour, at the place of business or (in case of such party has no place of business) at the residence of the party for whom it is intended.

Under section 97 of the same Act, when the party to whom the notice of dishonour is despatched is dead, but the party despatching the notice is ignorant of his death, the notice is sufficient.

When notice of dishonour unnecessary.- The law makes notice of dishonour unnecessary in certain circumstances. Under section 98 of the N.I. Act, no notice of dishonour is necessary (i) in order to charge the drawer when he has countermanded payment and (ii) when the party charged could not suffer damage for want of a notice. Thus, where the drawer of a cheque has countermanded payment, his order to the banker not to pay the cheque would amount to a waiver of the notice of dishonour (Silchar Bank Ltd. v. Pioneer Bank Ltd). It is generally considered that the drawer cannot suffer any damage for want of notice of dishonour if the dishonour arises out of inadequacy or absence of his funds with the drawee bank. Therefore, where a cheque has been dishonoured due to lack of funds in the relative account, or because the account has been closed, no notice of dishonour is necesary to the drawer for he is supposed to know about the state of his account. The above two circumstances, where notice of dishonour is made unnecessary, will, in practice, cover the majority of cases where cheques are dishonoured.

Under section 98 of the N.I. Act, no notice of dishonour is necessary in the following cases too:

(a) when it is dispensed with by the party entitled thereto;

(b) when the party entitled to notice cannot after due search be found; or the party bound to give notice is, for any other reason, unable without any fault of his own to give it; and

(c) when the party entitled to notice, knowing the facts, promises unconditionally to pay the amount due on the instrument.

DISCHARGE FROM LIABILITY

Discharge of parties from liability.- In bill of exchange, promossory note or cheque, the acceptor or the maker or drawee or the endorser is liable for payment to the holder. This liability may be discharged in the following ways:-

(a) By payment.-All parties to a negotiable instruments i.e. acceptor, drawer or maker are discharged when instrument concerned is paid on maturity to the holder.

(b) By concellation.-An indorser or acceptor is discharged from all liability to a holder or any one claiming under him, who cancels such indorser's or acceptor's name with intend to discharge him.

(c) By release.- A maker, or an indorser or an acceptor is discharged from liability to a holder when the holder agrees to release or releases such acceptor or maker or indorser.

(d) By default of the holder.- (i) If the holder of a bill allows the drawee more than 48 hours time excluding holidays to consider whether he will accept the same, all previous parties not consenting to such allowance are thereby discharged from the liability.

(ii) If the holder agrees to a qualified acceptance, all previous parties not consenting to such qualified acceptance are discharged as against the holder and any person claiming under him.

(iii) If the holder fails to give notice of dishonour to all previous parties, they are discharged as against the holder and those clamining under him. But the acceptor of bill or the maker of bill still remain liable to the holder as they are already parties to the bill under section 84 of the N.I. Act.

(iv) If the holder of a cheque fails to present it to the drawee bank before the relation between the drawer and bank is altered to the prejudice of the drawer and drawers suffer damage due to such delay, the drawer is discharged of all liability to the holder.

(e) By material alteration.- Any material alteration of a negotiable instrument while in possession of the holder discharges the liability of all parties prior to or at the time of such alteration who do not consent to such alteration, unless it was made to carry out the common intention of the original parties. The following are the cases of material alteration:-

(i) alteration in date,

(ii) alteration in time of payment,

(iii) alteration in the place of payment,

(iv) alteration in the amount payable,

(v) alteration in mode of payment, and

(vi) alteration of parties.

In the following cases of alteration liability of parties are not, however, discharged:-

(i) alteration made before delivery, issue or negotiation;

(ii) alteration made to rectify bonafide error;

(iii) alteration made with consent of parties;

(iv) alteration made by way of converting an indorsement in blank into an endorsement in full.

(v) alteration made by way of crossing a bearer cheque.

