

THE SECURITIES AND EXCHANGE ORDINANCE, 1969

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THE SECURITIES AND EXCHANGE ORDINANCE, 1969

ORDINANCE NO. XVII OF 1969

[28th June, 1969]

***An Ordinance to provide for the protection of investors, ¹[regulations of capital markets and issue] and dealings in securities.**

WHEREAS it is expedient to provide for the protection of investors, ²[regulations of capital markets and issue] and dealings in securities and for matters ancillary thereto;

³[***]

NOW, THEREFORE, in pursuance of the Proclamation of the 25th day of March, 1969, read with the Provisional Constitution Order, and in exercise of all powers enabling him in that behalf, the President is pleased to make and promulgate the following Ordinance:-

CHAPTER I

PRELIMINARY

Short title, extent and commencement	1. (1) This Ordinance may be called the Securities and Exchange Ordinance, 1969.
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* Throughout this Ordinance, the word “Commission” was substituted for the words “Central Government” by section 2 of the Securities and Exchange (Amendment) Act, 1993 (Act No. XVI of 1993).

¹ The words “regulations of capital markets and issue” were substituted for the words “regulations of markets” by section 3 of the Securities and Exchange (Amendment) Act, 1993 (Act No. XVI of 1993).

² The words “regulations of capital markets and issue” were substituted for the words “regulations of markets” by section 3 of the Securities and Exchange (Amendment) Act, 1993 (Act No. XVI of 1993).

³ The second paragraph was omitted by section 2 of the Securities and Exchange (Amendment) Act, 2012 (Act No. XLVI of 2012).

(2) It extends to the whole of ¹[Bangladesh].

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

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

(a) “associate” means any partner, employee, officer or director of a member;

²[(b) “bank” means a banking company as defined in the Banking Companies Act, 1991 (Act No. XIV of 1991);]

(c) “broker” means any person engaged in the business of effecting transactions in securities for the account of others;

³[(cc) “Commission” means the Securities and Exchange Commission constituted under the Securities and Exchange Commission Act, 1993 (Act No. 15 of 1993);]

⁴[(ccc) “Commodity Futures Contract” means an agreement to purchase or sell a particular commodity for delivery or settlement in the future at a price to be determined by a contract that obligates each party to fulfill the contract at the specified price and that may be settled by delivery, cash or offset at the Commodity Exchange duly

¹ The word “Bangladesh” was substituted for the word “Pakistan” by section 3 and the Second Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973) as amended by the Bangladesh Laws (Revision and Declaration) (Third Amendment) Act, 2001 (Act No. XLVIII of 2001).

² Clause (b) was substituted by section 3(a) of the Securities and Exchange (Amendment) Act, 2012 (Act No. XLVI of 2012).

³ Clause (cc) was substituted by section 3(b) of the Securities and Exchange (Amendment) Act, 2012 (Act No. XLVI of 2012).

⁴ Clause (ccc) and (cccc) were inserted after clause (cc) by section 3(c) of the Securities and Exchange (Amendment) Act, 2012 (Act No. XLVI of 2012).

registered with the Commission and in relation to Commodity Futures the expression “commodity” includes,-

- (i) agricultural, livestock, fishery, forestry, mining or energy goods, and any product that is manufactured or processed from any such goods; and
- (ii) any other matter as may be notified by the Commission in the official gazette;

(cccc) “derivative” includes—

- (i) a security derived from a debt instrument, share, loan, whether secured or unsecured, risk instrument or contract for differences or any other form of security;
- (ii) a contract which derives its value from the prices, or index of prices, of underlying securities;]
- (d) “equity security” means any stock or transferable share (preferred or common) or similar security representing ownership; any security convertible, with or without consideration, into such a security, or carrying any warrant or right to subscribe to or purchase such a security; any such warrant or right itself ; and such other security as may be prescribed;
- (e) “investment adviser” includes a person who is, for compensation, engaged in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing or selling securities, but does not include-
 - (i) a bank;
 - (ii) any lawyer, accountant, engineer or teacher whose performance of such services is solely incidental to the practice of his profession;

- (iii) any broker, ¹[jobber or dealer], member or associate whose performance of such services is solely incidental to the conduct of his business as a broker, ¹[jobber or dealer], member or associate and who receives no separate compensation therefore;
- (iv) the publisher of any newspaper, news magazine, or other publication of general and regular circulation; or

²[* * *]

