

THE FOREIGN EXCHANGE REGULATION ACT, 1947

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THE FOREIGN EXCHANGE REGULATION ACT, 1947

ACT NO. VII OF 1947

[11th March, 1947]

An Act to regulate certain payments, dealings in foreign exchange and securities and the import and export of currency and bullion.*

WHEREAS it is expedient in the economic and financial interests of Bangladesh to provide for the regulation of certain payments, dealings in foreign exchange and securities and the import and export of currency and bullion;

It is hereby enacted as follows:-

Short title,
extent and
commencement

1. (1) This Act may be called the Foreign Exchange Regulation Act, 1947.

(2) It extends to the whole of Bangladesh and applies to all citizens of Bangladesh and persons in the service of ¹[the Republic] wherever they may be.

(3) It shall come into force on such date as the Government may, by notification in the *official Gazette*, appoint in this behalf.

(4) [Omitted by section 2 of the Foreign Exchange Regulation (Amendment) Act, 1952 (Act No. I of 1952).]

Interpretation

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

(a) “authorised dealer” means a person for the time being authorised under section 3 to deal in foreign exchange;

* Throughout this Act, the words “Bangladesh”, “Government”, “the Bangladesh Bank” and “Taka” were substituted for the words “Pakistan”, “Central Government”, “the State Bank” and “rupees” respectively by section 3 and the Second Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

¹ The words “the Republic” were substituted for the word “Government” by the Bangladesh Laws (Revision and Declaration) (Amendment) Act, 1974 (Act No. LIII of 1974).

- (b) “currency” includes all coins, currency notes, bank notes, postal notes, money orders, cheques, drafts, traveller’s cheques, letters of credit, bills of exchange and promissory notes;
- (c) “foreign currency” means any currency other than Bangladesh currency;
- (d) “foreign exchange” means foreign currency and includes any instrument drawn, accepted, made or issued under ¹[clause (13) of Article 16 of the Bangladesh Bank Order, 1972] all deposits, credits and balances payable in any foreign currency, and any drafts, traveller’s cheques, letters of credit and bills of exchange, expressed or drawn in Bangladesh currency but payable in any foreign currency;
- (e) “foreign security” means any security issued elsewhere than in Bangladesh and any security the principal of or interest on which is payable in any foreign currency or elsewhere than in Bangladesh;
- (f) “gold” includes gold in the form of coin, whether legal tender or not, or in the form of bullion or ingot, whether refined or not;
- (g) “Bangladesh currency” means currency which is expressed or drawn in Bangladesh Taka;
- (h) “owner”, in relation to any security, includes any person who has power to sell or transfer the security, or who has the custody thereof or who receives, whether on his own behalf or on behalf of any other person, dividends or interest thereon, and who has any interest therein, and in a case where any security is held on any trust or dividends or interest thereon are paid into a trust fund, also includes any trustee or any person entitled to enforce the performance of the trust or to revoke or vary, with or without the consent of any other person, the trust or any terms thereof, or to control the investment of the trust moneys;
- (i) “prescribed” means prescribed by rules made under this Act;

¹ The words, brackets, figure and comma “clause (13) of Article 16 of the Bangladesh Bank order, 1972” were substituted for the words, brackets, figure and comma “clause (8) of section 17 of the State Bank of Pakistan Act, 1956” by section 3 and the Second Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

¹[(j) Bangladesh Bank means the Bangladesh Bank established under clause (1) of Article 3 of the Bangladesh Bank Order, 1972];

(k) “security” means shares, stocks, bonds, debentures, debenture stock and Government securities, as defined in the Securities Act, 1920, deposit receipts in respect of deposits of securities, and units or sub-units of unit trusts, but does not include bills of exchange or promissory notes other than Government promissory notes;

(l) “silver” means silver bullion or ingot, silver sheets and plates which have undergone no process of manufacture subsequent to rolling and uncurrent silver coin which is not legal tender in Bangladesh or elsewhere;

(m) “transfer” includes, in relation to any security, transfer by way of loan or security.

Authorised
dealers in
foreign
exchange

3. (1) The Bangladesh Bank may, on application made to it in this behalf, authorise any person to deal in foreign exchange.

(2) An authorisation under this section-

(i) may authorise dealings in all foreign currencies or may be restricted to authorising dealings in specified foreign currencies only;

(ii) may authorise transactions of all descriptions in foreign currencies or may be restricted to authorising specified transactions only;

(iii) may be granted to be effective for a specified period, or within specified amounts, and may in all cases be revoked for reasons appearing to it sufficient by the Bangladesh Bank.

(3) An authorised dealer shall in all his dealings, in foreign exchange, comply with such general or special directions or instructions as the Bangladesh Bank may from time to time think fit to give, and, except with the previous permission of the Bangladesh Bank, an authorised dealer shall not engage in any transaction involving any foreign exchange which is not in conformity with the terms of his authorisation under this section.