CHAPTER - TWENTY-ONE
PART - ONE
BANKER AND CUSTOMER

Definition of "banker" and "customer".- There is no satisfactory definition of the term "banker" or "customer" in any statute. Even the English law has failed to provide us with satisfactory definition of the terms "banker" and "customer". The negotiable Instruments Act, 1881 is content with laying down that the term "banker" includes any person acting as a banker. This is not at all a satisfactory definition. The other term i.e. customer has never been defined in any statute. Judicial decisions also has not so far floated a definition of this term.

Relation of banker and customer.- A banker does not hold the money of a customer in trust. A customer does not really deposit his money in a bank but it is lent to the banker. The banker has to discharge the debt by paying over an equal amount when called upon. The true relationship between the two parties was admirably described by Lord Cottenham in Foby Vs. Hill (1848), "Money" said his lorship, when paid into a bank, ceases altogether to be money of the principal. It is then the money of the banker, who is bound to return an equivelent when he is asked for it. The banker deals with the deposited money of customer in as much profit as possible. The banker is required to pay only the principal according to the custom or law of bankers in some places or the principal and a small rate of interest according to the custom or law of bankers in other places. That being relative situations of banker and customer, the banker is not an agent, but he is a debtor.

PART - TWO
LOAN, ADVANCE AND GUARANTEE

Unsecured and secured laon, etc.- The granting of advances is one of the most important functions of a bank. Advances given by a banker must be properly secured. In exceptional cases, however, the banker may, in consideration of his personal knowledge of the honesty and integrity of the customer, allow unsecured advance. An advance allowed without taking some tangible security is called a clean advance. In the case of a clean loan, a banker relies entirely on the personal liability of the customer and has nothing to fall back on in case of default in the repayment of such a loan or advance. A banker should not go to incur such a risk. The Banking Companies Act, 1991 prohibits unsecured loans or advance.

Section 5(c) of the Banking Companies Act, 1991, defines the "secured loan and advance" to mean a loan or advance made on the security of assets of the market value of which is not at any time less than the amount of such loan or advance; and "unsecured loan or advance" to mean a loan or advance not so secured, or that part of it which is not so covered. A partly covered loan or advance is partly covered by the security of assets, the market value of such securities being less than the amount that has been lent or outstanding at any time.

Guarantee.- A guarantee is a written promise made by one person to be collaterally answerable for the debt, default or miscarriage of another person. No action to enforce the fulfilments of such a promise can be maintained unless the agreement is in writing and singed by the party to be charged or by his lawfully authorised agent.

According to section 126 of the Contract Act, 1872 (Act IX of 1872), a "contract of guarantee" is a contract to perform the promise, or discharge the liability of a third person in case of his default. The same section further declares that "a guarantee may be either oral or written." The person giving the guarantee is called the "surety" or "guarantor", the person in respect of whose default the guarantee is given is called "the principal debtor" and

the person to whom the guarantee is given is called the "creditor". Contract of guarantee is of crucial importance in banking industry as a means to ensure safety of advance- made to borrowers. The essence of a contract of guarantee is that the guarantor is only collaterally answerable; the original debtor is not released from his liability. All that the guarantor promises to do is to pay, either the whole or an agreed part of the debt, if the person who has contracted or will contract the debt fails to do so. It is the principal debtor (i.e. the customer of the bank in the kind of guarantee we are concerned with) who is primarily responsible. The existence of an enforceable debt is generally fundemental.

Contract of Indemnity.- According to section 124 of the said Contract Act, a contract of indemnity is a contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself or by the conduct of any other person. The person who makes such a promise is called the "indemnifier" or "promisor" and the other person is called the "benificiary" or "indemnity-holder". A contract of indemnity is really a entingent contract.