- (f) “investment company” means a company engaged principally or wholly in buying and selling securities of other companies and includes a company eighty per cent of whose paid up capital is employed at any one time as investment in other companies, ³[* * *];

⁴[(ff) “issue of capital” means the issuing of any securities whether for cash or otherwise;]

- (g) “issuer” means any person who has issued or proposes to issue any security;

- (h) “jobber ⁵[or dealer]” means any person engaged in the business of effecting transactions in securities for his own account, through a broker or otherwise, but does not include any person who trades in securities for his own account, either individually or in some fiduciary capacity, otherwise than as a part of a regular business;

¹ The words "jobber or dealer" were substituted for the word "jobber" by section 3(d) of the Securities and Exchange (Amendment) Act, 2012 (Act No. XLVI of 2012).

² Sub-clause (v) was omitted by section 4 of the Securities and Exchange (Amendment) Act, 1993 (Act No. XVI of 1993).

³ The words “but does not include a bank or an insurance company or a corporation which is a member of a Stock Exchange” were omitted by section 4 of the Securities and Exchange (Amendment) Act, 1993 (Act No. XVI of 1993).

⁴ Clause (ff) was inserted by section 4 of the Securities and Exchange (Amendment) Act, 1993 (Act No. XVI of 1993).

⁵ The words “or dealer” were inserted by section 3(e) of the Securities and Exchange (Amendment) Act, 2012 (Act No. XLVI of 2012).

- (i) “member” means a member of a Stock Exchange;
 - (j) “person” includes a Hindu undivided family, a firm, an association or body of individuals, whether incorporated or not, a company and every other artificial juridical person;
 - (k) “prescribed” means prescribed by rules made under this Ordinance;
- ¹[(l) “securities” means any of the following instruments issued or to be issued, by or for the benefit of a company, whether incorporated in Bangladesh or not, namely:-
- (i) any Government security as defined in the Securities Act, 1920 (X of 1920); and
 - (ii) other instruments creating a charge or lien on the assets of the company; and
 - (iii) instruments acknowledging loan to or indebtedness of the company and guaranteed by a third party or entered into jointly with a third party, and includes any stock, transferable share, script, note, debenture, debentures stock, bond, investment contract ²[, derivative, commodity futures contract, options contract, exchange-traded fund] and pre-organisation certificate or subscription, and, in general, any interest or instrument commonly known as a “security”; and, any certificate of deposit for, certificate of interest or participation in, temporary or interim certificate for, receipt for, or any warrant or right to subscribe to or

¹ Clause (l) was substituted by section 4 of the Securities and Exchange (Amendment) Act, 1993 (Act No. XVI of 1993).

² The comma (,) was inserted after the words “investment contract” and thereafter the words, commas and hyphen “derivative, commodity futures contract, options contract, exchange-traded fund” were inserted by section 3(f) of the Securities and Exchange (Amendment) Act, 2012 (Act No. XLVI of 2012).

purchase, any of the foregoing, but does not include currency or any note, draft, bill of exchange or banker's acceptance or any note which has a maturity, at the time of issuance, or not more than twelve months, exclusive of days of grace, or any renewal thereof whose maturity is likewise limited;]

- (m) "Stock Exchange" means any person who maintains or provides a market place or facilities for bringing together buyers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a Stock Exchange, as that term is generally understood, and includes such market place and facilities.

¹[CHAPTER IA

ISSUE OF CAPITAL

2A. (1) ²[No issuer, or no company] incorporated in Bangladesh shall, except with the consent of the Commission, make an issue of capital outside Bangladesh. Control over
issue of capital

(2) ³[No issuer, or no company], whether incorporated in Bangladesh or not, shall, except with the consent of the Commission,-

- (a) make an issue of capital in Bangladesh;
- (b) make in Bangladesh any public offer of securities for sale;

¹ Chapter IA containing sections 2A to 2F was inserted by section 5 of the Securities and Exchange (Amendment) Act, 1993 (Act No. XVI of 1993).

² The words and comma "No issuer, or no company" were substituted for the words "No company" by section 4(a) of the Securities and Exchange (Amendment) Act, 2012 (Act No. XLVI of 2012).

³ The words and comma "No issuer, or no company" were substituted for the words "No company" by section 4(b) of the Securities and Exchange (Amendment) Act, 2012 (Act No. XLVI of 2012).

