APPENDIX-XV

THE BANGLADESH SHILPA BANK ORDER, 1972

(P.O. No 129 of 1972)

List of Amending Laws

1. The Bangladesh Shilpa Bank (Amendment) Ordinance, 1976 (Ord. No. XXIII of 1976).
2. The Financial Institutions Laws Amendment Ordinance, 1977 (Ord. No LXI of 1977).
3. The Banks and Financial Institutions Laws Amendment Act, 1980 (Act LX of 1980).
4. The Bangladesh Shilpa Bank (Amendment) Ordinance, 1983 (Ord. No. XLIX of 1983).
5. The Bangladesh Shilpa Bank (Amendment) Ordinance, 1984 (Ord. No. VI of 1984).
6. The Bangladesh Shilpa Bank (Second Amendment) Ordinance, 1984 (Ord. No VII of 1984).
7. The Bangladesh Shilpa Bank (Third Amendment) Ordinance, 1984 (Ord. No. LXVI of 1984).
8. The Bangladesh Shilpa Bank (Amendment) Act, 1987 (Act No. XVIII of 1987).

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THE BANGLADESH SHILPA BANK ORDER, 1972
President's Order No. 129 opf 1972

[Amendment Foot Notes at ANNEX-10]

WHEREAS it is expedient to establish a Shilpa Bank to provide credit facilities and equity support to industrial concerns in Bangladesh and to provide for the vesting in that Bank of the undertakings of the Industrial Development Bank of Bangladesh and the Equity Participation Fund in Bangladesh and for matters connected therewith or incidental thereto;

Now, THEREFORE, in pursuance of the Proclamation of Independence of Bangladesh read with the provisional Constitution of Bangladesh Order, 1972 and in exercies of all powersin that behalf, the President is pleased to make the following Order:-

1. (1) This Order may be called the Bangladesh Shilpa Bank Order, 1972.

(2) It extends to the whole of Bangladesh and also applies to the business of the Bank transacted outside Bangladesh.

(3) It shall come into force at once.

2. In this Order, unless there is anything repugnant in the subject or context,-

(a) "Bank" means the Bangladesh Shilpa Bank established by this Order:

(b) "Board" means the Board of Directors of the Bank;

(c) Chairman" means the Chairman of the Board;

(d) "company" means a company as defined in the Companies Act, 1913 (Act VII of 1913), and includes a body corporate established or incorporated under any other law for the time being in force;

(e) "Development Bank" means the Industrial Development Bank of Bangladesh established under the Industrial Development Bank Ordinance,1961 (Ord. XXXI of 1961), read with the Bangladesh (Industrial Development Bank) Order, 1971 (A.P.O. No. 4 of 1971), which, before the 30th day of

December, 1971, was called the Industrial Development Bank of Pakistan;

(f) "Director" means a Director of the Bank;

(g) "District Judge" includes an Additional District Judge or a Subordinate Judge;

(h) "equity security" means-

(i) any stock or transferable share, preferred or common or similar security representing ownership,

(ii) any security carrying any warrant or right to purchase or subscribe for such security and any such warrant or right itself, and

(iii) such other security representing ownership as may be prescribed,

(i) "fixed cost" means the cost of land, building and machinery of an industrial concern, including the cost of installation of machinery;

(j) "Fund" means the Equity Participation Fund established under the Equity Participation Fund Ordinance, 1970 (Ord. 1 of 1970);

(k) "Government" means the Government of the People's Republic of Bangladesh;

(l) "industrial concern" means a concern engaged or to be engaged in such industry or business, or in the manufacture, preservation or processing of such goods, as the Government may, by notification in the official Gazette, specify from time to time, and includes a company;

(m) "industrial concern in the private sector" means an industrial concern which is not an industrial concern in the public sector;

(n) "industrial concern in the public sector" means an industrial concern at least fifty one per cent shares of which are held by the Government and includes any other industrial concern which the Government may, by notification in the official Gazette, declare

to be an industrial concern in the public sector for the purpose of this Order;

(o) "loan" includes guarantee or indemnity which the Bank may give on behalf of an industrial concern and any liability which the Bank may incur on behalf of an industrial concern;

(p) "Managing Director" means the Managing Director of the Bank;

(q) "prescribed" means prescribed by rules or regulations made under this Order, and

(r) "underwriting" means contracting, with or without conditions, to purchase or subscribe for stocks, shares, bonds, debentures or other securities issued by any company with a view to holding, selling or distributing the whole or part thereof.

3. The provisions of this Order and any rules made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

4.(1) On the commencement of this Order, there shall be established a Bank to be called the Bangladesh Shilpa Bank for the purposes of this Order.

(2) The Bank shall be a body corporate having perpetual succession and a common seal with power, subject to the provisions of this Order, to acquire, hold and dispose of property, both movable and immovable, and to contract, and shall by the said name sue and by sued.

(3) The Bank shall be deemed to be a banking company for the purpose of the Banking Companies Ordinance, 1962, (Ord. LVII of 1962), and [1][the Bangladesh Bank Order, 1972 (P.O 127 of 1972)] and any other law for the time being in force relating to banking companies.

Notes

The Banking Companies Ordinance, 1962 (Ord. LVII of 1962) has been repealed by the Banking Companies Act, 1991, (Act 14 of 1991). Hence the reference of the said Banking Companies Ordinance may be construed as reference to the Banking Companies Act, 1991 (Act 14 of 1991).

5. (1) The Head Office of the Bank shall be at Dhaka.

(2) The Bank may establish regional and other offices, branches and agencies at such places in or outside Bangladesh as the Board may think fit.

[2][6. (1) The authorised capital of the Bank shall be two thousand million taka divided into twenty lac shares of one thousand taka each, of which not less than fifty-one per cent shall be subscribed for by the Government and the remaining shares may be subscribed for by Bangladesh nationals or by any financial institution, Bangladesh or foreign.

(2) The authorised capital of the Bank may be increased by a resolution passed by a three-fourth majority of the share-holders in a general meeting]

7. (1) Subject to rules made under this Order, the general direction and administration of the affairs and business of the Bank shall vest in a Board of Directors which may exercise all such powers and do all such acts and things as may be exercised or done by the Bank.

[3][(2) Subject to the general policy guidelines as may be given by the Government from time to time, the Board, in discharging its functions, shall act on commercial and banking considerations with due regard to the interests of industry and commerce and to the public interest generally.]

(3) Until the first Board is appointed under Article 8, the Managing Director appointed under the said Article shall exercise all powers, do all acts and things as may be exercised or done by the Board.

8. [4][(1) The Board shall consist of a Managing Director and eight other Directors to be appointed by the 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 per cent but does not exceed twenty five per cent 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 per cent 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 per cent.]

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

[5][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 the 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 theBoard:

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

(9) The Government, in determining 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 determined by it.]

10.[6][(1) The Managing Director shall be the chief executive officer of the Bank.]

(2) The [7][Chairman], the Managing Director and other directors shall exercise such powers, perform such functions and discharge such duties as may be prescribed or assigned to them by the Board.

11. No person shall be or shall continue to be a Director who-

(a) is or has at any time been convicted of an offence which, in the opinion of the Government, is an offence involving moral turpitude; or

(b) is a minor; or

(c) is found to be lunatic or of unsound mind; or

(d) is or at any time has been adjudicated an insolvent or has suspended payment or compounded with his creditors; or

(e) absents himself from three consecutive meetings of the Board without leave of absence granted by the Chairman or, in the case of the Chairman, by the Government; or

(f) has any financial or other interest in any industrial concern financed by the Bank which is likely to effect prejudicially his functions as a Director; or

(g) is or becomes a salaried employee of any industrial concern financed by the Bank.

[8][11A. [8][(1) The Government shall appoint one of the Directors, other than the Managing Director, to be the Chairman of the Board and in making such appointment, the Government shall ordinarily consult the Board.]

(2) Subject to his continuing to hold office as a Director, the Chairman shall hold office as Chairman for the term of his office as Director and shall be eligible for re-appointment.

(3) In the event of a casual vacancy in the office of the Chairman, a successor shall be appointed by the Government from amongst the Directors for the unexpired term or for the period of absence, as the case may be, but the person so appointed shall not hold office beyond the date of expiry of the term of office of his predecessor.]

12. (1) The meetings of the Board shall be held at such times and at such places as may be prescribed by regulations:

Provided that a meeting may be otherwise convened by the Chairman when he so thinks fit.

(2) To constitute a quorum at a meeting of the Board, the number of Directors present shall be [9][four, if the Booard consists of nine Directors, and three, if the Board consists of less than nine Directors.]

(3) At a meeting of the Board, each Director shall have one vote, and in the event of equality of votes, the Chairman shall have a second or casting vote.

(4) No Director shall vote on any matter in which he is directly or indirectly interested.

[10][(5) If for any reason the Chairman is unable to be present at a meeting of the Board, a Director, other than the Managing Director, chosen by the Directors present shall preside over the meeting.]

13. The Board may appoint such committee or committees as it thinks fit to assist it in the efficient discharge of its functions.

14. All acts done by the Chairman or any other Director, acting in good faith, shall, notwithstanding any defect in his appointment or in the procedure, be valid.

[11][15. (1) Every Director, officer or employee of the Bank shall be indemnified by the Bank against all losses and expenses incurred by him in the discharge of his duties except such as are caused by his own wilful act or default.

(2) No suit, prosecution or other legal proceedings shall lie against the Chairman, the Managing Director or any other Director or any officer or other employee of the Bank or any other person authorised by the Bank to discharge any function under this Order for anything done or intended to be done in good faith under this Order.]

16. (1) The Bank may carry on and transact all kinds of banking business.

(2) Without prejudice to the generality of the foregoing provision, the Bank may, in particular, carry on and transact the following kinds of business, namely:-

(i) advancing and lending of money, and opening of cash credits for the specific purpose of assisting an industrial concern upon the security of-

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

(b) 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;

(c) goods and machinery which, or the documents of title to which, are deposited with, or assigned to, the Bank as security for such advances, loans or credits;

(d) debentures of companies with limited liability subject to such directions as may be issued by the Board;

(e) shares of companies with limited liability with the prior approval of the Board;

(f) accepted bills of exchange and promissory notes endorsed by the payees and joint and several promissory notes of two or more persons or firms unconnected with each other in general partnership;

(g) immovable property or such documents of title relating to immovable property as have been deposited with, or assigned to, the Bank, and

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

Provided that no security shall be necessary in the case of advances or loans guaranteed by the Government;

(ii) guaranteeing loans, debts and credits raised or incurred by, or granted to, an industrial concern and repayable within a period not exceeding twenty years:

[12][Provided that the Board may, where considered necessary, extend the period of repayment exceeding twenty years;]

(iii) granting Loans to, or subscribing to debentures of industrial concerns, such loans or debentures being repayable within a period not exceeding twenty years from the date on which they are granted or subscribed to, as the case may be:

[12][Provided that Board may, where considered necessary, extend the period of repayment exceeding twenty years;]

(iv) selling and realisation of proceeds of sale of any promissory notes, debentures, stock receipts, bonds, annuities, stocks, shares, securities, goods or immovable properties which,or the documents relating to which, have been deposited with, or pledged, hypothecated, assigned or transferred to the Bank as security for such advances, loans or credits, or which are held by the Bank or over which the Bank is entitled to any lien or charge in respect of any such advances, loans or credits or any debt or claim of the Bank, and which have not been redeemed in due time in accordance with the terms and conditions, if any, of such deposit, pledge, hypothecation, assignment or transfer;

(v) investing of funds of the Bank upon any of the securities specified in paragraphs (a), (b), (d) and (e) of sub-clause (i) of clause (2) or in the units of a Unit Trust and converting the same into money when required, and transposing, altering and converting investment upon such securities or in such units for or into any other investment and selling and mortgaging any such securities or units;

(vi) giving of call loans which are commonly known as inter bank call loans to banks:

(vii) receiving of deposits and keeping cash accounts;

13[**********]

(viii) accepting charge of title-deeds, plate, jewels or other valuable goods;

(ix) selling and realising of all property, whether movable or immovable, which may in any way come into possession of the Bank in satisfaction or part satisfaction of any of its claims, and the acquisition and holding of, and generally the dealing with, any right, title or interest in any property, movable or immovable, which, is the security for any advance or loan made or guaranteed by the Bank connected with any such security;

(x) transacting of pecuniary agency business on commission and the entering into contracts of indemnity, suretyship or garantee with specific security or otherwise;

(xi) underwriting the issue of stocks, bonds or debentures by industrial concerns;

(xii) receiving and recovering such commission as may be agreed upon in consideration of any guarantee or underwriting ;

(xiii) acquiring and retaining as part of its assets any stocks, shares, bonds or debentures which it may have to take up in discharge of any liability incurred through underwriting any issue;

(xiv) drawing, accepting, discounting, buying and selling of bills of exchange and other negotiable instruments;

(xv) buying of bills of exchange payable outside Bangladesh;

(xvi) issuing of latters of credit;

(xvii) drawing of bills of exchange and the granting of latters of credit payable outside Bangladesh;

(xviii) borrowing of money for the purpose of its business and giving of security for money so borrowed by pledging assets or otherwise;

(xix) acquiring, maintaining and transferring its residential and business premises;

(xx) taking over, running and selling of such industrial concerns as have failed to repay in full the loan taken from the Bank;

(xxi) subscribing directly to the stock of any industrial concern;

(xxii) subsidising from time to time of the provident or other funds created for the benefit of its employees;

(xxiii) appointing of agents in or outside Bangladesh for transacting pecuniary business on commission;

(xxiv) carrying out of survey and research of industries and maintaining statistics relating thereto;

(xxv) administering as agent to the Government of such loans and in such manner as the Government may direct;

(xxvi) converting of any loan into equity at the option of the Bank;

(xxvii) extending of equity support for supplementing the capital resources of industrial concerns in Bangladesh through outright purchase of equity;

(xxviii) underwriting, managing and distributing the issue of stocks and shares of industrial concerns in Bangladesh either singly or in conjunction with other financial institutions;

(xxix) facilitating investment by selling new share floatations of companies without underwriting obligations;

(xxx) purchasing or otherwise acquiring, owning, selling, transferring and exchanging any tangible and intangible, movable or immovable property or any rights, title or interest in such property acquired for the conduct of its business;

(xxxi) accepting and furnishing any lien, charge, hypothecation or mortgage of any tangible or intangible, movable or immovable property or assets in the conduct of its business;

(xxxii) selling of shares acquired or held by it through stock exchanges in Bangladesh or by private negotiations required for revolving its funds or for any other purpose;

(xxxiii) entering into agreements and contracts and executing such documents as may be considered necessary for the discharge of its functions;

(xxxiv) receiving and paying commissions, fees and brokerage in connection with its business;

[14][(xxxv) appointing attorneys, lawyers, counsels, consultants and agents;]

(xxxvi) acquiring, retaining and disposing of assets of any type in satisfaction of its claims;

(xxxvii) doing of all such acts and things as may by incidental or subsidiary to transacting any of the aforesaid business, including foreign exchange business; and

(xxxviii) doing of such other acts and things in furtherance of the purposes of this Order as the Government may, from time to time, direct.

17.[(1) The business provided for in sub-clauses (i), (ii), and (iii) of clause (2) of Article 16 may be transacted with any industrial concern, either in the public or in the private sector, but shall not be transacted with any industrial concern incorporated outside Bangladesh.][15]

(2) Short term advances and loans may be made, according to the need, for the purpose of working capital of any industrial concern financed by the Bank.

(3) No guarantee, loan or subscription provided for in sub-clauses (ii) and (iii) of clause (2) of Article 16 shall be made which is not secured by pledge, mortgage, hypothecation or assignment of any property, movable or immovable, to the extent determined by the Board or by a contract to mortgage, hypothecate or assign any property which may be acquired in future with or without financial assistance of the Bank.

18. [Omitted.][16]

19. (1) The Bank shall not undertake or transact any kind of business other than those authorised by or under this order and, in particular, it shall not discount or buy, or advance, lend or open cash credit on the security of any negotiable instrument of any individual or partnership firm which does not carry on it the several responsiblities of at least two persons or firms not connected with each other in general partnership.

(2) Notwithstanding anything contained in clause (1), the Bank may grant advances or loans or make ex-gratia payment [(**********)][17] to its officers and staff for the purpose of providing amenities and facilities for the batterment.

20. On the commencement of this Order, the entire underakings of the Developmnet Bank and the Fund shall be transferrred to, and shall vest in, the Bank.

21. (1) The undertaking of the Development Bank or the Fund shall be deemed to include all assets, rights, powers, authorities and privileges and all property, movable and immovable, cash balances, reserve fund, 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 Development Bank or the Fund in relation to the undertaking within the territory of Bangladesh or in relation to the business of such undertaking outside Bangladesh, and all books of accounts, registers, records and all other documnets of whatever nature relating thereto and shall unless the Government otherwise directs, also be deemed to include all borrowings, liabilities and obligations of whatever

kind then subsisting of the Development Bank or the Fund in relation of such undertaking in the territory of Bangladesh.

Explanation-The assests of the Development Bank or the Fund shall be deemed to include any sum payable by or in respect of any industrial concern or person in Bangladesh on account of any financial assistance taken by or for it or him from any office of the Development Bank or the Fund in or outside Bangladesh.

(2) If, according to the laws of any country outside Bangladesh, the provisions of this Order by themselves are not effective to transfer or vest any asset situated in that country which form part of the undertaking of the Development Bank or the Fund to, or in, the Bank, the affairs of the Development Bank or the Fund in relation to such asset shall, on and from the commencement of this Order, stand entrusted to the chief executive officer for the time being of the Bank and the chief executive officer may exercise all such powers and do all such acts and things as may be exercised or done by Development Bank or Fund for the purpose of effectively transferring such asset.

(3) The chief executive officer of the Bank shall, in exercise of the power conferred on him hy clause (2), take all such steps as may be required by the laws of any such country outside Bangladesh for the purpose of effecting such transfer or vesting, and may, either himself or through any person authorised by him in this behalf, realise any asset of the Development Bank or the Fund.

(4) Unless otherwise expressly provided by this Order and unless the Government otherwise directs, 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 Development Bank or the Fund is a party or which are in favour of the Development Bank or the Fund shall, in so far as they relate to the undertaking of the Development Bank or the Fund which has vested in the Bank under Article 20, be of as full force and effect against or in favour of the Bank, and may be enforced or acted upon as fully and effectually as if in the place of the Development Bank or the Fund the Bank had been a party thereto or as if they had been issued in favour of the Bank.

(5) Subject to other provisions of this Order and unless the Government otherwise directs, any suit, appeal or other proceeding of whatever nature pending on the date of commencement of this Order by or against the Development Bank or the Fund in relation to its undertaking which has vested in the Bank under Article 20 shall be deemed to be suit, appeal or other proceeding pending by or against the Bank and may be continued or prosecuted and enforced by or against the Bank.

22. (1) The Bank may [18][subject to other provisions of this Article] appoint or employ such persons as it considers necessary for the efficient performance of its functions on such terms and conditions as it may determine.

(2) Every officer or other employee of the Development Bank and the Fund in Bangladesh shall become, on the commencement of this Order, an officer or other employee, as the case may be, of the Bank and shall hold his office or service in the Bank on the same terms and conditions and with the same rights and privileges as to provident fund, gratuity, pension and other matters as were enjoyed by him immediately before such commencement and shall continue to do so unless and untill his employment in the Bank is terminated or until his remuneration or terms and conditions are duly altered by the Bank:

Provided that an officer or other employee may within such time as may be specified by the Bank exercise his option not to continue in the service of the Bank:

Provided further that the Government may alter the terms and conditions of service of an officer or employee, if such alteration is considered necessary for the sake of uniformity and in the interest of equity in service.

(3) Notwithstanding anything contained in any terms and conditions of service or in any award, settlement or agreement for the time being in force, the Bank may, with the prior approval of the Government, alter the remuneration (whether by way of reduction or otherwise) and other terms and conditions of service of any officer or other employee of the Bank,and if such alteration is not acceptable to an officer or other employee, the Bank may terminate his employment by giving him compensiation equivalent to three months remuneration in case

of permanent officer or employee and one month's remuneration in case of a temporary officer or employee.

Explanation:-The compensation to an officer or other employee under clause (3) shall be in addition to any pension, gratuity or other benefit to which the officer or other employee may be entitled under the terms and conditions of his service.

(4) If any question arises as to whether any person was an officer or other employee of the Development Bank or the Fund or not immediately before the commencement of this Order, the question shall be referred to the Government whose decision shall be final and binding on the parties.

(5) The transfer of service of any officer or other employee from the Development Bank or the Fund to the Bank shall not entitle any such officer or other employee to any compensation, other than the compensation mentioned in clause (3) and no such claim shall be entertained by any Court, tribunal or other authority.

(6) [Omitted.][19]

23. (1) Where any property has vested in the Bank under Article 20, every person, in whose possession and custody or under whose control the property may be shall deliver the property to the Bank forthwith.

(2) Any person who, on the commencement of this Order, has in his possession or custody or under his control any books, documents or other papers relating to any undertaking which has vested in the Bank under Article 20, shall deliver them to the Bank or to such person as the Bank may direct.

(3) The Bank may take all necessary steps for securing possession of all properties which have vested in the Bank under Article 20.

24. The Government shall give compensation to the Development Bank and the Fund for such of their undertakings transferred to the Bank under Article 20 as have not already vested in the Government by or under any law, and such compensation shall be determined and distributed among the share holders of the Development Bank and the Fund in such manner as may be prescribed by rules made under this order:

Provided that the total compensation payable to the Development Bank or the Fund under this Article shall not exceed the total paid-up value of the shares held by the shareholders in Bangladesh among whom such compensation is to be distributed.

25. The Bank shall, by such date in each year as may be prescribed, submit to the Government for approval a statement to be called the annual budget statement, in the prescribed form for every financial year showing the estimated receipts and expenditure during that financial year.

[26. (1) The bank may issue and sell bonds and debentures carrying interest at such rates as the Board may determine.

(2) Notwithstanding anything contained in the Foreign Exchange Regulation Act, 1947 (VII of 1947), or in any other law for the time being in force, the Bank may, for the purpose of granting loans and advances to industrial concerns in foreign currency, borrow such currency from the Government or from any Bank or other financial institution in Bangladesh or from any foreign Government or foreign bank or other financial institution, and may pledge, mortgage, hypothecate or assign to such Government, bank or financial institution all or any part of the security taken by the Bank for the loans granted in foreign currency.

(3) The Government may, if it considers it expedient, guarantee the repayment of principal and payment of interest in respect of the bonds and debentures issued, and the borrowing made, by the Bank under this Article on such terms and conditions as may be agreed upon between the Government and the Bank.][20]

27. (1) For the purpose of transacting any business under this Order with any industrial concern, the Bank may impose such conditions as it may consider necessary or expedient for protecting its interest and securing that its guarantee, underwriting, loan, subscription or other aid is put to such use by the industrial concern as the Bank has agreed to.

(2) Any condition imposed on an industrial concern under clause (1) shall be valid and shall be enforceable against such concern.

28. [21][(1)] All loans granted to an industrial concern in foreign currency shall be repaid in accordance with such terms and conditions as may be determined by the Board, either-

(a) in the currency in which they were granted; or

[22][(b) in Bangladesh currency at the rate of exchange prevailing on the date of payment or at such other rate as the Government may, by order, determine from time to time in this behalf.]

[23][(2) Any loss incurred by, or profit accrued to, the Bank in connection with any foreign currency borrowed by it under clause (2) of Article 26 due to any fluctuation in any exchange rate shall be on the account of the recipient from the Bank of the foreign currency borrowed by it.

(3) The Bank may adopt an insurance policy to cover the risk of loss due to fluctuation in the exchange rate of the foreign currency borrowed by it under clause (2) of Article 26 and the recipient from the Bank of such foreign currency shall pay such permium for the insurance policy as the Bank may determine.]

29. (1) The Bank shall maintain proper accounts, and prepare annual statement of accounts, including the profit and loss account and balance sheet, and shall comply in respect of such accounts with such general directions as may be issued by the Government from time to time.

[24][(2) The accounts of the Bank shall be audited by not less than two auditors who shall be chartered accountants within the meaning of the Bangladesh Chartered Accountants Order, 1973 (P.O. No. 2 of 1973) and who shall be appointed by the Bank with the prior approval of the shareholders in the annual general meeting:

Provided that the Government may, if it deems it expedient, appoint special auditors for undertaking special audit of the accounts of the Bank.]

(3) Every auditor appointed under clause (2) 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 reasonable times have access to the books, accounts and other documents of the Bank,

and may, in relations to such accounts, examine any Director or officer of the Bank.

(4) The auditors shall report to the [25][share-holders] 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 Board, whether it has been given and whether it is satisfactory.

(5) The Government 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 [25][share-holders] and of the creditors of the Bank or upon the sufficiencyof 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 [25][share holders] so requires.

30. (1) The Bank shall furnish to the Government such returns, reports and statements as the Government may from time to time require.

(2) The Bank shall, as soon as possible after the end of every financial year, furnish to the Government a statement of accounts audited by the auditors under article 29 together with an annual report on the working of the Bank during the year.

(3) The copies of the audited accounts and annual report received by the Government under clause (2) shall be published in the official Gazette and shall be laid before the Parliament.

31. (1) The Bank shall establish a reserve fund to which shall be credited such amount out of its net annual profit as the Board may determine.

(2) After deducting the amount under clause (1) and making provisions for bad and doubtful debts, depreciation of assets and such other matters as are usually provided for by bankers or are considered expedient in the interest of the Bank, any surplus remaining thereafter shall be [26][declared as dividends].

[27][31.A The Bank may establish a fund to be called the Special Assistance Fund for providing concessional loans and advances to persons dealing with inventions and innovations in such sector as the Bank may decide in this behalf.]

32. Notwithstanding any agreement to the contrary, the Bank may, by notice, require any industrial 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 reasonale 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 percent, 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 permises of the industrial concern without being replaced; or

(f) without permission of the Bank any property of the indusrial 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 enquiries

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.

[28][32A. (1) The annual ordinary general meeting of the share-holders shall hold in the month of November each year.

(2) A general meeting may be convened by the Board at any other time and shall be convaned by it on the request, in writing, of the share-holders representing not less than thirty percent of the total number of shares subscribed.

(3) Subject to rules or regulations made under this Order, all decisions at a general meeting shall be taken by the votes of the majority of the shareholders exercised either personally or by proxy

(4) Each share-holder shall have such number of votes as are equal of the number of shares subscribed by him.

(5) A general meeting shall have the right to decide on any matter not expressly provided for in and not in violation of any provisio of, this Order.]

33. (1) Where the Bank becomes entitled to require the immediate payment of any loan before the due date under Article 32 or by reason of the breach of any condition of any agreement between the Bank and an industrial concern to which the loan has been granted or any person liable for payment of that loan, or where an industrial concern to which any loan has been granted or any person liable for payment of that loan fails to repay the loan by the due date or in compliance with the notice under Article 32, an officer of the Bank, generally or specially authorised by the Board in this behalf, may apply to the District Judge within the local limits of whose jurisdiction the industrial concern carries on the whole or a substantial part of its business or the office or branch of the Bank from which the loan was disbursed is situated, for one or more of the following reliets, namely:-

(a) an order for the sale of the property pledged, mortgaged, hypothecated or assigned to the Bank as security for the loan or any other property of the

industrial concern or of any person liable for payment of the loan or for payment of any other sum relating thereto; or

(b) transfer of the management and administration, including the authority to operate the bank accounts, of the industrial concern to the Bank or to a person specified by the Bank; or

(c) an order for injunction ad interim where there is apprehension that the machinery or equipment or other assets may be removed from the premises of the industrial concern without the permision of the Bank or the properties of any other person who is liable for payment of the loan or any other sum relating thereto may be transferred, removed or destroyed; or

(d) an order for payment of the loan or any other sum relating thereto.

(2) An application under clause (1) shall state the nature and extent of the liability of the industrial concern to the Bank, the ground on which it is made and such other particulars as the Bank may consider necessary.

(3) When the application is for the relief mentioned in sub-clause (a) or sub-clause (c) of clause (1), the District Judge shall pass an order ad interim attaching the property referred to in sub-clause (a) as aforesaid or such other property of the industrial concern or of the persons liable for payment of the loan or of both as is likely in his estimation to fetch, on being sold, an amont equivalent to the outstanding liability of the industrial concern to the Bank together with the costs of the proceedings taken under this Article, with or without an order of injunction ad interim restraining the industrial concern from transferring or removing any machinery or equipment or any other assets without the consent of the Bank or restraining the persons from transferrring, removing or destroying the same.