¹ Clause (j) was substituted by section 3 and the Second Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

(4) An authorised dealer shall, before undertaking any transaction in foreign exchange on behalf of any person, require that person to make such declarations and to give such information as will reasonably satisfy him that the transaction will not involve, and is not designed for the purpose of, any contravention or evasion of the provisions of this Act or of any rules, directions or orders made thereunder, and where the said person refuses to comply with any such requirement or makes only unsatisfactory compliance therewith, the authorised dealer shall refuse to undertake the transaction and shall, if he has reason to believe that any such contravention or evasion as aforesaid is contemplated by the person, report the matter to the Bangladesh Bank.

4. (1) Except with the previous general or special permission of the Bangladesh Bank, no person other than an authorised dealer shall in Bangladesh and no person resident in Bangladesh, other than an authorised dealer all outside Bangladesh, buy or borrow from, or sell or lend to, or exchange with, any person not being an authorised dealer, any foreign exchange.

Restrictions on dealing in foreign exchange

(2) Except with the previous general or special permission of the Bangladesh Bank, no person whether an authorised dealer or otherwise, shall enter into any transaction which provides for the conversion of Bangladesh currency into foreign currency or foreign currency into Bangladesh currency at rates of exchange other than the rates for the time being authorised by the Bangladesh Bank.

(3) Where any foreign exchange is acquired by any person other than an authorised dealer for any particular purpose, or where any person has been permitted conditionally to acquire foreign exchange, the said person shall not use the foreign exchange so acquired otherwise than for that purpose or, as the case may be, fail to comply with any condition to which the permission granted to him is subject, and where any foreign exchange so acquired cannot be so used or, as the case may be, the conditions cannot be complied with, the said person shall without delay sell the foreign exchange to an authorised dealer.

(4) Nothing in this section shall be deemed to prevent a person from buying from any post office, in accordance with any law or rules made thereunder for the time being in force, any foreign exchange in the form of postal orders or money orders.

Restrictions on
payment

5. (1) Save as may be provided in and in accordance with any general or special exemption from the provisions of this sub-section which may be granted conditionally or unconditionally by the Bangladesh Bank, no person in, or resident in, Bangladesh shall-

- (a) make any payment to or for the credit of any person resident outside Bangladesh;
- (b) draw, issue or negotiate any bill of exchange or promissory note or acknowledge any debt, so that a right (whether actual or contingent) to receive a payment is created or transferred in favour of any person resident outside Bangladesh;
- (c) make any payment to or for the credit of any person by order or on behalf of any person resident outside Bangladesh;
- (d) place any sum to the credit of any person resident outside Bangladesh;
- (e) make any payment to or for the credit of any person as consideration for or in association with-
 - (i) the receipt by any person of a payment or the acquisition by any person of property outside Bangladesh;
 - (ii) the creation or transfer in favour of any person of a right whether actual or contingent to receive a payment or acquire property outside Bangladesh;
- (f) draw, issue or negotiate any bill of exchange or promissory note, transfer any security or acknowledge any debt, so that a right (whether actual or contingent) to receive a payment is created or transferred in favour of any person as consideration for or in association with any matter referred to in clause (e).

(2) Nothing in sub-section (1) shall render unlawful-

- (a) the making of any payment already authorised, either with foreign exchange obtained from an authorised dealer under section 4 or with foreign exchange retained by a person in pursuance of an authorisation granted by the Bangladesh Bank;

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

(3) Nothing in this section shall restrict the doing by any person of anything within the scope of any authorisation or exemption granted under this Act.

(4) For the purposes of this section, "security" also includes coupons or warrants representing dividends or interest and life or endowment insurance policies.

6. (1) Where an exemption from the provisions of section 5 is granted by the Bangladesh Bank in respect of payment of any sum to any person resident outside Bangladesh and the exemption is made subject to the condition that the payment is made to a blocked account-

- (a) the payment shall be made to a blocked account in the name of that person in such manner as the Bangladesh Bank may by general or special order direct; and
- (b) the crediting of that sum to that account shall, to the extent of the sum credited, be a good discharge to the person making the payment.

(2) No sum standing at the credit of a blocked account shall be drawn on except in accordance with any general or special permission which may be granted conditionally or otherwise by the Bangladesh Bank.

(3) In this section "blocked account" means an account opened as a blocked account at any office or branch in Bangladesh of a bank authorised in this behalf by the Bangladesh Bank, or an account blocked, whether before or after the commencement of this Act, by order of the Bangladesh Bank.

7. (1) Where in the opinion of the Government it is necessary or expedient to regulate payments due to persons resident in any territory, the Government may, by notification in the *official Gazette*, direct that such payments or any class of such payments shall be made only into an account (hereinafter referred to as a special account) to be maintained for the purpose by the Bangladesh Bank or an authorised dealer specially authorised by the Bangladesh Bank in this behalf.

Blocked accounts

Special accounts

(2) The credit of a sum to a special account shall, to the extent of the sum credited, be a good discharge to the person making the payment:

Provided that where the liability of the person making the payment is to make the payment in foreign currency, the extent of the discharge shall be ascertained by converting the amount paid into that currency at such rate of exchange as is for the time being fixed or authorised by the Bangladesh Bank.