- (c) renew or postpone the date of maturity or repayment of any security maturing for payment in Bangladesh.

(3) The Commission may, on an application made to it, make an order according recognition to an issue of capital made or to be made outside Bangladesh.

Control over prospectus and other advertisements

2B. No person shall issue in Bangladesh any prospectus or other document offering for subscription or publicly offering for sale any securities which does not include a statement that the consent or recognition, as the case may be, of the Commission has been obtained to the issue or offer of the securities, and no person shall, without the consent of the Commission, issue in Bangladesh any document publicly offering for sale any security issued with the consent or recognition of the Commission if such issue was made by a private company or if the order according its consent or recognition contained a condition that the securities should be privately subscribed.

Purchase of securities

2C. No person shall accept or give any consideration for any securities in respect of an issue of capital made or proposed to be made in Bangladesh or elsewhere unless the consent or recognition of the Commission has been accorded to such issue of capital.

Power to impose conditions

¹[**2CC.** Notwithstanding anything contained in কোম্পানী আইন, ১৯৯৪ (১৯৯৪ সনের ১৮নং আইন) or in any other law for the time being in force, or in any contract or any Memorandum and Articles of Association of any company, any consent or recognition accorded under section 2A, section 2B or section 2C, whether before or after the commencement of this section, shall be subject to such conditions, if any, as the Commission may, from time to time, think fit to impose.]

¹ Section 2CC was inserted by section 2 of the Securities and Exchange (Amendment) Act, 1997 (Act No. VI of 1997).

2D. (1) The Commission may, by general order which shall be notified in the *official Gazette*, provide for the granting of exemption from all or any of the provisions of sections 2A, 2B and 2C.

Power to exempt and to condone contraventions

(2) The Commission may, by order, condone a contravention of any of the provisions of section 2A or section 2B and on the making of such order the provisions of this Ordinance shall have effect as if an exemption had been granted under sub-section (1) of this section in respect of the thing done or omitted to be done in contravention of section 2A or section 2B, as the case may be.

2E. Any officer authorised in this behalf by the Commission may, for the purpose of inquiring into the correctness of any statement made in an application for consent or recognition to an issue of capital or for the purpose of ascertaining whether or not the requirements of any condition attached to a order according such consent or recognition have been complied with, require any company, or any officer of a company, which has made such application or obtained such order to submit to him such accounts, books or other documents or to furnish to him such information, as he may reasonably think necessary.

Power to call for information

2F. No person shall, when complying with any requisition under section 2E or when making any application for consent or recognition to an issue of capital, 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 information

¹[**2G.** All orders made or deemed to have been made under the Capital Issues (Continuance of Control) Act, 1947 (XXIX of 1947), and in force on the commencement of this section, shall continue to be in force and be deemed to be orders made under this Ordinance.]

Continuity of orders

¹ Section 2G was added by section 3 of the Securities and Exchange (Amendment) Act, 1997 (Act No. VI of 1997).

CHAPTER II**REGISTRATION AND REGULATION OF STOCK EXCHANGES**

No Stock Exchange to operate without registration

3. No Stock Exchange shall operate or carry on its functions, and no person shall use or utilise, for the purpose of any transaction or dealing in any security, the facilities or services of a Stock Exchange, unless such Stock Exchange is registered under this Ordinance.

Eligibility for registration

4. (1) Any Stock Exchange which fulfils such conditions or complies with such requirements as may be prescribed to ensure fair dealings and to protect investors shall be eligible for registration under this Ordinance.

(2) The conditions or requirements which may be prescribed for the purposes of sub-section (1) may, among other matters, relate to-

- (a) qualifications for membership and admission, exclusion, suspension, expulsion and re-admission of members thereinto or therefrom;
- (b) constitution and powers of the governing body and the powers and duties of the office bearers;
- (c) representation of the Commission on the governing body of a Stock Exchange or any of its Committees;
- (d) the manner in which business should be transacted including restrictions on the business of the members;
- (e) Memorandum and Articles of Association, rules, regulations and bye-laws of a Stock Exchange; and
- (f) the maintenance of accounts, including those of members, and their audit.

Registration

5. (1) Any Stock Exchange which is eligible for registration under section 4 may, in such form and manner as may be prescribed, apply to the Commission for registration.

(2) The Commission, if it is satisfied, after such inquiry and after obtaining such further information as it may consider necessary,-

- (i) that the Stock Exchange is eligible for registration; and
- (ii) that it would be in the interest of the trade and also in the public interest to register the Stock Exchange;

may grant a certificate of registration to the Stock Exchange.