(4) Where the application is for the relief mentioned in sub-clause (b) of clause (1), the District Judge shall pass an order for injunction ad interim restraining the industrial concern from transferring or removing its machinery, equipment or any other assets and shall issue a notice calling upon the industrial

concern to show cause on a date to be specified in the notice why the management and administration, including the authority to operate the bank accounts, of the industrial concern should not be transferred to the Bank or to a person specified by the Bank.

(5) Where the application is for the relief mentioned in sub-clause (d) of clause (1), the District Judge shall issue a notice calling upon the industrial concern or the person who is liable to make the payment to show cause on a date to be specified in the notice why an order for payment of the loan or any other sum relating thereto shall not be passed.

(6) Before passing any order under clause (3), (4) or (5), the District Judge may, if he thinks fit, examine the person, making the application.

(7) At the time of passing an order under clause (3), the District Judge shall issue to the industrial concern or to the person liable for payment of the loan or any other sum relating thereto a notice accompanied by a copy of the order, the application and evidence, if any, recorded by him calling upon it or him to show cause on a date to be specified in the notice why the order of attachment ad interim should not be made absolute or the injunction be not confirmed.

(8) If no cause is shown on or before the date specified in the notice under clause (4) or (7), the District Judge shall forth-with make the order ad interim absolute and direct the sale of the attached property or transfer the management and administration, including the authority to operate the bank accounts of the industrial concern to the Bank or to the person specified by the Bank or confirm the injunction.

(9) If no cause is shown on or before the date specified in the notice under the clause (5), the District Judge shall pass an order for payment of the loan or any other sum relating thereto.

(10) If cause is shown, the District Judge shall proceed to investigate into the claim of the Bank and the provisions of the Code of Civil Procedure, 1908 (Act V of 1908), shall as far as practicable, apply to such proceedings.

(11) On completion of the investigation under clause (10), the District Judge shall pass an order-

(a) confirming the order of attachment or directing the sale of the attached property; or

(b) varying the order of attachment so as to release a portion of the property from attachment and directing the sale of the remainder of the attached property; or

(c) releasing the property from attachment, if he is satisfied that it is not necessary in the interest of the Bank to retain it under attachment; or

(d) confirming or vacating the injunction; or

(e) transferring or refusing to transfer the management and administration, including the authority to operate the bank accounts, of the industrial concern to the Bank or to the person specified by the Bank; or

(f) directing the payment of the loan or any other sum relating thereto:

Provided that when making any order under sub-clause (c), the District Judge may make such further orders as he thinks necessary to protect the interests of the Bank and may also allow the cost of the proceedings:

Provided further that unless the Bank intimates to the District Judge that it will not appeal against any order releasing any property from attachment, such order shall not be executed until the expiry of the period mentioned in clause (13), or if an appeal is preferred, unless the [29][High Count Division] otherwise directs, until the appeal is disposed of.

(12) An order under this Article for the attachment or sale of property or payment of the loan or any other sum relating thereto shall be carried into effect as far as may be in the manner provided in the Code of Civil Procedure, 1908 (Act V of 1908) for the attachment or sale of property in execution of a decree or for the execution of a decree, as if the Bank were the decree holder.

(13) Any party aggrieved by an order made under clause (8), (9), or (11) may, within thirty days from the date of the order, appeal to the [29][High Court Divsion] and upon such appeal, the High Court Division may, after hearing the parties, pass such order as it thinks proper.

34. (1) Where any industrial concern which is under a liability to the Bank under an agreement makes any default in payment or otherwise fails to comply with the terms of its agreement with the Bank, the Bank may, not withstanding anything contained in Article 33, take over the management and administration of the industrial concern, and may sell or realise any property pledged, mortgaged, hypothecated or assigned by the industrial concern to secure its liability to the Bank.

(2) Any transfer of property made by the Bank in exercise of its powers of sale or realisation under clause (1) shall vest in the transferee all rights in or to the property transferred as if the sale had been made by the owner of the property, and such transfer shall be final and binding on all the parties.

(3) The Bank shall have the same right and powers with respect to goods manufactured or produced wholly or partly from goods forming part of any security held by it as it has with respect to the original goods.

(4) Where the Bank takes over the management and administration of an industrial concern under clause (1), it shall be deemed to be the owner of such concern for the purpose of suit by or against such concern, and shall sue and be sued in the name of the said concern.

[30][(5) Where the Bank takes over the management and administration of an industrial concern under clause (1) or transfers any property in exercise of its powers of sale or realisation under that clause, such taking over or transfer shall not be called in question in or before any Court; and no Court shall-

(a) entertain any suit, application or other legal proceeding-

(i) for a declaration that such taking over or transfer is illegal, ineffective or void, or

(ii) for setting aside or annulling any order or decision of the Bank relating to such taking over or transfer, or

(iii) for an order of injuction or any other order prohibiting or restraining the Bank or any of its officer from such taking over or transfer; or

(b) issue, make or pass any order of ad interim or temporary injuction or any other Order prohibiting or restraining the Bank or any of its officers from such taking over or transfer.

(6) Where any certificate is issued by the Bank to the effect that it has taken over the management and administration of an industrial concern or transferred any property under clause(1), such certificate shall be conclusive evidence of the fact that the management and administration of such industrial concern has been taken over or such property transferred under that clause.]

35. (1) Without prejudice to the provisions of Article 33 and 34, all sums due to the Bank shall be recoverable as arrears of land revenue;

Provided that no sum shall be so recovered unless fifteen days notice has first been given by the Bank to the debtor or any other person liable to pay the sum will be so recovered;

Provided further that in so giving notice, the Bank shall inform the debtor or any other person liable to pay the sum that he may pay by such instalments as may be fixed in the notice and that upon his so paying every instalment on or before the due date the recovery will be suspended, but that it ill otherwise proceed as to the entire sum outstanding in case of any default in any instalment including the first.

(2) In the application of the Public Demands Recovery Act, 1913 (Ben, Act III of 1913), for the purpose of recovery of the dues of the Bank, the provisions of section 10-A of the said Act shall aply, but the provisions of sections 7, 9, 10 and 13 thereof shall not apply, and the certificate issued under section 6 of the said Act shall be conclusive proof that the amount specified therein is due to the Bank.

36. The Board may, for the purpose of ensuring efficient functioning of the Bank and facilitating transaction of its daily business, by a resolution, delegate to the [31][Chairman, Managing Director] or any other Director or any officer of the Bank subject to such conditions and limitations, if any, as may be specified therein such of its powers and duties under this Order as it may deem necessary.

[32][36A The Board may, for the purpose of signing any loan agreement with any foreign loan giving agency or any paper

connected therewith outside Bangladesh by a resolution, delegate to the head of the Bangladesh Consulate or Mission or any officer of the Bangladesh Consulate or Mission posted in that country, subject to such conditions and limitations, if any, as may be specified therein, such of its powers under this Order as it may deem necessary.]

37. (1) Whoever wilfully makes a false statement or knowingly permits any false statement to be made, or to remain, in any bill of lading, warehouse receipt or other document of title or any other document given to the Bank by way of security or otherwise in respect of any financial aid sought or granted under this Order, shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to two thousand taka, or with both.

(2) Whoever wilfully withholds or fails to deliver to the Bank, as required by Article 23, any property or any book, document of other paper which may be in his possession or unlawfully retains in his possession any property of the Development Bank or the Fund which has vested in the Bank under Article 20 shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.

(3) Whoever, without the consent in writing of the Bank, uses the name of the Bank in any prospectus or advertisement shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand taka, or with both.

(4) No Court shall take cognizance of any offence punishable under this Order except upon a complaint in writing signed by an officer of the Bank authorised in this behalf by the Board.

38. No provision of law relating to the winding up of companies, including banking companies, shall apply to the Bank and the Bank shall not be wound up save by order of the Government and in such manner as it may direct.

39. Any reference to the Development Bank or the Fund in any law, other than this Order or in any contract, agreement, deed of trust or other instrument shall, in so far as it relates to the undertakings which have been transferred to the Bank under Article 20, be construed as reference to the Bank.

40. If any difficulty arises in giving effect to the provisions of this Order, the Government may make such order, not inconsistent with the provisions of this Order, as may appear to it to be necessary for the purpose of removing the difficulty.

41. All laws relating to bankers and banking companies shall, subject to such adaptations and modifications as may be made from time to time, be applicable to the Bank.

42. (1) Anything done, action taken, order passed appointment made, notification issued or purporting to have been done, taken, passed, made or issued, by the Government in respect of the Development Bank or the Fund after the 16th day of December, 1971, and before the commencement of this Order shall be deemed to have been validly done, taken, passed, made or issued, and shall have and shall be deemed always to have had effect accordingly, and shall not be called in question in any Court.

(2) Anything done or action taken in good faith in or in relation to the Development Bank or the Fund by any body or person appointed by the Government after the 16th day of December, 1971, and before the commencement of this Order shall be deemed to have been validly done or taken, and shall have and shall be deemed always to have had effect accordingly, and shall not be called in question in any Court.

43. The Government may, by notification in the official Gazette, make rules for the purpose of giving effect to the provisions of this Order.

44. (1) The Board may, [33][... ... ...] makes regulations, not inconsistent with theprovisions of this Order and the rules, to provide for all matter for which provision is necessary or expedient for the purpose of giving effect to the provisions of this Order.

(2) In particular and without prejudice to the generality of the foregoing power, such regulations may provide for-

(a) the calling of the meetings of the Board or of any Committee, fees for attending the meeting thereof and the conduct of business thereat;

[34][(aa) the calling of general meeting of the share-holders and the conduct of the business thereat;]

(b) the delegation of powers and functions of the Board to the [35][Chairman, Managing Director] or any other Director or any officer or other employee of the Bank;

(c) the conditions subject to which the Bank may grant loans or equity support;

(d) the manner of determining the sufficiency of the security for the purpose of business;

(e) the manner and conditions subject to which the Bank may borrow in foreign currency;

(f) the form of returns and statements required to be prepared under this Order;

(g) the duties and conduct of officers and other employees and agents of the Bank;

(h) the recruitment, remuneration, promotion and other terms and conditions of service of the officers and other employees of the Bank;

(i) the establishment and maintenance of pensions, provident or other fund for the benefit of officers and other employees of the Bank, including the dependents of such officers and other employees;

(j) the provision of a seal of the Bank and the manner and effect of its use;

(k) the disclosure of interest, direct or indirect, of any Director or any member of a Committee in any business concern;

(l) taking over the management and control of any industrial or business concern committing a breach of its agreement with the bank; and

(m) generally for the efficient conduct of the affairs of the Bank.

(3) All regulations made under this Article shall be published in the official Gazette and shall come into force on such publication.

45. The Industrial Development Bank Ordinance, 1961 (Ord. No. XXXI of 1961), the Equity Participation Fund Ordinance, 1970 (Ord. No 1 of 1970), and the Bangladesh (Industrial Development Bank) Order, 1971 (A.P.O. No. 4 of 1971), are hereby repealed.

ANNEX-10

1. Substituted by Act IX of 1980 for "State Bank' Act, 1956 (Act XXXIII of 1956), read with Bangladesh Bank (Temporary) Order, 1971 (A.P.O No. 2 of 1971)"

2. Substituted bu Act XVIII of 1947. The clause, prior to substitution, stood as under:-

(1) The authorised capital of the Bank shall be five crore taka to be subscribed by the Government from time to time according to the requirements of the Bank and in such form and manner as may be prescribed:

Provided that the Government may increase the authorised capital of the Bank from time to time.".

3. Substituted ibid. The clause, prior to substitution, stood as under:-

"(2). The Board, in discharging its functions, shall act on commercial consideration with due regard to the interests of industry and commerce and to the public interest generally and shall be guided on Question of policy by the instructions, if any, given to it by the Government which shall be the sole judge as to whether a question is a question of policy or not.".

4. Clause (1) of Article 8 was first amended by Act IX of 1980 and later substituted by Act XVIII of 1987. Prior to substitution, the Clause was as under:-

"(1) The Board shall consist of a Managing Director, who shall be the Chairman of the Board, and not more than five other Directors to be appointed by the Government.".

5. Substituted by Act XVIII of 1987. The Article, prior to substitutiion, was as under:-

"9.(1) The Managing Director and other Directors shall hold office for such period and on such terms and conditions as the Government may determine.

(2) The Government may, at any time, terminate the appointment of the Managing Director or any other Director without assigning any reason.

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

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

6. The words "who is the Chairman of the Board" occurred between the word "Director" and "shall" omitted by Act IX of 1980.

7. Inserted ibid.

8. Article 11A inserted by Act IX of 1980 and thereafter sub-section (1) thereof was substituted by Act XVIII of 1987. Prior to substituton, clause (1) was as under:-

"(1) The Government shall appoint one of the Directors other than the Managing Director to be the Chairman of the Board.".

9. Substituted by Ordinance LXI of 1977, for "three, if the Board consists of five Directors and two, if the Board consists of less than five Directors".

10. Substituted by Act XVIII of 1987. Prior to substitution, the clause was as under:-

"(5) If for any reason the Chairman is unable to be present at a meeting of the Board, a Director authorised in writing by the Chairman shall preside over the meeting.".

11. Substituted ibid. Prior to substitution, the Article was as under:-

"15. Every Director shall be indemnified by the Bank against all losses and expenses incurred by him in the discharge of his duties except such as are caused by his own wilful act or default.".

12. Added by Ord. XXIII of 1976.

13. The provise with the words "Provided that the level of liquidity of such deposits shall be maintained not less than forty per cent." omitted by Ord. VI of 1984.

14. Substituted by Ord. LXXV of 1986.

15. Substituted ibid The clause, prior to substitution, was as under:-

"(1) The business provided for in sub-clauses (i), (ii) and (iii) of clause (2) of Article 16 may be transacted with any industrial concern either in the public or in the private sector, but shall not be transacted with any industrial concern incorporated outside Bangladesh:

Provided that the Government may relax the limitation as to fixed cost in the case of any industrial concern or class of industrial concerns in the private sector.".

16. Article 18 omitted ibid. The Article, before omission, was as under:-

18. Notwithstanding anything contained in Article 16 and 17, the Bank may grant loans to, or for the purposes of, any project or class of project which the Government may declare to be eligible for loans from the Bank.".

17. The words "with the prior approval of the Government" occured between the words "payment" and "to" omitted by Ord. LXX of 1986.

18. Inserted by Ord. No. LXI of 1977.

19. Clause (6) added by Ord. LXI of 1977 and omitted by Ord. LXX of 1986. The clause added and omitted was as under:-

"(6) Notwithstanding anything contained in this Article, the Government may appoint a General Manager of the Bank on such terms and conditions as it may determine.".

20. Substituted ibid. Prior to substitution, the Article was as under:-

"26(1) The Bank may, for the purpose of raising its working capital, with the prior approval of the Government, issue and sell bonds and debentures carrying interest at such rates as may be approved by the Government.

(2) The bonds and debentures of the Bank shall be guaranteed by the Government as to the repayment of principal and payment of interest at such rates as may be fixed by the Government at the time the bonds and debentures are issued.

(3) The Bank may, for the purpose of granting loans to industrial concerns in foreign currency and with the approval of the Government or any other agency, and may pledge, mortgage, hypothecate or assign to the said Government or other agency all or any part of the security taken by the Bank for the loans granted in foreign currency.".

21. Renumbered by Ord LXX of 1986.

22. Substituted by Ord. XLIX of 1983.

23. Added by Act XVIII of 1987.

24. Substituted ibid.

25. Substituted ibid.

26. Substituted ibid.

27. Inserted ibid.

28. Inserted ibid.

29. Substituted by Act IX of 1980 for "High Court".

30. Added by Ord. LXVI of 1984.

31. Substituted by Act IX of 1980, for "Managing Director"

32. Inserted by Ord. VII of 1984.

33. The words "with the previous approval of the Government" occurring before the word " may omitted by Act XVIII of 1987

34. Inserted ibid.

35. Substituted by IX of 1980 for " Managing Director"

APPENDIX- XVI
THE BANGLADESH SHILPA RIN SANGSTHA ORDER, 1972
(P.O. No. 128 of 1972)

List of Amending laws

1. The Bangaldesh Shilpa Rin Sangstha (Amendment) Ordinance, 1977 (XIV of 1977).
2. The Bangaldesh Shilpa Rin Sangstha (Second Amendment) Ordinance, 1977 (LXI of 1977).
3. The Bangaldesh Shilpa Rin Sangstha (Amendment) Act, 1980 (IX of 1980).
4. The Bangaldesh Shilpa Rin Sangstha (Amendment) Ordinance, 1983 (L of 1983).
5. The Bangaldesh Shilpa Rin Sangstha (Amendment) Ordinance, 1984 (VIII of 1984).
6. The Bangaldesh Shilpa Rin Sangstha (Second Amendment) Ordinance, 1984 (LXV of 1984).
7. The Bangaldesh Shilpa Rin Sangstha (Amendment) Ordinance, 1986 (LXXI of 1986).
8. The Bangaldesh Shilpa Rin Sangstha (Amendment) Act, 1993 (Act 4 of 1993).

[The law is without marginal note. Here it is given to facilitate the readers.]

Articles **Marginal note**

1. Short title, extent and commencement.
2. Definitions.
3. Order to override all other laws.
4. Establishment, incorporation of the Sangstha, etc.
5. Head office, Regional offices and Branches.
6. Authorised capital of the Sangstha.
7. Direction and Superintendence.

8. Board.
9. Managing Director, Director and their term of office.
10. Power of Chairman, Managing Director and other Directors.
11. Disqualification for becoming Director.
11A. Appointment of Chairman, etc.
12. Meeting of the Board.
13. Committees.
14. Acts done in good faith to be valid.
15. Indemnity of Directors.
16. Functions of the Sangstha.
17. Restriction of business of Sangstha.
18. Omitted.
19. Sangstha not to undertake or transact business other than those authorised.
20. Transfer of undertaking.
21. Meaning of undertaking.
22. Officers and employees of the Sangstha and their terms and conditions of service.
23. Obligation to deliver property vested.
24. Compensation.
25. Annual budget.
26. Bonds and debentures.
27. Protecting Sangstha's insterest in transacting business.
28. Repayment of loans paid in foreign currency.
29. Maintenance of accounts and audit.
30. Returns and report to Government.
31. Reserve fund of the Sangstha.
32. Repayment of Loan before due date.
33. Application to District Judge to enforce repayment of Loan before due date.
34. Taking over of the management and administration of concern.

35. Application of public Demands Recovery Act, 1913.

36. Delegation of powers.

36A. Delegation of powers to the Head of Bangladesh Mission.

37. Punishable offence.

38. Validity of certain actions. etc.

39. Winding up.

39A. Transfer of undertaking of Sangstha.

40. Construction of reference of Credit and Investment Corporation as reference to Sangstha.

41. Removal of difficulties.

42. Power to make rules.

43. Power to make regulations.

44. Dissolution of Credit and Invesment Corporation and Investment. Trust in Bangladesh.

45. Repeal of Investment Corporation Ordinance, 1966.

THE BANGLADESH SHILPA RIN SANGSTHA ORDER, 1972
(P. O. NO. 128 of 1972)

[Amendment Foot Notes at ANNEX-II]

WHEREAS it is expedient to establish a Sangstha 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 of the undertakings of the Pakistan Industrial Credit and Investment Corporation Limited, the Investment Corporation of Bangladesh and the National Investment Trust Limited in Bangladesh and for matters connected therewith or incidental thereto;

NOW, THEREFORE, in pursuance of the Proclamation of Independence of Bangladesh, read with the Provisional Constitution of Bangladesh Order, 1972, and in exercise of all powers enabling him in that behalf, the President is pleased to make the following Order:-

1. (I) This Order may be called the Bangladesh Shilpa Rin Sangstha Order, 1972.

(2) It extends to the whole of Bangladesh and also applies to the business of the Sangstha transacted outside Bangladesh.

(3) It shall come into force at once.

2. In this Order, unless there is anything repugnant in the subject or context,-

(a) "Board" means the Board of Directors of the Sangstha;

(b) "bond" means a bond of any description issued by any institution or by the Government;

(c) "Chairman" means the Chairman of the Board;

(d) ["company"][1] means a company as defined in the Companies Act, 1913 (Act VII of 1913), and includes a body corporate established or incorporated under any other law for the time being in force;

(e) "Sangstha" means the Bangladesh Shilpa Rin Sangstha established by this Order;

(f) "Credit and Investment Corporation" means 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;

(g) "debenture" means debenture issued by any institution in Bangladesh in accordance with the rules for the time being applicable to the issue of debentures and includes debenture stock;

(h) "Deposit account" means an account maintained by the Sangstha of the cash deposits made with it for purposes of investment;

(i) "Director" means a Director of the Sangstha;

(j) "District Judge" includes an Additional District Judge or a Subordinate Judge;

(k) "equity security" means-

(i) any stock or transferable share, preferred or common or similar security representing ownership;

(ii) any security carrying any warrant or right to purchase or subscribe for such security and any such warrant or right itself; and

(iii) such other security representing ownership as may be prescribed;

(l) "fixed cost" means the cost of land, building and machinery of an industrial concern, including the cost of the installation of machinery;

(m) "Government" means the Government of the People's Republic of Bangladesh;

(n) "industrial concern" means a concern engaged or to be engaged in such industry or business, or in the manufacture, preservation or processing of such goods, as the Government may, by notification in

the official Gazette, specify from time to time, and includes a company;

(o) "industrial concern in the private sector" means an industrial concern which is not an industrial concern in the public sector;

(p) "industrial concern in the public sector" means an industrial concern at least fifty one percent shares of which are held by the Government and includes any other industrial concern which the Government may, by notification in the official Gazette, declare to be an industrial concern in the public sector for the purpose of this Order;

(q) "institution" means an organisation established under any law for the time being in force in Bangladesh for the promotion of some public object;

(r) "Investment Corporation" means the Investment Corporation of Bangladesh established under the Investment Corporation Ordinance, 1966 (Ord. IV of 1966), read with the Bangladesh (Administration of Financial Institutions) Order, 1972 (A.P.O. No. 3 of 1972), which before the seventh day of January, 1972 was called the Investment Corporation of Pakistan;

(s) "Investment Trust" means the National Investment Trust Limited;

(t) ["loan"][2] includes guarantee or indemnity which the Sangstha may give on behalf of an industrial concern and any liability which the Sangstha may incur on behalf of an industrial concern;

(u) "Managing Director" means the Managing Director of the Sangstha;

(v) "prescribed" means prescribed by rules or regulations made under this Order;

(w) "securities" includes any note, stock, bond debenture, evidence of indebtedness, transferable share, investment contract, certificate of deposit for a security, certificate of interest or participation in any profit sharing agreement; and

(x) "underwriting" means contracting, with or without conditions, to purchase or subscribe for stocks, shares, bonds, debentures or other securities issued by any company with a view to holding, selling or distributing the whole or part thereof.

3. The provisions of this Order and any rule made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

4.(1) On the commencement of this Order, there shall be established a Sangstha to be called the Bangladesh Shilpa Rin Sangstha for the purposes of this Order.

(2) The Sangstha shall be a body corporate having perpetual succession and a common seal with power, subject to the provisions of this Order, to acquire, hold and dispose of property, both movable and immovable, and to contract, and shall by the said name sue and be sued.

["(3) The Sangstha shall be deemed to be a banking company for the purposes of Banking Companies Act, 1991 (Act No. 14 of 1991) and Bangladesh Bank Order, 1972 (P. O. No. 127 of 1972) and any other law for the time being in force relating to banking companies"][3]

5. (1) The head office of the Sangstha shall be at Dhaka.

(2) The Sangstha may establish offices, branches and agencies at such places in or outside Bangladesh as the Board may think fit.

[6. The authorised capital of the Sangstha shall be two thousand million taka to be subscribed by the Government from time to time according to requirement of the Sangstha and in such form and manner as may be prescribed:

Provided that the Government may increase the authorised capital of the Sangstha from time to time.][4]

7. (1) Subject to rules made under this Order, the general direction and administration of the affairs and business of the Sangstha shall vest in a Board of Directors which may exercise all such powers and do all such acts and things as may be exercised or done by the Sangstha.

[(2) Subject to the general policy guidelines as may be given by the Government from time to time, the Board, in discharging its functions, shall act on commercial and banking considerations with due regard to the interest of industry and commerce and to the public interest generally.][5]

(3) Until the first Board is appointed under Article 8, the Managing Director appointed under the said Article shall exercise all powers, do all acts and things as may be exercised or done by the Board.

8. [(1) The Board shall consist of a Managing Director and eight other Directors to be appointed by the Government][6]

(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 and other Directors shall hold office for such period and on such terms and conditions as the Government may determine.

(2) The Government may, at any time, terminate the appointment of the Managing Director or any other Director without assigning any reason.

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

Provided that no resignation shall be effective until it has been accepted by the Government"][7]

10. (1) The Managing Director shall be the chief executive officer of the Sangstha.

(2) The [Chairman][8], Managing Director and other Directors shall exercise such powers, perform such functions and discharge such duties as may be prescribed or assigned to them by the Board.

11. No person shall be or shall continue to be a Director who-

(a) is or at any time has been convicted of an offence which, in the opinion of the Government is an offence involving moral turpitude; or

(b) is a minor; or

(c) is found to be a lunatic or of unsound mind; or

(d) is or at any time has been adjudicated an insolvent or has suspended payment or compounded with his creditors; or

(e) absents himself from three consecutive meetings of the Board without leave of absence granted by the Chairman or, in the case of the Chairman, by the Government; or

(f) has any financial or other interest in any industrial concern financed by the Sangstha which is likely to affect prejudicially his functions as a Director; or

(g) is or becomes a salaried employee of any industrial concern financed by the Sangstha.

[11A. (1) The Government shall appoint one of the Directors, other than the Managing Director, to be the Chairman of the Board[**********][10]

(2) Subject to his continuing to hold office as a Director, the Chairman shall hold office as Chairman for the term of his office as Director and shall be eligible for re-appointment.

(3) In the event of a casual vacancy in the office of the Chairman, a successor shall be appointed by the Government from amongst the Directors for the unexpired term or for period of absence, as the case may be, but the person so appointed shall not hold office beyond the date of expiry of the term of his predecessor.][9]

12.(1) The meetings of the Board shall be held at such times and at such places as may be prescribed by regulations:

Provided that a meeting may also be otherwise convened by the Chairman when he so thinks fit.

(2) T constitute a quorum at a meeting of the Board, the number of Directors present shall be four. [**********]"

(3) At a meeting of the Board, each Director shall have one vote and, in the event of equality of votes, the Chairman shall have a second or casting vote.

(4) No Director shall vote on any matter in which he is directly or indirectly interested.

[(5) If for any reason the Chairman is unable to be present at a meeting of the Board, a Director, other than the Managing Director, chosen by the Directors present shall preside over the meeting][12]

13. The Board may appoint such committee or committees as it thinks fit to assist it in the efficient discharge of its functions

14. All acts done by the Chairman or any other Director, acting in good faith, shall, notwithstanding any defect in his appointment or in the procedure, be valid.

[15. (1) Every Director, officer or employee of the Sangstha shall be indemnified by the Sangstha against all losses and expenses incurred by him in the discharge of his duties except such as are caused by his own wilful act or default.

