

Bangladesh Securities and Exchange Commission ACT, 1993
(ACT No. XV of 1993)

To provide the provisions for the establishment of the Bangladesh Securities and Exchange Commission

Whereas it is expedient and necessary to establish a commission namely the Bangladesh Securities and Exchange Commission to provide for the protection of interest of investors in securities, development of the securities markets and for matters ancillary thereto or to provide provisions thereunder;

Now, therefore, the following act is hereby promulgated:-

1. SHORT TITLE AND COMMENCEMENT.-

- (1) This Act may be called the Bangladesh Securities and Exchange Commission Act, 1993.
- (2) It shall come into force on the 20th Boishakh, 1400 BS corresponding to the 3rd May, 1993.

2. DEFINITION:-

- (1) In this Act, unless there is anything repugnant in subject or context-
 - (a) “Commission” means Bangladesh Securities and Exchange Commission as constituted under Section 3;
 - (aa) “Commissioner” means commissioner of the Commission;
 - (b) “Chairman” means Chairman of the Commission;
 - (c) “Fund” means Commission’s Fund constituted under section 12 of this Act.
 - (d) Deleted
 - (dd) “Person” means any institution in addition to natural person;
 - (d) “Rules” means the rules framed under this Act;
 - (e) Deleted
- (2) Words and expressions used herein but not defined shall carry the same meanings respectively as defined in the Companies Act, 1994 (XVIII of 1994) or the Capital Issues (Continuance of Control) Act, 1947 (XXIX of 1947 and the Securities and Exchange Ordinance, 1969 (XVII of 1969).

3. ESTABLISHMENT OF THE COMMISSION.-

- (1) As soon as possible, after the commencement of this Act, the Government shall, by notification in the official gazette, establish a commission namely the Bangladesh Securities and Exchange Commission for pursuing the purpose of this Act.
- (2) The Commission shall be a statutory organization, having perpetual succession and a common seal, with power to acquire, hold and transfer of properties, both movable and immovable, and can sue on its behalf and can be sued.

4. OFFICE OF THE COMMISSION ETC.- (1) Head office of the Commission shall be located in Dhaka.

(2) The Commission may, with prior approval of the Government, establish branch offices at any place of the country.

5. FORMATION OF THE COMMISSION.- (1) The Commission shall consist of one Chairman and four commissioners.

(2) Chairman and commissioners shall be appointed by the Government;

Provided that a person from private sector with required qualification and experience shall be appointed as a commissioner;

(3) Chairman and commissioners shall be full time Chairman and commissioners of the Commission.

(4) Expertise in matters relating to company and securities markets or special knowledge in law, economics, accountancy and any other discipline as may be deemed necessary by the government for the Commission, shall be considered as required qualification for appointment of Chairman and commissioners;

(5) The Chairman shall be the Chief Executive of the Commission.

(6) Chairman and commissioners shall hold their respective offices for a period of four years from the date of appointment and shall be eligible for re-appointment for another term only;

Provided that a person who has attained the age of 65 years, shall not be eligible for appointment, or hold the position of Chairman or commissioner, as the case may be.

(7) Chairman and any of the commissioners may, at any time before end of their service term, resign from his office by giving at least three months prior notice to the Government;

Provided that the Chairman or the commissioner, as the case may be, shall continue to carry out his functions until acceptance of his resignation by the Government.

6. DISQUALIFICATION OF THE CHAIRMAN, ETC.-

(1) No person shall be eligible for appointment or hold office of the Chairman or commissioner, if :-

(a) he has been adjudicated bankrupt by a competent court;

(b) he has been declared to be of unsound mind by a court;

(c) he has been convicted for a criminal offense of moral turpitude;

(d) he has, in the opinion of the government, abused his position in such a manner that continuation of his service will go against the public interest;

(e) he has been appointed as a director or official of a company or organization.

(2) No action shall be taken under clause (d) or (e) of sub-section (1) against the Chairman or any commissioner unless he has been provided with a reasonable opportunity of show-cause.

7. MEETINGS OF THE COMMISSION.-

- (1) Meetings of the Commission shall be held at such times and places as may be determined by the rules and before that, such meetings shall be held at such times and places as may be determined by the Chairman.
- (2) Three commissioners present shall constitute quorum of the meeting;
- (3) The Chairman shall preside over all meetings of the Commission and in his absence, a commissioner elected by the commissioners present shall preside over the meeting.
- (4) Decisions at a meeting of the Commission shall be taken by majority votes of the commissioners present and in case of equality of votes, the person presiding shall have the power to exercise a second or casting vote.
- (5) No action or proceeding of the Commission shall be treated illegal and no questions can be raised merely for a vacancy in the post of a commissioner or any defect in the formation of the Commission.