(3) No application for registration shall be refused except after giving the applicant an opportunity of being heard.

6. (1) Every Stock Exchange and every director, officer and member thereof shall prepare and maintain such books of accounts and other documents in such manner as may be prescribed; and every such book of accounts or document shall be subject to inspection at all reasonable times by any person authorised by the Commission in this behalf.

Accounts, annual reports, returns, etc.

(2) Every Stock Exchange shall submit to the Commission, in such manner and containing such particulars as may be prescribed, an annual report and periodical returns relating to its affairs.

(3) Without prejudice to the provisions of sub-section (1) and sub-section (2), every Stock Exchange and every director, officer or member thereof shall furnish such documents, information or explanation relating to the affairs of the Stock Exchange or, as the case may be, relating to the business on the Stock Exchange of such director, officer or member as the Commission may, at any time, by order in writing require.

7. (1) Where the Commission is of opinion that Stock Exchange or any member, director or officer of a Stock Exchange has contravened any provision, or has otherwise neglected or failed to comply with any requirement, of this Ordinance, or of any rule, regulation or direction made or given thereunder, the Commission may, if it considers it necessary for the protection of investors or to ensure fair dealings or fair administration of the Stock Exchange so to do, by order in writing,-

Cancellation of registration, etc.

- (a) suspend for such period as may be specified in the order the transaction of any business on the Stock Exchange;

- (b) cancel the registration of the Stock Exchange;
- (c) supersede the governing body or other authority of the Stock Exchange;
- (d) remove the director, officer or member from his office in, or membership of, the Stock Exchange:

Provided that no such order shall be made except after giving the governing body or other authority or, as the case may be, the director, officer or member, an opportunity of being heard.

(2) An order made under clause (c) or clause (d) of sub-section (1) may also direct that the functions of the governing body or other authority which has been superseded or of the director or officer who has been removed shall be performed by such authority or person as may be specified therein.

(3) An order under sub-section (1) shall have effect notwithstanding anything contained in any other law for the time being in force or in any Memorandum or Articles of Association:

Provided that no order made under clause (a) or clause (b) of sub-section (1) shall affect the validity of any contract lawfully entered into before the date of such order.

Restriction on
dealings in
securities

8. (1) No person shall transact any business in securities on any Stock Exchange unless he is a member thereof.

(2) No business shall be transacted on a Stock Exchange in a security, other than a Government security or a bonus entitlement voucher, which is not listed on such Stock Exchange ¹[:

Provided that business of security which is de-listed or not listed may be transacted in such manner as the Commission may direct.]

¹ The colon (:) was substituted for the full-stop (.) and thereafter the proviso was inserted by section 5(a) of the Securities and Exchange (Amendment) Act, 2012 (Act No. XLVI of 2012).

(3) No person shall act as a ¹[jobber or dealer] in a security listed on a Stock Exchange outside such Stock Exchange.

²[* * *]

(4) No person other than a member shall act as a broker or a ³[jobber or dealer] for any security not listed on a Stock Exchange:

Provided that the prohibition in this sub-section shall not apply to discounting of any security evidencing a loan.

9. (1) An issuer who intends to get any of his securities listed on a Stock Exchange shall submit an application therefore, in the prescribed form to the Stock Exchange and submit a copy of the application to the Commission.

Listing of securities

(2) Upon receipt of an application under sub-section (1), the Stock Exchange may, if it is satisfied after making such inquiry as it may consider necessary that the applicant fulfils the conditions prescribed in this behalf, list the security for dealings on the Stock Exchange.

(3) Where a Stock Exchange refuses to list a security, the Commission may, either on petition by the applicant made within the prescribed time or on its own motion, direct the Stock Exchange to list the security.

(4) Where after the listing of a security, the Commission or Stock Exchange finds that the application is deficient in any material respect or that the issuer has failed to comply with any prescribed condition or requirement and that the continued listing of the security would not be in the public interest, the Commission or, as the case may be, the Stock Exchange may, by order, either require the issuer to correct the deficiency or comply with the prescribed condition or requirement within the time specified in the order or revoke the listing.

¹ The words “jobber or dealer” were substituted for the word “dealer” by section 5(a) of the Securities and Exchange (Amendment) Act, 2012 (Act No. XLVI of 2012).