(3) The sum standing to the credit of any special account shall from time to time be applied-

- (a) where any agreement is entered into between the Government and the Government of the territory to which the aforesaid notification relates for the regulation of payments between persons resident in Bangladesh and in that territory, in such manner as the Bangladesh Bank, having regard to the provisions of such agreement, may direct, or
- (b) where no such agreement is entered into, for the purpose of paying wholly or partly, and in such order of preference and at such times as the Government may direct, debts due from the persons resident in the said territory to persons resident in Bangladesh or in such other territories as the Government may by order specify in this behalf.

Restrictions on import and export of certain currency and bullion

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

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

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

(3) The restrictions imposed by sub-sections (1) and (2) shall be deemed to have been imposed under ¹[section 16 of the Customs Act, 1969,] without prejudice to the provisions of section 23 of this Act, and all the provisions of that Act shall have effect accordingly.

9. The Government may, by notification in the *official Gazette*, order every person in, or resident in, Bangladesh-

Acquisition by
Government of
foreign
exchange

- (a) who owns such foreign exchange as may be specified in the notification, to offer it, or cause it to be offered for sale to the Bangladesh Bank on behalf of the Government or to such person, as the Bangladesh Bank may authorise for the purpose, at such price as the Government may fix, being a price which is in the opinion of the Government not less than the market rate of the foreign exchange when it is offered for sale;
- (b) who is entitled to assign any right to receive such foreign exchange as may be specified in the notification, to transfer that right to the Bangladesh Bank on behalf of the Government on payment of such consideration therefore as the Government may fix:

Provided that the Government may by the said notification or another order exempt any persons or class of persons from the operation of such order:

Provided further that nothing in this section shall apply to any foreign exchange acquired by a person from an authorised dealer and retained by him with the permission of the Bangladesh Bank for any purpose.

¹ The words, figure and commas “section 16 of the Customs Act, 1969,” were substituted for the words, figure and comma “section 19 of the Sea Customs Act, 1878” by section 3 and the Second Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

Duty of persons entitled to receive foreign exchange etc.

10. (1) No person who has a right to receive any foreign exchange or to receive from a person resident outside Bangladesh a payment in Taka shall, except with the general or special permission of the Bangladesh Bank, do or refrain from doing any act with intent to secure-

- (a) that the receipt by him of the whole or part of that foreign exchange or payment is delayed, or
- (b) that the foreign exchange or payment ceases in whole or in part to be receivable by him.

(2) Where a person has failed to comply with the requirements of sub-section (1) in relation to any foreign exchange or payment in Taka, the Bangladesh Bank may give to him such directions as appear to be expedient for the purpose of securing the receipt of the foreign exchange or payment as the case may be.

Power to regulate the uses, etc., of imported gold and silver

11. The Government may, by notification in the *official Gazette*, impose such conditions as it thinks necessary or expedient on the use or disposal of or dealings in gold and silver prior to, or at the time of, import into Bangladesh.

Payment for exported goods

12. The Government may, by notification in the *official Gazette*, prohibit the export of any goods or class of goods specified in the notification from Bangladesh directly or indirectly to any place so specified unless a declaration supported by such evidence as may be prescribed or so specified, is furnished by the exporter to the prescribed authority that the amount representing the full export value of the goods has been, or will within the prescribed period, be paid in the prescribed manner.

(2) Where any export of goods has been made to which a notification under sub-section (1) applies, no person entitled to sell, or procure the sale of, the said goods shall, except with the permission of the Bangladesh Bank, do or refrain from doing any act with intent to secure that-

- (a) the sale of the goods is delayed to an extent which is unreasonable having regard to the ordinary course of trade, or

- (b) payment for the goods is made otherwise than in the prescribed manner or does not represent the full amount payable by the foreign buyer in respect of the goods, subject to such deductions, if any, as may be allowed by the Bangladesh Bank, or is delayed to such extent as aforesaid:

Provided that no proceedings in respect of any contravention of this sub-section shall be instituted unless the prescribed period has expired and payment for the goods representing the full amount as aforesaid has not been made in the prescribed manner.

(3) Where in relation to any such goods the said period has expired and the goods have not been sold and payment therefore has not been made as aforesaid, the Bangladesh Bank may give to any person entitled to sell the goods or to procure the sale thereof, such directions as appear to it to be expedient for the purpose of securing the sale of the goods and payment therefore as aforesaid, and without prejudice to the generality of the foregoing provision, may direct that the goods shall be assigned to the Government or to a person specified in the directions.

(4) Where any goods are assigned in accordance with subsection (3), the Government shall pay to the person assigning them such sum in consideration of the net sum recovered by or on behalf of the Government in respect of the goods as may be determined by the Government.