(2) No suit, prosecution or other legal proceedings shall lie against the Chairman, the Managing Director or any other Director or any officer or other employee of the Sangstha or any other person authorised by the Sangstha to discharge any function under this Order for anything done or intended to be done in good faith under this Order.][13]

16. The Sangstha may carry on, transact or do several kinds of business and acts hereinafter specified, namely:-

(a) assisting in the creation, expansion and modernisation of industrial concerns;

(b) encouraging, sponsoring and facilitating participation of capital, internal as well as external, in industrial concerns and acquisition or ownership of industrial investments, shares and securities;

(c) underwriting, managing and distributing the issue of stocks, shares, bonds, debentures and other securities either directly or through or jointly with any investment or financial institution;

(d) providing finance in the form of long or medium-term loans or share participation;

(e) guaranteeing and counter-guaranteeing loans, debts, credits, performance of contracts and obligations of any kind;

(f) administering as agent to the Government such loans and in such manner as the Government may direct;

(g) engaging in the business of investing and reinvesting in the owning and holding of securities and of discounting of purchase of shares and investment in such other securities as may be approved by the Board;

(h) [furnishing][14] managerial, technical and administrative advice to, and assisting in obtaining managerial, technical and administrative services by, any industrial concern or person;

[(hh) engaging in research for industrial promotion and providing advisory and consultancy services;][15]

(i) facilitating investment by selling new floatations of existing or new industrial concerns without underwriting obligations;

(j) merchandising, buying, selling, holding or transferring of shares, stocks, debentures, debenture stocks, bonds, obligations and securities;

(k) drawing, making, accepting, endorsing, negotiating, executing, issuing, discounting, buying and selling of bills of exchange, promissory notes and other negotiable or transferable instruments;

(l) [issuing][16] or opening of letters of credit;

(m) drawing of bills of exchange and granting of letters of credit payable outside Bangladesh;

(n) lending money with or without security and making advance upon or holding in trust, or otherwise acquiring or disposing of, on commission or otherwise, any of the securities or investments;

(o) receiving money on time deposit, loan or otherwise on such terms as may be approved by the Board;

(p) taking over,running and selling of such industrial concerns as have failed to repay in full the loan taken from the Sangstha;

(q) opening and maintaining of Investors' Deposit Accounts and managing investment portfolios on behalf of individuals or institutions;

(r) purchasing and selling shares to the Investors' Deposit Account holders over the counter;

(s) providing professional counsel regarding investment and helping generally in broadening the base of investments and encouraging investment in sound projects, whether by issuing [17][Mutual Funds or Unit Trusts] or both in or outside Bangladesh or otherwise;

(t) constituting, promoting, issuing, organising, managing and administering Mutual Funds or Unit Trusts of any type or character and acquiring, holding, dealing, selling, paying or disposing of, dealing in shares, certificates, or securities of, such Funds or Trusts;

(u) being a member of a stock exchange in Bangladesh;

(v) for purposes of, and in matters relating to, its business or object:-

(i) purchasing or otherwise acquiring, owning, selling, transferring and exchanging any tangible or intangible, movable or immovable property and any right, title or interest in such property absolutely, temporarily or on hire or by hire purchase or on instalment or entering into joint-venture or profit-sharing arrangements with, or assisting in any way, any industrial concern or person on such terms and conditions as may be approved by the Board;

(ii) accepting and furnishing any undertaking or commercial guarantee for the performance of any obligation or the fulfillment of any contract or the repayment of any money;

(iii) accepting and furnishing any lien, charge, hypothecation or mortgage on any movable or

immovable property or any bond or promissory note or bill of exchange;

(iv) entering into agreements and contracts and executing such documents as may be considered necessary or expedient;

[(v) appointing attorneys, lawyers, counsels, consultants and agents;][18]

(vi) subsidising from time to time of the provident fund or other funds created for the benefit of its employees;

(w) receiving, recovering and paying interest, commission, fees and other charges and brokerage in connection with the business of the Sangstha;

(x) selling and realising all property, whether movable or immovable, which may in any way come into possession of the Sangstha in satisfaction or part satisfaction of its claims;

(y) generally doing all such acts and things as may be necessary, incidental, subsidiary or conducive to the transacting of any of the aforesaid business or acts including proceedings in courts of law; and

(z) doing of such other acts and things for the purposes of giving effects to the provisions of this Order.

17. [(1) The business provided for in Article 16 may be transacted with any industrial concern, either in the public or in the private sector, but shall not be transacted with any industrial concern incorporated outside Bangladesh.][19]

(2) Short-term advance and loans for the purposes of working capital of any industrial concern shall not be made of an amount exceeding, at any time [twenty-five][20] percent of the total advances made to such concern except with the approval of the Government.

(3) No guarantee, loan or subscription provided for in Article 16 shall be made which is not secured by pledge, mortgage, hypothecation or assignment of any property, movable or immovable, to the extent determined by the Board or by a contract to mortgage, hypothecate or assign any property which

may be acquired in future with or without financial assistance of the Sangstha.

18. [Omitted][21]

19. (1) The Sangstha shall not undertake or transact any kind of business other than those authorised by or under this Order and, in particular, it shall not discount or buy or advance, lend or open credit on the security of, any negotiable instrument of any individual or partnership firm which does not carry on it the several responsibilities of at least two persons or firms not connected with each other in general partnership.

(2) Notwithstanding anything contained in clause (1), the Sangstha may grant advances or loans or make exgratia payments [22][xxx] to its officers and staff for the purposes of providing amenities and facilities for their betterment.

20. On the commencement of this Order, the undertakings of the Credit and Investment Corporation, the Investment Corporation and the Investment Trust, hereinafter in this Order referred to as the said financial institutions, shall be transferred to, and shall vest in, the Sangstha.

21.(1) The undertaking of the said financial institutions 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 interests 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 said financial institutions in relation to the undertaking within the territory of 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, unless the Government otherwise directs, also be deemed to include all borrowings, liabilities and obligations of whatever kind then subsisting of the said financial institutions in relation to such undertaking within the territory of Bangladesh.

Explanation- The assets of any of the said financial institutions shall be deemed to include any sum payable by or in respect of any industrial concern or person in Bangladesh on account of any financial assistance taken by or for it or him from

any office of any of the said financial institutions in or out of Bangladesh.

(2) If, according to the laws of any country outside Bangladesh, the provisions of this Order by themselves are not effective to transfer or vest any assets situated in that country which form part of the undertaking of any of the said financial institutions to, or in, the Sangstha, the affairs of the said financial institutions in relation to such assets shall, on and from the commencement of this Order, stand entrusted to the Managing Director, for the time being of the Sangstha, and he may exercise all powers and do all such acts and things as may be exercised or done by the said financial institutions for the purpose of effectively transferring such assets.

(3) The [Managing Director][23] of the Sangstha shall, in exercise of the powers conferred on him by clause (2), take all such steps as may be required by the laws of any such country outside Bangladesh for the purpose of effecting such transfer or vesting, and may, either himself or through any person authorised by him in this behalf, realise any such assets of the said financial institutions.

(4) Unless otherwise expressly provided by this Order and unless the Government otherwise directs, 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 any of the said financial institutions is a party or which are in favour of the said financial institutions shall, in so far as they relate to the undertaking of the said financial institutions, which have vested in the Sangstha under Article 20, be of as full force and effect against or in favour of the Sangstha, and may be enforced or acted upon as fully and effectually as if in the place of the said financial institutions, the Sangstha had been a party thereto or as if they had been issued in favour of the Sangstha.

(5) Subject to the other provisions of this Order and unless the Government otherwise directs, any suit, appeal or other proceeding of whatever nature pending on the date of commencement of this Order by or against any of the said financial institutions in relation to its undertaking which has

vested in the Sangstha under Article 20 shall be deemed to be suit, appeal or other proceeding pending by or against the Sangstha and may be continued, prosecuted and enforced by or against the Sangstha.

22. (1) The Sangstha may, [24][subject to other provisions of this Article,] appoint or employ such persons as it considers necessary for the efficient performance of its functions on such terms and conditions as it may determine.

(2) Every officer or other employee of the said financial institutions in Bangladesh shall become on the commencement of this Order, an officer or other employee, as the case may be, of the Sangstha and shall hold office or service in the Sangstha on the same terms and conditions and with the same rights and privileges as to provident fund, gratuity, pension and other matters as were enjoyed by him immediately before such commencement and shall continue to do so unless and until his employment in the Sangstha is terminated or until his remuneration or terms and conditions are duly altered by the Sangstha:

Provided that an officer or other employee may, within such time as may be specified by the Sangstha, exercise his option not to continue in the service of the Sangstha:

Provided further that the Government may alter the terms and conditions of service of an officer or employee if such alternation is considered necessary for the sake of uniformity and in the interest of equity in service.

(3) Notwithstanding anything contained in any terms and conditions of service or in any award, settlement or agreement for the time being in force, the Sangstha may, with the prior approval of the Government, alter the remuneration (whether by way of reduction or otherwise) and other terms and conditions of service of any officer or other employee of the Sangstha, and if such alteration is not acceptable to an officer or other employee, the Sangstha may terminate his employment by giving him compensation equivalent to three months remuneration in case of a permanent officer or other employee and one month's remuneration in case of temporary officer or other employee.

Explanation-The compensation to an officer or other employee under clause (3) shall be in addition to any pension,

gratuity or other benefit to which the officer or other employee may be entitled under the terms and conditions of his service.

(4) If any question arises as to whether or not any person was an officer or other employee of any of the said financial institutions immediately before the commencement of this Order, the question shall be referred to the Government whose decision shall be final and binding on the parties.

(5) The transfer of service of any officer or other employee from any of the said financial institutions to the Sangstha shall not entitle any such officer or other employee to any compensation, other than the compensation mentioned in clause (3), and no such claim shall be entertained by any court, tribunal or other authority.

(6) [Omitted][25]

23. (1) Where any property has vested in the Sangstha under Article 20, every person, in whose possession and custody or under whose control the property may be, shall deliver the property to the Sangstha forthwith.

(2) Any person who, on the commencement of this Order, has in his possession or custody or under his control any books, documents or other papers relating to the undertaking which has vested in the Sangstha under Article 20 shall deliver them to the Sangstha or to such person as the Sangstha may direct.

(3) The Sangstha may take all necessary steps for securing possession of all properties which have vested in the Sangstha under Article 20.

24. The Government shall give compensation to the said financial institutions for such of their undertakings transferred to the Sangstha under Article 20 as have not already vested in the Government by or under any law, and such compensation shall be determined and distributed among the share-holders of the said financial institutions in such manner as may be prescribed by rules made under this Order:

Provided that the total compensation payable to any of the said financial institutions under this Article shall not exceed the total paid up value of the share held by the shareholders in Bangladesh among whom such compensation is to be distributed.

25. The Sangstha shall, by such date in each year as may be prescribed, submit to the Government for approval a statement, to be called the annual budget statement, in the prescribed form for every financial year showing the estimated receipts and expenditure during that financial year.

[26. (1) The Sangstha may issue and sell bonds and debentures carrying interest at such rates as the Board may determine.

(2) Notwithstanding anything contained in the Foreign Exchange Regulation Act, 1947 (VII of 1947), or any other law for the time being in force, the Sangstha may, for the purpose of granting loans and advances to industrial concerns in foreign currency, borrow such currency from the Government or from any bank or other financial institution in Bangladesh or from any foreign Government or foreign bank or other financial institution, and may pledge, mortgage, hypothecate or assign to such Government, bank or financial institution all or any part of the Security taken by the Sangstha for the loans granted in foreign currency.

(3) The Government may, if it considers it expedient, guarantee the repayment of principal and payment of interest in respect of the bonds and debentures issued, and the borrowing made, by the Sangstha under this Article on such terms and conditions as may be agreed upon between the Government and the Sangstha.][26]

27. (1) For the purpose of transacting any business under this Order with any industrial concern or person, the Sangstha may impose such conditions as it may consider necessary or expedient for protecting its interest and securing that its guarantee, underwriting, loan, subscription or other aid is put to such use by the industrial concern or person as the Sangstha has agreed to.

(2) Any condition imposed on an industrial concern or person under clause (1) shall be valid and shall be enforceable against such concern or person.

28. (1) All loans granted to an industrial concern in foreign currency shall be repaid in accordance with such terms and conditions as may be determined by the Board either --

(i) in the currency in which they were granted; or

[(ii) in Bangladesh currency at the rate of exchange prevailing on the date of payment or at such other rate as the Government may, by order, determine from time to time in this behalf.][27]

(2) Any loss incurred by, or profit accrued to, the Sangstha in connection with any foreign currency borrowed by it under clause (2) of Article 26 due to any fluctuation in any exchange rate shall be on the account of the recipient from the Sangstha of the foreign currency borrowed by it.

[(3) The Sangstha may adopt an insurance policy to cover the risk of loss due to fluctuation in the exchange rate of the foreign currency borrowed by it under clause (2) of Article 26 and the recipient from the Sangstha of such foreign currency shall pay such premium for the insurance policy as the Sangstha may determine.][28]

29. (1) The Sangstha shall maintain proper accounts and prepare annual statement of accounts including the profit and loss account and balance sheet, and shall comply in respect of such accounts with such general direction as may be issued by the Government from time to time.

[(2) The accounts of the Sangstha shall be audited by not less than two auditors who shall be chartered accountants within the meaning of the Bangladesh Chartered Accountants Order, 1973 (P. O. No. 2 of 1973), and who shall be appointed by the Sangstha. [XXXXXX][30]

Provided that the Government may, if it deems it expedient, appoint special auditors for undertaking special audit of the accounts of the Sangstha.][29]

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

(4) The auditors shall report to [31][Government] 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 Sangstha and, in case they have called for any explanation or information from the Board, whether it has been given and whether it is satisfactory.

(5) The Government may, at any time, issue directions to the auditors requiring them to report to it upon the adequacy of measures taken by Sangstha for the protection of the interest of the [31][Government] and of the creditors of the Sangstha or upon the sufficiency of the procedure in auditing the affairs in the Sangstha, 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 [31][Government] so requires.

30. (1) The Sangstha shall furnish to the Government such returns, reports and statements as the Government may from time to time require.

(2 The Sangstha shall, as soon as possible after the end of every financial year, furnish to the government a statement of accounts audited by the auditors under Article 29 together with an annual report on the working of the Sangstha during the year.

(3) The copies of the audited accounts and annual report received by the Government under clause (2) shall be published in the official Gazette and shall be laid before Parliament.

31. (1) The Sangstha shall establish a reserve fund to which shall be credited such amount out of its net annual profit as the Board may determine.

(2) After deducting the amount under clause (I) and making provision for bad and doubtful debts, depreciation of assets and such other matters as are usually provided for by bankers or are considered expedient in the interest of the Sangstha, any surplus remaining thereafter shall be [32][declared as dividends]

[31A. The Sangstha may establish a fund to be called the Special Assistance fund for providing concessional loans and adances to persons dealing with innovations in such sector as the Sangstha may decide in this behalf][33]

32. Notwithstanding any agreement to the contrary, the Sangstha may, by notice, require any industrial 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 Sangstha 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 Sangstha in the matter of the 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 Sangstha as security for the loan is not insured or kept insured by the industrial concern to the satisfaction of the Sangstha or has, in the opinion of the Sangstha, depreciated in value by more than twenty percent and further security to the satisfaction of the Sangstha is not given; or

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

(g) without prior approval of the Sangstha 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 enquiries made by the Sangstha or failed to supply the papers or document asked for by the Sangstha; or

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

32A. [Omitted][34]

33. (1) Where the Sangstha becomes entitled to require the immediate payment of any loan before the due date under Article 32 or by reason of the breach of any condition of any agreement between the Sangstha and an industrial concern to which any loan, has been granted or any person liable for payment of that loan, or where an industrial concern to which any loan has been granted or any person liable for payment of that loan fails to repay the loan by the due date or in compliance with the notice under Article 32, an officer of the Sangstha generally or specially authorised by the Board in this behalf, may apply to the District Judge within the local limits of whose jurisdiction the industrial concern carries on the whole or a substantial part of its business, or the office or branch of the Sangstha from which the loan was disbursed is situated, for one or more of the following reliefs, namely:-

(a) an order for the sale of the property pledged, mortgaged, hypothecated or assigned to the Sangstha as security for the loan or any other property of the industrial concern or of any person liable for payment of the loan or for payment of other sum relating thereto; or

(b) transfer of the management and administration, including the authority to operate the bank accounts of the industrial concern to the Sangstha or to a person specified by the Sangstha; or

(c) an order for injunction ad-interim where there is apprehension that the machinery or equipment or other assets may be removed from the premises of the industrial concern without the permission of the Sangstha or the properties of any other person who is liable for payment of the loan or any other sum relating thereto may be transferred, removed or destroyed; or

(d) an order for payment of the loan or any other sum relating thereto.

(2) An application under clause (I) shall state the nature and extent of the liability of the industrial concern to the Sangstha,

the ground on which it is made and such other particulars as the Sangstha may consider necessary.

(3) When the application is for the relief mentioned in sub-clause (a) or sub-clause (c) of clause (I), the District Judge shall pass an order ad-interim attaching the property referred to in sub-clause (a) as aforesaid or such other property of the industrial concern or of the persons liable for payment of the loan or of both as is likely in his estimation to fetch, on being sold, an amount equivalent to the outstanding liability of the industrial concern to the Sangstha, together with the costs of the proceeding taken under this Article, with or without an order of injunction ad-interim restraining the industrial concern from transferring or removing any machinery or equipment or any other assets without the consent of the Sangstha, or restraining the persons from transferring, removing, or destroying the same.

(4) Where the application is for the relief mentioned in sub-clause (b) of clause (I), the District Judge shall pass an order for injunction ad-interim restraining the industrial concern from transferring or removing its machinery, equipment or any other assets and shall issue a notice calling upon the industrial concern to show cause on a date to be specified in the notice why the management and administration, including the authority to operate the bank accounts, of the industrial concern, should not be transferred to the Sangstha or to a person specified by the Sangstha.

(5) Where the application is for the relief mentioned in sub-clause (d) of clause (I), the District Judge shall issue a notice calling upon the industrial concern or the person who is liable to make the payment to show cause on a date to be specified in the notice why an order for payment of the loan or any other sum relating thereto shall not be passed.

(6) Before passing any order under clause (3), (4) or (5), the District Judge may, if he thinks fit, examine the person making the application.

(7) At the time of passing an order under clause (3), the District Judge shall issue to the industrial concern or to the persons liable for payment of the loan or any other sum relating thereto a notice accompanied by a copy of the order, the application and evidence, if any, recorded by him calling upon it or him to show cause on a

date to be specified in the notice why the order of attachment ad-interim should not be made absolute or the injunction be not confirmed.

(8) If no cause is shown on or before the date specified in the notice under clause (4) or (7), the District Judge shall forthwith make the order ad-interim absolute and direct the sale of the attached property or transfer the management and administration, including the authority to operate the bank accounts, of the industrial concern to the Sangstha or to the person specified by the Sangstha or confirm the injunction.

(9) If no cause is shown on or before the date specified in the notice under clause (5), the District Judge shall pass an order for payment of the loan or any other sum relating thereto.

(10) If cause is shown, the district Judge shall proceed to investigate into the claim of the Sangstha and the provisions to the Code of Civil procedure, 1908 (Act V of 1908), shall, as far as practicable, apply to such proceedings.

(11) On completion of the investigation under clause (10), the District Judge shall pass an order--

(a) confirming the order of attachment or directing sale of the attached property; or

(b) varying the order of attachment so as to release a portion of the property from attachment and directing the sale of the remainder of the attached property; or

(c) releasing the property from attachment, if he is satisfied that it is not necessary in the interest of the Sangstha to retain it under attachment; or

(d) confirming or vacating the injunction; or

(e) transferring or refusing to transfer the management and administration, including the authority to operate the bank accounts, of the industrial concern to the Sangstha or to the person specified by the Sangstha; or

(f) directing the payment of the loan or any other sum relating thereto:

Provided that when making any order under sub-clause (c), the District Judge may make such further orders as he thinks necessary to protect the interests of the Sangstha and may also allow the cost of the proceedings:

Provided further that unless the Sangstha intimates to the District Judge that it will not appeal against any order releasing any property from attachment, such order shall not be executed until the expiry of the period mentioned in clause (13), or if any appeal is preferred, unless the [High Court Division][35] otherwise directs, until the appeal is disposed of.

(12) An order under this Article for the attachment or sale of property or payment of the loan or any other sum relating thereto shall be carried into effect as far as may be in the manner provided in the Code of Civil Procedure, 1908 (Act V of 1908), for the attachment or sale of property in execution of a decree or for the execution of a decree as if the Sangstha were the decree-holder.

(13) Any party aggrieved by an order made under clause (8), (9) or (11) may within thirty days from the date of the order, appeal to the [High Court Division][35] and upon such appeal, the [High Court Division][35] may, after hearing the parties, pass such orders as it thinks proper.

34. (1) Where any industrial concern which is under a liability to the Sangstha under an agreement makes any default in payment or otherwise fails to comply with the terms of its agreement with the Sangstha, the Sangstha may notwithstanding anything contained in Article 33, take over the management and administration of the industrial concern, and may sell or realise any property pledged, mortgaged, hypothecated or assigned by the industrial concern to secure its liability to the Sangstha.

(2) Any transfer of property made by the Sangstha in exercise of its powers of sale or realisation under clause (1) shall vest in the transferee all rights in or to the property transferred as if the sale had been made by the owner of the property and such transfer shall be final and binding on all the parties.

(3) The Sangstha shall have the same rights and powers with respect to goods manufactured or produced wholly or partly from

goods forming part of any security held by it as it has with respect to the original goods.

(4) Where the Sangstha takes over the management and administration of an industrial concern under clause (l), it shall be deemed to be owner of such concern for the purposes of suit by or against such concern, and shall sue and be sued in the name of the said concern.

[36][(5) Where the Sangstha takes over the management and administration of an industrial concern under clause (l) or transfers any property in exercise of its powers of sale or realisation under that clause, such taking over or transfer shall not be called in question in or before any Court; and no Court shall--

(a) entertain any suit, application or other legal proceeding__

(i) for a declaration that such taking over or transfer is illegal, ineffective or void, or

(ii) for setting aside or annulling any order or decision of the Sangstha relating to such taking over or transfer; or

(iii) for an order of injunction or any other order prohibiting or restraining the Sangstha or any of its officers from such taking over or transfer; or

(b) issue, make or pass any order of ad interim or temporary injection or any other order prohibiting or restraining the Sangstha or any of its officers from such taking over or transfer.

(6) Where any certificate is issued by the Sangstha to the effect that it has taken over the management and administration of an industrial concern or transferred any property under clause (1), such certificate shall be conclusive evidence of the fact that the management and administration of such industrial concern has been taken over or such property transferred under that clause.]

35. (1) Without prejudice to the provisions of Article 33 and 34, all sums due to the Sangstha shall be recoverable as arrears of land revenue:

Provided that no sum shall be so recovered unless fifteen days' notice has first been given by the Sangstha to the debtor or any other person liable to pay the sum that the sum will be so recovered:

Provided further that in so giving notice, the Sangstha shall inform the debtor or any other person liable to pay the sum that he may pay by such instalments as may be fixed in the notice and that upon his so paying every instalment on or before the due date the recovery will be suspended but that it will otherwise proceed as to the entire sum outstanding in case of any default in any instalment including the first.

(2) In the application of the Public Demands Recovery Act, 1913 (Ben. Act. III of 1913), for the purpose of recovery of the dues of the Sangstha, the provision of section 10A of the said Act shall apply, but the provision of Section 7, 9, 10 and 13 thereof shall not apply and the certificate issued under section 6 of the said Act shall be conclusive proof that the amount specified therein is due to the Sangstha.

36. The Board may, for the purpose of ensuring efficient functioning of the Sangstha and facilitating transaction of its daily business, by a resolution, delegate to the [Chairman, Managing Director][37] or any other Director or any officer of the Sangstha subject to such conditions and limitations, if any, as may be specified therein, such of its powers and duties under this Order as it may deem necessary.

[36A. The Board may, for the purpose of signing any loan agreement with any foreign loan giving agency or any paper connected therewith outside Bangladesh, by a resolution, delegate to the head of the Bangladesh Consulate or Mission or any officer of the Bangladesh Consulate or Mission posted in that country, subject to such conditions and limitations, if any, as may be specified therein, such of its powers under this Order as it may deem necessary.][38]

37. (1) Whoever willfully makes a false statement or knowingly permits any false statement to be made or to remain, in any bill of lading, warehouse receipt or other document of title or any other document given to the Sangstha by way of security or otherwise in respect of any financial aid sought or granted under this Order, shall be punishable with imprisonment for a term

which may extend to two years, or with fine which may extend to two thousand taka, or with both.

(2) Whoever wilfully withholds or fails to deliver to the Sangstha, as required by Article 23, any property or any book, document or other paper which may be in his possession or unlawfully retains in his possession any property of any of the said financial institutions which has vested in the Sangstha under Article 20 shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.

(3) Whoever, without the consent in writing of the Sangstha, use the name of the Sangstha in any prospectus or advertisement shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand Taka, or with both.

(4) No Court shall take cognizance of any offence punishable under this Order except upon a complaint in writing signed by an officer of the Sangstha authorised in this behalf by the Board.

38. (1) Any thing done, action taken, order passed, appointment made, notification issued, or purporting to have been done, taken, passed, made, or issued, by the Government in respect of the Credit and Investment Corporation, the Investment Corporation or the Investment Trust after the 16th day of December, 191, and before that commencement of this Order shall be deemed to have been validly done, taken, passed, made or issued and shall have and shall be deemed always to have had effect accordingly, and shall not be called in question in any Court.

(2) Anything done or action taken in good faith in relation to the Credit and Investment Corporation, the Investment Corporation or the Investment Trust by anybody or person appointed by the Government after the 16th day of December, 1971, and before the commencement of this Order shall be deemed to have been validly done or taken and shall have and shall be deemed always to have had effect accordingly, and shall not be called in question in any Court.

39. No provision of law relating to the winding up of companies shall apply to the Sangstha and the Sangstha shall not be wound up save by order of the Government and in such manner as it may direct.

[39A. (1) Notwithstand anything contained in this Order, the Government may, if in the national interest it deems it expedient so to do. transfer, by agreement, the centre undertaking of the Sangstha to any company registered under the Companies Act, 1913 (VII of 1913), on such terms and conditions as 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, investment, rights, powers, authorities and privileges including rights and interests in, or arising out of, such properties and all books of 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 by, 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."][39]

40. Any reference to the Credit and Investment Corporation, or the Investment Trust in any law, other than this Order or in any contract, agreement, deed of trust or other instrument shall, in so far as it relates to the undertakings which have been

transferred to the Sangstha under Article 20, be construed as a reference to the Sangstha.

41. If any difficulty arises in giving effect to the provisions of this Order, the Government may make such order, not inconsistent with the provisions of this Order, as may appear to it to be necessary for the purposes of removing the difficulty.

42. The Government may, by notification in the official Gazette, make rules for the purpose of giving effect to the provisions of this Order.

43. (1) The Board may [with the prior approval of the Government][40] make regulations, not inconsistent with the provisions of this Order and the rules, to provide for all matters for which provision is necessary or expedient for the purpose of giving effect to the provisions of this Order.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for __

(a) the calling of the meetings of the Board or any committee, fees for attending the meetings thereof and the conduct of business thereat;

[(aa) Omitted][41];

(b) the delegation of powers and functions of the Board to the Chairman, Managing Director or any other Director or any officer or other employees of the Sangstha;

(c) the conditions subject to which the Sangstha may grant loans or equity support;

(d) the manner of determining the sufficiency of the security for the purpose of business;

(e) the manner and conditions subject to which the Sangstha may borrow in foreign currency;

(f) the form of returns and statements required to be prepared under this Order;

(g) the duties and conduct of officers and other employees of the Sangstha;

(h) the recruitment, remuneration, promotion and other terms and conditions of service of the officers and other employees of the Sangstha;

(i) the establishment and maintenance of pension, provident or other fund for the benefit of officers and other employees of the Sangstha including the dependents of such officers and other employees;

(j) the provision of a seal of the Sangstha and the manner and effect of its use;

(k) the disclosure of interest, direct or indirect, of any Director or any member of a committee in any business concern;

(l) taking over the management and control of any industrial or business concern committing a breach of its agreement with the Sangstha;

(m) generally for the efficient conduct of the affairs of the Sangstha.

(2) All regulations made under this Article shall be published in the official Gazette and shall come into force on such publication.

44. The Credit and Investment Corporation and the Investment Trust shall stand dissolved in Bangladesh on such date as the Government may, by notification in the official Gazette, appoint.

45. The Investment Corporation Ordinance, 1966 (Ordinance No IV of 1966), is hereby repealed.

ANNEX - II

1. Substituted by Ordinance XIV of 1977, for "Company"

2. Substituted by Ordinance XIV of 1977, for "Loan".

3. Added by Act 4 of 1993.

4. Substituted by Act 4 of 1993. Prior to the substitution, the Article was as under:-

"6. (1) The authorised capital of the Sangstha shall be two thousand million taka divided into twenty lac shares of one thouand taka each, of which not less than fifty-one per cent shall be subscribed for by the Government and the remaining shares may be subscribed for by Bangladeshi nationals or by any financial institution, Bangladeshi or foreign.

(2) The authoried capital of the Sangstha may be increased by a resolution passed by a three-fourth majority of the share-holders in a general meeting".

It may be mentioned that, at the time of commencement of the President's Order the Article was as under:-

"6. The authorised capital of the Sangstha shall be five crore taka to be subscribed by the Government from time to time according to requirement of the Sangstha and in such form and manner as may be prescribed:

Provided that the Government may increase the authorised capital of the Sangstha from time to time".

5. Substituted by Ordinance No. LXXI of 1986. Prior to subtitution, the clause was as under:-

"(2). The Board, in discharging it function, shall act on commercial considerations with due regard to the interests of industry and commerce and to the public interest generally and shall be guided on question of policy by the instructions, if any, given to it by the Government which shall be the sole judge as to whether a question is a question of policy or not".

