

**WELCOME TO THE PRESENTATION**  
**ON**  
**Bank and Financial Sectors Related Laws and**  
**Rules**



**PRESENTED BY**

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# THE COMPANIES ACT, 1994

By repealing the Companies Act, 1913, the Companies Act, 1994 is newly introduced. The Companies Act, 1994 came into force in 1 January, 1995.

## Company:

A company is a separate legal entity which engages in business.

Section 2(d) of the Company Act, 1994 deals with definition of company:

Company means a company formed and registered under this Act or an existing company.

# TYPES OF COMPANIES

- ❑ **Private Company:** A private limited company is a business entity that is held by private owners. This type of entity limits the owner's liability to their ownership stake and restricts shareholders from publicly trading shares.
- Section 2(j) deals with definition of public company:
- Public company means a company incorporated under this Act or under any law at any time in force before the commencement of this Act and which is not a private company.
- ❑ **Public Company:** A public company is a company that has permission to issue registered securities to the general public through an initial public offering (IPO) and it is traded on at least one stock exchange market. A public company is not authorized to begin its business operations just upon the grant of the certificate of incorporation. In order to be eligible to run as a public company, it should obtain another document called a trading certificate or certificate of commencement.

# DIFFERENCE : PRIVATE LIMITED AND PUBLIC LIMITED COMPANY

- **Name:** It is mandatory that private company should mention Pvt. Ltd. at the end of a company name and public company should mention Ltd. at the end of a company name.
- **Member of company:** The number of member of private company is minimum 2 and maximum 50 and the number of member of public company is minimum 7 and maximum is limited by shares.
- **Director of company:** There are two directors are required as minimum to form private limited company and there are three directors are required as minimum to form public limited company. (Section 90 of the Companies Act, 1994)
- **Prospectus, Shares & Debentures:** A public limited company can issue prospectus, shares & debentures which a private limited company can't.

# DIFFERENCE : PRIVATE LIMITED AND PUBLIC LIMITED COMPANY

- **Transfer of shares:** shareholder or member of a private limited company A public limited company's shares are purchased and sold on the stock market. They are freely transferred among the members and the people trading on stock markets. The shares in a private limited company cannot be sold or transferred to anyone unless other shareholders agree on the same.
- **Liability:** The liability of each is unlimited. The individual or personal assets of shareholders or members are at risk. The liability of a public company is limited i.e. up to the face value of the share. No shareholder is individually liable for the payment. The public limited company is a separate legal entity, and each shareholder is a part of it.
- **Beginning of business operations:** A private company is authorized to begin its business operations just upon the grant of the certificate of incorporation. In case of beginning business operations of a public limited company, the certificate of incorporation and certificate of commencement (trading certificate) are required.

# MEMORANDUM OF ASSOCIATION & ARTICLES OF ASSOCIATION

- **The Memorandum of Association:** It is the legal document that has to be filed with the registrar of companies at the time of incorporation. It is often called as a memorandum and is comprised of fundamental conditions on the basis of which a company operates.
- **The Articles of Association:** It is the legal document that along with the memorandum of association serves as the constitution of the company. It is comprised of rules and regulations that govern the company's internal affairs within the ambit of memorandum of association.

# **BANKERS RESPONSIBILITY**

- A public limited company is a separate legal entity. In case of bank financing the personal guarantee of the directors is obtained in addition to the director's personal capacity of a company. Bankers should not do anything exceeding the ambit of memorandum of association and articles of association.

# THE BANK COMPANY ACT, 1991

- The Bank Company Act, 1991 deals with the provisions for regulating and bringing discipline in the banking sector of the country. This Act came into force on 14 February, 1991. The provisions of this Act are in addition to and not in derogation of the Companies Act, 1994 and any other Act for the time being in force.
- In case of Bank Company, the number of members/directors is minimum 11 and maximum 20. (Section 4 of the Companies Act, 1994)
- The banks registered with the RJSC which get license to operate under Bank Company Act, 1991 are termed as Scheduled Banks.
- The articles of the Act deal with the following aspects of banking companies:
  - Operations;
  - Prohibited activities;
  - Acquisition of undertakings for the sake of public interest;
  - Suspension of business, winding up and disposal of winding up proceedings.