(5) Where in relation to any such goods the value as stated in the invoice is less than the amount which in the opinion of the Bangladesh Bank represents the full export value of those goods, the Bangladesh Bank may issue an order requiring the person holding the shipping documents to retain possession thereof until such time as the exporter of the goods has made arrangements for the Bangladesh Bank or a person authorised by the Bangladesh Bank to receive on behalf of the exporters payment in the prescribed manner of an amount which represents in the opinion of the Bangladesh Bank the full export value of the goods.

(6) For the purpose of ensuring compliance with the provisions of this section and any orders or directions made thereunder, the Bangladesh Bank may require any person

making any export of goods to which a notification under subsection (1) applies to exhibit contracts with his foreign buyer or other evidence to show that the full amount payable by the said buyer in respect of the goods has been, or will within the prescribed period be, paid in the prescribed manner.

Regulation of
export and
transfer of
securities

13. (1) No person shall, except with the general or special permission of the Bangladesh Bank, -

- (a) take or send any security to any place outside Bangladesh;
- (b) transfer any security or create or transfer any interest in a security to or in favour of a person resident outside Bangladesh;
- (c) transfer any security from a register in Bangladesh to a register outside Bangladesh or do any act which is calculated to secure, or forms part of a series of acts which together are calculated to secure, the substitution for any security which is either in, or registered in, Bangladesh of any security which is either outside or registered outside Bangladesh;
- (d) issue, whether in Bangladesh or elsewhere, any security which is registered or to be registered in Bangladesh to a person resident outside Bangladesh.

(2) Where the holder of a security is a nominee, neither he nor any person through whose agency the exercise of all or any of the holder's rights in respect of the security is controlled shall, except with the general or special permission of the Bangladesh Bank, do any act whereby he recognises or gives effect to the substitution of another person as the person from whom he directly receives instructions, unless both the persons previously instructing him and the person substituted for that person were, immediately before the substitution, resident in Bangladesh.

(3) The Bangladesh Bank may, for the purpose of securing that the provisions of this section are not evaded, require that the person transferring any security and the person to whom such security is transferred shall subscribe to a declaration that the transferee is not resident outside Bangladesh.

(4) Notwithstanding anything contained in any other law, no person shall, except with the permission of the Bangladesh Bank -

- (a) enter any transfer of securities in any register or book in which securities are registered or inscribed if he has any ground for suspecting that the transfer involves any contravention of the provisions of this section, or
- (b) enter in any such register or book, in respect of any security, whether in connection with the issue or transfer of the security or otherwise, an address outside Bangladesh except by way of substitution for any such address in the same country or for the purpose of any transaction for which permission has been granted under this section with knowledge that it involves entry of the said address.

(5) For the purposes of this section,-

- (a) “holder” in relation to a bearer security means the person having physical custody of the security; provided that, where a bearer security is deposited with any person in a locked or sealed receptacle from which the person with whom it is deposited is not entitled to remove it without the authority of some other person, that other person shall be deemed to be the holder of the security;
- (b) “nominee” means a holder of any security (including bearer security) or any coupon representing dividends or interest who, as respects the exercise of any rights in respect of the security or coupon, is not entitled to exercise those rights except in accordance with instructions given by some other person, and a person holding a security or coupon as a nominee shall be deemed to act as nominee for the person who is entitled to give instructions either directly or through the agency of one or more persons, as to the exercise by the holder of the security or coupon of any rights in respect thereof and is not, in so doing, himself under a duty to comply with instructions given by some other person;
- (c) “security” also includes coupons or warrants representing dividends or interest, and life or endowment insurance policies;

- (d) “a person resident outside Bangladesh” includes a foreign national for the time being resident in Bangladesh.

Custody of securities

14. (1) The Government may, by notification in the *official Gazette*, order every person by whom or on whose behalf a security or document of title to a security specified in the order is held in Bangladesh to cause the said security or document of title to be kept in the custody of an authorised depository named in the order:

Provided that the Bangladesh Bank may by order in writing permit any such security to be withdrawn from the custody of the authorised depository subject to such conditions as may be specified in the order.

(2) No authorised depository may part with any security covered by an order under sub-section (1) without the general or special permission of the Bangladesh Bank except to, or to the order of, another authorised depository.

(3) Except with the general or special permission of the Bangladesh Bank, no authorised depository shall-

- (a) accept or part with any security covered by an order under sub-section (1) whereby the security is transferred into the name of a person resident outside Bangladesh, or
- (b) do any act whereby he recognises or gives effect to the substitution of another person as the person from whom he directly receives instructions relating to such security unless the person previously so instructing him and the person substituted for that person were immediately before the substitution resident in Bangladesh.

(4) Except with the general or special permission of the Bangladesh Bank, no person shall buy, sell or transfer any security, or document of title to a security, covered by an order under sub-section (1) unless such security or document of title has been deposited in accordance with the order.

(5) Except with the general or special permission of the Bangladesh Bank, no capital moneys, interest or dividends in respect of any security covered by an order under sub-section (1) shall be paid in Bangladesh except to or to the order of the authorised depository having the custody of the security.