6. Substituted by Act 4 of 1993. Prior to substitution, the clause was as under:-

"(1) The Board shall conist of a Managing Director and eight other Directors to be appointed by the 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 percent but does not exceed forty percent of the total shares;

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

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

It may be mentioned that, at the time of commencement of the President's Order the clause was as under:-

"(1) The Board shall consist of a Managing Director, who shall be the Chairman of the Board and not more than five other Directors to be appointed by the Government".

7. Substituted by Act 4 of 1993. Prior to substitution, the Article was as under:

"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) As elected Director shall hold office for a period of three years from the date of his election on such terms and conditions as the Government may determine.

(4) The Managing Director or any other Director shall be eligible for the re-appointment or re-election, as the cae 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 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 Government:

Provided that no resignation shall taka 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 determined by it".

It may by mentioned that the original Article 9 at the time of commencement of the President's Order was as under:-

"9. (1) The Managing Director and other Director shall hold office for such period and on such terms and conditions as the Government may determine.

(2) The Government may, at any time, terminate the appointment of the Managing Director or any other Director without assinging any reason.

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

Provided that no resignation shall taka effect until if has been accepted by the Government.".

8. Inserted by Act IX of 1980.

9. Inserted by Act IX of 1980 and subsequently clause (1) substituted by Ordinance LXXI of 1986. The original clause (1) before such substitution was as under:-

"(1) The Government shall appoint one of the Directors other than the Managing Director to be the Chairman of the Board.".

10. The words " and in making such appointment, the Government shall ordinarily consult the Board" omitted by Act 4 of 1993.

11. The words "if the Board consist of nine Directors including of the Managing Director and three if the Board consist of less than nine Directors" omitted by Act 4 of 1993.

12. Substituted by Ordinance No. LXXI of 1986. Prior to substitution, the clause was as under:-

"(5) If for any reason the Chairman is unable to be present at a meeting the Board, a Director authorised in writing by the Chairman shall preside over the meeting.".

13. Substituted by Ordinance No LXXI of 1986. Prior to Substitution, the Article was as under:-

"15. Every Director shall be indemnified by the Sangstha against all losses and expenses incurred by him in the discharge of his duties except such as are caused by his own wilful act or default.".

14. Substituted by Ordinance No. XIV of 1977.

15. Inserted by Ordinance No. LXXI of 1986.

16. Substituted by Ordinance No. XIV of 1977.

17. Substituted by Ordinance No. XIV of 1977

18. Substituted by Ordinance No. LXXI of 1986 Prior to substitution, the entry (v) was as under:-

"(v) appointing and constituting attorneys, principals, agents and trustees and to be an act as attorney, principal, agent, managing agent, manager, executor, administrator, receiver, treasurer, custodian or trustees and executing any trust, document, instrument or other deed in respect thereof;".

19. Substituted by Ordinance No. LXXI of 1986. Prior to substitution, the clause was as under:-

"(1) The business provided for in Article 16 may be transacted with any industrial concern, in the private section, but shall not be transacted with any industrial concern in the private sector whose fixed cost is less than twenty lac taka:

Provided that the Government may relax such limitation as to fixed cost in the case of any industrial concern or a class of industrial concerns in the private sector.".

20. Substituted by Ordinance No. XIV of 1977, for "twenty".

21. Article 18 omitted by Ordinance LXXI of 1986.

22. The words "with prior approval of the Government" "omitted by LXXI of 1986.

23. Substitued by Ordinance XIV of 1977, for "Chief Executive Officer"

24. Inserted by Ordinance No. LXI of 1977.

25. Clause (6) was added by Ordinance No. LXI of 1977 and omitted by Ordinance No. LXXI of 1986. The clause so added and omitted was as under:-

"(6) Notwithstanding anything contained in this Article, the Government may appoint a General Manager of the Sangstha on such trems and conditions as it may determine.".

26. Substituted by Ordinance No. LXXI of 1986. The Article before substitution was as under:-

"26. (1) With the prior approval of the Government, the Sangstha may, for its purposes, raise finance by-

(a) isue and sale of bonds and debentures carrying interest at such rates in Bangladeh or outside Bangladesh as may be approved by the Government; and

(b) borrowing moneys from Bangladesh Bank or any other bank and other institutions and source by way of loans with or without security.

(2) The bonds and debentures of the Sangstha shall be guarantee by the Government as to the repayment of principal and payment of interest at such rate as may be fixed by the Government at the time the bonds and debentures are inssued.

(3) The Sangstha may, for the purpose of granting loans to industrial concerns in foreign currency and with the approval of the Government, borrow such currency from the foreign Government or any other agency, and may pledge, mortgage, hypothecate or assign to the Government or other agency all or any part of the security taken by the Sanstha for the loans granted in foreign currency.".

27. Substituted by Ordinance L of 1983. The entry, before substitution, was as under:-

"(ii) in Bangladesh currency at the rate of exchange prevailing on the date of repayment".

28. Added by Ordinance No. LXXI of 1986.

29. Substituted by Ordinance No. LXXI of 1986. The clause, before substitution, was as under:-

"(2) The account of the Sangstha 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).".

30. The words "with the prior approval of the share holders in the annual general meeting" omitted by Act 4 of 1993.

31. Substituted for the word "shareholders" by Act 4 of 1993.

32. Substituted for "paid to the Government" by Ordinance No. LXXI of 1986.

33. Inserted by Ordinance LXXI of 1986.

34. Article 32A was inserted by Ordinance LXXI of 1986 and omitted by Act 4 of 1993. The Article so inserted and omitted was as under:-

"32A. (1) The annual ordinary general meeting of the share-holders shall hold in the month of November each year.

(2) A general meeting may be convened by the Board at any other time and shall be convened by it on the request, in writing, of the share-holders representing not less than thirty percent of the total number of shares subscribed.

(3) Subject to rules or regulations made under this Order, all decisions at a general meeting shall be taken by the votes of the majority of the share-holders exercised either personally or by proxy.

(4) Each share-holder shalf have such numbers of votes as are equal of the numbers of shares sbuscribed by him.

(5) A general meeting shall have the right to decide on any matter expressly provided for in, and not in violation of any provision of, this Order.".

35. Substituted by Act No. IX of 1980 for "High court."

36. Clause (5) and (6) added by Ordinance No. LXV of 1984.

37. Substituted by Act No. IX of 1980 for "Chairman."

38. Inserted by Ordinance No. VIII of 1984.

39. Article 39A inserted by Act 4 of 1993.

40. Inserted by Act 4 of 1993.

41. Omitted by Act 4 of 1993.

APPENDIX-XVII
LAWS CONTINUANCE ENFORCEMENT ORDER.

MUJIBNAGAR,
Dated 10th day of April, 1971

[The Order repealed by clause (a) of article 151 of the Constitution of the Peoples Republic of Bangladesh.]

I, Syed Nazrul Islam, the Vice-President and Acting President of Bangladesh, in exercise of the powers conferred on me by the Proclamation of Independence dated tenth day of April, 1971 do hereby order that all laws that were in force in Bangladesh on 25th March, 1971, shall subject to the Proclamation aforesaid continue to be so in force with such consequential changes as may be necessary on account of the creation of the sovereign independent State of Bangladesh formed by the will of the people of Bangladesh and that all Government officials, civil, miliary, judicial and diplomatic who take the oath of allegiance to Bangladesh shall continue in their offices on terms and conditions of service so long enjoyed by them and that all Disrict Judges and Disrict Magistrates, in the territory of Bangladesh and all diplomatic representatives elsewhere shall arrange to administer the oath of allegiance to all government officials within their jurisdiction.

This Order shall be deemed to have come into effect from 26th day of March 1971.

APPENDIX-XVIII

THE BANGLADESH BANK (TEMPORARY) ORDER, 1971.

(Acting President's order No. 2 of 1971.)

[The Order repealed by the Bangladesh Bank Order, 1972 (P.O.NO. 127 of 1972, Art.84]

WHEREA it is expedient to make provisions for the functioning of a Central Bank of Bangladesh;

NOW, THEREFORE, in puruance of the Declaration of Independence of Bangladesh and in exericse of all powers enabling him in that behalf, the Acting President is pleased to make the following Order:

1. (1) This Order may be called the Bangladesh Bank (Temporary) Order, 1971.

(2) It extends to the whole of Bangladesh.

(3) It shall come into force at once and shall be deemed to have taken effect on the 16th day of December, 1971.

2. (1) There shall be a Central Bank of Bangladesh to be called the Bangladesh Bank with headquarters at Dacca.

(2). Until the Government of Bangladesh may direct otherwise.

(a) the Bank which, immediately before the commencement of this Order, was known as the State Bank of Pakistan shall, within the territory of Bangladesh, be deemed to be the Bangladesh Bank as mentioned in sub-paragraph (1);

(b) the office of the Deputy Governor of the said State Bank of Pakistan at Dacca shall be the head office of the Bangladesh Bank;

(c) all the branches and offices and all the assets of the said State Bank of Pakistan within the territory of Bangladesh shall be deemed to be the offices, branches and assets of the Bangladesh Bank.

3. All the currency notes and coins which immediately before the commencement of this Order, were issued by the State Bank of Pakistan and the Government of Pakistan and were in

circulation in Bangladesh shall be deemed to have been issued by the Bangladesh Bank or, as the case may be, by the Government of Bangladesh and continue as legal tender in Bangladesh until the Government of Bangladesh may, by notification in the official Gazett, direct otherwise.

4. The Bangladesh Bank shall be governed, as far as practicable, in accordance with the provisions of the State Bank of Pakistan Act, 1956.

5. The provisions of the Negotiable Instruments Act, 1881, the Trust Act, 1882, the Companies Act, 1913, the Foreign Exchange Regulation Act, 1947, and the Banking Companies Ordinance, 1962, shall, in so far as they were applicable to the State Bank of Pakistan before the commencement of this. Order, be aplicable to the Bangladeh Bank.

6. The Bangladesh Bank may, in addition to the functions that it shall perform as the Central Bank of Bangladesh, perform such other functions as may be assigned to it by the Government of Bangladesh from time to time.

7. For the purpose of this Order, in all the laws mentioned in this Order and in all other existing laws, rules, regulations, bye-laws, notifications, orders and instruments, reference to "Central Government", "Pakistan" and "State Bank of Pakistan" shall, unless the context otherwise requires, be construed as references to "Government of Bangladesh", "Bangladesh" and "Bangladesh Bank" respectively.

APPENDIX- XIX

THE BANGLADESH (ADMINISTRATION OF BANKS) ORDER, 1971.

(Acting President's Order No. 3 of 1971)

Whereas it is expedient to make provisions for the administration of Banks with head offices in Pakistan, formerly known as West Pakistan.

NOW, therefore, in pursuance of the Proclamation of Independence of Bangladesh and in exercise of all powers enabling him in that behalf, the Acting President is pleased to make the following Order:-

1. (1) This Order may be called the Bangladesh (Administration of Banks) Order, 1971.

(2) It shall come into force at once.

2. (1) Where any Bank having offices and branches in Bangladesh has its head office in Pakistan, formerly known as West Pakistan, the Government of Bangladesh may, notwithstanding anything contained in any law for the time being in force or in any instrument or document relating to the incorporation or registration of the Bank, by nofification in the official Gazette, appoint an Administrator for the management and control of the affairs of the Bank in Bangladesh.

(2) Where an Administrator is appointed for any Bank under clause (1), the Board of Directors of the Bank shall cease to function in respect of the Bank in Bangladesh and all the powers and duties of the Board of Directors or, as the case may be, Local Board of the Bank of Bangladesh shall vest in the Administrator.

(3) The Administrator shall hold office for such period and on such terms and conditions as the Government of Bangladesh may specify.

(4) In addition to the powers and duties of the Board of Directors, an Administrator shall also have the powers and duties of the Chief Executive of the Bank in Bangladesh and shall be wholly responsible for the management of its affairs in Bangladesh.

3. An Administrator shall exercise his powers and discharge his duties under the direct supervision and control of the Government of Bangladesh and shall submit to the Government of Bangladesh such statements and furnish such information as the Government of Bangladesh may direct or require from time to time.

4. This Order shall also apply to a Bank in Bangladesh which is a subsidiary to a Bank mentioned in clause (1) of Article 2.

5. No action taken under this Order shall be called in question by or before any Court.

APPENDIX- XX

PROVISIONAL CONSTITUTION OF BANGLADESH ORDER, 1972

[The Order repealed by clause (b) of article 151 of the Constitution of the Peoples Republic of Bangladesh.]

WHEREAS by the Proclamation of Independence Order, dated the 10th April, 1971, provisional arrangements were made for the governance of the People's Republic of Bangladesh;

AND WHEREAS by the said proclamation the President is divested with all executive and legislative authority and the power to appoint a Prime Minister;

AND WHEREAS the unjust and trecherous war as referred to in the said Proclamation has now ended;

AND WHEREAS it is the manifest aspiration of the people of Bangladesh that a parliamentary democracy shall function in Bangladesh;

AND WHEREAS in pursuance of the said objective it is necessary immediately to make certain provisions in that behalf;

NOW, THEREFORE, in pursuance of the Proclamation of Independence Order, dated the 10th April, 1971 and all other powers enabling him in that behalf, the President in pleased to make and promulgate the following Order;

(1) This Order may be called the Provisional Constitution of Bangladesh Order, 1972.

(2) It extends to the whole of Bangladesh.

(3) It shall come into force at once.

(4) Definition:

"Constituent Assembly" referred to in this Order means the body comprising of th elected representatives of the people of Bangladesh returned to the N.E. seats in the elections held in December, 1970, January, 1971 and March, 1971 not otherwise disqualified by or under any law.

'(5) There shall be a Cabinet of Ministers, with the Prime Minister at the head.

(6) The President shall in exercise of all his functions act in accordance with the advice of the Prime Minister.

(7) The President shall commission as Prime Minister a member of the Constituent Assembly, who commands tl confidence of the majority of the members of the Constituent Assembly. All other Ministers, Ministers of State and Deputy Ministers shall be appointed by the President on the advice of the Prime Minister.

(8) In the event of a vacancy occurring in the Office of the President at any time prior to the framing of the Constitution by the Constituent Assembly, the Cabinet shall apppoint as President a citizen of Bangladesh who will hold the office of President until another President enters upon the office in accordance with the Consitution as framed by the Constituent Assembly.

(9) There shall be a High Court of Bangladesh, consisting of a Chief Justice and so many other Judges as may be appointed from time to time.

(10) The Chief Justice of the High Court of Banngladesh shall administer an oath of office to the President and the President shall administer an oath of office to the Prime Minister, other Ministers, Ministers of State and Deputy Ministers. The form of the oath shall be as prescribed by the Cabinet.

Dated this eleventh day of January, One thousand nine hundred and seventy-two, being the twenty-sixth day of Poush, One thousand three hundred and seventy-eight.

APPENDIX- XXI

THE BANGLADESH (INDUSTRIAL DEVELOPMENT BANK) ORDER, 1971

Acting President's Order No. 4 of 1971

[The Order repealed by Article 45 of the Bangladesh Shilpa Bank Order, 1972 (P.O. No 129 of 1972)]

Whereas it is expedient to make provisions for the appointment of an administrator for the management of the affairs of the Industrial Development Bank of Bangladesh (formerly called Industrial Development Bank of Pakistan);

Now, therefore, in pursuance of the Proclamation of Independence of Bangladesh and in exercise of all powers enabling him in that behalf, the Acting President is pleased to make the following Order:-

1. (1) This Order may be called the Bangladesh (Industrial Development Bank) Order, 1971.

(2) It extends to the whole of Bangladesh.

(3) It shall come into force at once.

2. Notwithstanding anything contained in the Industrial Development Bank of Pakistan Ordinance, 1961 (Ordinance No XXXI of 1961) (hereinafter referred to as the said Ordinance), or in any rules or regulations made thereunder or in any other law for the time being inforce, the Government of Bangladesh may, at any time, by notification in the Official Gazette, appoint an Adminstrator for the management and control of the affairs of the Industrial Development Bank constituted under the said Ordinance (hereinafter referred to as the said Bank).

3. Where an Administrator appointed under Article 2, the Board of Directors of the said Bank shall stand dissolved and the Chairman of the Board of Directors and the Managing Director of the said Bank shall cease to function and the powers and duties of the Chairman, Board of Director and Managing Director of the said Bank shall vest in the Administrator.

4. The Administrator shall hold office for such period and on such terms and conditions as the Government of Bangladesh may specify.

5. The Administrator shall be the Chief Executive of the said Bank.

6. Subject to the direction and control of the Government of Bangladesh, the Administrator shall exercise his powers and perform his functions in accordance with the provisions of the said Ordinance and the rules and regulations made thereunder.

7. The Administrator shall submit such statement and furnish such information as the Government of Bangladesh may direct or require from time to time.

8. Notwithstanding anything contained in the said Ordinance, on the commencement of this Order, the said Bank shall be called the Industrial Development Bank of Bangladesh.

9. No action taken under this Order shall be called in question by or before any Court.

APPENDIX- XXII

THE BANGLADESH (ADMINISTRATION OF FINANCIAL INSTITUTIONS) ORDER, 1972

Acting President's Order No. 3 of 1972

WHEREAS it is expedient ot make provisions for the management and administratin of certain financial institutions in Bangladesh;

NOW, THEREFORE, in pursuance of the Proliamation or Independence of Bangladesh, and in exercise of all powers enabling him in that behalf, the Acting President is pleased to make the following Order;

1. (1) This Order may be called the Bangladesh (Administration of Financial Institutions) Order, 1972.

(2) It extends to the whole of Bangladesh.

(3) It shall come into force at once.

2. In this Order, "financial institutions" means--

(a) the House Building Finance Corporation established under the House Building Finance Corporation Act, 1952 (Act No. XVIII of 1952);

(b) the Pakistan Refugees Rehabilitation Finance Corporation established under the Pakistan Refugees Rehabilitatin Finance Corporation Ordinance, 1959 (Ordinance No. II of 1960);

(c) the Investment Corporatin of Pakistan established under the Investment Corporation of Pakistan Ordinance, 1966 ((Ordinance No. IV of 1966);

(d) the Equity Participation Fund established under the Equity Participation Fund Ordinance, 1970 (Ordinance No. I of 1970).

3. (1) Notwithstanding anything contained in any of laws mentined in Article 2, or in any other law for the time being in force, the Government of Bangladesh may, if it deems fit in the national interest, by notification in the official Gazette, appoint an Administrator for the management and administration of the affairs of a financial institution in Bangladesh.

(2) Where an Administrator is appointed for a financial institution under clause (1), the Board of Directrs, the Managing Director and the Executive Cmmittee, if any, of the institution shall cease to function in respect of the affairs of the institution in Bangladesh and all the powers and duties of such Board of Directors, Managing Director and Executive Committee shall vest in the Administrator.

(3) The Administrator shall be the Chief Executive of the financial institution for which he is appointed and shall hold office for such period and on such terms and conditions as the Governement of Bangladesh may determine.

4. Subject to the direction and control of the Government of Bangladesh, the Administrator shall exercise his power and perform his duties, as far as practicable, in accordance with the provisions of the law under which the financial institution concerned is established and the rules and regulatins made thereunder.

5. The Administrator shall submit such statements and furnish such information as the Government of Bangladesh may direct or require from time to time.

6. No action taken under this Order shall be called in question by or before any Court.

7. For the purpose of this Order, in all the laws mentioned in Article 2 and in all rules and regulations made thereunder, references to Central Government, Pakistan and East Pakistan shall, except where the context otherwise requires, be construed as references to the Government of Bangladesh and Bangladesh respectively.

APPENDIX- XXIII

THE BANGLADESH COINAGE ORDER, 1972.

President's Order No.83 of 1972.

[Amendment Foot Notes at ANNEX-12]

WHEREAS it is expedient to provide for the establishment of the Mint and for the issue and putting into circulation of Taka coins of the Government of the people's Republic of Bangladesh;

NOW, THEREFORE, in pursuance of the Proclamation of Independence of Bangladesh, read with the Provisional Constitution of Bangladesh Order, 1972 and in exercise of all powers enabling him in that behalf, the President is pleased to make the following Order:-

1. (1) This Order may be called the Bangladesh Coinage Order, 1972.

(2) It extends to the whole of Bangladesh.

(3) It shall come into force at once and shall be deemed to have taken effect on the 26th day of March, 1971.

2. In this Order, unless there is anything repugnant in the subject or context,-

(a) "deface" with its grammatical variations and cogna expresions, includes clipping, filling, stamping or such other alteration of the surface or shape of a coin as is readily distinguishable from the effects of reasonable wear;

(b) "Government" means the Government of the People's Republic of Bangladesh;

(c) "the Mint" means any Mint which may hereafter be established in Bangladesh;

(d) "prescribed" means prescribed by rules made under this Order;

(e) "remedy" means variation from the standard weight and fineness; and

(f) "Standard weight" means the weight prescribed for any coin.

3. The Government may, by notication in the official Gazette,-

(a) establish a Mint at any place within Bangladesh,

(b) abolish any Mint which may hereafter be established.

4. Coins may be coined at the Mint which may hereafter be established in Bangladesh or at any Mint of any other country for issue under the authority of the Government of such denominations not higher than two taka, of such dimension and designs, and of such metals or of mixed metals of such composition as the Government may, by notification in the official Gazette, determine.

[2][5. The two taka coins, one taka coins, fifty poisha coins, twenty-five coins, ten poisha, coins, five poisha coins, two poisha coins and one poisha coins issued under the authority of the Government shall be current in Bangladesh until such time as they are called in by the Government by notification in the offfcial Gazette.]

6. The standard weight of the coins of any denomination coined under the provisions of Article 4, and the remedy allowed in the making of such coins shall be such as may be prescribed in this behalf by the Government.

7. (I) The coins issued under the authority of Article 4 shall be a legal tender in payment or on account,-

(a) in the case of a Taka coin, for any sum;

(b) in the case of a fifty paisa coin for any sum not exceeding ten Taka; and

(c) in the case of any other coin, for any sum not exceeding one Taka:

Provided that the coin has not been defaced and has not lost weight so as to be less than such weight as may be prescribed in its case.

8. Notwithstanding anytihng contained in Article 5, the Government may by notification in the official Gazette, call in, with effect from such date as may be specified in the notification any coin, of whatever date or denomination, referred to in that Article, and on and from the date so specified such coin shall

cease to be a legal tender save to such extent as may be specified in the notification.

9. [(1) The Taka, which is the standard monetary unit in Bangladesh, shall be divided into one hunderd units and the coin representing such unit shall be called poisha, and shall, subject ot the provisions of clause (1) of Article 7, and to the extent specified therein, be legal tender in payment or on account accordingly.][4]

(2) All references in any enactment or in any notification, rule or order under any enactment or in any contract, deed ro other instrument, to any value expressed Taka and poisha shall be construed as reference to that value expressed in Taka][5] and poisha coins referred to in clause (1), and the Government may by notifcation in the official Gazette specify any symbol or abbreviation as it may deem, fit for making any writen reference to their value in words or in figures.

10. Where any silver coin issed under the authority of the Government is tendered to any preson authorised by the Government to act under this Article and such person has reason to belive that the coin,

(a) has been diminished in weight so as to be more than such percentage below standard weight as may be prescribed as the unit of reasonable wear, or

(b) has been defaced,

he shall, by himself or another, cut or break the coin.

11. A preson cutting or breaking the coin under provision of clause (a) of Article 10 shall observe the following procedure, namely:-

(a) if the coin has been diminished in weight so to be more than such precentage below standard weight as may be prescribed as the limit of reasonable wear, but not more than such further precentage as may be prescribed in the behalf, he shall either, return the pieces to the preson tendering the coin, or if the person so requests, shall receive and pay for the coin at such rates as may be prescribed in this behalf; and

(b) if the coin has been diminished in weight so as to be more than such further percentage below standard

weight so prescribed as aforesaid, he shall return the pieces to the person tendering the coin, who shall bear the loss caused by such cutting or breaking.

12. A person cutting or breaking coin under clause (b) of Article 10 shall observe the following procedure, namely:-

(i) if such person has reason to believe that coin has been fraudulently defaced, he shall return the pieces to the person tendering the coin, who shall bear the loss caused by such cutting or breaking;

(ii) if such person has no reason to believe that the coin has been fraudulently defaced, he shall receive and pay for the coin at its nominal value.

Explanation-For the purpose of this Article, a coin which, there is to believe has been defaced by sweating shall be deemed to have been fraudulently defaced.

13. If a coin is liable to be cut or broken under the provisions of both clauses (a) and (b) of Article 10, the preson cutting or breaking the coin shall deal with it,-

(a) if he has reason to believe that the coin has been fraudulently defaced, under clause (a) of Article 11, and

(b) in other cases, under Article 12.

14. Where any coin purporting to be coined or issued under the authority of the Government is tendered to any person authorised by the Government to act under this Article, and such person has reason to believe that the coin is counterfiet or has been fraudulently defaced, he shall by himself or another cut or break the coin and may at his discretion either return the pieces to the tenderer, who shall bear the loss caused by such cutting or breaking or in the case of silver coin receive and pay for the coin accordingly to the value of the silver bullion contained in it.

15. (1) The Government may, by notification in the official Gazette, make rules to carry out the purposes of this Order.

(2) In particular and without perjudice to the generality of the foregoing power, such rules may,-

(a) provide for the guidance of person authorised to cut or break coin under Articles 10 and 14;

(b) determine the percentage of diminution in weight below standard weight not being less than two per cent, in the case of silver soins or five per cent, in the case of pure nickle coins, which shall be the limit of reasonable wear; and

(c) prescribe the further percentage referred to in clause (a) Article 11 and the rates at which payments shall be made in the case of coins falling under the same clause.

16. No suit or other proceedings shall lie against any person in respect of anything in good faith done or intended to be done under or in pursuance of the provisions of this Order.

17. Nothing in this Order shall be deemed to prohibit or restrict the making at the Mint of coins intended for issue as money by the Government of any country beyond the limits of Bangaldesh.

18. The Pakistan Coinage Act (Act III of 1906) is hereby repealed.

ANNEX-12

1. Substituted by Bangladesh Coinage (Amendment) Act, 1989 (Act 3 of 1989) for "one Taka".

2. Substituted ibid. The Article, before substitution, was as under:-

"5. The rupee coins, half-rupee coins, fifty paisa coins, quarter-rupee coins, twentyfive paisa coins, ten paisa coins, five paisa coins, two paisa coins and one paisa coins issued under the authority of the Government of Pakistan before the 26th day of March, 1971 and thereafter issued under the authority of the Government shall be current in Bangladesh until such time as they are called in by the Government by notification in the official Gazette,".

3. Omitted ibid. The clause, before omission, was as under:-

"(2) All silver coins issued under Pakistan Coinage Act (Act III of 1906), after the 10th day of March,1940 shall continue as before to be a legal tender in payment or on account,

(a) in the case of a rupee coin, for any sum;

(b) in the case of a half-rupee, for any sum not exceeding ten rupees; and

(c) in the case of a quarter-rupee, for any sum not exceeding one rupee:

Provided that the coin has not been defaced and has not lost weight so as to be less than-

(i) 176.4 grains Troy in the case of a rupee coin, or

(ii) 88.2 grains Troy in the case of half-rupee coin, or

(iii) such weight as may be prescribed in the case of quarter-rupee coin,".

4. Substituted ibid. The clause, before substitution, was as under:-

"(1) The Taka, which is the standard monetary unit in Bangladesh, shall be added into one hundred units and the new coin representing such unit may be designated as poisha by the Government by notification in the official Gazette, and the rupee, half-rupee and quarter-rupee, which are in circulation in Bangladesh, shall respectively be equivalent to one hundred, fifty and twenty-five such new coins and shall, subject to the provisions of clause (1) and clause (2) of Article 7, and to the extent specified therein, be legal tender in payment or on account accordingly,".

5 Substituted ibid, for "in rupee, and poisha shall be construed as reference to that value expressed in new Taka".

APPENDIX- XXIV
THE BANGLADEH CURRENCY ORDER, 1972
(President's Order No. 84 of 1972)

[Amendment Foot Notes at ANNEX-13]

WHEREAS it is expedient to provide for the issue and putting into circulation of one Taka note and two taka note by the Government of the People's Republic of Bangladesh;

NOW, THEREFORE, in pursuance of the Proclamation of Independence of Bangladesh, read with the Provisional Constitution of Bangladesh Order, 1972, and in exercise of all powers enabling him in that behalf, the President is pleased to make the following Order:-

1. (1) This Order may be called the Bangladesh Currency Order, 1972,

(2) It exends to the whole of Bangladesh.