The final articles deal with provisions in case of violation of the Act.



# THE BANK COMPANY ACT, 1991

## Important Sections of the Act:

**Section – 5 :** Definition of different terminologies/concept

- a) “Bank Company” means any company which serves financial transactions (Banking Business in Bangladesh) including all new banks and specialized banks.
- b) “Banking business” means accepting, in order to lend or invest, of deposits of money from the public which will be paid on demand or otherwise and will be withdrawal by cheque, draft, order or otherwise.

**Section – 7 :** Form of business in which banking company may engage –

- a) The borrowing, collecting or taking up of money;
- b) The lending or advancing of money either against security or without security;
- c) drawing, accepting, making, buying, selling, collecting and dealing with in bills of exchange, Promissory notes, debentures etc.
- d) to grant and issue of letter of credit, traveller’s cheques, credit card and circular notes;
- e) No bank company shall engage in any other business form except those referred in above.

# THE BANK COMPANY ACT, 1991

## **Section – 8 :** Use of the word “Bank” or any of its derivatives

- Every banking company carrying banking business in Bangladesh shall use the word ‘Bank’ or any of its derivatives as part of its name.

## **Section -10:** Disposal of non-banking assets

- No banking company shall hold any immovable property however acquired, except such as is required for its own use, for any period exceeding seven years from the acquisition thereof.

## **Section-11:** Prohibition on employment of managing agents and restrictions on certain forms of employment.

- a) No banking company shall employ Managing Agent for managing its management;
- b) No bank shall appoint any person who was once insolvent, convicted etc.

## **Section-12:** No banking company shall remove from Bangladesh to a place outside Bangladesh any of its records and documents relating to its business in the Head Office or any of its branches, whether they are functioning or not, without the prior permission in writing of the Bangladesh Bank.

## **Section-13:** Requirement as to minimum Paid-up Capital and it is mandatory for Private Banks to maintain the minimum requirement of paid-up capital and reserve fund. The minimum requirement is declared by the Bangladesh Bank from time to time based on minimum capital requirement of the Private Banks.

# THE BANK COMPANY ACT, 1991

**Section-14:** Regulation of paid-up capital, subscribed capital, authorized capital and voting rights of shareholders.

- 1) No banking company except a new bank or a specialized bank incorporated in Bangladesh shall run business in Bangladesh without satisfying the following conditions, viz-
  - a) that the company's subscribed capital shall not be less than one-half of the authorized capital;
  - b) that the company's paid-up capital shall not be less than one-half of the subscribed capital;
  - c) That the voting rights of any share-holder, except those of the Government, do not exceed 5(five) percent of the total voting rights of all the shareholders.

**Section -15:** Election of new directors

- All banking companies except a new bank or a specialized bank may elect new directors in the Annual General Meeting.

**Section –15A:** Filling up the post of Chief Executive Officer

# THE BANK COMPANY ACT, 1991

## Section -17: Vacation of the office of Director.

- (1) If any director of an banking company fails to-
  - a) pay advances or loans accepted by him or instalments or interests on that advances or loans, or
  - b) pay the money he is bound to for any security, or
  - c) accomplish any duty to be accomplished by him and the responsibility for which he has taken on in writing,
- and the said banking company gives him order through a notice by the Bangladesh Bank to pay the said advances, loans, instalments, interests or money or to accomplish the said duties and he fails to accomplish those duties and payments within two months after receipt of the order, in that case the office of director shall be vacant beginning from the expiry of the said term.
- (2) Whoever has received a notice under sub-section (1) may, within thirty days after receipt of the notice, send his statements on the subject in question, if any, in written form to the Bangladesh Bank, and a copy thereof to the banking company who issued the notice.
- (3) The decision of the Bangladesh Bank on any statement under subsection (2) shall be final.