(6) For the purposes of this section,-

- (a) "authorised depository" means a person notified by the Government to be entitled to accept the custody of securities and documents of title to securities, and
- (b) "security" shall include coupons.

15. The Government may, by notification in the *official Gazette*, order that except with the general or special permission of the Bangladesh Bank no person shall in Bangladesh issue any bearer security or coupon or so alter any document that it becomes a bearer security or coupon.

Restrictions on issue of bearer securities

16. (1) Subject to any exemptions that may be contained in the notification, the Government may, if it is of opinion that it is expedient so to do for the purpose of strengthening its foreign exchange position by notification in the *official Gazette*,-

Acquisition by Government of foreign securities

- (a) order the transfer to itself of any foreign securities specified in the notification at a price so specified, being a price which is, in the opinion of the Government not less than the market value of the securities on the date of the notification, or
- (b) direct the owner of any foreign securities specified in the notification, to sell or procure the sale of the securities and thereafter to offer or cause to be offered the net foreign exchange proceeds of the sale to the Bangladesh Bank on behalf of the Government or to such person as the Bangladesh Bank may authorise for the purpose, at such price as the Government may fix, being a price which is in the opinion of the Government not less than the market rate of the foreign exchange when it is offered for sale.

(2) On the issue of a notification under clause (a) of sub-section (1),-

- (a) the securities to which the notification relates shall forthwith vest in the Government free from any mortgage, pledge or charge, and the Government may deal with them in such manner as it thinks fit.

(b) the owner of any of the securities to which the notification relates and any person who is responsible for keeping any registers or books in which any of those securities are registered or inscribed, or who is otherwise concerned with the registration or inscription of any of those securities, shall do all such things as are necessary or as the Government or the Bangladesh Bank may order to be done, for the purpose of securing that-

- (i) the securities and any documents of title relating thereto are delivered to the Government and, in the case of registered or inscribed securities, that the securities are registered or inscribed in the name of the Government or of such nominee of the Government as it may specify, and
- (ii) any dividends or interest on those securities becoming payable on or after the date of the issue of the notification are paid to the Government or its nominee as aforesaid and where in the case of any security payable to bearer which is delivered in pursuance of the said notification, any coupons representing any such dividends or interest are not delivered with the security, such reduction in the price payable therefor shall be made as the Government thinks fit:

Provided that where the price specified in the notification in relation to any security is ex-dividend or ex-interest, this sub-clause shall not apply to that dividend or interest or to any coupon representing it.

(3) A certificate signed by any person authorised in this behalf by the Government that any specified securities are securities transferred to the Government under this section shall be treated by all persons concerned as conclusive evidence that the securities have been so transferred.

Restriction on
settlement

17. (1) No person resident in Bangladesh shall, except with the general or special permission of the Bangladesh Bank, settle any property, otherwise than by will, upon any trust under which a person who at the time of the settlement is resident outside Bangladesh elsewhere than in territories notified in this behalf, by the Bangladesh Bank, will have an interest in the

property, or exercise, other than by will, any power for payment in favour of a person who at the time of the exercise of the power is resident outside Bangladesh elsewhere than in such notified territories.

(2) A settlement or power as aforesaid shall not be invalid except in so far as it confers any right or benefit on any person who at the time of the settlement or the exercise of the power is resident outside Bangladesh elsewhere than in territories notified by the Bangladesh Bank.

18. (1) Except with the general or special permission of the Bangladesh Bank, no person resident in Bangladesh shall do any act whereby a company, which is controlled by persons resident in Bangladesh ceases to be so controlled.

Certain provisions as to companies

(2) Except with the general or special permission of the Bangladesh Bank, no person resident in Bangladesh shall lend any money or security to any company, not being a banking company, which is by any means controlled, whether directly or indirectly, by persons resident outside Bangladesh elsewhere than in the territories notified in this behalf by the Bangladesh Bank.

In this sub-section, "company" includes a firm, branch or office of a company or firm.

¹[**18A.** (1) Notwithstanding anything contained in any other law for the time being in force, no person shall, except with the general or special permission of the Bangladesh Bank, act or accept an appointment to act as an agent in the trading or commercial transactions, or as a technical or management adviser or any other employee, in Bangladesh (whether or not a citizen of Bangladesh) of a person resident in Bangladesh (but not a citizen of Bangladesh) or of a company (other than a banking company) not incorporated under any law in force in Bangladesh.

Restriction on agents

(2) A person acting or holding an appointment to act as an agent or as an adviser or any other employee in Bangladesh of a person or company referred to in sub-section (1) immediately

¹ Sections 18A and 18B were inserted by The Foreign Exchange Regulation (Amendment) Ordinance, 1976 (Ord. No. LXXVI of 1976).

before the commencement of the Foreign Exchange Regulation (Amendment) Ordinance, 1976 (Ord. No. LXXVI of 1976), may continue to so act for a period not exceeding six months from such commencement unless the Bangladesh Bank has, upon an application made in this behalf in such form and containing such particulars as the Bangladesh Bank may direct, granted him permission to continue to so act thereafter.