Distinction between guarantee and indemnity.-In the case of a guarantee, there are two contracts-a principal contract between the borrower and the lender and a secondary contract between the lender and the guarantor; whereas in the case of indemnity, there is only one primary contract. In the case of guarantee, the liability of the guarantor is secondary and arises only when the principal debtor makes a defult in fulfilling his obligation; whereas in the case of indemnity, the indemnifier or promiser is the only person who is liable to the promised in the event of his suffering a loss. Further, in the case of guarantee, the surety has the right of reimbursement from the principal debtor, whereas the indemnifier can not claim such reimbursement from anybody else, other than the promisor.

Drawbacks in guarantee.-Nearly every form of security has its drawbacks, and a guarantee is no exception. In the first place, it is obvious that its value as a security depends entirely upon the financial stability of the guarantor. Secondly, to be effective, the liabilities of the guarantor must be well difined. No banker should ordinarily accept the guarantee of person about whose

credit he knows nothing. If a guarantee is to be of any real value, the banker should make the necessary inquiries about the character and financial position of the proposed guarantor, because, if the guarantor's financial status is unsatisfactory, the contract of guarantee is of no value. Bankers should be coutious in accepting the guarantees of persons with no means other than fixed incomes terminating with death. However, if such a guarantee has to be accepted, it is very desirable for a banker to take out an insurance policy on the life of the guarantor. As to the socond drawback, namely, the possible loop-holes in the form of the guarantee which are likely to allow the guarantor to evade his liability. In order to avoid this risk, now a days almost every bank has printed copies of its own guarantee forms drafted by legal Draftsman. No difficulty now arises on this score. Every provision contained in the form is inserted for a definite reason and it will be a blunder on the part of a banker to accept a guarantee which is not drawn up according to the approved form.

It is settled issue that guarantor can not be liable for more than that he has undertaken by the letter of his engagement. In India, in the State of Maharastra Vs. Dr. M. N. Kaul, (1963) 38 Comp. Cas. I, the Supreme Court viewed that under a law, a guarantor can not be made liable for more than he has undertaken, a surety can be bound to the letter of his engagement.

Capacity of contract .- Generally speaking, any person able to contract may enter into a guarantee; infants and persons of unsound mind are for this reason ineligible. Contracts with minors and persons of unsound mind are void. It is, therefore, clear that bankers should never accept guarantees of such persons.

A partner has no implied authority to bind his co-partners by giving a guarantee in the firm's name, unless perhaps the giving of guarantees of the type in question is a necessary part of the ordinary business of the firm. A guarantee given by one partner will, however, be binding on the firm if he is authorised by his co-partners to give a guarantee.

Consideration on contract.-The contract of guarantee like other contracts is required to be supported by consideration.

Consideration for a guarantee is defined by sec. 127 of the Contract Act as follows:

"Anything done, or any promise made, for the benefit of the principal debtor may be a sufficient consideration to the surety for giving the guarantee".

Thus, it will be clear that it is not necessary that consideration should imply necessarily something done for the benefit of the guarantor but anything done for the benefit of the principal debtor is considered as an adequate consideration for the guarantor to make the contract valid. For example, if Mr. Habib asks Mr. Kalim (the creditor) to forbear to sue Mr. Zubair (the principal debtor) for a certain period and promises that if Mr. kalim does so, Mr. Habib will pay the amount in case of the default of Mr. Zubair, the forbearance on the part of Mr. kalim is good consideration for the guarantee. However, if Mr. Habib instead of asking Mr. Kalim to forbear to sue Mr. Zubair, asks Mr. Kalim to withdraw a criminal proceeding against Mr. Zubair, which is compoundable, subject to leave to the Court and if the Court refuses to grant the necessary permission, the consideration here fails and Mr. Habib, is, therefore, not liable to Mr. Kalim.

Death of guarantor.-Notice of the guarantor's death involves stopping or ruling off the account, unless specified notice of determination from his legal representatives, or the continuing liability of the guarantor's estate, is expressly provided for in the guarantee. If the guarantee contains a provision that the surety may revoke it during life by giving a specified notice, but no provision that a like notice shall be required from the surety's legal representatives in the event of his death, then mere notice of his death will absolve his estate from liability for any fresh advances made after notice.