## Section -18: Certain benefit of the directors

## Section -19: Restriction on commission, brokerage, discount etc.

## Section -20: Prohibition of charge on unpaid capital

- No banking company shall create any charge upon unpaid capital of the company.

## Section -21: Prohibition of floating charge on assets

# THE BANK COMPANY ACT, 1991

## **Section -22:** Restrictions regarding payment of dividend

- a) No banking company shall pay any dividend on its shares if all its capitalized expenses and other expenses have not been completely written off; or
- b) If it fails maintain paid-up capital and reserve fund.
- c) If there is provision shortfall.

## **Section -24:** Reserve Fund

- To transfer 20% of the profit to the Reserve Fund as long as the accumulated Reserve Fund is below its paid-up capital.

## **Section -25:** Cash Reserve Fund

- It is mandatory for all banking companies to maintain certain percentage of cash reserve with Bangladesh Bank. The percentage of cash reserve changes from time to time through Bangladesh Bank's notification.

## **Section -27:** Restrictions on loans and advances

No Banking company shall

- a) make any loans or advances against the security of its own shares
- b) grant unsecured loans & advances

# THE BANK COMPANY ACT, 1991

## **Section -27 Ka Ka:** List of Defaulting Borrowers

- The Banking companies are allowed to send the list of defaulting borrowers to the Bangladesh Bank from time to time.

## **Section -31:** License of Banking Companies

- No banking company shall carry out banking business in Bangladesh without obtaining a license from Bangladesh Bank.

## **Section -32:** Open a branch in a new place of business

- No banking company shall open a new branch in a new place or change the location of an existing branch without obtaining prior permission of Bangladesh Bank.

## **Section -33:** Maintenance of Liquid Assets

## **Section -35:** Unclaimed deposits and valuable articles

## **Section -37:** Power to publish information

- The Bangladesh Bank has the power to publish information of banking companies regarding overdue loans & advances of banking companies.

## **Section -38:** Accounts and balance sheet

- At the end of each year, every banking company shall prepare a balance sheet and profit and loss account as on the last working day of the year.

# THE BANK COMPANY ACT, 1991

## **Section -39:** Audit

- The balance sheet and profit and loss account prepared in accordance with section 38 shall be audited by a Chartered Accountants Firm with a special report to the Bangladesh Bank highlighting the status of the financial parameters.

## **Section -40:** Report submission

- The accounts and balance sheet along with the Auditor's Report, duly approved by the Board of Directors, shall be published in the Daily Newspaper, and three copies thereof shall be sent to Bangladesh Bank by three months at the close of the period to which they relate.

## **Section -46:** Power of Bangladesh Bank to remove Directors

- In order to protect the interest of the depositors of the Banking Companies, the Bangladesh Bank is empowered to remove the Chairman or Director or CEO of the concerned banking companies recording the reasons of removal.

## **Section -57:** Punishment for certain activities relating to Bank Companies

- If anybody makes obstruction from entering or leaving any banking company within office hours or works in any manner planned to lower the confidence of the depositors regarding the banking company, he shall be punishable with imprisonment of maximum two years or with penalty of taka twenty thousand or with both.

# THE MONEY LAUNDERING PREVENTION ACT, 2012

- The main objective of the Money Laundering Prevention Act, 2012 Act is to tackle the illegal money transfer to different countries. In order to exercise the powers, and perform the duties, vested in Bangladesh Bank, a separate unit named Bangladesh Financial Intelligence Unit (BFIU) has been established within Bangladesh Bank.
- Money laundering is considered an offence, because it has potentially devastating economic, security, and social consequences. It is an avenue for drug dealers, smugglers, terrorists, illegal arms dealers, corrupt public officials, and others to operate and expand their criminal enterprises. It can also adversely affect collection of government revenue and deprives the government of due revenues Section 2(v).
- Sections 4-8 deal with the penalties relating to the offence of Money Laundering.
- **Section-4:** If a person commits an offence of money laundering, he will be punished with not less than 4 years and not more than 12 years and penalty for twice the amount which relate with the offence or up to 10 lac, which is higher.
- If an institution commits an offence of money laundering, it will be punished with penalty for twice the amount which relate with the offence or up to 20 lac, which is higher and the registration of that institution will be cancellable.