(3) It shall come into force at once and shall be deemed to have taken efect on the 26th day of March, 1971.

2. In this Order, unless there is anything repugnant in the subject or context,-

(a) "Bangladesh one Taka note" and "Bangladesh two Taka note" shall respectively mean a one Taka note and a two taka note issued by the Government; and][2]

(b) "Government" means the Government of the People's Republic of Bangladesh.

[3][3. Notwithstanding anything contained in any law for the time being in force, the Government may issue Bangladesh one Taka notes and any such notes shall be current in Bangladesh in the same manner and to the same extent and as fully as taka coin called Government Taka issued under the provisions of the Bangladesh coinage Order, 1972 (P.O.No 83 of 1972) and shall be legal tender in Bangladesh for the payment of any amount until such time as they are called in by the Government under the provision of Article 8 of that Order.]

4. The provision of sections 489A, 489B, 489C and 489D of the [Penal Code, (Act XLV of 1860)][4] shall apply in respect of notes issued under this Order as they apply in respect of currency notes and bank notes.

5. The Pakistan Currency Act, 1950 (Act No. XXIX of 1950) is hereby repealed.

ANNEX-13

1. Inserted by the Bangladesh Currency (Amendment) Act, 1989 (Act 2 of 1989).

2. Substituted ibid. The clause, before substitution, was as under:-

   "(a) "Bangladesh one Taka note" means a one Taka note issued by the Government of the People's Republic of Bangladesh on or after the 4th day of March, 1972 and includes the Government of Pakistan one rupee note in circulation in Bangladesh.".

3." Substituted ibid. The Article, before substitution, was as under:-

"3. Notwithstanding anything contained in any law for the time being in force the Government may issue Bangladesh one Taka notes and any such notes shall be current in Bangladesh in the same manner and to the same extent and as fully as the rupee coin called Government rupee issued under the provisions of the Pakistan Coinage Act, and shall be legal tender in Bangladesh for the payment of any amount until such time as they are called in by the Government under the provisions of Article 8 of the Bangladesh Coinage Order, 1972."

4. Substituted ibid. for "Pakistan Penal Code, as adapted in Bangladesh,"

APPENDIX-XXV
PART-ONE
LENDING POLICY

Lending policy and its importance.-The bank laws of conventional banks, that is, banks, other than the specialised banks, do not generally provide suitable provisions for safe, sound and profitable bank lending. But it is advisable that every individual bank should establish its lending policy in writing. The primary purpose of a written credit or lending policy is to provide a framework of standards within which individual lending personnel can operate with confidence. In a bank having written lending policy, every individual lending personnel can take decision in loan matters within his delegated authority and there arises no necessity for constant referrel to higher management. Without it, there is a tendency to either concentrate all decision making in one or two person at or near the top. This is likely to result in slower decisions and inability of loan officers to develop their potential, or a dangerous diversity of lending practices and philosophies within the organisation. This ultimately lead to problem in lending matters. A loan policy may function as decision making aid to lending personnel. Needless to point out that, like any other business, a commercial bank establishes particular objective to be met and a lending policy may assist the management in defining objectives of the Bank.

Contents of the lending policy.- The importance of the matter mandated that the responsibility to establish the loan policy of a bank lies on its Board of Directors. That does not, however, mean that the lending policy should be written and approved by the Board. The actual drafting of the lending policy of a bank should be done by the chief executive officer with the assistance of his senior associates and colleagues of the bank. The policy must, of course, be approved by the Board after careful considertion, examination and discussion. There may variations in the contents of the lending policy of different banks on the basis of the needs of respective bank. But a comprehensive loan policy should cover the following areas, namely:-

(a) Legal considerations.-In order to avoid inadvertent violation of the provision of banking laws, the bank's legal lending limit and other constraints should be set forth in the lending policy.

(b) Delegation of authority.-Each individual loan officer should know precisely how much and under what conditions he or she may commit the bank's funds. These authorities should be approved by written resolution of the Board of Directors at least annually and kept current at all times.

(c) Types of credit extension.-One of the most substantive parts of a lending policy is a delineation of which types of loan are acceptable and which are not.

(d) Pricing.-The price to be charged for the goods or services rendered is very important. Relative uniformity within the same market is necessary. Without it, individuals have few guidelines for quoting rates or fees, and the variations resulting from human nature will be a source of customer dissatisfaction.

(e) Market area.-Each bank should establish its proper market area, based upon, among other things, the size and sophistication of its organisation, its ability to serve its customers, and its ability to absorb risks. Given the bank's capital, defining market area is probably more important in the lending function than in any other aspect of banking.

(f) Loan standards.-This is a definition of the types of credit to be extended, wherein qualitative standards for acceptable loans are set forth.

(g) Credit granting procedures.-This subject may be covered in a separate manual,. It is very much a factor in the achievement of sound loan standards. Without proper procedures, policy and standarads are not likely to be achieved.

Rationale for lending policy.- The next step after establishing the rationale for and definition of lending policy is to get into the specifics of one's own institution and delineate the policy that best fits its peculiar needs. A word should be given about individual variations. Some areas of lending policy should differ from bank to bank, reflecting the bank's size, asset composition, liability composition, earnings, capital, loan loss, reserve, and the ability of lending officers and support personnel. The type of market and clientele should also be considered in determining the degree of risk the bank is willing to assume. Although lending policy may vary from bank to bank, sound loan standards and credit granting procedures should not vary at any given time.

Market area of bank.-The market area of a bank may be the town, city, region, state or the world. The economic characteristics of the market of a bank influences the composition of its portfolio by type, maturity and repayment plan of loans. Most important in establishing market area for loans is the ability of the lending staff to safely and adequately serve the portfolio. The greater the distance from the bank officer, the less the likelihood of frequent and close cantact with the borrower and, therefore, the greater the risk. Certainly it should be a policy that only the strongest credits should be accepted in the outer limits of one's geographic area.

Distribution of type of loan.-The distribution of various types of loan is another basic matter requiring managment decision. There are a number of factors which bear directly on the decision as to the desired levels of commercial and industrial loan, real estate loan, and conumer credit. Some of these factors are (i) the nature and stability of deposits, (ii) the precentage of time versus demand, and (iii) deposit trends. It is better to state categorically in the lending policy those types of loans whoih are not acceptable than it is to list acceptable credit categories. The statement on acceptable loans can be broader and less specific and should emphasize the recognised obligation of the bank to meet the credit need of its trade area. The major reason for which banks are licensed is to serve the legitimate credit needs of the area in which they are located. Examples of desirable loans may include the following:-

(a) Short-term working capital loans that are self-liquidating in nature;

(b) Loans to experienced farmers where source of repayment is clear, such as, crop loans;

(c) Loans to finance the carrying of commodities where the collateral is negotiable warehouse receipts;

(d) Non-speculative construction loans with firm takeout commitments from reliable long-term lenders;

(f) Various kinds of consumer loans;

(g) Construction loans on housing.

Other desirable types of loans might be (a) first mortgages on single family house with adequate equity, (b) loans secured by good quality marketable securities and (c) property margined, etc. Unacceptable types of loans may vary from one bank to another. In any case, illegal loans and loans solely for speculative purpose should always be included in the unacceptable types of loans. Some other unacceptable loans may be the following:-

(a) Loans secured by second mortgages on real estate;

(b) Loans to new business unless well collateralized;

(c) Unsecured loans for real estate purposes;

(d) Loans where the source of payment is solely public or private financing, not firmly committed.

(e) Loans based on unmarketable securities.

Delegation.- The delegation of lending authority is an integral part of loan policy. Delegation of lending usually exists in some form or other, even though the bank may have no other written loan policy. The Directors normally do not meet frequently to serve the credit needs of the bank's borrowing customers. So every bank, small or big, has to delegate some lending authority to its officers. There exist three broad categories of lending authority which are (a) individual authorities, (b) groups or combination of two or more

individuals, and (3) formal committees. While some banks function with only one of these methods of approving loans, most banks employ a combination of two or more. Some banks grant authority up to the bank's legal limit to all lending officers. This is a very lenient approach. Others are very strict, requiring practically all loans to be approved by the Board of Directors. Surely the optimum arrangement lies somewhere between the two extremes. Individuals are not equally qualified to extend the bank's legal limit without undue risk. By the same token, a bank that cannot delegate any authority to its officers must be staffed with inferior personnel, which is an indictment of the Board of Directors.

PART-II
PRINCIPLES OF GOOD LENDING

Lending money to different kind of borrowers is one of the most important functions of a bank. Lending is a risky business. The borrowers from a bank range from individuals to partnership firms, joint stock companies, institutions, societies, corporations, etc., engaged in such activities as farming, transport, business and industry, etc. The nature of their economic activity, the location of business, financial stability, earning and re-paying capacity, purpose of advance seeurity for advance-all differ. To do this business of lending successfully and profitably, a banker has to follow certain principles, some of which are considered below.

Safety.- The very survival of a banker depends on the safety of his loans and advances. The ideal position is when all the advances are fully secured. But due to keen competition among bankers, they have to advance loans which may not be secured. Here a banker has to use his discretion and judgment about the customer. Therefore, to maintain a banking concern in a sound condition, it is very essential that the safety of its advances to customers should be its first principle. Care should be taken to ensure that the funds advanced are not subject to any risk of being lost.

Purpose of advance.-Another important point be studied by a banker before lending is the purpose for which a loan is required and the resources from which the borrower is expected to repay. Loans may be required for productive purposes, trading purposes, agriculture, transport, or self-employment etc. If a loan is required for a non-productive or speculative purposss, the banker should be very cautious in entertaining such a proposition. Even in cases of good business propositions, if they are contrary to national interest the applications for loans may be turned down. The banker should advance loans only for the purposes determined to be worthwhile by the central Bank and the Government. Now-a-days, there is a certain amount of legal control on bank advances, and a bank has to keep within the limits of such control. These legal control have mostly been

specified in the Banking Companies Act, 1991 (Act 14 of 1991). The Bangladesh Bank is the authority to ensure that the controls are strictly observed by all banks. In case of default by any bank in following the restrictions, legal action under that Act follows. The power to control the advances are used by the central Bank through credit control measures.

Borrower's-character, capacity, standing, means.- Wherever a banker lends money, he must carefully consider the chances of his being repaid by the borrowers, which depend upon the character, capacity, standing and means of the borrowers. The banker may sometimes allow a considerable unecured loan to a substantial customer in whose integrity and honesty he has complete confidence. It is extremely difficult to judge the character of a borrower. Generally, he sincerely want to repay the bank loan at the time of maturity, However, he may not be in a position to return it. Character and honesty are subjective, and they can be judged in cach case by bank officials on the basis of the information they have and other factors. The standing and means of the borrowers can be known from their bank account, business record, market good will, etc. The repaying capacity of farmer is always uncertain, because their economic well-being depends on the vagaries of nature. The repaying capacity of small businessmen is not easy to assess, for it depends on many factors, viz, the nature of buiness, purpose of advance, the amount of loan, the period of advance and the source of repayment.

Nature of business.- A business may be sub-divided into many categories, e.g., manufacturing business, trading business, import and export business, whole sale and retail business having a monopoly of the market or a business having a keen competition in the market, a business having a tremendous scope for increase in demand or a business having not much scope for increase in future demand. It may be seen here that there may be innumerable types of business and the repaying capacity of a borrower depends, to a great extent, on the nature of the business he is engaged in.

Security.- The security offered against the loan may be various. It may vary from gold and silver to stock exchange securities, goods, documents of title to goods, insurance policy and immovable property. The security accepted by a banker to

cover a bank advance must be adequate, readily marketable, easy to handle and free from any encumbrance. There may be cases where there is no security except the personal security of the debtor. Whatever be the security, a banker must realise that it is only a cushion to fall back upon in case of need, and its adequacy alone should not form the sole consideration for judging the suitability of a loan.

Location of business.- The location of a business largely influences the type of security that may be offered for a bank advance. In big industrial cities, the banker would naturally be offered a large quantity of shipping documents, or other documents of title to goods as security for advances. In the countryside and in the interior, the security may be the produce of an agricultural area which has to be financed for the purpose of being taken to various centres of consumption. Title deeds of property for the purpose of raising temporary loans are also handled in almost every locality, whether it is in a commercial town or the countryside. In industrial areas, the ready goods as well as raw material would be offered as security against advances. A bank, which has a large number of branches, is undoubtedly in a favourable position, because the securities on which its money is advanced are well spread out.

Liquidity.- The banker, while making advance, must see to it that the money lent is not locked up for a long time. Liquidity of capital is another important principle of good lending. If a banker advances for the fixed assets requirements of a business, which are of a long term nature, there is no likelihood of his being able to recall such loans in time to meet the demands of his depositors, in case a general withdrawal of deposits takes place. This is an important aspect of banking, which distinguishes it from insurance finance or industrial finance. Of course, industrial banks, which have a large capital of their own and which borrow funds for long periods generally by the issue of bonds and debentures, can safely lend the required amount for fixed assets, for they can afford to wait for a long time for the repayment of their advances, since their liabilities do not mature on demand or at short notice.

Safe margin.- When a security is offered to cover a bank advance, the banker has to consider two aspects, the first is

economic, consisting of an estimate of the probable market value of the security at the time of its realisation, and the second is the legal aspect, that is, the validity of the security offered and the difficulties that may arise in its enforcement. The principle generally followed in these cases, with a view to arriving at the maximum amount which could be safely advanced, is to take the market value of the security offered and leave a sufficiently safe margin, both for fluctuations in value and interest accumulation. The banker should take care to ensure that not only its valuation is accurate but that, in the case of securities of a speculative nature which are subject to heavy fluctuations, the margin of safety is maintained in the form of a much higher precentage than it is in other cases. Moreover, if there is a subequent fall in the market prices of the securities deposited with the banker, it would be necessary to call for more margin.

National policy objectives.-In a developing society like Bangladesh, banks are also required to fulfil some social responsiblities. The lending policies of banks should be to provide credit facilities to the neglected sectors of the economy. Banks are now playing an active role in serving the development needs of the economy in conformity with the national policy and objectives. With the changing perspective, the attitude of banks in following the principle of security in lending to the weaker sections of society must be changed. Security for the advances should not be demanded exclusively in the tangible assets of the borrower, but banks should rely on the technical competence, managerial ability, honesty and integrity of the borrower. In recent years, banks have been providing finance on a large scale to agriculturists, small industrialists, professional persons, transporter, self-employed etc. Some advances to weaker and underprivileged sections are given at concessional rate of interest. But it may be noted that, despite changes in the lending policies, the banks follow the basic principles of sound lending which are fundamental. However, the method of lending are from time to time modified to suit the present needs of the society.

PART-III
SECURED LENDING

Before we discuss secured lending, perhaps it is appropriate to examine Webster's definition of collateral, which is "collateral is related to but not strictly a part of the main thing or matter under consideration." In terms of banking, it is obvious from the definition that the main thing or matter under consideration is the loan and the collateral is that which is related to it. Even though good lending policy and strict adherence to the fundamentals of credit foster sound loans, collateral is an inept substitute for either. While space permits only a cursory examination of lending policy and the basics of credit, any discussion of lending that fail to consider these essentials would be fruitless.

General consideration.-Prudence in lending requires critical self examination. A wise lender knows his own limitations, seeks advice when necessary, and seldom makes the same mistake twice, Lending policy should evolve only after careful consideration has been given to the bank's management, organisation, trade area, objectives, market, lending personnel, loan protfolio, experience in various fields, areas of experties and problem areas. The product of this consideration and its subsequent follow-up should be guidlines which promote sound loans and eliminate many unnecessary risks. Some key elements relating to secured lending which should be covered by loan policy are the following:-

(a) types of collateral considered desirable and undesirable;

(b) margin requirements for different types of collateral;

(c) term of loans for each types of collateral;

(d) interest rate;

(e) method of determining and documenting the value of collateral;

(f) documentation standards;

(g) proceedures for handling each types of loan.

We are all exposed to the old axiom, that is, "collateral cannot make a bad loan good, but it can make a good loan better" in one form or another. On the other hand, adherence to the basics of credit is the best way to ensure that the lender starts first with agood loan. A few moment to analyse the following questions will often reveal an unsound loan:-

(a) Are the borrower's character, reputation and ability satisfactory?

(b) What is the purpose of the loan?

(c) Will the loan benefit both the borrower and the lender?

(d) How, when, and from what source will the loan be repaid?

(e) Is the capital of the borrower adequate?

(f) Is the loan practical considering the above questions and all of the other factors which must be considered?

Admittedly, secured lending came about partly in recognition of the fact that some borrowers fail to meet all of the criteria necessary for unsecured financing. The tool of secured lending can be effectively used to compensate to a certain extent for some deficiencies, such as, temporary shortages of working capital or of inadequate capital. It can never serve as a substitute for character and ability. A secured loan should never be made to permit a borrower to acquire collateral if selling the collateral is the only source of repayment.

Risk inherent in lending.- Secured lending may serve as a vehicle to enable one to reduce risks to an acceptable level, so that bank can better fulfil their responsibilities to their customers. The reduction of risk to an acceptable level is the principal function of collateral. When a secured loan is properly handled, collateral values should always exceed loan balances so that the lender never loses the option of liquidating collateral, if necessary. In theory, this seems quite simple but experience proves that it is easier said than done. A logical and systematic approach to each secured transaction can, however, assist the lender in minimising the risks associated with secured lending. One approach is to divide each secured transaction into four

phases. First, the value of the collateral should be established and the proper margin determined. The second step is to control and evaluate the collateral throughout the life of the credit. Third, the lender must perfect a security interest in the collateral, and last, but most important, he or she must review the overall credit on a regular basis.

In most transactions, it is necesary to begin by obtaining a security agreement. This is the contract between the borrower and the lender in which the debtor assigns his specific property to the creditor as collateral for the loan, and in which the lender agrees that he does not own the property and that the collateral is taken only to secure the repayment of a loan. The creditor's security interest attaches to the specified collateral only upon meeting three conditions as specified in the quoted line, that is, "A security interest cannot attach until there is agreement that it attach and value is given and the debtor has rights in the collateral. It attaches as soon as all of the events in the preceding sentence have taken place unless explicit agreement postpones the time of attaching."The key elements in this definition are the following:-

(a) The creditor must give value;

(b) The debtor must have rights in the collateral;

(c) Both parties must agree that the creditor is to have a security interest in the collateral;

(d) The collateral is in the possession of the secured party or the debtor has signed a security agreement.

PART-IV

SCHEDULED BANK AUTHORITY TO BE REFORMED

In an equitable mortgage, no legal estate is vested in the mortgagee bank. Hence, a registered power of attorney is given by the mortgagor stating that in default of payment of the loan, the mortgagee bank shall be authorised to sell the mortgaged property directly under section 69 of the Transfer of Property Act, 1882, without intervention of the court of law. But since the mortgagee bank does not have possession of the mortgaged property, it is always difficult to give vacant possession of the property to the purchaser. Secondly, when the mortgagee bank advertise for sale, the chances are that the mortgagor may file a suit and ask for an injunction to restrain the bank to sell the mortgaged property. Where a sale of the mortgaged property is made, the mortgagor can still file a money suit claiming damage against the bank on the ground that such a sale was not proper and the property has been sold at a reduced price. Even if a decree is obtained, appeal may be lodged in the higher court against such a decree on the grouned that no mortgage was effectively created or that the mortgagor himself did not create the mortgage or that the mortgagor did not deposit the title deeds and the like. It may be pointed out that, in a suit the bank must prove that there was a debt and that the miotgagor deposited the title deeds with the intention of securing the debt, which are the essential elments to be proved. In the case of Mohini Mohan Saha Vs. Deb Narain Summanta, 40 CWB 1277, at 1278, it was held as under:-

"It is well-settled that in the case of mortgage by deposit of title deeds, the debt must be proved; the deposit of title deeds has to be established; and the intention that the title deeds deposited as a part of the transaction should be security for the debt made out."

The method of recovering dues through the process of title suit is very time consuming and costly and a period of long time goes by between the time of filing the suit and the decree is obtained. Thereafter, even if the bank succeeds in a suit, the court passes a perliminary decree ordering the mortgagor to pay the principal sum together with interest, cost, etc. to the morgaged

bank within a specified period, failing which the bank may apply for a final decree for sale of the morgaged property. During the long time between filing of suit and final decree, the bank may, of course, apply for an ad-interim order of attachment, which may or may not be granted by the court. Nevertheless, it is always advisable for a bank to file a title suit to enforce the mortgage. In practice, it is observed that the scheduled banks rarely exercise their power of sale of a mortgaged property given under the relevant power of attorney or the mortgage deed and opts to file a title suit to enforce the mortgage. This, however, causes great hardship for a financial institution dealing with public money.

Although no legal estate is vested in the mortgagee bank in an equitable mortgage, it has a perfectly legitimate claim to recover its dues on time either by sale of the mortgaged property direct or through the court, inspite of the fact that in many cases such a property may not be of the borrower but of a third party who has mortgaged it to secure the loan. If a third party has mortgaged his property to secure the loan of the borrower, the threat of selling the mortgaged property may promptly work. However, as far as bank's rights are concerned, what is said in the case of Bank of Upper India Ltd. Vs. Fancy Skinner ILR 51 ALL 494 are the following:-

"The mortgages's interest is not a mere right to recover the debt due but to have a charge on the property and to follow it wherever it goes."

From the above discussion, it would appear that this area of law has to be reformed to give the scheduled banks more power to deal with the mortgaged properties more freely and the law should give better protection to the interests of the scheduled banks. In this connection, it may be mentioned that Bangladesh Krishi Bank and Bangladesh Shilpa Bank can directly sell the mortgaged property by publishing notice of sale in the daily newspaper and inviting bidders in the auction. This is special statutory powers available to those banks in their respective law. Such power is not available for scheduled banks. It is necessary that appropriate provistions be made in the laws governing the scheduled banks for same provision as is available to Bangladesh Krishi Bank and Bangladesh Shilpa Bank.

PART-V

CREDIT TO PRIORITY AND NEGLECTED SECTORS OF ECONOMY

Traditionally, commercial banks in Bangladesh provide credit facilities to large commercial and industrial enterprises. The other sectors of economy like small businessmen, farmers, and self-employed professional persons are mostly neglected by them in matters of credits. Due to want of bank credit facilities, the above neglected sectors of the economy remained economically backward. Some of the reasons why these sectors do not get bank credit are mentioned below:-

(a) Banking facilities in rural areas are not generally available. Till few years back, there were hardly any branch of banks in villages. Bankers are mainly interested in providing credit facilities to big industrialists and businessmen. They generally do not care to provide credit to aforementioned neglected sectors of economy. It is very difficult for the farmers and small traders of rural areas to pursue the banks in towns for their loan.

(b) The lending by banks is made only when the borrowers can give security of tangible assets. Naturally, those sectors of economy which are not in a position to provide tangible security are deprived of bank credit. This is the reason why small borrowres do not get any credit from banks.

(c) The illeteracy o farmers and small traders of rural areas is again an important reason for their being deprived of bank credit. They are ignorant of the rules and regulations of bank credit. They also do not know how to maintain proper accounts of their business transaction.

A financially strong Bangladesh can not be think of unless the economic condition of our villages is improved. Banks are the wheels on which the economy of the country run. Taking into consideration of this reality, the concept of bank lending must go for a real change. Banks must abandon their conservative and traditional outlook and methods. Commercial banks should

start specific schemes to finance priority and neglected sectors which are undeveloped parts of the economy and are not in a position to provide securities required. They should provide credit to these sectors under relaxed security conditions. The central bank may play an important role by giving necessary support in the implemention of such scheme to cover the risks of banks in financing these neglected sectors. This type of credit policy is bound to be successful under the active direction and control of the central bank.

The commercial banks may provide credit facilities to farmers for the purpose of seeds, fertilizers, pesticides, dairy, farm animals, tractors and other farm machinery and for the development of land. Bangaldesh Krishi Bank and Rajshahi Krishi Unnayan Bank have introduced schemes for giving loan for the above mentioned purposes and it has proved successful. Commercial banks may also provide credit for amall scale industries for short periods or for medium terms on the basis of hypothecation of raw materials or semi-furnished goods, or in the form of a charge on land, buildings, machinery etc. Self-employed person like medical practitioner, dentists, chartered accountants, cost accountants, lawyers, solicitor, engineers, architects, surveyors, construction contractors, management consultants, etc, may be given credit facilities by commercial banks. The borrower may be required to taka out life insurance policy for the amount of the loan. Schemes may also be introduced for giving credit facilities to those who have no finance but who have technical knowledge and ability. Financial assistance may be provided by a bank depending upon the requirements of the project.

A consolidated set of guidelines of the central bank is necessary for priority sector lending. It should also lay down targets for lending to the priority sectors as well as weaker sections of the society. The following may be some of the guidelines applicable to all the advances in the priority sector, namely:-

1. Loan disbursement.-As far as possible, loan amount should be disbursed directly to the suppliers of seeds, fertilizers, raw materials, implements, machinery, etc.

2. Repayment schedule.-The schedule for the repayment of the loan should be fixed on basis of the following factors, namely:-

(a) sustenance requirements of the borrowers;

(b) surplus generating capacity;

(c) break-even point;

(d) life of assets, etc.

In case of default on account of national calamities like floods and draught, crop loans may be converted into medium-term loans. In case of term loans, extension or rephasement may be allowed. Similarly, in case of borrowers affected by natural calamities, drawals exceeding the value of securities may be converted into a term loan repayable over a reasonable period of time. Further, working capital may also be provided and instalments due under term loans may be extended or rephased.

3. Penal interest.-Loans upto a reasonable amount of money should be free of the charge of penal interest. For others, the rate of penal interest should be at a very low and nominal rate compared to other sectors.

4. Borrowers photographs.-Borrowers photographs may be taken for the purpose of idenfification. Banks should make arrangement for photo at their cost.

5. Disposal of applications.-There should be a time limit for disposal of applications for credit.

APPENDIX-XXVI
FORM OF AGREEMENT FOR CASH/OVERDRAFT

In consideration of the Sonali Bank, Dhaka through their office at Chittagong (hereinafter referred to as "the said Bank " which expression shall include its assigns and successors in interest) allowing me/us. Messers.....

the undersigned (hereinafter called "the Borrowers" which expression, unless repugnant to the context shall include my/our heir-executors, administrators, assigns and legal representatives), as advance by way of credit/overdraft upto the extent and limit of Tk. ..... (Taka.....) (hereinafter referred to as the said limit) repayable to the said bank on demand being made by the said bank, the borrowers hereby jointly and severally agree as follows;

1. That the said bank shall not, under this argument, be required to make advances to exceed the said limit. The borrowers shall, however, be responsible for the payment on demand of the entire amount that may, at any time, be due in this account although such amount may exceed the said limit.

2. That the interest at the rate of ..... per cent per annum over Bangladesh Bank rate with a minimum of ..... per cent per annum shall be calculated and charged on the last working day of each month and it will form part of the principal and will carry interest at the above-mentioned rate.

3. That the borrowers agree to pay incidental charges for every half year or part thereof (according to labour involved) as fixed by the said bank from time to time during the time the account remains open.

4. That on demand being made by the said bank,the borrowers shall pay to the said bank the balance then outstanding and owing to the said bank on the said account inclusive of interest at the rate mentioned above to the date of payment, together with all the charges and expenses charged or

incurred by the said bank as ascertained from the books of the said bank, which the borrowers agree to accept as sufficient proof of the correctness thereof without production of any voucher or paper.

5. That the amount due to the said bank on this account shall be payable by the borrowers at ..... Branch of the said bank where the account is maintained or at the Head Office of the said Bank of Dhaka and the said Bank shall be entitled to bring a suit against the borrowers either at the place where the branch is situated or at Dhaka where the Head Office of the said Bank is located.

6. That the borrowers will be liable for all costs of recovery incurred by the said Bank before filing a suit and also for all costs in connection with the suit till recovery of full amount.

7. That the borrowers shall not be entitled to any interest for any sum which may be of any time stand to their credit in this account.

8. That the said Bank will always be at liberty to stop making fresh advances at any time without previous notice, which notice is hereby expressly waived and without assigning any reason even though the said limit has not been fully availed of.

9. That the borrowers agree that their liaibility to the said Bank for their dues on the said account shall be joint and several, with the authority and right to the said Bank to compromise and/or give indulgence to any of them reserving its rights and remedies against all or any of them.

10. That the borrowers hereby agree to hold themselves liable as aforesaid on all confirmation letters signed by any one of them.

