

Published in Bangladesh Gazette Extraordinary  
Dated 20th September, 1995

## **Act No.25 of 1995**

### **An Act made further to amend the Banking Companies Act, 1991**

Whereas it is expedient to further amend the Banking Companies Act, 1991 (Act No.14 of 1991) for the purpose hereinafter appearing;

Now, therefore, it is herewith enacted as follows:-

**1. Short title and commencement.-** (1) This Act may be called the Banking Companies (Amendment) Act, 1995.

(2) It shall be deemed to have come into force on 24th Baishakh, 1402/ 7th May, 1995, respectively.

**2. Amendment of section 5 of Act No.14 of 1991.-** In section 5 of the Banking Companies Act, 1991 (Act No.14 of 1991), heretoafter referred to as the said Act, after clause (qu) the following new clauses shall be inserted, namely:-

"(ququ) "mudaraba certificate" means any certificate issued on the basis of a mudaraba;

(quququ) "mudaraba" means any contract following the conditions of which any bank conducted in accordance with Islami Shariat supplies capital for any matter whatsoever and in which a customer invests skill, effort, labour and intelligence;

(ququququ) "musharika" means any certificate issued on the basis of a musharika;

(quququququ) "musharika" means any such contract as regulates any work the capital for which is supplied partly by a bank conducted in accordance with Islami Shariat and partly by a customer and the profit arising from such work is distributed in such ratio as is mentioned in the contract and the loss in the ratio of the capital;"

**3. Amendment of section 9 of Act No.14 of 1991.-** At the end of the first paragraph of section 9 of the said Act for the full stop shall be substituted a colon and thereafter the following proviso shall be inserted, namely:-

Provided that nothing contained in this section shall apply in the case of any banking company conducted in accordance with Islami Shariat directly or indirectly buying, selling or bartering goods or articles in accordance with accepted Islami manners.

**4. Amendment of section 11 of Act No.14 of 1991.-** After sub-section (4) of section 11 of the said Act the following new sub-section (4A) shall be inserted, namely:-

"(4A) No officer of a bank who has been removed from office on account of misappropriation of money, misconduct, forgery or conduct involving moral turpitude shall be fit to be appointed to an office of any subsequent banking company."

**5. Amendment of section 13 of Act N.14 of 1991.-** In section 13 of the said Act-

(a) in sub-section (2), (3) and (4) for the words "previous financial year", wherever they are mentioned, the words "accounting year" shall be substituted;

(b) after sub-section (7) the following explanation shall be added, namely:-

**"Explanation.-** For the purpose of this section, demand liabilities and temporary liabilities shall not include the paid-up capital, the consolidated fund, the liabilities shown in the profit and loss account and loans received from the Bangladesh Bank and interbank liabilities."

**6. Insertion of the new section 13A of Act No.14 of 1991.-** After section 13 of the said Act the following new section 13A shall be inserted, namely:-

**"13A. Risk capital.-** (1) The Bangladesh Bank may, on the previous consent of the Government, at any time make policies regarding the maintenance of risk capital.

(2) Where any policy under sub-section (1) has been made and set into force, the provisions regarding the maintenance of capital against demand liabilities and temporary liabilities referred to in sub-section (2), (3) and (4) of section 13 shall not be applicable."

**7. Substitution of section 14A of Act No.14 of 1991.-** For section 14A of the said Act shall be substituted the following section 14A, namely:-

**"(14A) Restriction on the acquisition of shares of banks, etc. .-** (1) The shares of a bank shall not be concentrated on any person, company or members of a joint family and no person, company or members of a joint family shall, alone, jointly or both, more than ten percent of the shares of a bank.

(2) A customer shall, at the time of buying shares of a bank, furnish an affidavit or declaration to the effect that he does not buy shares as an agent or under a fictitious name and that he did not formerly buy shares under a fictitious name.

(3) If the content of an affidavit or declaration furnished under sub-section (2) is at any time proven to be false, all the bank shares relating to the person who furnished the affidavit or declaration shall forfeit to the Bangladesh Bank.

(4) If anyone mentioned in sub-section (1) holds, immediately before the commencement of the Banking Companies (Amendment) Act, 1995 (Act of 1995), more shares than determined in that sub-section, he may, within one year after the commencement of the said Amendment, sell (his shares) to a person who is not a member of the said company or family or to a company or institution which does not hold shares in the said company.

(5) If the shares in excess mentioned in sub-section (4) are not sold within the time and under the conditions mentioned therein, they shall be deposited with the Government or any institution determined in this behalf by the Government and the Government or institution concerned shall pay for such shares their face value or market value, whichever is less.