Explanation.- For the purpose of this section, the term “person” shall include a firm, or a business organisation or concern whether incorporated or not.

Restriction on
foreign
companies

18B. (1) Notwithstanding anything contained in any other law for the time being in force, no person resident outside Bangladesh (whether or not a citizen of Bangladesh) nor a person who is not a citizen of, but resident in, Bangladesh nor a company (other than a banking company) not incorporated under any law in force in Bangladesh shall, except with general or special permission of the Bangladesh Bank, continue or establish in Bangladesh a branch, office or any other place of business for carrying on any activity of a trading, commercial or industrial nature.

(2) Any such person or company carrying on any activity of the nature referred to in sub-section (1) immediately before the commencement of the Foreign Exchange Regulation (Amendment) Ordinance, 1976 (Ord. No. LXXVI of 1976), may, except in the case of a person or company carrying on any activity of the nature referred to in sub-section (1) or having a branch, office or other place of business for carrying on such activity in pursuance of any permission or licence granted by the Government, continue to so carry on such activity for a period not exceeding six months from such commencement unless the Bangladesh Bank has, upon an application made in this behalf, granted him permission to continue to so carry on such activity thereafter.

(3) Where no application under sub-section (2) has been made by any such person or company, the Bangladesh Bank may, by order, direct such person or company to discontinue such activity or to close down such branch, office or place of business, as the case may be, on the expiry of such period as may be specified in the direction.]

19. (1) The Government or the Bangladesh Bank may, at any time by notification in the *official Gazette*, direct owners, subject to such exceptions, if any, as may be specified in the notification, of such foreign exchange or foreign securities as may be so specified, to make a return thereof to the Bangladesh Bank within such period, and giving such particulars, as may be so specified.

Power to call
for information

(2) The Government may by order in writing require any person to furnish it or any person specified in the order with any information, book or other document in his possession, being information, book or document which the Government considers it necessary or expedient to obtain and examine for the purposes of this Act and may, at any time, by notification in the *official Gazette*, direct that the power to make such order shall for such period as may be specified in the direction, be exercised by the Bangladesh Bank.

¹[(3) On a representation in writing made by a person authorised in this behalf by the Government or the Bangladesh Bank and supported by a statement on oath of such person that he has reason to believe that a contravention of any of the provisions of this Act has been or is being or is about to be committed in any place or that evidence of the contravention is to be found in such place, a district magistrate, a sub-divisional magistrate or a magistrate of the first class, may, by warrant, authorise any police officer not below the rank of sub-inspector-

- (a) to enter and search any place in the manner specified in the warrant; and
- (b) seize any books or other documents found in or on such place.

Explanation.- In this sub-section, “place” includes a house, building, tent, vehicle, vessel or aircraft.

¹ Sub-sections (3), (3A) and (3B) were substituted for the former sub-section (3) by section 5 of the Foreign Exchange Regulation (Amendment) Act, 1950 (Act No. LXII of 1950).

(3A) A police officer authorised under sub-section (3) may search any person who is found in or whom he has reasonable ground to believe to have recently left or to be about to enter such place and to seize any article found in the possession of or upon such person and believed by the police officer so authorised to be evidence of the commission of any offence under this Act.

(3B) A police officer authorised under sub-section (3) shall conduct any search under that sub-section or under sub-section (3A) in accordance with the provisions relating to search in the Code of Criminal Procedure, 1898.]

(4) The provisions of sub-sections (1), (2) and (3) of section 54 of the Income-tax Act, 1922, shall apply in relation to information obtained under sub-section (2) of this section as they apply to the particulars referred to in that section, and for the purposes of such application-

- (a) the said sub-section (3) shall be construed as if in clause (a) thereof there was included reference to a prosecution for an offence under section 23 of this Act, and
- (b) persons to whom any information is required to be furnished under an order made under sub-section (2) of this section shall be deemed to be public servants within the meaning of that section.

Power of
inspection

¹[19A. (1) The Government or the Bangladesh Bank may, at any time, cause an inspection to be made, by one or more of its officers, of the books of accounts and other documents of any person, firm or business organisation or concern required to submit to the Bangladesh Bank any return, statement or information under this Act and, where necessary, direct all such books of accounts and other documents to be seized.

(2) Every such person, firm, business organisation, and concern shall produce books of accounts and other documents and furnish such statements and information to such officer or officers in connection with the inspection under sub-section (1).

¹ Section 19A was inserted by the Foreign Exchange Regulation (Amendment) Ordinance, 1976 (Ordinance No. LXXVI of 1976)

(3) Failure to produce any books of accounts or other documents or to furnish any statement or information required under sub-section (2) shall be deemed to be contravention of the provisions of this Act.]