# THE NEGOTIABLE INSTRUMENT ACT, 1881

## Negotiable Instrument:

- Section 13 of the Act deals with negotiable instrument.
- A “negotiable instrument” means a promissory note, bill of exchange or cheque payable either to order or to bearer.

## Promissory Note:

- Section 4 of the Act deals with promissory note.
- A “promissory note” is 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 or determinable future time a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument.

## Bill of Exchange:

- Section 5 of the Act deals with bill of exchange.
- A “bill of exchange” is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay on demand or at fixed or determinable future time a certain sum of money only to, or to the order of, a certain person or to the bearer of the instrument.

# THE NEGOTIABLE INSTRUMENT ACT, 1881

## Cheque:

- Section 6 of the Act deals with cheque.
- A "cheque" is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand.
- **Crossing:**
- **Endorsement of "Cheque":**
- **Holder in due course:**
- **Payment in due course:**
- Dishonor of Cheque for insufficiency, etc, of funds in the account:
- Under Section 138 the Negotiable Instrument Act, 1881 a Complaint Register case can be filed for dishonor of cheque for insufficiency of funds in the account. The punishment is imprisonment for a term which may extend to one year, or fine which may extend to thrice the amount of the cheque, or both.
- 85A. Drafts drawn by one branch of a bank on another payable to order. - where any draft, that is, an order to pay money, drawn by one office of a bank upon another office of the same bank for a sum of money payable to order on demand, purports to be endorsed by or on behalf of the payee, the bank is discharged by payment in due course.

# THE ARTHO RIN ADALAT AIN, 2003

- For further amendment and consolidation of existing laws for recovery of loans by financial institutions the Artho Rin Adalat Ain, 2003 is enacted.
- Steps of the Artha Rin Suits:
  - Auction before filing suit (section 12 )
  - Special time limit for filing suit (section 46 )
  - Limitation of claim (section 47 )
  - Interest Calculation (section 50 )
  - Complaint (under section 8 )
  - Summons /SR (Summons Return) (section 7 )
  - Written statement (WS) (section 9, 10 )
  - Additional statement against written statement (WS) (under section 11 )
  - Exparty Decree (section 19 )
  - ADR (Alternative Dispute Resolution) (section 22-25 )
  - Hearing
  - Argument
  - Judgement and decree (section 16 )

# THE ARTHO RIN ADALAT AIN, 2003

- Steps of the Artha Rin Execution Suits
- Filing of Artha Rin Execution Suits (section 27)
- Time limit for Filing of Artha Rin Execution Suits(section 28 )
- Summon (section 30)
- Auction (section 33)
- Certificate for possession and use section 33(5)
- Certificate of title section 33(7)
- Appeal (section 41)
- Revision (section 42)
- Leave to Appeal (section 43)
- **Limitations of the Act:**
- -According to section 17 an Artha Rin Case should be settled within maximum 120 days. But due to some obstacles often created by the defendant (borrower/guarantor) the case can't be settled within that time.
- -Over burden of courts for a lot of suits due to small number of courts/benches.
- -Obstacles of the Artha Rin Adalat Ain, 2003 (Sections: 6, 22, 28, 33, 34, 45 & 57).