8. FUNCTIONS OF THE COMMISSION.-

- (1) Subject to the provisions of this Act and rules made thereunder, responsibilities and functions of the Commission shall be to ensure proper issuance of securities, protect the interest of investors in securities and develop and regulate the capital market.
- (2) Without prejudice to the foregoing provisions, the functions, in particular, may include the following:-
 - (a) regulating the business of stock exchange or any securities market;
 - (b) stipulating and regulating the functions of stock brokers, sub-brokers, share transfer agents, bankers to the issue, merchant bankers, registrars to the issue, managers to the issue, underwriters, portfolio managers, investment advisers, trustee of trust deeds, asset management companies, custodians, credit rating companies and such other intermediating organizations as may be associated with the securities market;
 - (c) registering, regulating and directing the functions of any type of collective investment schemes including mutual funds;
 - (d) developing, monitoring and regulating all authorized self-regulatory organizations;
 - (e) prohibiting fraudulent and unfair business related to securities or securities markets;
 - (f) promoting investment related education and training of all segments of the securities market;
 - (g) prohibiting insider trading in securities;
 - (h) regulating substantial acquisition of shares or stocks and take-over or control of companies;

- (i) calling for information from or through the issuer of securities, stock exchanges and self-regulatory organizations of the securities market and conduct inspection, enquiry and audit thereof;
- (ii) notwithstanding anything contained in any other law for the time being in force, in conducting enquiry, the Commission, keeping the Bangladesh Bank informed, may seek information regarding bank account from any bank, insurance company and financial institution or other authority, as the case may be, so far as it relates to the transaction of security;
- (iii) signing agreement related to securities transaction, exchange of information and cooperation with local and foreign authority or organization after taking prior approval of the government;
- (j) compiling, analyzing and publishing information related to the financial performance of issuer of securities;
- (k) levying fees or other charges to accomplish the purposes of this section;
- (l) conducting research and publishing information and data to fulfill the above purposes;
- (ll) regulating the activities of clearing corporation established for settlement of transaction of securities including derivatives;
- (m) performing such other functions and duties as may be prescribed by the rules to achieve the objectives of this Act.

9. APPOINTMENT OF OFFICERS AND EMPLOYEES.-

- (1) As per organogram approved by the Government, the Commission may appoint such officers and employees as necessary for discharging its functions properly.
- (2) Terms and conditions of the services of officers and employees of the Commission appointed under sub-section (1) shall be determined by the rules.
- (3) Under sub-section (2), service condition of the officers and employees of the Commission may be determined in line with the salaries, allowances and other benefits provided to the officers and employees of Bangladesh Bank.

9A. APPOINTMENT OF CONSULTANT OR ADVISER. – With prior approval of the Government, the Commission may recruit required number s of consultants or advisers as per the terms and conditions as determined by the Government.

10. REGISTRATION CERTIFICATE.-

- (1) No stock broker, sub-broker, share transfer agent, banker to the issue, merchant banker, registrar to the issue, manager to the issue, underwriter, portfolio manager, investment adviser, mutual fund, trustee of trust deeds, asset management company, custodian, credit rating company and such other intermediary organizations as may be associated with the securities market shall sell or deal in securities except under and in accordance with the conditions of a the registration certificate obtained from the Commission;

- (2) An application for registration shall be submitted in the manner and on payment of fees, as may be determined by the rules;
- (3) The Commission may, suspend or cancel a registration certificate following the procedure as may be prescribed in the rules;

Provided that no order under this sub-section shall be passed without giving the person or organization concerned a reasonable opportunity of hearing.

11. LIABILITIES AND RESPONSIBILITIES ETC. UNDER ACT XXIX OF 1947 AND ORDINANCE OF XVII OF 1969.-

On the date of establishment of the Commission-

- (a) any reference to the Controller of Capital Issues in any law, other than this Act, or in any contract, instrument or document shall be deemed to have been replaced by the word "Commission";
- (b) office of the Controller of Capital issues, if any shall cease to exist;
- (c) all rights and obligations of the Government under the Capital Issues (Continuance of Control) Act, 1947 (XXIX of 1947) and the Securities and Exchange Ordinance, 1969 (XVII of 1969) hereinafter referred to as the said Acts shall be the rights and obligations of the Commission.
- (d) All contracts and matters executed by or with the Government under the provisions of the said Acts shall be deemed to have been executed with the Commission.
- (e) all suits and other legal proceedings instituted by or against the Government under the said Acts shall deem to be instituted by or against the Commission;
- (f) If anything is pending with the Government in accordance with any provision of the said Acts, it shall be disposed of in accordance with the provisions of the said Acts by the Commission.