PART - THREE
SECURED LOANS AND ADVANCES

In the preceding chapter, the matters of advances against personal security of the borrower has been discussed. In the case of loans and advances secured by a guarantee, the surety usually does not pledge any tangible security, but merely promises to pay the amount due from the principal debtor if the latter fails to do so.

Lien, pledge or mortgage.- There are three ways in which a banker may avail himself of securities as cover for an advance. They are (a) by lien; (b) by pledge; (c) by mortgage. In each case, the banker does not become absolute owner of the property, but has rights over the property until the debt due to him is repaid. With regard to an ordinary lien, the creditor is in actual or constructive possession of the property. But yet he has not, generally speaking, a right to sell it. In a pledge, the pledgee is entitled to the exclusive possession of the property until the debt is discharged, and the pledge, in certain circumstances, has the power of sale, but the ownership remains in the pledgor, subjec to the pledgee's rights. In other words, a lien is a mere right to retain a thing, whereas a pledge gives a special right in the thing pledged.

Collateral security.- A collateral security is a security belonging to and deposited by a third party to secure a customer's account. This type of security must be differentiated from a security deposited by or belonging to the customer himself. The distinction is clearly seen by what happens when a customer becomes bankrupt. When this event occurs, all securities belonging to him must be either sold or valued, and the amount realised by sale or determined by valuation is available to reduce the total indebtedness of the bankrupt customer. The banker can then claim on the estate for the balance remaining. In the case of third securities, however, the banker is entitled for the time being to ignore the callateral security, and claim on the estate for the full amount of the customer's bebt. If the dividend or dividends he receives from the estate are not sufficient to wipe out the debt, then the banker can look to the collateral security for the partial

or full liquidation, as the case may be, of the balance of debt remaining.

A banker can minimise his risk by spreading advances over variety of securities deposited either by the borrower himself, or by some one else on his behalf as a guarantor. Collateral securities are considered advantageous for the bankers. Some of the different types of securites offered by customers for loans and advances are discussed below, namely:-

(1) Stock exchange securities.-The term "stock exchange securities" include securities as are issued by Government and public bodies, and shares and debentures of industrial and commercial companies, banks and insurance companies in which dealings take place on the stock exchange. Stock exchange securities have advantage and disadvantages as under:-

Advantages

(a) Reliability.-These securities are more reliable than a guarantee where the banker has to depend entirely upon the solvency of the security for the recovery of advance, in case the borrower makes a default.

(b) Valuation. - The market price of these securities is published in the daily papers and other economic journals. Hence, a valuation of these securities is comparatively easier.

(c) Ascertainment of title. - It is easier for a banker to satisfy himself whether the title of the customer to the securities offered is good.

(d) Realisability.- Stock exchange securities are more easily realisable than those of certain other kinds, viz., land, buildings and certain kinds of goods, because there is always a ready market for good stock exchange securities.

(e) Stability in prices.- Stock exchange securities are less liable to fluctuations than commodities such as cotton, sugar, etc.

(f) Transferability.-These securities can be more easily transferred than certain other partially negotiable securities or land and buildings.

(g) Portability.-The release of securities can be effected with a minimum of expense and formality.

(h) Reduction in indebtenness.-These securities yield interest or dividend which, when received, reduces the borrower's indebtedness towards interest and often towards the principal as well.

Disadvantages.

(a) Partly paid-up shares.-In the case of partly paid-up shares, the banker may be called upon to pay the uncalled amount.

(b) Company's lien.-The Articles of Association of a company generally provide that its shares will be subject to its lien in case of default in the payment of calls on them or of any other amounts due to them. A banker may, therefore, find that he connot get the full benefit of securities if he fails to give a proper notice of his charge on them to the company concerned.

(c) Non-negotiable securities.-If the securities are not negotiable, their transfer cannot give to the transferee a better title than his own.

(d) Transferee's liability.-A banker renders himself liable as transferee to indemnify the company against any loss it may suffer, if the transferor's signature on the instrument of transfer turns out to be a forged one.