(6) Nothing contained in this section shall be applicable to the Government.

**Explanation.-** In this sub-section "family" shall include the wife, husband, father and mother, sons and daughters, brothers and sisters of any person and all those who are dependant on this person.";

**8. Amendment of section 15 of Act No.14 of 1991.-** For sub-section (4) of section 15 of the said Act the following sub-section shall be substituted, namely:-

"(4) The Bangladesh Bank may, by general order, make provisions to the effect that no banking company except new and special banks shall appoint its advisors (if any), managing directors or chief executive officers, whatever be the name of the office, without the previous approval of the Bangladesh Bank and no advisor, managing director or chief executive officer appointed in this way shall be removed from his office, acquitted or dismissed without the previous approval of the Bangladesh Bank."

**(9). Insertion of the new section 15A of Act No.14 of 1991.-** After section 15 of the said Act the following new section 15A shall be inserted, namely:-

"15A. Filling of the office of chief executive officers, etc. .- (1) Notwithstanding anything contained in this Act or any other law in force, the person temporarily discharging the functions of the vacant office of the chief executive officer, whatever be the name of the office, of any banking company shall be responsible for the discharge of the general functions of the chief executive officer of the banking company concerned.

(2) Notwithstanding anything contained in sub-section (1), the office of the chief executive officer of any banking company shall not remain vacant for more than three months successively.

(3) Where the office of the chief executive officer of a banking company has not been filled within the period specified in sub-section (2), the Bangladesh Bank may appoint an administrator for discharging the functions of the chief executive officer of the said company and the said company shall bear the expeditures caused through his wages and other conveniencies."

**10. Amendment of section 17 of Act No.14 of 1991.-** After sub-section (3) of section 17 of the said Act the following new sub-section (4) shall be inserted, namely:-

"(4) Notwithstanding anything contained in this section, the money due to the bank from the person who managed the vacant office shall be realised through adjustment with his shares and the money which may be outstanding after such adjustment shall be realised in accordance with the laws in force."

**11. Amendment of section 26 of Act No.14 of 1991.-** For the full stop at the end of sub-section (2) of section 26 of the said Act shall be substituted a colon and thereafter the following proviso shall be

inserted, namely:-

"Provided further that the amount of the shares held by any banking company shall, in the aggregate, not exceed 10 (ten) percent of its total obligations."

**12. Amendment of section 27 of Act No.14 of 1991.-** In the explanation of sub-section (2) of section 27 of the said Act for the words and commas "brother-in-law, sister-in-law, sister's husband, father-in-law, mother-in-law, son's wife and daughter's husband" the words "and everybody dependant on this director" shall be substituted.

**13. Amendment of section 30 of Act No.14 of 1991.-** For the words "on the mere ground of" in section 30 of the said Act the words "and on the mere ground of high profits and rates of rent in the commercial business of a bank conducted in accordance with Islami Shariat" shall be substituted.

**14. Amendment of section 38 of Act No.14 of 1991.-** In the explanation of sub-section (4) of the said Act for the word "quinquennium" the words "accounting year" shall be substituted.

**15. Insertion of the new section 39B of Act No.14 of 1991.-** After section 39A of the said Act the new section 39B shall be inserted, namely:-

**"39B. Auditor declared unfit.-** (1) Where the Bangladesh Bank has reasonable grounds to believe that any auditor appointed as an auditor of a banking company neglects his duties or fails to discharge the duties entrusted upon him, it may, on the basis of the information and recommendation of the committee established in this behalf by the Bangladesh Bank, declare such auditor, for no more than two years, to be unfit to audit any banking company:

Provided that, before making such a declaration, the auditor concerned shall be given reasonable opportunity to show his reasons.

(2) Any person afflicted by a declaration of the Bangladesh Bank under sub-section (1) may, within fifteen days after a declaration under sub-section (1) has been made, submit an appeal to the managing board of the Bangladesh Bank and the decision of the said board in this matter shall be final."

**16. Amendment of section 109 of Act No.14 of 1991.-** For the words "no more than the highest number by the said bank" the words "mentioned in the above-mentioned sub-sections" shall be substituted.

**17. Repeal and savings.-** (1) The Banking Companies (Amendment) Ordinance, 1995 (Ordinance No.3, 1995) stands herewith repealed.

(2) Notwithstanding such repeal, all actions done and all measures taken under the said Act amended through the repealed Ordinance shall be deemed to have been done or taken under the said Act amended through this Act.