# THE PUBLIC PROCUREMENT ACT, 2006 & THE PUBLIC PROCUREMENT RULES, 2008

## Public Procurement Act, 2006:

- Total Chapters-09, Total Section-73
- Date of Enactment: 06 July 2006

## Public Procurement Rules, 2008

- Total Chapters :09, Rules :1-130, Total Schedules: 14

### Chapter-01: Preliminary (R: 1-3)

- \* Short Title and commencement (24 January 2008)
- \* Definitions

### Chapter-02: Preparation of Tender or Proposal, Committee etc. (R: 4-12)

### Chapter-03: Public Procurement Policies (R: 13-60)

- \* Proc. Plan, Tender & Performance Security, Retention Money

# **THE PUBLIC PROCUREMENT ACT, 2006 & THE PUBLIC PROCUREMENT RULES, 2008**

## **Chapter-4:**

- Different Proc. Methods & their use (R: 61-89)
- Open Tendering Method (Rule-61)
- Limited Tendering Method (Rule-63)
- Request for Quotation Method (RFQ) (Rule-69)
- Direct Procurement Method (Rule-74)
- Two-Stage Tendering Method (Rule-65)
- One-Stage Two Envelop Tendering Method (Rule-68)

Generally first four methods are used for procurement in Sonali Bank Limited.

## **Chapter-5:** Proc. Processing (R: 90-102)

- Advertisement, pre-qualification, Tender preparation, opening, Evaluation, NOA etc.

## **Chapter-6:** Procurement of Intellectual & Professional Services (R: 103-126)

## **Chapter-7:** Professional Misconduct (R: 127)

## **Chapter-8:** E-Procurement (R: 128)

## **Chapter-9:** Misc. (R: 129-130)

# OTHERS RELEVANT LAWS FOR BANKS

- ❑01. The Court Fees Act, 1870
- ❑02. The Law of Contract Acts, 1872
- ❑03. The Transfer of Property Act, 1882.
- ❑04. The Trust Act, 1882.
- ❑05. The Bankers Books Evidence Act, 1891 (Act No. XVIII of 1891).
- ❑06. The Stamp Act, 1899.
- ❑07. The Limitation Act, 1908.
- ❑08. The Code of Civil Procedure, 1908.
- ❑09. The Code of Criminal Procedure, 1898.
- ❑10. The Registration Act, 1908 (Amendment 2012).
- ❑11. The Public Demand Recovery Act, 1913 (Amendment 2004).
- ❑12. The Succession Act, 1925.
- ❑13. The Sales of Goods Act, 1930.
- ❑14. The Partnership Act, 1932.
- ❑15. The Insurance Act, 2010.
- ❑16. The Foreign Exchange Regulation Act, 1947 (Act No. VII of 1947).

# OTHERS RELEVANT LAWS FOR BANKS

- ❑ 17. The Import Export (Control) Act, 1950.
- ❑ 18. Employment of Labour (Standing Order Act, 1955).
- ❑ 19. Industrial Relations Ordinance, 1967.
- ❑ 20. Bangladesh Banks (Nationalization) Order, 1972 (P.O. No-26 of 1972).
- ❑ 21. Bangladesh Bank Order, 1972 (P.O. No-127 of 1972).
- ❑ 22. The Importers, Exporters and Indentor's (Regulation) Order 1981.
- ❑ 23. The Bank Company Act, 1991 (with Amendments), Act No-14 of 1991.
- ❑ 24. The Security and Exchange commission Act, 1993.
- ❑ 25. The Financial Institutions Act, 1993 (Act No. XXVII of 1993).
- ❑ 26. The Uniform Customs and Practice for documentary credit (ICC Brochure-500) (1993 Revised).
- ❑ 27. The Arbitration Act, 2001.
- ❑ 28. The Sonali Bank Employees Service Regulation, 1995.
- ❑ 29. The Bankruptcy Act, 1997 (Act No. 10 of 1997).
- ❑ 30. Santrash Birodhi Ain, 2013 (Amendment), Origin-2009.
- ❑ 31. The Uniform Rules for Bank to Bank reimbursement under documentary credit (URR-525);(Now URR-600)
- ❑ 32. The Uniform Rules for Collection under documentary credit (URC-522).





**THANK YOU**