(e) Forged scrips.-Certain unscrupulous persons resort to the foreging of scrips to obtain advances against them. In such cases, it becomes difficult for a banker to find out whether a particular script is genuine and in case of default, the advance may become difficult of realisation.

(2) Documents of title goods.- The following are the principal documents of title of goods, namely:

(a) Bill of Lading.-In the case of a bill of lading, the goods are made deliverable to the bearer; they may be transferred by the original holder to anyone he chooses, and the transferee in his turn can also

transfer it. The transfer can be made by endorsement or delivery, as the case may be, and the transferee acquires, by such a transfer, all the rights to goods shipped that the transferor had. He is also subject to the same liabilities as those of the transferor.

A bill of lading is not a negotiable instrument in the real sense of the term, though there are many points of resemblance between a bill of lading and a negotiable instrument, viz. its transferability by delivery with or without endorsement, and without any notice to the person liable on it; also the transferee of a bill of lading can use it in his own name. Thus, some authors call it a quasi-negotiable instrument.

Bill of lading and Bill of exchange difference.-A bill of lading differs from a bill of exchange in point of negotiablity, because in the case of a bill of lading, a holder connot give a better title than he himself has; whereas in the case of a bill of exchange, a holder in due course, who receives it for value and in good faith, receives it free from all defences as to defect in title that may have been successfully pledged against a previous holder, except of course, forgery.

(b) Dock Warrant.-A dock warrant is a document issued by a dock, warehouse keeper or wharfinger stating that the goods, as described therein, have been received and are deliverable to the person mentioned therein or his assigns by endorsement.

(c) Warehouse-keeper's Certificate or Warehouse Receipt. A warehouse-keeper's certificate is a receipt certifying that the goods are held by the warehouse -keeper, which is usually expressed to be non-transferable, though in some cases, it is transferable with an endorsement. This mere statement as to the holding of the goods on behalf of the owner in no sense makes it a document of title. It is for this reason that a bank does not consider this certificate to be a proper security for a loan. Before making an advance against a warehouse receipt, a banker

should see to it that the person approaching him for the advance is entitled to receive the goods in his own name and that he obtains, in addition, a declaration from the borrower that the goods mentioned in the receipt are his absolute property. The genuineness of the warehouse receipt should also be verified.

(d) Delivery Order.- It is an order on the warehouseman from the owner to deliver the goods mentioned therein to a particular person. A banker, before making an advance on such an order, should see to it that the goods are transferred to his own name; otherwise the holder of a second delivery order for the same goods who has no notice of the banker's claim may obtain the goods by giving his copy to the warehouse.

(e) Immovable Property.- Bankers are generally reluctant to make advance or loan against securities of immovable property. Because, in the case of such securities, it is difficult to find out whether or not the title of a person to an immovable property is good. This type of securities are required to be scrutinised by a good and reliable advocate to certify as to the title being good. This is very long process. It is really risky to certify the title to an immovable property good. One has to make search in the land registration office, court, etc. before such certificate is given. Moreover, prior charge for any other office or organisation might have been created in the property concerned. Moreover, a person who is in possession of a title-deeds of an immovable property may not be the absolute owner of the same, as, for istance, he may be holding the title deeds in some right other than of an absolute owner, such as, for example, a mortgatgee. While accepting land and building as security for an advance, the banker expects to get some rent from the property; but there is always difficulty of finding suitable tenant and collecting rent from them.

Because of the difficulties discussed above, immovable property is not a popular security for bank advances.

(f) Life Policies.-A life policy is a good security against advances on the basis of its surrender value. The other consideration for the banker is to make sure that the policy was effected by the person himself on his own life. In case the pdicy is effected on the life of some other party, it should be ascertained whether the party affecting this insurance had an insurable interest in the life insured.