12. FUND OF THE COMMISSION.-

- (1) There shall be a fund of the Commission namely the Bangladesh Securities and Exchange Commission Fund and all sums received from the grants of the Government, local authorities or any other institution by the Commission shall be deposited in the fund.
- (2) Money of the fund shall be kept in the name of the Commission with a scheduled bank approved by the Commission.
- (3) Salaries and allowances of the officers and employees of the Commission shall be paid and other expenses may be met from the Fund.
- (4) Notwithstanding anything contained in sub-section (3), the Commission can spend money earned by it for its own purpose except the grants received from Government, local authorities or any other institutions as described in sub-section (1).

13. ANNUAL BUDGET STATEMENT.-

The Commission shall submit the annual budget statement for the upcoming financial year, to the Government within the time as may be determined by the government mentioning the amount of money as required from the Government in that financial year.

14. ACCOUNTS AND AUDIT.-

- (1) The Commission shall maintain proper books of accounts and prepare annual financial statements.
- (2) Accounts of the Commission shall be audited once in every year by the Comptroller and Auditor General, hereinafter referred to as the Auditor General and copies of the audit report shall be submitted to the Government and the Commission, and the Government shall take steps to place it before the Parliament.
- (3) The Auditor General or any person authorized by him, in connection with the audit of accounts of the Commission as per sub-section (2), may examine all records, documents, cash in hand and at bank, deposits, store and other properties of the Commission and interrogate any commissioner, officer and employee of the Commission.

15. REPORTS ETC.-

- (1) The Government may call from the Commission, reports and statements on any matter related to the activities of the Commission as and when required and the Commission shall be bound to furnish those to the Government.
- (2) The Commission shall furnish a report, containing its activities during the previous year, to the Government within sixty days of closing of each financial year and the Government shall, as soon as possible, take steps to place it before the Parliament.

16. POWER OF THE GOVERNMENT TO ISSUE DIRECTION.-

To pursue the purpose of this Act, the Government may issue direction on policy matters from time to time to the Commission and the Commission shall be bound to comply with such direction.

Provided that before giving such direction the Government shall give the Commission an opportunity to express its opinion on the issue concerned.

17. DELEGATION OF POWER.-

Except the power to frame rules, the Commission may delegate any of its powers, under specific terms, to the Chairman, any commissioner or any officer.

17A. CONDUCTING INSPECTION OR ENQUIRY. –

- (1) The Commission may inspect or enquire the affairs of any person mentioned in sub-section (1) of section 10.
- (2) A person or a committee consisting of more than one person empowered by the Commission, may conduct inspection or enquiry in order to fulfill the objectives of sub-section (1) and shall submit the enquiry report to the Commission.

- (3) The person under inspection or enquiry shall be bound to submit all necessary information and documents to the enquiry officer or enquiry committee constituted under sub-section (2).

17B. COMMISSION'S POWER OF CIVIL COURT IN CERTAIN CASES. – The Commission may exercise the same powers as vested in a civil court under the Code of Civil Procedure, 1908 (Act V of 1908), for the purpose of hearing on the enquiry report under section 17A, in respect of the following matters, namely:-

- (a) Issuing summon for enforcing the attendance of a person and examining him under oath;
- (b) compelling submission of any information or the production of required documents.

18. PENALTY.-

- (1) If any person contravenes or attempts to contravene or abets the contravention of any provision of this Act, shall be punishable with rigorous imprisonment for a term not more than five years or with fine not less than Taka Five Hundred Thousand or with both.

- (2) If any person, under the Act or rules or regulations-

- (a) fails to comply with any order or direction; or
- (b) fails to furnish necessary information; or
- (c) fails to provide required assistance to the persons conducting any inspection or enquiry; the Commission may, after giving the person an opportunity of hearing either in person or through authorized representative, issue warning in writing or impose penalty of an amount not less than taka one hundred thousand; and in case of continuing default, a further sum calculated at the rate of taka ten thousand may be imposed for every such day of continuing default.