11. That the borrowers do further agree and hereby give to the said Bank during the currency and for the payment of its dues, a general lien and right of set-off and charge on all movable property of every description coming into the possession of the said Bank on account of the Borrowers or any one of them, or for the time being held by the said Bank on behalf of the borrowers or any one of them, whether alone or jointly with others in Bangladesh or elsewhere including, without prejudice to this

generality, any moneys, bullion, deposits, deposit receipts for moneys, promissory notes, bill of exchange, hundis, stocks, goods and merchandise, bills of lading including railway receipts, Government bills with inspection notes and other bills in course of collection, articles in safe custody and other documents of title to goods, and any other negotiable or transferable instruments or securites, instruments and documents of title and mercantile documents of every discription including hire-purchase agreement or contracts other than those affecting immovable property and requiring registration under the laws relating to registration and other documents evidencing the title of the borrowers as creditiors or members of any Corporation, Association, Company or Syndicate in Bangladesh or elsewhere.

12. And it is hereby agreed that in the event of there being a surplus available after payment of all such principal and interest moneys and all charges and expenses as aforesaid of the net proceeds of such sale of security as aforesaid, it shall be lawful for the said Bank to apply the said surplus as far as the same shall extend in or towards payment or liquidation of any other moneys due or to be due from the borrowers or any one or more of them whether solely or jointly with any other person or persons, firms or company to the said Bank by way of loans, discounted bills, letters of credit, guarantee charges or of any other demand, legal or equitable, which the said Bank may have against the borrowers or any one or more of them and whether the borrowers or any one or more of them shall become or be adjudicated bankrupt or insolvent or be in liquidation or otherwise, and interest thereon from the date on which any and all advances in respect thereof shall have been made at respective rates at which the same shall have been so advanced.

13. That the borrowers hereby agree that any notice in writing requiring to be served hereunder shall be sufficiently served if addressed to any one of them at their address registered in the said Bank or in the event of no such address being registered at their or of any one of their last known place of residence or business and left at such address or if forwarded to any one of them by post at the address or place aforesaid. And the borrowers

do hereby further agree that any demand hereunder may eventually be made by parole notice to any one of them by any officer of the said Bank or by notice in writing under the hand of any such officer either served personally on the borrowers or any one of them or left for or sent by post to any one of them at their usual or last known place of business.

14. In witness thereof I/We, borrowers, hereunto set my/our hand this ..... day of..... one thousend nine hundred and nighty.....

Signed by the Borrower or Borrowers

Place of Execution.....

Address.....

PLEDGE OF GOODS TO SECURE CASH CREDIT

..... Bank Ltd.

.....

No.....

Amount TK. .....

Name (s) .....

THE RUPALI BANK LIMITED (hereinafter called "the Bank") having at the request of ..... [hereinafter called "the Borrower(s)"] opened or agreed to open in the Books of the Bank at ..... a Cash Credit Account to the extent of Taka..... with the Borrower(s) to remain in force until closed by the Bank and to be secured by goods to be pledged with the bank. IT IS HEREBY AGREED between the Bank and the Borrowers, (s), the Borrower(s) agreeing jointly and severally as follows:

1. That the goods described in general terms in the Schedule hereto which have been already delivered to and the goods which shall be hereafter delivered to the Bank under this Agreement whether for the purpose of forming additional security for any sum already drawn or as security for any sum or sums to be drawn against the said Cash Credit Account, or by way of

substitution for and in lieu of any goods which may from time to time have been delivered or may be delivered to the bank under this Agreement or otherwise howsoever (hereinafter called "the Securities"), are hereby pledged to the Bank or are to be deemed to have been so pledged as security to the Bank for the payment by the Borrowers of the balance due to the Bank at any time or ultimately on the closing of the said Cash Credit Account and for the payment of all debts and liabilities mentioned in the 11th clause hereof. The expression. "the balance due to the Bank" in this and the subsequent clauses of this Agreement shall be taken to include the principal money from time to time due to the said Cash Credit Account and also all interests thereon calculated from day to day of the rate hereinafter mentioned in the amount of all charges and expenses which the bank may have paid or incurred in any way in connection with the Securities or the sale or disposal thereof.

2. That the Borrower(s) shall not during the continuance of this Agreement pledged or otherwise charge or encumber any of the goods for the time being the subject or intended to be subject of this security nor do or permit any act whereby the security herein before expressed to be given to the Bank shall be in anyway prejudicially affected.

3. That the Borrower(s) shall with the previous consent of the Bank be at liberty from time to time to withdraw from the Bank any of the goods for the time being pledged to the Bank and forming part of the securities the subject of this Agreement, provided the advance value of the said goods is paid into the said account or goods of a similar nature to those mentioned in the schedule hereto, or any of the same, and of at least equal value, are substituted for the goods so withdrawn. Provided always that with the previous consent of the Bank the Borrower(s) shall be at liberty to withdraw from the Bank any of the goods for the time being pledged to the Bank without paying into the said Account such advance value as aforesaid substituting any goods as aforesaid, provided the necessary margin required by the clause hereof is fully maintained.

4. That all securities already and hereinafter delivered as aforesaid shall be insured against fire risk by the Borrower(s) with some insurance company or companies approved by the

Bank in the name of the Bank for the full market value of such securities and that all policies for and receipts for premia and on such insurance shall be delivered to the Bank. Should Borrower(s) fail to so insurance or fail to deliver the policies or receipts for premia as aforesaid the Bank shall be at liberty to effect such insurance at the expense of the Borrower(s).

5. That all sums received under any such insurance as aforesaid shall be applied in or towards the liquidation of the balance due to the Bank for the time being and in the event of there being a surplus, the same shall be applied as provided by the 11th clause hereof.

6. That the Borrower(s) shall make and furnish to the Bank such statements and returns of the cost and market value of the securities and a full description thereof and produce such evidence in support thereof as the Bank may from time to time require and shall maintain in favour of the Bank a margin of ..... per cent between the market value from time to time of the securities and the balance due to the Bank for the time being. Such margin shall be calculated on the open market value of the securities as fixed by the Bank from time to time and shall be maintained by the Borrower(s) either by delivery of further security to be approved by the Bank or by cash payment by the Borrower(s) immediately on the market value for the time being of the securities becoming less than the aggregate of the balance due to the bank plus the amount of the margin as calculated above.

7. The interest at the rate of..... per cent per annum shall be calculated and charged on the daily balance in the Bank,s favour due upon the said Cash Credit Account until the same is fully liquidated and shall be paid by the Borrower(s) as and when demanded by the Bank.

8. That on demand the Borrower(s) shall pay to the Bank Balance than due to the Bank on the said Cash Credit Account together with all further interest at the rate abovementioned and the amount of all further charges and expenses (if any) to the date of payment provided that nothing herein in the clause contained shall be deemed to prevent the Bank from damanding payment of the interest for the time being due at the abovementioned rate without at the same time demanding payment of the balance due to the Bank exclusive of such interest.

9. That if the Borrower(s) shall fail to maintain such margin as aforesaid or if the Borrower(s) fail or neglect to repay to the Bank on demand the balance then due to the Bank or in the event of the Borrower(s) becoming or being adjudicated bankrupt or insolvent or in the event of any distress or execution being levied or enforced upon or against any of the property of Borrower(s) whether the said property shall or shall not be the subject of this security or [whether the Borrower(s) are or are not a Joint Stock Company] in the event of any person, firm or Company taking any steps towards applying for or obtaining an order for the appointment of a Receiver of the Borrower(s) property or any part thereof or in the event of the Borrower(s) being a Joint Stock Company or if any person, firm or company shall apply for or obtain an order for the winding up of the Borrower(s) or if any such order is made or any step be taken by any person, firm or Company in or towards passing any resolution to wind up the Borrower(s), or if any such resolution be passed whichever may first happen, it shall be lawful for the Bank forthwith or at any time thereafter and without any notice to the Borrower(s), without prejudice to the Bank's right of suit against the Borrower(s), either by public auction or private contract absolutely to sell or otherwise dispose of all or any of the securities either together or in lots or separately and to apply the net proceeds of such sale in or towards the liquidation of the balance then due to the Bank.

10. That if the net sum realised by such sale be insufficient to cover the balance then due to the Bank, the Bank shall be at liberty to apply any other money or moneys in the hands of the Bank standing to the credit for or belonging to the Borrower(s) or any one or more of them in or towards payment of the balance for the time being due to the Bank; and in the event of there not being any such money or moneys as aforesaid in the hands of the Bank or in the event of such money or moneys being still insufficient for the discharge in full of such balance the Borrower(s) promise and agree forthwith on production to them of an account to be prepared and signed as in the 12th clause hereinafter provided to pay any further balance which may appear to be due by the Borrower(s) thereon, PROVIDED ALWAYS that nothing herein

contained shall be deemed to negative, qualify or otherwise prejudicially affect the right of the Bank (which it is hereby expressly agreed the Bank shall have) to recover from the Borrower(s) the balance for the time remaining due from the Borrower(s) to the Bank upon the said Cash Credit Account notwithstanding that all or any of the said securities may not have been released.

11. That in the event of there being a surplus available of the net proceeds of such sale after payment in full of the balance due to the Bank, it shall be lawful for the Bank to retain and apply the said surplus together with any other money or moneys belonging to the Borrower) (s) or any or more of them for the time being in the hands of the Bank in or under whatever account as faras the same shall stand against in or towards payment or liquidation of any and all other moneys which shall be or may become due from the Borrower(s) or any one or more of them whether solely or jointly with any other person or persons, firm or Company to the Bank by way of Loans, Discounted Bills, Letters of Credit, Guarantees, Charges or of any other debt liability including Bills, Notes, Credits and other obligations current though not then due or payable or other demands, legal or equitable, which the Bank may have against the Borrower(s) or any one or more of them or which the law of set-off or mutual credit would in any case admit and whether Borrower(s) or any one or more of them shall become or be adjudicated Bankrupt or nsolvent or be in liquidation or otherwise and interest thereon from the date on which any and all advance or advances in respect thereof shall have been made at the rate or respective rates at which the same shall have been so advanced.

12. The Borrower(s) agree to accept as conclusive proof of the correctness of any sum claimed to be from them to the Bank under this Agreement a statement of account made out from the books of the Bank and signed by the Accountant or other duly authorised officer of the Bank without the production of any other voucher, document or paper.

13. That this Agreement is to operate as security for the balance from time to time due to the Bank and also for the ultimate balance to become due on the said Cash Credit Account and the said account is not to be considered to be closed for the purpose of this security and the security is not to be considered

exhausted by reason of the said Cash Credit Account being brought to credit at any time or from time to time or of its being drawn upon to the full extent of the said sum of Tk. ..... if afterwards reopened by a payment to credit.

14. Provided always that this Agreement is not to prejudice the right or remedies of the Bank against the Borrower(s) irrespective and independent of this Agreement in respect of any other advances made or to be made by the Bank to the Borrower(s).

15. In case the Borrower(s) shall be a firm or members of a firm, no change whatsoever in the constitution of such firm or during the continuance of this Agreement shall impair or discharge the liability of the Borrower(s) or any one or more of them thereunder.

IN WITNESS whereof the Borrower(s) have hereunto set his (their) hands this ..... day of ..... in the year One Thousand Nine Hundred and .....

SCHEDULE OF SECURITIES referred to in the foregoing Instrument.

LETTER OF LIEN

To

The Manager,

.....19.....

...

..... Bank Limited,

.....

Sir,

In consideration of your Bank having made an advance of Tk. ---------- or making advance to me/us (not exceeding , ---------- ----------in all), I/we hereby deposit and pledge with the Bank goods described in the Schedule hereto, of the value of Tk. ---------- ------ thus providing a margin of ---------- percent therein in security for payment on demand of the said advances with interest thereon at ---------- per cent per annum or at such other rate as may be, from time to time, agreed upon with half yearly/monthly rests together with Fire Insurance Premium and all Warehouse and other charges paid or incurred by the Bank in respect of the said goods.

I/We will be at liberty to remove goods from time to time on sufficient cash payments to the Bank, but so long as any money remains due to the Bank in respect of the said advances or any interest thereon or any Insurance Premium or charges on the said goods I/we hereby engage to maintain the above margin intact, i.e., the balance due to the Bank at any time will not have a larger proportion to the value of the goods in deposit with and pledged to the Bank than ---------- to 100.

In case the amount of the said advances with all interest and charges shall not be paid to the Bank on demand or in case I/we at any time fail to maintain the margin of security above stipulated between the sum due by me/us and market value of the security for twenty-four hours after being required in writing to do so, it shall be lawful for the Bank forthwith or at any time thereafter absolutely to sell and dispose of all or any said goods and to apply the net proceeds of such sale in satisfaction so far as the same will extend towards the liquidations of the amount due for principal and interest in respect of the said advances, together with all costs, charges and expenses incurred by the Bank and I/we agree to accept the Bank's account of such sale, signed by the Manager, Accountant or other duly authorised officer of the Bank as sufficient proof of the correctness of the amount realised by, and the charges and expenses in connection with such sale.

If the net realised by such sale should be insufficient to cover the full amount due in respect of the said advances with interest and charges as shown in the said account of the Bank, I/we agree to pay to the Bank forthwith on delivery of the said account any balance due by me/us on the footing thereof.

It is understood that the Bank's lien on the goods pledged under the agreement shall also extend to any other sum or sums of moneys for which I/we (or any or either of us) of either separately or jointly with any other person or persons may be or become indebted or liable to the Bank on any other account.

On payment of all sums, including interest and charges payable hereunder, any part of the goods so deposited and pledged which may not have been sold shall be returned to me/us and any surplus of net proceeds of any such sale of the said goods shall be paid to me/us or as I/we shall direct.

Signature(s)

SCHEDULE

Marks	Date of Invoice	Bales or Packages	Description of Goods.

TRUST RECEIPT

To

..... Bank Limited,

.....

In consideration of the Bank handing to me Shipping Documents for goods, as per particulars at foot, hypothecated to the Bank as collateral security for the due payment of the under-mentioned draft drawn upon their office in ---------- by ---------- and acepted by their said Office, I/we hereby agree to land, store and hold the said goods as Trustee for and on behalf of the Bank, and the proceeds of the sales shall be received by me/us as Trustee for the Bank, and paid to the Bank as and when received, I/we at the same time specially advising the Bank of the account on which such payment is made, and I/we undertake to provide the Bank, by this or other means, with sufficient funds to meet the said draft, together with all charges and commission, not less than---------- day before maturity.

I/we also undertake to keep the goods fully insured against fire, and to hand over to the Bank all amounts received from the insurers, the policies of Insurance being, in the meantime, held by me/us asTrustee for and on behalf of the Bank.

Without prejudice to anything herein contained I/we will, on the Bank's written demand to be made at any time forthwith, either return to the Bank the said Shipping Documents, Fire Insurance Policies, or any of them, or deliver up to the Bank the said goods or any part thereof .

Particulars of Draft and Goods

Amount of Bill	Due	Description of Goods	Marks and Nos.	uessel Tk.....

Signature

MORTGAGE DEED

This Indenture made the ---------- day of ---------- 19---------- between ---------- of ---------- (hereinafter called the Mortgagor, whiich expression shall be deemed to include his heirs, executors, adminitrators and assigns of the one part and the ---------- Bank, Limited having its registered office at ---------- (hereinafter called the Bank, which expression shall include its assigns) of the other part.

Whereas the Mortgagor is the owner and the proprietor of the messuages, lands, hereditaments and premises described in the Schedule hereto and intended to be hereby mortgaged free from encumbrances and whereas the Bank has agreed to lend to the Mortgagor the sum of Taka---------- only on having the repayment thereof with interest secured in the manner hereinafter appearing.

Now this Indenture Witnesseth as follows:

1. In pursuance of the said agreement and in consideration of the sum of Tk. ---------- paid on or before the execution of these presents by the Bank to the Mortgagor (the receipt whereof the Mortgagor hereby acknowledges) the Mortgagor hereby convenants with the Bank as follows:

(1) That the Mortgagor will pay to the Bank the said principal sum of ---------- by equal half-yearly instalments of Tk..... on the first day of ---------- and the first day of ---------- each year commencing from ---------- and any interest due thereon so that the whole debt is paid full on or before the ----------.

(2) That the Mortgagor shall in addition pay interest on the principal sum secured by these presents at the rate of ---------- per cent per annum.

(3) That the Mortgagor shall pay to the Bank interest at the rate stipulated in Clausel (2) with half -yearly rests on the ----------and ---------- up to the date of realisation in case the Bank has to institute a suit for recovery of the principal and interest or any portion thereof that may be due to the Bank. And if at any time six months interest payable under these presents shall remain owing and unpaid then the interest so in arrears

shall be converted into principal and until paid off shall carry interest at the aforesaid rate of ---------- per cent per annum with half-yearly rests.

(4) That the Mortgagor shall and will during the subsistence of this security at his own costs and charges and expenses keep and maintain the said premises hereby mortgaged in good repair and tenantable condition.

(5) It is hereby agreed and declared that in case any of the instalments of principal or interest payable under these presents be not satisfied on the dates hereinbefore appointed for the payaments of such instalments of principal or interest then the whole amount of principal remaining unpaid together with interest due shall at once become payable to the Bank, and the Bank may forthwith enforce any of the remedies to which a holder of a simple mortgage is entitled under the Transfer of Property Act.

(6) That the Mortgagor will within one month from the date of these presents insure and keep insured the building and such other part of the mortgaged premises as are of an unsuitable nature or any part or parts thereof from loss or damage by fire in the full value thereof in the insurance Company to be approved of by the Bank in the joint names of the Mortgagor and the Bank as Mortgagee (the relative policy to contain the agreed Bank clause of the Fire Insurance Association) and will duly pay all premiums and sums of money payable for that purpose and will deliver to the Bank the policy for such insurance and the receipt for every such payment within seven days after it shall become due and in case the Mortgagor shall neglect or refuse to keep the said premises insured to the amount aforesaid or to deliver such policy and receipts as aforesaid then and in every such case it shall be lawful for the Bank to insure the same to the amount aforesaid or any less amount and all sums of money expended by the Bank in or about such insurance as aforesaid with interest for the same at the rate of Taka ---------- per cent per annum (with half-yearly rests) computed from the time or respective times of advancing, the same shall be repaid by the Mortgagor to the Bank on demand and in the meantime shall be a charge on the premises hereby mortgaged in addition to the principal sum and interest thereon.

(7) That the Mortgagor agrees that sums of money awarded as compensation for any compulsory acquisition of any portion of the mortgaged property by any Government, or local Authority shall be receivable by the Bank direct on behalf of the Mortgagor and that such money as well as moneys received under and by virtue of any such insurance as aforesaid shall be at the option of the Bank either be forthwith applied in or towards substantially rebuilding, re-instating or repairing the said premises or in or towards the payment of the principal money, interest and costs for the time being remaining due on the security of these presents.

II. For the consideration aforesaid and in further pursuance of the said agreement the Mortgagor hereby grants and transfers by way of simple mortgage unto the Bank all the property described in the Schedule hereto together with all rights, easements and appurtenances thereto and all rights, title and interest in and to the said premises to the intent that the said premises hereby mortgaged shall remain and be charged by way of simple mortgage and free from all encumbrances as security for the payment to the Bank of the said principal money, interest and costs in accordance with the covenants hereinbefore contained.

III. That the Mortgagor shall allow the Bank, its employees, agents and surveyors at all reasonable times to enter the said premises and view and examine the state and condition thereof.

IV. Provided always that the Mortgagor may at any time after giving the Bank thirty day's notice pay the Bank the whole of the principal sum and interest and costs that may due to the Bank.

In witness whereof the parties hereto have set their hands and seal on the ..... day of .....19.....

SCHEDULE

Signed in the presence of-

1.

2.

Signature

Memorandum of Deposit by a Customer of the Title Deeds to Secure his own Account

Memorandum that I, the undersigned of ..... hereby acknowledge that I have this day deposited with the..... Bank Ltd. (hereinafter called "the Bank", which expression shall include their successors and assigns) the documents specified in the Schedule hereto, with intent to create an equitable mortgage upon all my estate and interest in the property to which such documents relate, for the purpose of securing the payment to the Bank on demand for all moves now owing or which shall at any time hereafter be owing for me either solely or jointly with person or persons, to the Bank whether on balance of account or by discount, or otherwise in respect of bills of exchange, promissory notes, cheques and other negotiable instruments, or in any manner whatsoever, and including interest with half-yearly rests, commission and other banking charges, and any low costs incurred in connection with the account. And I hereby further agree whenever requested by the Bank at my own costs to execute to the Bank a valid legal mortgage of such property in such form and with such power of sale and other provisions as the Bank may require for recovering the re-payment on demand of all moneys secured by this equitable mortgage. And I hereby also agree that so long as any money remain owing from me to the Bank to pay interest thereon to the Bank at the rate of ..... per cent per annum. And I hereby declare that the ducuments now deposited are all that are in my possession or control, and that the property is not charged or encumbered in any way whatsoever.

As witness my hand this ..... day of ..... 19 .....

SCHEDULE

Witness

1.
2.

.....

Customer's Signature

Promissory Note.

Stamp

Tk. 5,000.00 Dhaka,

August 1, 1992

In consideration of the loan of Tk. 5,000.00 (five thousand only) advanced by A.B. etc. to me, I hereby promise to repay the said loan of Tk. 5,000.00 with interest at ten percent per annum to the said AB or order on demand.

Signed ..... CD.. I.....

Stamp Dhaka,

Tk ..... February, 29, 1993

I, AB, etc, hereby promise to pay to CD, etc. or order the sum of Tk. ..... (in words) in twelve equal instalments of Tk. ..... each payable on the first day of every month commencing from the first day of March, 1994.

Signed ..... AB .....

Stamp

Tk .10,000 CHITTAGONG

June, 25, 1993

One month after date, I promise to pay Mr. Bahar the sum of taka ten thousand only, value received.

Morhed

Stamp

Tk .5,000 KHULNA

May, 30, 1993

On demand we promise to pay Mr. Rahim the sum of taka five thousand only, value received.

Monowar

Shahid.

Bill of Exchange

Stamp

Tk. 5000 Dhaka

March, 5, 1993

On demand pay Mr. X or order the sum of five thousand taka for value received.

Humayum.

To.

Mr. Zahir

11/3, Babar Road,

Chittagong.

Stamp

Tk. 5,000.00 Chittagong
1st May, 1993

On presentation pay Bearer the sum of ten thousand taka.

To
Mr. Khan Sardar
5, Mirpur Road
Dhaka.

Stamp

Tk .6,000 Dhaka,
September 5, 1992

Three months after date, pay to Khaleque or order the sum of taka six thousand, value received.

Baset

To
Md. Abdur Rouf
25/41, Santinagar,
Feni.

APPENDIX-XXVII
SOME LEGAL DECISIONS

BANK AND CUSTOMER

Where a person opens a current account with a Bank and pays money into it, the Bank is a debtor to the customer. If the Bank allows the customer to overdraw the account and he does so, he becomes a debtor to the Bank and each party could say that he had a separate account against the other. (1953) 5 DLR 69

BANGLADESH BANKS (NATIONALISATION) ORDER, 1972
(P.O. 26 OF 1972)

Sonali Bank is not a Government Department.-It is a public statutory body. Sonali Bank or other similar public statutory bodies which have been nationalised are not to act for and onbehalf of the Government. The State Vs. Abdul Awal (1983) 35 DLR 151.

Art. 9: In the absence of any Rule or Regulation, Board of Directors competent to fix criteria of promotions and ther matters of bank employees. Md. Belayet Hossain Vs. Janata Bank (1981) 33 DLR 59.

BANGLADESH BANK ORDER, 1972,
(P.O. NO 127 of 1972)

1. Art.7 : Terms and conditions of service of a Bank employee as were applicable on the 'appointed day', that is, on 16-12-71 shall continue to be applicable thereafter and under Article 7 of the Order such terms and conditions cannot be altered to the disadvantage of the employee. Governor, Bangladesh Bank vs. Huda (1975) 27 DLR (SC) 71.

2. Art. 25: On 16-12-71 demonetised notes of 500 and 100 rupees ceased to be legal tender is Bangladesh. Article 25 of the Bangladesh Bank Order provided that Pakistani Bank Notes issued by the former State Bank of Pakistan of the denomination of rupees 100 and issued before 8th June, 1971 "shall cease to be

legal tender". This provision indicates that denomination of 500 rupee and 100 rupee notes made on 7th June, 1971 was not recognised in Bangladesh under provisions of Article 25 of P.O. 127 of 1972. These notes ceased to be legal tender in Bangladesh on 16-12-1971 under the aforesaid Order. Md. Yahya Vs. Govt. of Bangladesh, (1983) DLR 182.

"Article 7: Joint seniority list prepared under the Circular affects the service of the Banks employees adversely and as such joint seniority list is invalid. Governor, Bangladesh Bank vs. Huda (1975) 27 DLR (SC) 71.

"Article 7 and 82 :Powers conferred by Article 82 read with regulation 2(a) do not include the power of changing the terms and conditions of a Bank employee as are available under Article 81.-Ibid.

"Art. 32: Liability of the Bangladesh Bank limited to the total amount of Bank notes in circulation on the appointed day i.e. 16-12-72. Demonetised notes having been withdrawn from circulation under M.L.R 81, the Bangladesh Bank not liable to pay any value to the holder of such notes. Md. Yahya Vs. Govt. of Bangladesh (1983) 35 DLR 182.

Art. 32 (1) read with Art.25.- In view of the provisions of Article 32 (1) read with that of Article 25 of Bangladesh Bank Order, 1972 (P.O. 27 of 1972), the Issue Department of Bangladesh Bank has no liablity for the demonetised notes surrendered under the provisions of Martial Law Regulation 81 of 1971.-Ibid.

"Article 162 (2)(e).-Power to make regulation under sub-cluse (e) of clause (2) of Article 82 does not include a power to do anything in violation of Art.7 to the disadvantage of a Bank employee. Governor of Bangladesh Vs. S. Huda (1975) 27 DLR (SA) 71.

"Art. 86(2)(e).-Art. 86(2)(e) does not authorise the Bank to make Regulation which may adversely affect the service condition of the employees who are already in service. Shamsul Hada va Governor, Bangladesh Bank (1976) 28 DLR 200.

"Art. 86.-Having regard to the provision of the President's Order No 127 of 1972, the Bangladesh Bank has no authority to issue any circular under Regulation 2A of the Staff Regulation under Art. 82 of the said President's Order affecting the seniority of the employee of the Bank with retrospective effect.-Ibid.

BANGLADESH BANK STAFF REGULATION

Regulation 12 (i) (ii). Right of termination of service matual.-When sub regulation (i) and (ii) are read together, they clearly show that Regulation 12 deals with mere "termination of service" which cannot be termed as punishment. The rights as contained in Regulation 12 is rather mutual-while an employee has been given the right to leave the service. Such termination does not involve any accusation in other words, the services of an employee is terminable without giving any stigma or making any accusation There is no doubt that sub-Regulations (i) and (ii) give right to the employees as well as to the employer to terminate the service, and termination of service by the employer cannot be treated as punishment (1979) 31 DLR (AD) 298.

Termination of service under sub-regulation (i) of regulation 12 is not a punishment-No notice need be served under Regulation 22.-Termination of service simpliciter, not being a punishment as contemplated under Regulation 22, the question of giving notice or an opportunity of being heard does not arise. In such a case, there is no scope for making any grievance on the ground of violation of the principle of natural justice.

It is true that both the appellants were permanent employees of the Bank but permanency of service makes no difference in the case of application of Sub-Regulation (ii) of Regulation 12.-Ibid.

BANGLADESH SHILPA BANK ORDER, 1972 (P.O. NO. 129 of 1972).

1. Article 24:-Payment of compensation to the erstwhile share-holders guaranteed by the Government. Failure to frame Rules is no ground to defer unduly the payment of compensation to the share-holders.- Non-payment of share-holders dues by the Bank unjustified. Chowdhury Md. Sarwar Vs Bangladesh Shilpa Bank (1980) 32 D.L.R 25

2. Article 34, clause (5) :-When Shilpa Bank takes over management and administration of any industrial concern under clause (5) of Article 34, no court shall entertain any case as against such taking over or pass any prohibitory order, etc. Civil Revision No 193 of 1986 Messrs. Moon Light Silk Mills Ltd Vs. Bangladesh Bank. 18 DLR (SC) 354.

SHILPA BANK RULES ON DIRECT SALE OF MORTGAGED PROPERTY

1. Sale of mortgaged property-irregularity in holding sale-Mere irregularity in holding a sale of mortgaged property by public tender does not divest the Bank of its power to sell the property by private negotiation. Irregularity in sale notice calling for public tender or non-compliance with other rules in case of sale by private negotiation have no effect on the sale. Fair Tech. Limited Vs. Bangladesh Shilpa Bank (Civil) 216 42 DLR (AD) (1990).