20. (1) For the purposes of this Act and of any rules, directions or orders made thereunder-

Supplemental provisions

- (a) until the Bangladesh Bank by general or special order otherwise directs, any person who has at any time after the commencement of this Act been resident in Bangladesh shall be treated as still being resident in Bangladesh and if such direction is given in relation to any such person the Bangladesh Bank may by the same or a subsequent direction, declare the territory in which he shall be treated as being resident;
- (b) in the case of any person to whom clause (a) does not apply the Bangladesh Bank may by general or special order declare the territory in which he shall be treated as being resident;
- (c) in the case of any person resident in Bangladesh who leaves Bangladesh, the Bangladesh Bank may give a direction to any bank that until the direction is revoked, any sum from time to time standing to the credit of that person and any security held on his behalf at any office or branch of that bank in Bangladesh specified in the direction, shall not be dealt with except with the permission of the Bangladesh Bank;
- (d) any transactions with a branch of any business, whether carried on by a body corporate or otherwise, shall be treated in all respects as if the branch were a body corporate resident where the branch is situated;
- (e) the making of any book entry or other statement recording a debit against a branch of any business in favour of the head office or any other branch of that business shall be treated as the acknowledgement of a debt whereby a right is created in favour of a person resident where the head office or other branch is situated.

(2) Nothing in this Act relating to the payment of any price or sum by the Government shall be constructed as requiring the Government to pay that price or sum otherwise than in Bangladesh currency or otherwise than in Bangladesh.

(3) The Bangladesh Bank may give directions in regard to the making of payments and the doing of other acts by bankers, authorised dealers, travel agents, carriers, whether common or private, stock brokers and other persons who are authorised by the Bangladesh Bank to do anything in pursuance of this Act in the course of their business, as appear to it to be necessary or expedient for the purpose of securing compliance with the provisions of this Act and any rules, orders or directions made thereunder.

Contracts in
evasion of this
Act

21. (1) No person shall enter into any contract or agreement which would directly or indirectly evade or avoid in any way the operation of any provision of this Act or of any rule, direction or order made thereunder.

(2) Any provisions of, or having effect under, this Act that a thing shall not be done without the permission of the Government or the Bangladesh Bank, shall not render invalid any agreement by any person to do that thing, if it is a term of the agreement that that thing shall not be done unless permission is granted by the Government or the Bangladesh Bank, as the case may be; and it shall be an implied term of every contract governed by the law of any part of Bangladesh that anything agreed to be done by any term of that contract which is prohibited to be done by or under any of the provisions of this Act except with the permission of the Government or the Bangladesh Bank, shall not be done unless such permission is granted.

(3) Neither the provisions of this Act nor any term (whether expressed or implied) contained in any contract that anything for which the permission of the Government or the Bangladesh Bank is required by the said provisions shall not be done without that permission, shall prevent legal proceedings being brought in Bangladesh to recover any sum which, apart from the said provisions and any such term, would be due, whether as a debt, damages or otherwise, but -

- (a) the said provisions shall apply to sums required to be paid by any judgment or order of any Court as they apply in relation to other sums; and

- (b) no steps shall be taken for the purpose of enforcing any judgment or order for the payment of any sum to which the said provisions apply except as respects so much thereof as the Government or the Bangladesh Bank, as the case may be, may permit to be paid; and
- (c) for the purpose of considering whether or not to grant such permission, the Government or the Bangladesh Bank, as the case may be, may require the person entitled to the benefit of the judgment or order and the debtor under the judgment or order, to produce such documents and to give such information as may be specified in the requirement.

(4) Notwithstanding anything in the Negotiable Instruments Act, 1881, neither the provisions of this Act or of any rule, direction or order made thereunder, nor any condition, whether express or to be implied having regard to those provisions, that any payment shall not be made without permission under this Act, shall be deemed to prevent any instrument being a bill of exchange or promissory note.

22. No person shall, when complying with any order or direction under section 19 or when making any application or declaration to any authority or person for any purpose under this Act, give any information or make any statement which he knows or has reasonable cause to believe to be false, or not true, in any material particular.

False statements

¹[**22A.** (1) The Government may, if it is of the opinion (the reason for such opinion being recorded in writing) that with a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in, or privy to, the contravention of any of the provisions of this Act or of any rule, direction or order made or given thereunder it is necessary or expedient so to do, grant such person immunity from prosecution under this Act or any other law for the time being in force, and may also grant such person immunity from imposition of any penalty under this Act, subject to the condition of his making full and true disclosure of the whole circumstances relating to such contravention.

Grant of immunity in certain cases

¹ Section 22A was inserted by The Foreign Exchange Regulation (Amendment) Ordinance, 1976.

(2) An immunity granted to, and accepted by the person concerned under sub-section (1) shall, to the extent to which the immunity extends, render him immune from prosecution for any offence or, as the case may be, from imposition of any penalty under this Act to which the immunity relates.