(2A). Notwithstanding anything contained in any other law, no appeal under section 21(1) or review under section 21(5) can be made or no legal proceeding before any court can be brought by challenging an order of penalty imposed by the Commission as per this act or rules made thereunder unless an amount of 15% (fifteen percent) of such penalty is deposited with the Commission.

(2B). Any sum directed to be paid under this Act shall be recoverable as an arrear of land revenue.

- (3) No case shall be filed, for the same offence, with any court against a person already convicted under sub-section (2).

19. COGNIZANCE OF OFFENSE.-

- (1) No court other than a Court of Sessions shall try an offense punishable under this Act.

- (2) No court shall take into cognizance of any offense punishable under this Act, without a written complaint made by the Commission or any person authorized by the Commission.

20. OFFENSES BY A COMPANY.-

If the person contravening any provision of this Act is a company, the owners, directors, managers, secretary or any other officer or agent of the company shall be held responsible for such contravention, unless he/she can prove that the contravention was committed without his/her knowledge and that he/she had exercised all due diligence to prevent such contravention.

21. APPEALS.-

- (1) Any person being aggrieved by an order issued under this act or rules framed thereunder by a commissioner or officer, may submit an appeal to the Commission within such time as may be determined by rules and the Commission's decision on the appeal shall be final.
- (2) No appeal shall be acceptable if it is submitted after the stipulated time, but if the person submitting the appeal can satisfy the Commission with reasonable causes behind not submitting the appeal in time, in that case the Commission may entertain such appeal after expiry of the stipulated time.
- (3) Every appeal made under this Section shall be made in forms along with fees as may be determined by rules and a copy of the order against which the appeal is being made shall be enclosed with the appeal.
- (4) Every appeal shall be disposed off in a manner as determined by the rules; and no appeal shall be disposed off without giving the appellent a reasonable opportunity of being heard.
- (5) The Commission may, on its own motion or on a representation, review any matter settled earlier and in such a case, decision of the Commission shall be final.

22. INDEMNITY FOR ACTIVITIES PERFORMED IN GOOD FAITH.-

No suit, whether civil or criminal, prosecution or other legal proceedings shall be initiated against the Government, any officer or employee of the Government, any commissioner, officer or employee of the Commission for any impairment or a possibility of impairment of any person for the activities performed in good faith under this Act or rules made thereunder.

23. POWER TO EXEMPT.-

The Commission may, if it deemed expedient and necessary by the Commission or for protection of the public interest, by notification in the official gazette exempt any person or organization from the requirements of section 10(1) of this Act in respect of buying and selling of securities or matters related thereto.

24. POWER TO MAKE RULES.-

- (1) The Commission may, by notification in the official gazette, make rules for pursuing the purposes of this Act.

Provided that before publication of the notification in the official Gazette, the proposed rules shall have to be published in at least two Bangla and one English widely circulated daily newspapers of the country inviting opinion, advice or objection of all concerned giving at least two weeks time for submission of such opinion, advice or objection.

- (2) In any special case, if it is considered not appropriate in the public interest to invite opinion, advice or objection of the persons concerned, the Commission may, after consultation with the Government, make the concerned rules by notification in the official Gazette.
- (3) Notwithstanding anything contained in this section, rules regarding service condition cannot be prepared or amended without prior approval of the Government.

25. Deleted.

26. POWER TO REMOVE DIFFICULTIES.-

- (1) If any difficulty arises in giving effect to the provisions of this Act, the Government may, by order published in the official gazette, take any action as may appear necessary for removing the difficulty:

Provided that no order shall be made under this Section after the expiry of five years from the commencement of this Act.

- (2) Every order made under this Section shall be placed before the Parliament by the Government, as soon as possible.

26A. PUBLICATION OF AUTHENTIC ENGLISH TEXT ETC.- (1) After the Commencement of this Act, the Government may, if necessary publish an authentic English Text of this Act, by notification in the official Gazette.

- (2) In case of any conflict between this Act and the said English Text, this Act shall prevail.

27. REPEAL AND SAVINGS.-

- (1) Securities and Exchange Commission Ordinance, 1993 (Ordinance No. 3 of 1993) is hereby repealed.
- (2) In spite of such repeal ~~ed~~, any work done or action taken under the Ordinance repealed, shall be deemed to have been done or taken under this Act.

[PROVISION FOR RULES AND REGULATIONS.- All rules and regulations framed before the enactment of this act shall be in force in such way subject to in conformity with the provisions of this act as if this act was never enacted.]