2. Rule 5 and 7 (3).- It cannot be laid down as a general rule that a sale by private negotiation will be invalid because the auction process that began has not been exhausted. When sale by private negotiation takes place and the matter is brought to the court, the question for consideration should be whether there was any malafide or lack of proper consideration for the transaction. 45 DLR (AD) (1993)-P.138.

Agrani Bank (Employees) Service Requlations, 1981 Requlation 28 (11) (e).-

"Second show cause notice-Since the departmental enquiry against the employee was held and his order of dismissal was passed on the basis of report of enquiry after the present Requlation came into force, his case will be governed by the Regulation and he will be entitled to a second show cause notice before his dismissal from srevice. This having not been done, the dismissal is illegal. 45 DLR (1993)-P.373.

BANKING COMPANIES ACT.-

Publication of outstanding dues Bangladesh Bank's competence to make publication-The argument that since the Banking Companies Act came into force at a later time, the Bangaldesh Bank is not entitled to publish the statement regarding the position of outstanding dues of an account holder as on 31.12.90 has no substance as section 37 without putting any time-limit has empowered the Bank to publish the information in public interest. 45 DLR (1993)-P.8.

ARTHA RIN ADALAT ACT.

Section 7.- There is no provision for any appeal against an interlocutory order passed by the Artha Rin Adalat, rather the proviso to scetion 7 of the Act has expressly created a bar against such order. 44 DLR (1992) P.394.

BANKER'S BOOKS EVIDENCE ACT (XVIII of 1881)

Sec. 3.-A pass book-issued by a Bank does not come within the difinition of Banker's Books Evidence Act. 1891, as given in sec. 3 of the Act and as such, its authenticity as well as the relevant entries must be proved (1954) 6 DLR 445.

S. 4 : Question was whether certificate given by Manager of a foreign bank from foreign country is admissible in evidence-Held, not admissible. Nabadwip Chandra Podder vs S.D. Ahmed, Official Receiver, (1969) 21 DLR 255.

S. 4- Evidentiary value of entries under section 4. read with section 34 of the Evidence Act.

Certified copy under section 4 of the Banker's Book Evidence Act shall be prima facie evidence of the existence of such an entry in the books of the bank and shall be admitted as evidence of the matters, transactions and accounts therein recorded to the same extent as the original entry itself. But no further or otherwise. It does not purport. therefore, to give the certified copy any greater efficiency than the original itself. It merely provides a simplified mode of proof of the original entry, provided the original entry itself is relevant to the enquiry or was admissible under the law prevailing in 1891.

The Evidence Act was a law applicable on the date of enactment of the Banker's Book Evidence Act in 1891. If under that Evidence Act of 1872, the original entry was not by itself sufficient to charge a person with liability, the certification of that entry under the latter Act could not made it so.

The mere production of a certified copy of the account under section 4 of the Banker's Book. Evidence Act is not by itself sufficient to charge the defendants with liability. The copy produced was tantamount, however, to production of entries from the original books of account. Those entries could have been admissible in evidence only for the purpose mentioned under the Evidence Act and to the extent therein provided. M/s Md. Siddiq vs. Australasia Bank Ltd.

Section 4.-In Chandrahar Goswami v. Gauhati Bank Ltd (1967) 37 Com 108 (S.C). it was held that entries of Bankers' Books are not alone sufficient evidence to charge any person with liability. The facts brought to the notice of the Supreme Court were that in the suit before the trial court Gauhati Bank Ltd, relied on the certified copy of its books to prove that a sum of Rs 10,000 was advanced to the defendant. That defendant contended that the accounts of the Bank were not kept correctly in the regular course of business and were fraudulent and were, therefore, not relevant and not admissible in evidence. The Supreme Court held that in view of the contention of the defendant mere reliance by the bank on the production of certified copies was not sufficient. The basis of this view was section 34 of the Evidence Act, which provides that "entries in books of accounts, regualarly kept in the course of business, are relevant whenever they refer to a matter which the court has to enquire, but such statements shall not alone be sufficient evidence to charge any person with liability" Since the Bank wanted to charge the defendant with the liability of a debtor, the certified copies would not constitute evidence for the purpose. The Court held that the certified copies are of the evidentiary value to the same extent as the original entry itself and no further. Therefore, where the entries are not admitted, it is the duty of the bank to produce evidence in support of the entries to show that the money was advanced, and thereafter the entries would be of use as corroborative evidence.

United Industrial Bank Ltd. V. G.C Dey, AIR 1974 Cal. 151.- An officer of the plaintiff bank produced a statement of account of the defendant with the bank duly certified by the branch Manager under the Banker's Books Evidence Act and deposed to the correctness of the statement. It appeared that a certain sum was due and the plaintiff demanded payment of the overdraft balance then put standing by two letters, the copies of which were also produced. But the defendant failed and neglected to pay the same. The Court held that the plaintiff's claim ought to succeed although the defendant filed a written statement and chose not to appear.

Tricumlal v. Laiclmidas (5 Bom LRP 85). Court in the matter, Banker's Banks Evidence Act, has laid down a specific principle that were a party desires an order under section 6 of the Bankres Books Eisdence Act, in respect of its own account, the court grants the order ex-parte; but when a person applies for such an order in respect of the account of another party, the court does not grant an order without notice to the other party and in case the court is not satisfied with the reason exterded, the court refuses to grant such an order.

NEGOTIABLE INSTRUMENTS ACT (XXVI of 1881)

S.4:-A promissory note payable on demand does not imply that a demand must be made and the words "on demand" only mean that a note is payable immediately or at sight. Rabia Khatun Vs. Ram Kali Mahajan. (1950) 2 DLR 385

Promissory note explained :-A promissory note is defined in section 4 of the Negotiable Instruments Act as an instrument in writing (not being a bank note or a currency note) containing an unconditional undertaking, signed by the maker, to pay on demand or at a fixed 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. It should be noticed that there is no mention of consideration in the definition and in that it differs from the definition of an agreement under the Contract Act. The maker or a holder of negotiable instrument, e.g. a promissory note, may endorse it by signing the same otherwise than as such maker, for the purpose of negotiation. He is, thereupon, called the "endorser." Ismail Vs. Fida Ally (1965) 17 DLR (SC) 531.

S. 5:-Sections 5 and 85A of the Negotiable Instruments Act make it clear that prima facie the relationship between the holder of the draft and any prior party is that of a creditor and debtor as prescribed by section 36 of the Negotiable Instruments Act. I PLR (Dac.) 20.

S.8:-"Holder of promissory note, bill of exchange or cheque" means any possession thereof and to receive or recover the amount due thereon from the parties thereto. 3 PLR (DAC) 463.

The negotiable instruments have a dual aspect which should be constantly kept in mind if confusion is to be avoided. In their negotiable aspect, they are similar to paper currency or chattel and in the other aspect, they are debts or chose in action. The provisions of the Negotiable Instruments Act are such that the owner of the instrument in its negotiable quality' and the owner of the chose in action need not be and in many cases will not be the same. Under section 8 of the said Act, it is only the holder who is entitled to the money due on and the possession of the

instrument. According to section 78 of said act it is the holder who can give a discharge for the amount and it is he alone who according to section 48 can negotiate it. The property in the insrument vests in him in spite of the fact the owner of the debt be another. Negotiation is not necessarily accompanied by the transfer of the chose in action. Hence if a suit be brought on the instrument it is only the holder who can sue. The owner of the debt has no title to the instrument as such. 1953 PLR (Lah.) 123

S.8:-'Holder'-In view of the definition of "holder' in section 8 of the Negotiable Instruments Act, the holder of a promissory note, bill of exchange or cheque means any person entitled in his own name to the possession thereof and to receive or recover amount due thereon from the parties thereto. The India Bank Ltd. Vs. Durvesh Brother (1965) 13 DLR 419.

S.9:-"Holder in due course"means any person who for consideration became the possessor of a promissory note, bill of exchange or cheque if payable to bearer, or the payee or the endorsee thereof if payable to order before the amount mentioned in it became payable to order, and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.

A holder in due course who gets these instruments in good faith in the course of their currency is not only himself protected against all defects of title of persons from whom he received them as current coin, but also serves as a channel to protect all subsequent holders; of all holders he occupies the best and most favoured position. A holder in due course can recover the amount of the instrument from all previous parties although, as a matter of fact, no consideration was paid by some of the previous parties to the instrument or there was a defect of title in the party from whom he took it. Once an instrument passes through the hands of a holder in due course it is purged of all defects. It is like current coin. Whosoever takes it can recover the amount from all parties previous to such holder. 3 PLR (Dac.)463.

The term "holder" means and includes an endorsee and also includes "holder in due course" and as such, a bank as holder of a cheque can cross it generally or specially under section 125 of the

N.I. Act. East Pak. Provincial Co-Operative Bank Vs Eastern Federal Union Insurance Co. (1956) 8 DLR 245.

S. 10 :-When a bank without ascertaining the position whether they are actually paying this amount to another bank to whom the cheque is crossed, paid the amount endorsed on the cheque to one K, the bearer of the cheque and whom they did not know, such payment can not be justified as payment 'without negligence' though it might be in good faith.

The words "good faith" are used in section 10 of the N.I. Act in the sense of the honesty. A payment may be honest, still it may be without care and caution. Payment though honest and in good faith may not be free from taint of "not without negligence." East Pak. Provincial Co-op, Bank Vs Eastern Federal Union Insurance Co. (1956) 8 DLR 245.

S. 19:-The words "on demand" are technical words of English law which, paradoxical though it may seem, only mean without demand. The object of saying that a promissory note is payable on demand is only that payment is not to be withheld till a particular date as is the case with promissory notes payable on a specified date. "On demand" means immediately or forthwith. 1956 PLR (Lah.) 292.

Ss. 26 and 78:-Tender by cheque is a valid tender unless creditor expressly objects or there is express arrangement for discharging liability in cash. Sarfaraz Khan Vs. Muhammad Abdul Rouf. (1969) 21 DLR (WP) 196.

S. 35 :-Liability of the endorser.- The liability of an endorser is laid down in section 35 of the Negotiable Instruments Act in the terms that in the absence of a contract to the contrary, the endorser of a negotiable instrument by indorsing it engages that on due presentment it shall be accepted and paid acording to its tenor and that if it be dishonoured he will compensate the holder or subsequent endorser, who is compelled to pay it for any loss or damage caused to him by such dishonour. Ismail Vs. Fida Ally (1965) 17 DLR (SC) 531.

When a person guarantees the payment in a promissory note as a surety and not an endorser, he is liable therefor when default in payment is made by the maker of the promissory note.

There is nothing in the Negotiable Instruments Act to support the view that parties to a negotiable instrument, other than the maker, the drawer, payee acceptor or endorser thereof can be held liable as an endorser or that the liabilities of other parties thereto such as a surety can be negotiated. Nevertheless a surety is liable for payment of the debt created by the instrument backed by him but the contract will be governed by the provisions of sections 127 to 147 of the Contract.Act, subject always to the rule that a contract of guarantee is a contract to perform the promise or discharge the liability of a third person in case of his default.- Ismail vs Fide Ally (1965) 17 DLA (SC) 531.

S. 46 :-Evidence whether can be led to show that what is real is not so when the case is between an endorser and an indorsee and when it is between an endorser and drawee:-Under the privisions of section 46 para 3 of the Negotiable Instruments Act, when the indorser of the instrument wants the endorsee to act as an agent, it must be shown on the note itself in order to succeed in a suit by the endorser.

When an endorser endorsed a bill of exchange in favour of the endorsee and makes delivery of the bill of exchange to the endorsee without qualification, in that case in between the endorser and the endorsee the endorser can lead evidence to show that what is apparent is not the real thing but the endorser cannot lead any oral evidence to show that what is apparent is not the real thing when the endorser wants to realise the money from the drawee instead of realisation by the endorsee from the drawee.

According to section 8 of the N.I. Act, the endorsee entitled to realise the money from the drawee. If, therefore, it is held that the endorser is also entitled to realise the money from the drawee, in that case two persons will be in a position to realise the money from the drawee, who may be made to pay twice in place of once. The India Bank Ltd. Vs. Durvesh Brothers (1961) 13 DLR 419.

S.63:-Acceptance of the bill relates back to the date of presentation:-Under Section 63 of the Negotiable Instruments Act, the holder of a bill of exchange must, if so required by the drawee of a bill of exchange presented for acceptance, allow the

drawee forty -eight hours (exclusive of public holidays) to consider whether he will accept it. It is well settled that on the expiry of the period mentioned therein, the acceptance will relate back to the date of presentment, S.M Hanif Ltd. Vs. Central Bank of India (1962) 14 DLR (SC) 308.

S.64:-A promissory note that is payable on demand or at sight is governed by section 70 of the Limitation Act and time runs from the date of the execution of the instrument and under section 64 of the Negotiable Instruments Act where note is payable on demand: no presentation is necessary. Rabia Khatun Vs. Ram Kati Mahajan, (1950) 2 DLR 385.

S.78:-A payee or a holder of a promissory note, though a benamdar is entitled to maintain a suit on it. Under section 78 of the N.I. Act the maker of a promissory note can obtain discharge of the debt by payment to the holder only.

Where a hand-note is executed in favour of benamdar, it is not opon to the promisor to assert that the holder of the note is not the beneficial owner. Conversely, if a suit is to be based upon the handnotes, it must be instituted by the holder whose name appears on the note. Jogendra M. Deb Vs. Rat Saheb Nirmalya Chaklader. (1956) 8 DLR 68.

S118:-Initial presumption that an instrument was for consideration is rebuttable by the person who alleges the contrary:-Under section 118 of the Negotiable Instruments Act, there is initial presumption that negotiable instrument is made, drawn, accepted or endorsed for consideration but this presumption is a rebuttable presumption and the onus is on the person denying consideration to allege and prove the same. Fine Textile Mills Ltd. Vs. Haji Umar, (1963) 15 DLR (SC) 86.

Ss126 and 129:-Payment to bank to which the cheque is crossed is contemplated both under sections 126 and 129 and payment means payment either in cash or by cheque.

A cross cheque presented by a bank, to which it is crossed at the counter of the drawee bank can be paid over the counter and the payment may either be in cheque or in cash and in the absence of any instruction the drawee bank is entitled to pay it in whatever way they think fit and it would be payment in due course, if it is paid in good faith and without negligence on the

part of the drawee bank. Fine Textile mills Ltd. Us. Haji Umar (1963) 15 DLR (SC) 36.

S134: -Liability includes the determination of the measure of damages:-The word "liabilities" occurring in section 134 of the Negotiable Instruments Act, would obviously include the determination of the measure of damages in case of non-acceptance or refusal to pay on the part of the acceptor. The central Bank of India Vs. Md. Islam Khan. 1962-14 DLR (SC) 86.

Section-4:-Narayan Das v. Punia Das AIR (1959) Orissa 176. Narayan Das filed a suit against Punia Das for recovery of an amount on the basis of a promissory note dated 28.5.55 executed by Punia Das in favour of Narayan Das. Punia Das defended that he has given his thumb impression on a blank piece of paper under threat and coercion. The lower court dismissed the suit turning down the evidence of the attestor and the scribe, as they were proved to be interested in the plaintiff and on the plea that the name of the payee was not mentioned with certainty in the body of promissory note in terms of Section 4 of the NI Act. In the revision the High Court upheld the dismissal of the suit by the lower court by emphasising that what the legislature intends in unmistakable terms is that not only that the money advanced is a certain sum of money but it is advanced to a person who is certain. It further held that Narayan Das could fall back on the original consideration for the promissory note and sue for it, after amending his plaint and consequently the case was remitted to the trial court to enable Narayan Das to do so.

Section-4:-Promissory Note- Requirements

Jagjiwanda Bhikabhai v Guman Bhai Narottamdas AIR (1967) Guj 1.-The objection of the defendant is that it was not promissory note.The Courtpointed out that Section 4 of the Negotiable Instruments Act, 1881, does not say that the name of the payee must be specified in the words of the promise nor does it say that the payee must be specified in any particular part of the instrument and the court also observed that the name of the payee may be set out in any part of the instrument and so long as it appears clearly on a reading of the instrument taken as a whole that the instrument specified the payee with certainty, the

instrument must be held to be a promissory note, if the other ingredients of the definition are satisfied. Further the definition of promissory note in Section 4 does not lay down any rule that an instrument in order to be a promissory note must be negotiable. Further the words,"I promise to pay you on demand", do not restrict negotiability. It must be properly stamped. However, as the subject instrument was unstamped, the High Court refused to admit it in evidence and the plaintiff's claim was therefore rejected.

Section 118(a):-Presumptions to Consideration

Narayan Rao v. Ramachandra Rao AIR (1959) Andhra Pradesh 370.-The respondent/plaintiff brought a suit against the appellant/defendant on a promissory note executed by the appellant/ defendant in favour of one, who had endorsed it to the respondent/ plaintiff. The defendant admitted that he had executed the document in question but contended that the same was not a promessory note and was therefore not enforceable.There was also the question whether there was consideration for the instrument. The suit was decreed by the lower court. In appeal the High Court held that looking to the wording of the instrument, it was a promissory note as defined in Section 4 of the NI Act and the respondent/ plaintiff was entitled to the benefit of the presumption under Section 118 of the NI Act.

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.

In case of forged cheques, the banker cannot escape from liability, even if the customer was neglient 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".

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.

The following are REPRODUCTION from B.K Pals up to date Ready Reference on N.I.Act.-

Scope of the Act: The Act is not a compendium of the whole law relating to the transfer of interest in negotiable instruments or the procedure governing actions on them.1940 Bom.164: 188 I.C. 618, it makes no provision as regards hundis. 1936 All. 396 162 I. C 894.

A negotiable instrument means a promissory note, bill of exchange or cheque payable either to order or to bearer and a promissory note, bill of exchange or cheque is payable to order which is expressed to be so payable to a particular person and does not contain words prohibiting transfer, 1923 Lah. 388, 22 C. W.N. 1036.

S.4 Promissory note:-A hand-note is a promissory note, 1941 pat. 99: 190 I. C. 704. A promissory note may be payable in instalments. 1935 All 410: 154 I.C. 517.

One of the most essential characteristics of a promissory note is certainty both as regards the person by whom and to whom payment is to be made, because any uncertainly in such matters would tend to restrict credit and hamper commerce. 35 C.W.N. 53:58 C.I.J.37:1931 Cal 387:131 I. C. 570, see also 1934 Lah.93,

A promissory note executed in favour of the "Mohathameem Sahib Guru of Gadwal Samasthenam" is one in favour of a certain person within the meaning of s.4. 53 M. 968:59 M. L. J. 548: 1930 Mad. 1004.

A promissory note payable in favour of an institution which has no judicial status is void. 1934 Nag. 207: 151 I. C. 893.

A promissory note which expresses a promise to pay on demand a certain sum with interest at 10 per cent per annum with quarterly rests is for a "sum certain" within the meaning of s. 4. 7Pat. 41:1929 Pat. 36:115 I.C. 201.

An admission of liability to pay does not make it a promissory note. 1938 All. 619: 178 I. C 578.

The instrument must contain in words unconditional undertaking to pay a sum of money, acknowledgement of receipt of money or indebtedness is not sufficient. 10 M. L. T. 538 Bom. L.R. 839, 21 B. 986, meaning of "unconditional under taking" 1935 Mad. 447 F. B.

A document promising to pay money and paddy is not promissory note, because pro-note must be expressed to be payable in money only. 4 M.296 F. B.

War-bond is promissory note. 1933 Mad. 376. "I am bound to pay" or "I am liable to pay" only constitutes an acknowledgement of liability to pay and does not amount to an undertaking to pay, 21 M. 49, 1934 Mad. 220.

For the purpose of stamp, an attested decument purporting to be a promissory note but not payable to bearer or order, is a bond as defined in s. 2(5) of the Stamp Act, but a similar document, payable to order or bearer is a promissory note, 29 B.82: 6 Bom. L.R. 841, 8 M. 87 F. B. 13 M.

Promissory note not payable to a person or bearer or order is illegal and void. 40 M. 585. It may amount to a bond. 34 C. W. N. 911: 1930 Cal.630.

The payee or bearer must be certain, 1953 Cal. 758. A document which sets out the debt owing from father of the executant and provides for payment in instalment is a promissory note. 1935 All, 410.

Mere memorandum or note in respect of a transaction just settled between the parties, with a stipulation to pay interest, but no promise to repay the money is neither a promissory note nor an agreement, 27 A 84: I A. L.J 43.

An instrument containing an express promise to pay the amount acknowledged to be due is a promissory note, 8 C. 645, and in case it is not a promissory note it may be valid as an agreement. 25 B. 373.

A document attested by witnesses and containing unconditional undertaking to pay and expressing to the bearer is a bond 3 Bom L. R. 699.

Simple attestation does not change the character of the promissory note. 8 M. 87, 17 A. 211.

A letter requesting a loan with a promise to repay is not a promissory note as it is dependent on advance being made. 27 M.I.

A letter offering to pay a debt due by another after limited period on demand is only a proposal and not a promissory note. 1934 Lah. 93.

Where the note was in the following terms: "I having hereby taken on this date from your Tahabil the sum of Rs.... through ..... do hereby promise and bind myself in writing that I will pay interest on the above amount at the rate of I per cent per month up to the date of realisation. I will repay the said amount with interest on demand on your behalf. I hold myself wholly liable for the said amount".Held :-As there was no covenant that the repayment would be made to the creditor or to his order and as there was no evidence that by any custom or usage instruments of this description were negotiable in the locality it was not a negotiable instrument within s. 4.:-held also that illustration (b) of s.4 can not be relied on because illustration can not control the plain meaning of the words of the statute. 14 C. W. N. 414: 11C, L. J. 236.

But there is no rule laying down in which part of the documents the payee is to be named or by what kind of language. 67 M. L. J. 595; 1934 Mad, 676.

A document affixed with a receipt stamp contained the following terms."The receipt is hereby executed by H. and A, residents of Hoti, for Rs. 43,900 half of which amount comes to Rs. 21,950 received from the firm of L. for and on behalf of M. of Hoti. This amount to be payable after two years. Interest at the rate of Rs. 5/4 p.c. per year to be charged. Dated Ist. April 1917, Stamp has been duly affixed". It was not a promissory note but only a receipt. As the document did not contain all the terms of the contract, parties were not prevented from proving the terms. 17 Lah. 557: 40 C. W. N. 997: 38 Bom. L. R. 739.

Where the executant has not received any consideration for the promissory note, it does not create an oblglation. 1936 Cal. 315: 167 I. C. 301.

A post-dated promissory note is not invalid. 1952 Nag. 308.

Insufficiently or wrongly stamped promissory note, validity of:-There is no bar preventing the court from using a promissory note which is stamped with an one anna stamp instead of two annas stamp as a piece of evidence supporting the plaintiff's case as to loan. 53 C. L. J. 254: 1931 Cal 480.

A promissory note stamped with quarter anna postal stamp is a document bearing stamp of improper description and can be validated by the Collector under R. 18 of the Govt. of India Stamp Rules. 55 M 627: 1932 Mad. 390 F. B.

Suit may be brought against some:-Suit may be brught against some of the makers of pro-note. 5 M. 37, 6B. 700,14 B. 408,

"On demand" is a mere formula meaning that the money is payable immediately or at once; it does not import a condition that a demand ought to made before payment can be enforced. 4.C. 283 p 294, 20 M. 245, but in case of bond, such actual demand is necessary.

Payable on demand is payable at the instant the note is made and no demand is necessary. On demand is distinct from 'after demand'; in the latter case demand is necessary before suit, 1917 Pat.(20, M, 245 P. 248: 21 M. 139), Ref.

S.4 :-The liability on a pro-note payable on demand arises from the date of the note and not from the date of demand, and

under the provisions of s. 80 interest also runs from the date of note. 94 I.C. 21: 28 Bom. L.R. 141: 1926 Bom. 241: 50 B. 266.

Stipulation to pay interest does not change the character of the promissory note. 4 Bom. L.R. 912, 9A. 351, 3 A, 260 F.B.

There must be express promise to pay, 22 B. 986, 21 M. 49: 2 M. W.N. 38.

When promissory note is inadmissible whether secondary evidence may be given.-In case of a loan antecedent to an independent of or separable from the promissory note taken in its support, a suit lies on the original consideration even if the note be not admissible in evidence. 41 C.W.N. 537.39 C.W.N. 1235 but in such a case the suit should be frame in the alternative form, 23 C.W.N 93 P.C., or the plaint should be and may be amended. 39 C.W.N. 1235, because if the claim be based on the promissory note alone the plaintiff cannot succeed on the original consideration without amending the plaint. 39 C.W.N. 1241, 40 C.W.N 473; but when there is an allegation of such a loan in the body of the plaint the heading describing it as a suit on the handnote need not be amended. 41 C.W.N. 537: the fact that the money has been lent implies a promise to pay it and the plaintiff in such a case has a cause of action on the implied promise which is independent of the promissory note. 40 C.W.N. 696:62 C.L.J. 545; 1936 Cal. 127. But where the original cause of action is a bill or note itself and does not exist independently of it, the plainiff cannot disregard the note and sue for the original consideration. 61 C. 433: 38 C.W.N. 488: 1934 Cal, 554.

When a promissory note is given in payment for goods sold and delivered the original debt can be availed of by the seller if the promissory note be inadmissible, but when it is part and parcel of the transaction of laon containing terms of contract, the contract cannot independently be proved, 59 M 268:

Every loan carries with it the contract to repay, so if a handnote is found to be inadmissible in evidence, there is nothing in law to prevent the plaintiff from giving other evidence as regards the laon. 1931 Pat. 293, 1932 Oudh 235: 139 I.C 298 F.B and there is nothing to prevent the plaintiff using a promissory note which is stamped with an one anna stamp instead of two

annas stamp as a piece of evidence supporting his case as to laon. 53 C.L.J. 254; 1931 Cal. 480: 134 I.C. 575, but the debt must be separable from the promissory note, 1933 All 280 following 53 A. 114: 1931 All 183: 1931 A.L.J. 64 F.B; But a suit on an earlier handnote is maintainable if not time barred when the letter handnote is found to be inadmissile in evidence. 1931 All. 560; 1931 A.L.J 522.

From the mere fact that a bill of exchange or a hundi has been executed, it does not follow that the whole of the contract between the parties has been reduced to the form of document. When all the terms of the contract are not contained in the handi, S 91 does not exclude evidence showing the terms of the whole contract. 51 A. 530: 1929 All. 254, 1934 Rang 389 F.B.

A plaintiff suing on a hundi may alternatively claim relief upon the consideration but not for the first time upon appeal to the Privy Council, 23 C.W.N. 937 P.C.

Where in a suit upon a promissory note executed by the Karta of a joint Hindu family, the plaintiff wanted to have a decree on the original cause of action against all the members of the family, oral evidence inadmissible to prove the different causes of action. 41 C.L.J. 535: 1925. Cal. 1153.

Renewed promissory note for barred debt.-A promissory note executed in renewal of a former note which is barred by limitation is a promise in writing to pay a debt under s. 25 (3), Contract Act and is enforceable. The second instrument need not recite the details of the loan nor the promisor should have knowledge of the fact that the debt is barred. 63 C. 759: 40 C.W.N. 130.

Admissibility of evidence varying the terms of promissory note.-The promise of a promissory note can prove that the actual consideration was something different from that recived in the document. 1935 Lah.

Where a promissory note is payable on demand, an agreement providing for a different mode of satisfaction is inadmissible. 63 I.C. 748, 45 B 1135.

A person is not entitled to adduce oral evidence of a condition by which he says it was agreed to postpone the enforcement of a promissory note, 90 I. C 1020; 1925 M.W.N.601: 1925 Mad. 1240.

S.5:-A post dated cheque is a bill of exchange. 1942. Cal. 562: 46 C.W.N. 645.

Bill of exchange may include a hundi but hundi does not include a bill of exchange. 23 C.W.N. 524: 29 C.L. J. 305.

Hundis are negotiable instruments written in some oriental language being sometimes bills of exchange and at others promissory notes. In a suit on a hundi, the first essential is to ascertain whether the hundi is a promissory note or a bill of exchange: 58 I.C. 313.

A person holding a bill for collection with a lien on the bill is a holder of the bill for consideration. 49 B. 270: 87 I.C. 982 1925 Bom. 369.

An instrument is not taken out of the definition of a bill of exchange simply for the reason that the drawer and the drawee are the same person. 1930 Pat. 239: 9 Pat. 717: 127 I. C. 575.

An instrument called a 'hundi' but in the form of a promissory note becomes a bill of exchange on the acceptance of a third party though the bill is not addressed to him and he is not named as drawee, provided his acceptance is not inconsistent with the address. 57 C. 695: 1930 Cal. 697: 129 I. C. 305.