(3) If the Government is satisfied that any person to whom immunity under sub-section (1) was granted has not complied with any of the conditions subject to which the immunity was granted or is wilfully concealing anything or giving false evidence, it may record a finding to that effect and thereupon the immunity so granted shall be deemed to have been withdrawn and such person may be tried for the offence to which the immunity relates and shall be also liable to such penalty as he would have been liable to but for the grant of immunity under this section.]

Penalty and
procedure

¹[23. (1) Whoever contravenes, attempts to contravene or abets the contravention of any of the provisions of this Act or of any rule, direction or order made thereunder, shall notwithstanding anything contained in the Code of Criminal Procedure, 1898, be tried by a Tribunal constituted by section 23A, and shall be punishable with imprisonment for a term which may extend to ²[four years] or with fine or with both, and any such Tribunal trying any such contravention may, if it thinks fit, and in addition to any sentence which it may impose for such contravention, direct that any currency, security, gold or silver, or goods or other property in respect of which the contravention has taken place shall be confiscated.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1898, any offence punishable under this section shall be cognizable for such period as the Government may from time to time, by notification in the *official Gazette*, declare.

¹ Sections 23 and 23A were substituted for section 23 by section 5 of the Foreign Exchange Regulation (Amendment) Act, 1957 (Act No. XL of 1957).

² The words “four years” were substituted for the words “two years” by section 2 of the Foreign Exchange Regulation (Amendment) Act, 2003 (Act No. II of 2003).

(3) A Tribunal shall not take cognizance of any offence punishable under this section and not declared by the Government under the preceding sub-section to be cognizable for the time being, or of an offence punishable under section 54 of the Income-tax Act, 1922, as applied by section 19, except upon complaint in writing made by a person authorised by the Government or the Bangladesh Bank in this behalf:

Provided that where any such offence is the contravention of any of the provisions of this Act or any rule, direction or order made thereunder which prohibits the doing of an act without permission and is not declared by the Government under the preceding sub-section to be cognizable for the time being, no such complaint shall be made unless the person accused of the offence has been given an opportunity of showing that he had such permission.

(4) Where the person guilty of an offence under this Act is a company or other body corporate every director, manager, secretary and other officer thereof who is knowingly a party to the offence shall also be guilty of the same offence and liable to the same punishment.

23A. (1) Every Sessions Judge shall, for the areas within the territorial limits of his jurisdiction, be a Tribunal for trial of an offence punishable under section 23.

Tribunal, its powers, etc.

(2) A tribunal may transfer any case for trial to an Additional Sessions Judge within its jurisdiction who shall, for trying a case so transferred, be deemed to be a Tribunal constituted for the purpose.

(3) A Tribunal shall have all the powers of a Magistrate of the First Class in relation to criminal trials, and shall follow as nearly as may be, the procedure provided in the Code of Criminal Procedure, 1898, for trials before such Magistrate, and shall also have powers as provided in the said Code in respect of the following matters, namely:-

- (a) directing the arrest of the accused;
- (b) issuing search warrants;

- (c) ordering the police to investigate any offence and report;
- (d) authorising detention of a person during police investigation;
- (e) ordering the release of the accused on bail.

(4) All proceedings before a Tribunal shall be deemed to be judicial proceeding within the meaning of sections 193 and 228 of the Pakistan Penal Code, and for the purposes of section 196 thereof, and the provisions relating to the execution of orders and sentences in the Code of Criminal Procedure, 1898, shall, so far as may be, apply to orders and sentences passed by a Tribunal.

(5) As regards sentences of fine, the powers of a Tribunal shall be as extensive as those of a Court of Sessions.

(6) ¹[The Bangladesh Bank] or any other person aggrieved by a judgment of a Tribunal may, within three months from the date of judgment, appeal to the ²[High Court Division].

(7) Save as provided in the preceding sub-section, all judgments and orders passed by a Tribunal shall be final.]

Burden of proof
in certain cases

24. (1) Where any person is tried for contravening any provision of this Act or of any rule, direction or order made thereunder which prohibits him from doing an act without permission, the burden of proving that he had the requisite permission shall be on him.

(2) If in a case in which the proof of complicity of a person resident in Bangladesh with a person outside Bangladesh is essential to prove an offence under this Act, then after proof of the circumstances otherwise sufficient to establish the commission of the offence, it shall be presumed that there was such complicity, and the burden of proving that there was no such complicity shall be on the person accused of the offence.

¹ The words "The Bangladesh Bank" were substituted for the words "the State Bank of Pakistan" by section 3 and the Second Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

² The words "High Court Division" were substituted for the words "High Court" by section 3 and the Second Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

25. For the purposes of this Act the Government may from time to time give to the Bangladesh Bank such general or special directions as it thinks fit, and the Bangladesh Bank shall, in the exercise of its functions under this Act, comply with any such directions.

Power to Government to give direction

26. No suit, prosecution or other legal proceedings shall lie against any person for anything in good faith done or intended to be done under this Act or any rule, direction or order made thereunder.

Bar of legal proceedings

27. The Government may, by notification in the *official Gazette*, make rules for carrying into effect the provisions of this Act.

Power to make rules

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