PART - FOUR
LETTERS OF CREDIT

What is Letters of Credit. - A letter of credit is a document or order by a banker in one place, authorising some other banker, acting as his agent or correspondent in another place, to honour the drafts or cheques of a person named in the document, up to the amount stated in the letter and charge the total amount of the drafts so honoured or payments so made to the grantor of the letter of credit. The particulars of all the drafts or cheques, drawn by the specified person against the credits are required to be endorsed at the back of the letter of credit so that it will be easy to find out how much of the credit allowed has been utilised, and how much is outstanding.

The sale of goods across the world is now usually arranged by means of confirmed credits. The buyer requests his banker to open a credit in favour of the seller and in pursuance of that request the banker, or his foreign agent, issues a confirmed credit in favour of the seller. This credit is a promise by the banker to pay money to the seller in return for the shipping documents. Then the seller, when he presents the documents, get paid the contracts price. The conditions of the credit must be strictly fulfilled; otherwise the seller would not be entitled to draw on it.

Clean and decumentary letters of credit.-A letter of credit, as has been stated, gives authority to whomsoever it is addressed to draw bills, according to its terms on the bank issuing it and includes a promise by the issuing banker to accept all bills so drawn up to the limit of credit. When the promise to accept is made conditional on the attachment of documents of title to goods, such as the invoice, the bill of lading, the policy of insurance, etc., the letter is known as a documentary letter of credit. It is clean and open credit where the promise is unconditional or without reference to the attachment of document of title of goods.

Revocable and irrevocable letters of credit. - In case of revocable credit, the banker issuing it can cancel the authority at any time he chooses, but he will still be liable for bills negotiated

before its cancellation. An irrevocable credit cannot be cancelled unless it has run its full course or unless its beneficiary agrees to such cancellation.

Circular letters of credit.- Circular letters of credit are particularly useful to tourists and travellers who may require money in the different countries which they intend to visit. They may be divided into two groups-(a) traveller's letters of credit, and (b) guarantee letters of credit. A traveller's letter of credit takes the form of a request from the issuing bank to its foreign agents and correspondents to honour the beneficiary's drafts, on itself, which it undertakes to meet on presentation. Customers usually pay cash down for letters of this kind or have their current accounts debited with the amounts. In the case of guarantee letters of credit, an amount equal to the amount of the letter is not usually paid in cash, the banker issuing them claims reimbursements of draft as and when they are presented. When issuing such letters, the banker obtains a guarantee to the effect that the re-imbursements will be made on demand at the agreed rate of interest or he may require sufficient security for the grant of the credit. A letter of credit carries either at its foot or at its back space for particulars, such as, the date and the name of the place of the payment, the amount in words and figures paid and the name of cashing banker. These particulars will help to prevent cashing bankers from exceeding the limit of the letter.

Circular Notes.- Circular notes differ from circular letters of credit in that the former are for certain round sums, generally in the currency of the country of the issuing bank. On the reverse side of a circular note are instructions to the agents and correspondents of the issuing bank, giving the name of the holder and the number of the letter of indication supplied to him.

Traveller's cheques.-Traveller's cheques bear a striking reasemblance to circular notes, with the exception that they do not require any letter of indication. Like the circular notes, they are generally drawn for certain round sums and are cashable at the current exchange rate. At the time of the issue of a travellor's cheque, its holder signs it at the place appointed for the purpose and he has only to sign in the persence of the banker to whom he presents it for payment. This signature must correspond with the signature already on the cheque, which serves to identify the holder.

CHAPTER-NINETEEN
BANKER'S BOOKS EVIDENCE ACT

Special law for bankers alone.-Banker's Books Evidence Act, 1891(Act No XVIII of 1891) (APPENDIX-VII) is an important piece of legislation, which is made for bankers alone in this country. It is a special law enacted to give certain privileges to banks in the matter of proving the entries of their books in the court.