S. 6 Cheque.-Post-dated cheques are cheques and after the due dates may be sued upon as cheques. 52 C 677. 90 I. C 59.

S.7 "Drawer" "Drawee".-The definition of "drawer" is not exhaustive, the maker of a promissory note can also be called a "drawer", 1935 Lah. 153.

Marking or certification of cheque by bank is not acceptance 1944 P.C. 58: 48 C.W.N. 810: 47 Bom. L.R. 578.

There cannot be an oral acceptance of hundi apart from mercantile usage, 154 SC 554:

S.8. Holder. -The endorsee of a promissory note to whom the encorsement has been legally made followed by delivery to him of the note is the holder of the note. 2 CWN 286, significance of the words "entitled in his own name". 30 M. 88, 44 290, 30 M. 44.

A purchaser of promissory note is a holder. 1934 Cal. 549: 38 C. W. N. 465.

A receiver is a "holder" of a promissory note within the meaning of this section and can sue. 41 C.W.N.697, 35, 8 C.W.N. 53.

S.9. Holder in due course.-By taking a defective cheque a transferee does not become a holder for value. 1928 All. 68.

The presumption that possessor of negotiable instrument is holder in due course is rebutted if maker proves that it has been obtained by fraud or offence or for unlawful consideration, 1933 A.L.J. 1241.

When a negotiable instrument bears a forged endorsement, no person can claim title to it. 36 C. 235, 24 A, 428.

Where there is a prohibitory order of the court restraining the payee from dealing with or receiving the money due under a promissory note, an endorsee from him who has knowledge of such prohibition is not a holder in due course under s.9. 46 M. 415.

Endorsee of a promissory note payable on demand is a "holder is due course." 1951 Cal. 55: 6 D.L.R. Cal. 125. and must be presumed to have had no knowledge of the discharge of demand. 1936 Mad. 879.

Where a promissory note is taken in the name of a joint Hindu family firm, the members thereof are holders in due course. 1939 Bom. 147: 181 I.C. 808.

S.10: Payment in due course:-Where the drawees of Shah jog hundi made payment although the drawer had notified them by a telegram to stop payment until further instructions, payment by them was not a payment in due course. 26 A. 443.

S.11: Inland instrument:-A bill drawn upon a resident in British India is an inland bill as defined in s. 11 wherever it may have been drawn in or out of British India. 57 C. 730 Cal. 692; 129 I. C. 190.

S.13: Negotiable Instrument:-The person to whom the money is to be paid or that it is to be paid to bearer must be expressly stated. 1938 Nag. 464: 177 I. C. 889.

A payee of the promissory note is the only person who can sue upon it. 1934 Bom.356.

A bill payable to a particular person and not bearer or order is nonetheless a negotiable instrument by virtue of Expl. I to S. 13. 1930 Pat. 239: 9 Pat. 717: 127 I. C.575.

Substituted hundi not duly stamped does not discharge from the liability under the original hundi. 1923 Lah. 396: 75 I. C. 827.

S.14. Negotiation:-It is not every transfer that amounts to negotiation. A transfer is negotiation which constitutes the transferee a "holder" within s.8. 1935 All. 1041.

S.15. Indorsement:-Signature on the back consitutes indorsement. 1925 Sind 9.

A mere written acknowledgment of receipt of money due under a promissory note does not come under ss. 15 and 16, 59 I. C. 943: 39 M. L. J. 273.

Where an endorser gets another person to write his name for him. it is validly signed, 1936 Rang. 27,40 M. 1171 Rel, on.

S. 17. Ambiguous instrument:-When an instrument is ambiguous, the holder is entitled to treat it as hundi or pronote,129 I. C, 305 and this right is not taken away by the stamp. 1932 Mad. 765, but when he elects to treat it as bill of exchange he cannot subsequently treat the same as promissory note. 15 B. 267. 58 I. C. 313.

S.19. Instruments payable on demand:-A bill of exchange is payable on demand. 451. C. 22.

A promissory note payable on demand does not become payable until demand is made, so a transfer before demand is valid. 1923 Lah. 638. 47 C. 861 Ref.

S.20 Inchoate stamped instrument:-A person, whom a stamped and signed paper is delivered may complete it in favour of another person. 1941 Pat.504: 194 I. C 433.

S.22 .Maturity- Days of grace:-The term "maturity" can have no application to a promissory note payable on demand. 130 I. C. 477.

A bill of exchange which is not expressed to be payable on demand, at sight or on presentation is at maturity on the third day after the day on which it is expressed to be payable. 39A, 86.

S. 26. Capacity to make promissory notes etc:-The manager of a Hindu joint family is not its agent but represents the family in all its dealings with outsiders and on the negotiable instrument drawn by the manager, the other members would be liable. 44 A. 393, 41 C. L. J. 535; 88 I.C. 1025. II C.W.N. 139.

S. 27 Agency.-Under this section a principal can only be made liable, through his agent on a negotiable instrument, when the agent acts on the principal's name i.e., when he signs as agent. 30 M. 88 F. B.

An agent who is authorised to draw a hundi in the name of his principal and to sign his name is not required to indicate on the hundi that he is drawing as an agent, 1946 Lah. 387: 224 I. C. 117.

The name of the person or firm to be charged should be clearly stated on the face or on the back of the document so that the responsibility is made plain and can be instantly recognised as the document passes from hand to hand. It is not enough that the prinicpal's name should be "in some way" disclosed in the document. In a suit against a person whose name properly appears as party to the instrument it is not open either by way of claim or defence to show that the signatory was in reality acting for an undisclosed principal. 23 C. W. N 937 P. C. 1953 Orissa 179.

A person drawing a hundi or bill of exchange or making a pronote as trustee is personally liable. 41 M. 815, 1943 Mad. 247: 207 I. C. 389.

Where a promissory note executed by an executor the estate of the testator is not payable. 1937 Mad. 153.

There is nothing to show ordinary law of agency stated in S. 226 Contract Act is applicable to negotiable instruments. 40.M 1171, 193, 4 M. 351.

Where a promissory note was signed by a person and below his signature appeared the word "Managing Agent D. & Co." but the Articles of Association of the Company did not authorise him to sign the note, held that the Company was not liable under the note. 52 A. 883; 1930 All. 778. 1930 A. L.J. 1052.

A pro-note executed by the secratary of a company is binding against the company. 24 Bom. L.R.355.

A director for a company executing a promissory note both in his personal capacity and on behalf of the company is personally liable. 1940 Cal. 177; 70 C.L.J. 307.

Where the note was signed by the executant and thereafter he was described as agent and attorney of another , he was perssonally liable; the words "agent" and "attorney" were descriptive only, 37 C. W.N.296: 1933 Cal. 660, Contra. 1941 Mad. 417: 195 I.C.561 F.B.

Where a partner of a firm executes a promissory note in his individual capacity only he is alone liable. 1933 Bom. 101, 1945 Mad. 439.

How far a prpmissory note executed by the karta or manager of the joint family is binding against other members.-Where the manager of a joint family borrows money on a promissory note for a joint family businses or to meet a joint family necessity, the other members of the family may be sued on the note but their liabilities are limited to their shares of the joint family property. 11 C. W N. 139 7 C. W.N. 725, 23 M. 597. But in such cases there is no presumption that the borrowing was for the purposes of the joint family businses and the lender must prove that the money was required for the family business. 36 Bom. L.R.225: 1934 M.W.N.4: 38 C.W.N. 201.

The liability of the other members follows from authority of the managing member for the contracts made by him for the benefit of the family or carrying on legitimate benefit of the family, 1933 Lah. 494, (1916) P.C.146 P.C. 1925 Cal. 1133.

It is open and proper to sue on the promissory note and alternatively on the consideration impleading also the members of the family on the allegation that the debt was incurred for the purposes of the family or the family business. 38 C.W.N. 1146: 60 C.L.J,91,25 Bom. L,R. 151: 1932 Bom. 244; because the other members will be liable on an entirely different cause of action, namely, on debt. 41 C.L.J. 535: 1925 Cal. 1153" Amendment of the plaint impleading other members alternatively should be allowed even if the application is made after limitation period. 38 C,W,N. 1146" 60 C, L, J, 91.

S. 28" Liability of agent signing:-Where the agent does not disclose the name of his principal, he is personally liable. 42 I,C, 642, 641.C. 742 (c).

The name of a person or firm to be charged upon a negotiable instrument must be so stated in the document itself to make it clear that he is the person liable on it. 46 C. 663 P.C. 1933 Bom. 444 1944 Oudh 273.

Personal liability is to be determined by the language of the promissory note 1926 Mad. 390: 92 I.C.805 : 50 M.L.I.125.

Pro-note executed by mother as guardian of minor but no description as guardian in the signature-intention to exclude personal liability, minor is liable, 58 M, 735:1935 Mad. 447 F,B,

Where the signature of the executant was made describing him as "Chairman of the Weaver's Society" but nothing was said as to on whose behalf the promissory note was executed, held that the executant was personally liable. 1932 Bom. 607; so also in case where the executant described himself as "common manager". 40 C,W,N, 92: 164 I. C. 728.

S. 29: Liability of legal representative signing:-Executors are personally liable on promissory notes executed by them as such even though they may be acting for the benefit of the testator's estate, unless their liability is excluded in the manner provided in the Sec, 47. M,L,J,, 765: 1925 Mad, 371.

The language in s. 29 is different from that of s. 28 in that there must be express words limiting liability which can only be limited to the extent of the assets of the deceaed, 1926 Mad. 390: 92 I,C, 305.

S. 30: Liability of drawer:-It is plain from the terms of ss. 30 and 93 that notice of dishonor should be given to the drawer of a hundi to give the plantiff a cause of action and notice can be dispensed with under the circumstances mentiond in s. 98. 30 C. 977: 7 C.W.N 878. held in a case where the holder did not give notice of dishonour till after 10 days, that the conduct of the holder discharged the drawer from his liability according to the terms of secs 30, 39 and 86 of this Act. 12 C. W.N. 644: 8 C.L.J. 163: Notice of dishonour should be given as soon as the bill is dishonoured. 116 I.C. 887.

Drawers of bills of exchange who discount them with a bank are bound, in the case of dishonour by the acceptors, to compensate the holder for value (that is, the Bank). unless they (the drawers) can show that when they discounted the bills they bargained that the transaction should be without recoarse. 49 C.L.J. 61" 32 C.W.N. 30: 25 A.L.J. 665:

S. 32: Liability of maker of note and acceptor of bill:-Drawer is not liable unless he has accepted. 0954. S.C. 554: 1954 S.C.J. 626: 1954 S.C.A. 842.

Where a person against whom a bill of exchange drawn by name, accepts the bill for or on behalf of a Corporation of which he is a member, there is the valid acceptance of the bill. 27 Bom. L.R. 283: 87 sc 485: 1925 Bom 252.

S. 35: Liability of endorser.-This section does not apply to promissory note payable on demand. 1931 Mad. 113: 130 I. C. 477: 1930 M. W. N. 1232.

S. 43: Negotiable instrument made without consideration:-When a promissory note is renewed, it is not without consideration even if the former note is not delivered to the maker or cancelled. 40 C. W. N. 130.

S. 44: Partial absence or failure of money consideration.-The plea of partial failure of consideraton was well founded in the case. 1934 M. W. N 1382.

Ss. 46 to 51: Negotiation by delivery and endorsement.-A promissory note may be transferred in one of three ways. (1) by endorsement and delivery as a negotiable instrument under s. 48. (2) by written assignment under s. 130 T. P. Act. (3) by transfer

under the general law, i. e by delivery for value or assignment of value just as a mere chattel may be delivered. 66. I. C. 501, 16 C. W. N. 666, 24 M. 654, 28 M. 544, 31 M. 534, 9 M. L. T. 169 Rel.

A handnote has two characters, it is negotiable and it is also actionable, and title may be transferred by act of parties, for example, by assignment as also by the procedure prescribed by the N. I. Act. So it may be transferred by registered kabala. 61 C. 425: 38 C. W. N. 465: 1934 Cal. 549, 41 C.W.N, 697P, 700.Section 137 of the T, P, Act does not prohibit such a transfer, 1937 Pat, 100: 16 Pat, 74 F. B.

Sending of cheques by post does not constitute delivery, 50 B, 118.

Govt, promissory notes can be transferred by registered deed of gift. 16 C. W. N. 666.

An instrument containing a promise to pay to a certain person without the words 'order' or 'bearer' or their equlivalent is a non-negotiable promissory note and it cannot be transferred by mere endorsement. 7 M. L. J. 231.

Although an assignment of a negotiable instrument can be effected only by endorsement, that does not prevent any arrangement not to negotiate it but to put an end to it, 12 C, W, N, 1102: 36 C,493.

Section 50: Is not limited to negotiable instruments payable to order. It applies to any negotiable instrument whether it is payable in the first instance to order or to bearer. 27 Bom, L, R, 34; 87 I, C, 118: 1925 Bom, 173.

An endorsee can sue only on the promissory note and not on the debt, 1951 Bom, 345: 52 Bom. L.R.,830.

Section 51: Does not require that the endorsements should be at one and the same time, 1922 M,W. N, 263. 1953 Mad.840: (1953) 1 M. L, J, 823.

S.57 Negotiation by legal representative.-Section 57 prescribes how a note may be negotiated by the legal representatives of a deceased person, but this is not the only method of having title to a promissory note, 42 C, W, N, 697p, 700 41 M, 353.

S. 60: Instrument negotiable till payment or satisfaction.- Payment by the maker of promissory note to the payee is no defence against a holder in due course. 35 I. C. 591.

S. 61: Presentment for acceptance:-By the general law there is no specific time within which a hundi payable at sight or payable on arrival at a particular place is to be presented within reasonable time. 11 C. 344.

No presentation is valid unless it is made after the bill had matured, 87 I. C. 488: 47 A. 572: 1925 All. 442: 22 A. L.J, 349.

S.64: Presentment for payment: Presentment of a promissory note which is payable at a specified place is necessary to render the maker liable under it. 1931 Lah. 758, 1929 Lah 2401937 Lah. 257 173 I. C 175.

Section 64 should be given its plain meaning and the exemption to it must be read as an independent rule of law. The result of non-presentment of hundis for payment is not the exemption of the acceptor from liability but the exemption of other parties to the hundis. 1930 All. 648: 125 I. C 449 1930 A. L.J. 818.

Though the parties to a promissory note other than the maker are discharged from their liabilities by reason of default in making presentment for payment, the maker is nevertheless liable except when the note is payable at a specified place. 1929 Lah. 240: 10 Lah, 755: 115 I, C.860, 30 M, 172.

Neither the bankruptcy nor death of the party dispenses with the presentment under s. 64 as even the loss of the bill or the note does not excuse non-presentment, 72 I, C, 777.

The presentment requisite in the case of hundi is presentment for payment and not presentment for acceptance, 1923 All, 345: 345:71 I, C, 610.

S. 69: Instruments payable at specified place:-The word place includes places, 1926 Mad; 792: 50 M, L, J, 242. Where the notes provide for the money to be paid "at Poona, Bomby or elsewhere" it is not one payable at a specified place, 60 B 796: 1936 Bom. 218.

A note payable in a large city is not payable at specified place 6 D, L, R, Cal 125: 1951 Cal, 55.

The address at the head of promissory note is not the place of payment, 1951 Cal. 55: 6 D. L. R. Cal . 125.

It is not necessary that the holder should exhibit the promissory note and then demand payment, 50 C. W. N. 773.

S.76: When presentment unnecessary:-Mere demand of money is not presentement, 55 I.C 610, 87 I. C. 488.

No presntation is necessary if the maker of the promissory note does not reside at the specified place. 1943 Lah 121: 210 I. C. 91.

Even part promise to pay the note is sufficient to constitute an engagement to pay notwithstanding non-presentment, 47 A. 572: 23 A.L. J. 349: 87 I. C. 488.

Where there is no allegation that the presentment was excused, the plaintiff must prove that the drawee was required to accept the bill, and that he honoured it by non-acceptance, 86 I. C. 576: 1925 and, 444: 21 L. W. 210.

Though the plaintiff in a suit on a Hundi fails to prove that there had been a presentation of the Hundi alleged by him, he could nevertheless show that the case was one in which no presentation was necessary, 1922. All. 422.

Presentment for payment is dispensed with as against the drawer if the drawer could not suffer damage from want of presentation, 39 A. 364.

Where the promissory note is in the hand of the drawee, the drawer cannot plead that he would suffer damage for want of presentation, 1936 Cal 489.

Where the drawer and drawee of a hundi is the same person, no presentation on due date is necessary. 1926 Lah. 328: 27 Punj L. R. 75. 44 A. 554. 1941 Pesh. 45: 195 I. C. 185 1939 Lah. 225.

The word "drawer" in S. 76 (d) includes the maker of promissory note. 1935 Lah. 153.

S. 78: To whom payment should be made:-The payment must be made to the holder, 30 M. 88 F.B., 49 A. 547.

If the note be in the name of the manager of the firm and the manager elects to treat the payment to his firm as the payment to

himself, the payment to the firm is sufficient discharge, 1936 Cal, 315.

A joint payee of a pro-note cannot discharge the maker of the note effectively as the word "holder" applies to all the payees. 1937 Rang. IF. B.

A benamdar cannot sue on the promissory note. 1934 Mad 391, 1935 Oudh 278, 1937 Pat. 100

No one except the holder of a promissory note can maintain a suit on a promissory note. The fact that the holder has been made a party and has admitted that he is only the plaintiff's benamdar makes no distinction. 58 C. 752: 35 C. W. N. 53 : 53 C . L. J.37: Cal, 387. Similarly it has been held by the Allahabad High Court that where a promissory note is executed in favour of one person in lieu of considerations advanced by another, the promisor cannot pay money to the latter and get rid of the liability. But when the real creditor sues making the debtor and the holder of the note parties, a decree can be passed with a clear provision that payment shall be made to the holder or to his credit and if it is made by deposit in Court or if it be recovered in execution, it shall be to the credit of the holder, 53 A. 5: 1931 All. 108: 130 I. C. 698 But the Patna High Court holds a contrary view. 1930 Pat. 313:11 Patl L. T. 255, 1932 Pat. 246. According to Patna High Court the test is whether he can give a valid discharge. 1934 Pat. 85, 1930 Pat. 313. 1947 All. 52: 226 I. C. 358.

The real creditor can sue if the liability of the debtor to the holder has been discharged 1937 Cal. 753: 41 C. W. N. 1283.

A suit is maintainable by the real beneficiary where the ostensible holder deposes that the money belongs to plaintif 1943 Pat, 79: 205 I, C,382.

Though the promisor cannot plead that the payee is the benamdar for another person as between payee named in the instrument and persons other than promisor, there is no rule which precludes the admissibility of evidence to show that the payee was only a benamdar for another, 58 M, 693:1935 Mad, 181 F, B.

Where hundi drawn in favour of payee or bearer is endorsed by the payee to a named person, it ceases to be a bearer hundi and it can be paid only to the endorsee named, 86 I. C. 118 : 27 Bom L. R. 34. 1925 Bom. 173.

Where a person primarily liable on a negotiable instrument pays the amount thereof to a wrong person who holds it under a forged endorsement, he remains liable to the true owner, 25 Bom. L. R. 604, 24 B. 65,28 A. 428, 36 C. 239.

Promissory note executed in favour of trustee can be used on by his successor without endorsement or assignment. 41 M. 353.

Where promissory note was executed in the name of one of the partners of a partnership, suit on the note is maintainable by the partnership, 105 I. C. 549: 55 C. 551: 1928 Cal. 148, 1941 Nag.207: 197 I. C. 426.

A principal can sue on a pro-note executed in favour of his agent without obtaining an assignment from him. 90 I. C. 1047: 1925 Mad. 1130: 21 L. W. 696, 1949 Nag. 21.

A suit by the common manager appointed under sec. 301 or the Succession Act can be filed on behalf of the estate. 1941 Pat. 403: 192 I. C. 560.

A suit by representative of the deceased holder of promissory note is maintainable. 1940 Bom. 164: 188 I. C. 618.

But where a promissory note was executed in favour of an executor, a suit by the assignee from the legatee without the andorsement of the executor is not maintainable. 1923 M. W. N. 332: 70 I. C. 670.

Pro-note in the name of Hindu father.-suit by son after father's death as survivor is not maintainable as he does not represent the estate of the deceased coparcener. A coparcener is neither the holder nor the payee nor he can negotiate. 59 B. 573: 1935 Bom. 343.

When a promissory note is allotted to the share of a person by award, he can sue it without endorsement of the person in whose name it stands. 1935 Mad. 573. Contra. 1934 Bom. 356.

A person to whom a promissory note has been allotted on partition can sue on the note. 1952 All. 245 F. B.

S. 79: Interest when rate specified.-Under this section the court should allow contract rate of interest up to the decree and thereafter up to the realisation in its discretion which is normally 6 p. c. p. a. 1934 Lah. 32.

This section does not exclude the operation of the Usurious Loans Act under which the court has a discretion to reduce the interest in a proper case 1931 All. 662.

S. 80: Interest when no rate specified.-Where the promissory note contained no stipulation for interest and no demand was made prior to suit, interest at 6 p.c. should be calculated from the date of service of summons. Interest in those instruments coming under this section is payable from the date of execution or from maturity or from presentation or from demand or from service of summons according to the circumstances of the case. 58 C. 290 : 34 C. W. N. 779:1931 Cal. 140: 130 I. C. 134, 134 I. C. 121 (L).

When it is established that a document is not a promissory note, the provisions of s. 80 does not apply. 1932 Lah. 616: 13 Lah. 516: 33 P.L. R. 809.

When interest is not provided in a hand note, it is payable at 6 p. c. 51 I. C. 350: 1 p. L . W. 615, 1917 Pat 279, 1935 A. L. J. 1256, 1935 All. 451. 7 C. W. N. 412 P. C. Ref. there may be collateral agreement as to interest . Last P. C. Case.

Interest on promissory note runs from the date of execution of promissory note. 1935 All. 451: 154 I. C. 532.

S. 82: Discharge from liability. -A new instrument in place of an existing one does not discharge the instrument then existing but acts as a conditional satisfaction of it so that if the new instrument is duly paid at maturity the first is discharged otherwise the first can be revived. 49 A. 257:1927 All. 236, 7 C. 256, 25 M. 580. 4 A. 330.

When the handnote was excuted for old debt, limitation would run from the date of handnote. 1918 Pat. 318.

Payment to endorsee's agent effects discharge. 1929 Lah. 634.

Where the instrument of debt and security for its payment are found in the hands of the debtor, presumption is that the debt has been discharged. 29 C. 334: 29 I. A. 43: 6 C. W. N. 401 P. C.

Under s. 87 a negotiable instrument is void if there is any material alteration without the consent of the party against whom it is sought to be enforced, unless the alteration was made to carry out the common intention of the original parties. 1925 Mad. 929. The section contemplates an alteration subsequent to the execution of the note and an alteration without the consent of the party liable 1936 Mad.

A forged endorsement outside the body of the note and the signature is not material alteration vitiating the note. 1936 Mad. 616.

The court can also correct a mis-statement in a negotiable instrument in order to represent the true bargain. Where the parties wrote one per cent per. annum in the promissory note the court corrected it to be one parcent per mensem. 31 C. W. N. 747: 1927 Cal. 605: 104 I. C. 559.

Where the name of one of the executants has been forged, the other executant can escape liability. 1943 Mad. 511 : 210 I. C. 50.

Where in a promissory note the plaintiff was a party to the fraud by which the 2nd defendant's name was inserted by the first defendant, the forgery was material alteration. 1928 M. W. N. 591 : 112 I. C. 404 : 1928 Mad. 1092.

Where a promissory note contained no agreement to pay interest and the agreement to pay interest at 2 per cent. was interpolated after the note was written, held that the promissory note sued upon had been materially altered and as such was void. 23 A. L. J. 253. 87 I.C 796, 1925 All. 282, 1937 A. L . J. 235.

Where in a pro-note words "at 5 p. c.per mensem" were written at the time of its execution but the words "with interest" were inserted subsequently, there was no material alteration. 29 C. W. N. 965: 861. C 552 : 23 A. L. J. 109 : 49M.L. J. 132 : 27 Bom. L. R. 777 : 26 Punj. L. R. 419 P. C.

An alteration of the name of the payee so as to make him an altogether different person,is a material alteration within s.87,20 A. L. J. 987. So also the interpolation of the rate of interest. 23 A . L. J. 253 : 87 I. C. 796 :1925 All. 282.

Deliberately inserting a false date on the promissory note is a material alteration so as to vitiate the document. 28 Bom L. R. 944:1926 Bom.491.(6B. 371, 12 M. 239) Fol.

When an alteration has been made by a stranger without consent of holder and when there is no fraud or laches on the part of the holder, the right of the holder is not affected, 1941 Mad. 383. 199 I. C. 55.

S. 98: When notice of dishonour is unnecessary:-No notice of dishonour is necessary where the payee has endorsed the promissory note after limitation with a forged endorsement of payment. 1940 Mad. 85: 50 M. L. W. 649.

The use of the singular " drawer" followed by the plural "drawers" in the section, shows that if the acceptor is one of the drawers, both the drawers would be liable although no notice of dishonour has been given. 51 A. 530 : 1929 All. 254 : 27 A. L. J. 333.

S. 104: Protest of foreign bills : A bill drawn upon a resident in British India is an inland bill for which no protest is necessary. The fact that the bill was drawn out of British India does not make it a foreign bill. 57 C. 730 : 1930 Cal 692: 129 I. C. 190.

S.105: Reasonable time: In considering the question of reasonable time, the distance at which the persons live from each other, the course of dealings with respect to similar instruments, the nature of the instrument and all such other circumstances applicable to the case ought to be considered and on the ascertainment of these facts the reasonableness of the time becomes a mixed question of law and fact. 1929 Lah. 577. 116 L.C. 887.

S.106: Reasonable time of giving notice of dishonour :-A delay of 27 days in giving notice of dishonour is an unreasonble delay which absolves the drawers from liability. 1929 Lah. 577. 116 I. C. 887.

S. 115: Drawee in case of need:-This section makes the presentment to the drawee in case of need obligatory on the holder and the presentment absolves the drawer from liability. 1929 Lah. 577 : 116 I. C. 887.

Where the promissory note used upon is not a negotiable instrument within the meaning of the definition, the initial onus is almost invariably on the plaintiff to prove that consideration did pass. 84 I.C 866: 6 Lah. L.J. 542 : 1925 Lah. 272.

To support the claim under a promissory note, it is not necessary that any money should pass at the time of its execution as consideration. The term consideration is not restricted to cash money only. 61 C.L.J. 17 : 1935 Cal. 111.

The initial pressumption of consideration arising under s. 118 can be rebutted even by circumstantial evidence. 1930 All. 568: 121 I.C. 717, 31 I.C 739: 29 M.L.J. 236, Ref. But the presumption is not rebutted by the mere fact that the executant is a profigate young man and the creditor is a money lender. 1935 Lah. 599.

Where the defendent contended that his signature was taken on blank paper, plaintiff is to prove execution as there is denial of execution. 1934 Lah. 293: 151 I.C. 60.

Where the defendant contended that the affixed his signature on a blank paper and no consideration passed, the onus is on the defendant. 54 A. 375: 1932 All. 164.

Where the transferee sues on promissory note, he is entitled to recover what is due to the original promisee. 1932 All. 648.

Where it is proved that the executant of promissory note did not receive any consideration for it, the instrument does not create obligation. 1936 Cal. 315.

When the recital of consideration in a promissory note is admittedly false, the burden of proving consideration is shifted on to the holder of the note as against the maker of it and more heavily as against third person. 1928 Mad. 773.

A suit is not liable to be dismissed if the condideration proved be different from that mentioned in the instrument. 1936 Pat. 498 165 I.C 809.

The presumption as to the receipt of full consideration arising from a debtor's signature on a promissory note can be available against the debtor only but not against Official Receiver or a creditor in insolvency proceedings. 1928 All. 380: 108 I.C. 147: 26 A. L.J 241.

S 120: Estoppel against denying original valldity of instrument:-To apply this section, there must be a properly stamped bill of exchange before the court. 1926 All. 359, and the plaintiff must be a holder in due course. 1933 All. 754.

A person is not precluded under section 120 from denying the validity of the note on the ground that he was a minor on the date of the note as the specific provision of s. 120 is controlled by the general rule of s. 26. 117 I.C. 133.

It does not bar a defence independent of original validity of the instrument. 1942 mad. 169: 201 I.C. 117.

S. 122: Estoppel against denying signature or capacity of prior party:-An endorser is not estopped as against the endorsee from setting up the validity of the instrument.