According to the provisions of our Evidence Act, the existence, condition or contents of a document can be proved in a court by producing its original and, so long original is avaliable, a copy is not an alternative. But the said Act makes provision for certain exception. One of such exception is when the original is a document of which a certified copy is permitted by any law. The Bankers Books Evidence Act allows the production of a certified copy of a document. Hence it comes within the exception of the Evidence Act referred to above in the matter of certified copy.

There are two important definitions in that Act which are necessary to understand its provision. One such definition is "bankers books" which has been defined to include ledgers, day-books, cash-books, account-books and all other books used in the ordinary business of bank. The other definition of that Act is "certified copy", which has been difined as follows:-

"certified copy" means a copy of any entry in the books of a bank together with a certificate written at the foot of such copy that it is a true copy of such entry, that such entry is contained in one of the ordinary books of the bank and was made in the usual and ordinary course of business, and that such book is still in the custody of the bank, such certificate being dated and subscribed by the principal accountant or manager of the bank with his name and official title".

Section 4 of the Bankers' Books Evidence Act provides the mode of proof of entries in bankers' books. The provisions of that section are as follows:-

"Subject to the provisions of this Act, a certified copy of any entry in a banker's book shall in all legal proceedings be received

as prima facie evidence of the existence of such entry, and shall be admitted as evidence of the matters, transactions and accounts therein recorded in every case where, and to the same exent as, the original entry itself is now by law admissible but not further or otherwise."

Under the above section, although the original books of a Banker are easily available, the Act allows certified copies to be produced in legal proceedings. The production of an entry in the bankers books, certified in the manner provided in section 2(8) of the Act, is receivable by any court as prima facie evidence of the existence of such entry and matters, transactions and accounts therein recorded. Having regard to the language of the section, it should be borne in mind that the Act merely authorises certified copies to be produced instead of the originals and does not in anyway affect the provisions of the Evidence Act regarding the proof of a document.

Section 5 of the Act reads as under:-

"5. Case in which officer of bank not compellable to produce books.- No officer of a bank shall in any legal proceeding to which the bank is not a party be compellable to produce any banker's book the contents of which can be proved under this Act, or to appear as a witness to prove the matters, transactions and accounts therein recorded, unless by order of the Court or a Judge made of special cause".

It must be noted that the above section applies only when the bank is not a party to the proceeding. Further, the section does not apply to an investigation by a police officer. Under section 94 of the Criminal Procedure Code, an officer in charge of a Police Station can compel a bank officer to produce the books without the order of a court (A.F.G. Price V. Emperor, A.I.R. 1937 Lahore 160).

Section 6 of the Act runs as under:-

"6. Inspection books by order of Court or Judge.- (1) On the application of any party to a legal proceeding the Court or a Judge may order that such party be at liberty to inspect and take copies of any entries in a banker's book for any of the purposes of such proceeding, or may order the bank to prepare and produce, within a time to be specified in the order, certified copies of all such entries, accompanied by a further certificate that no other entries

are to be found in the books of the bank relevant to the matters in issue in such proceeding, and such further certificate shall be dated and subscribed in manner hereinbefore directed in reference to certified copies.

(2) An order under this or the proceeding section may be made either with or without summoning the bank, and shall be served on the bank three clear days (exclusive of bank holidays) before the same is to be obeyed, unless the Court Judge shall otherwise direct.

(3) The bank may at any time before the time limited for obedience to any such order as aforesaid either offer to produce their books at the trial or give notice of their intention to show cause against such order, and thereupon the same not the enforced without further order".

It is in the discretion of the Court to order that a party to a legal proceeding can inspect and take copies of banker's book. An order under the section is made only when the entries are relevant for the purpose of any issue in the proceeding. Courts are always averse to giving anything in the nature of a roving or fishing enquiry when commissioning to inspect documents (Central Bank of India v. Shamdasani, 39 Bom. L.R. 1187). Where the inspection of the book of a third party was sought the Court held that the same ought not be allowed as it involves a serious inroad upon his normal right as a citizen. (Satyanarayan Vs. Punjab National Bank, AIR 1977 Cal. 280).