² The proviso was omitted by section 6 of the Securities and Exchange (Amendment) Act, 1993 (Act No. XVI of 1993).

³ The words “jobber or dealer” were substituted for the word “jobber” by section 5(c) of the Securities and Exchange (Amendment) Act, 2012 (Act No. XLVI of 2012).

(5) A listed security may be de-listed on application by the issuer to the Stock Exchange which may deny the application or grant it on such conditions as appear necessary or appropriate for the protection of investors.

(6) Where a Stock Exchange refuses to de-list a security, the Commission may, on petition by the applicant made within the prescribed time, direct the Stock Exchange to de-list the security.

(7) The Commission or a Stock Exchange may, if it considers it to be in the interest of trade or in the public interest so to do, suspend, by order recording the reasons, trading in any listed security.

(8) An order under sub-section (7) shall remain in force for a period of ¹[thirty] days which the Commission or, as the case may be, the Stock Exchange may extend for further periods not exceeding ²[fifteen] days at any time.

(9) No application submitted under sub-section (1) shall be refused, and no listing shall be revoked under sub-section (4), unless the issuer has been given an opportunity of being heard.

Compulsory
listing of
securities

10. Where the Commission, having regard to the nature of, and the dealings in, any security, is of the opinion that it is necessary or expedient in the public interest so to do, it may, after consulting a Stock Exchange and giving the issuer of such security an opportunity of being heard, direct the Stock Exchange to list the security.

CHAPTER III

REGULATION OF ISSUERS

Submission of
returns

11. (1) An issuer of a listed security shall furnish to the Stock Exchange, to the security holders and to the Commission an annual report of its affairs and such statements and other reports as may be prescribed.

¹ The word “thirty” was substituted for the word “fourteen” by section 6 of the Securities and Exchange (Amendment) Act, 2012 (Act No. XLVI of 2012).

² The word “fifteen” was substituted for the word “fourteen” by section 6 of the Securities and Exchange (Amendment) Act, 2012 (Act No. XLVI of 2012).

(2) Without prejudice to the provisions of sub-section (1), an issuer of a listed security shall furnish to the Commission such other documents, information or explanation relating to its affairs as the Commission may, at any time, by order in writing, require.

12. Every director or officer of an issuer who is or has been the beneficial owner of any class of its listed equity securities and every person who is directly or indirectly the beneficial owner of more than ten per cent of any class of such securities shall submit to the Commission such returns pertaining to the beneficial ownership of such securities in such form and at such times or at such intervals as may be prescribed.

Submission of statements of beneficial owners of listed equity securities

13. No director or officer of an issuer of a listed equity security and no person who is directly or indirectly the beneficial owner of not less than ten per cent of such securities shall practise directly or indirectly short-selling such securities.

Prohibition of short-selling

14. (1) Where any director or officer of an issuer of a listed equity security or any person who is directly or indirectly the beneficial owner of not less than ten per cent of such securities makes any gain by the purchase and sale, or the sale and purchase, of any such security within a period of less than six months, such director or officer or beneficial owner shall make a report and tender the amount of such gain to the issuer:

Trading by directors, officers and principal shareholders

Provided that nothing in this sub-section shall apply to a security acquired in good faith in satisfaction of a debt previously contracted.

(2) Where a director, officer or beneficial owner fails or neglects to tender, or the issuer fails to recover, any such gain as is mentioned in sub-section (1) within a period of six months after its accrual, or within sixty days of a demand therefore, whichever is later, such gain shall vest in the Commission which may recover the same as an arrear of land revenue.

15. Notwithstanding anything contained in the Companies Act, 1913 or in the Memorandum or Articles of Association of the issuer of a listed security, the Commission may regulate the solicitation of any proxy, consent or authorisation pertaining to the securities of such issuer in such manner as may be prescribed.

Regulation of proxies

CHAPTER IV**PROHIBITIONS AND RESTRICTIONS**

16. No member or associate shall, in contravention of any rules made under this Ordinance, directly or indirectly,-

Credit,
hypothecation
and lending of
customers'
securities

- (a) extend or maintain credit, or arrange for the extension or maintenance of credit, to or for any person for the purpose of purchasing or carrying any security; or
- (b) borrow on any security or land or arrange for the lending of any security carried for the account of a customer; or
- (c) hypothecate or arrange for the hypothecation of any security carried for the account of any customer.

Prohibition of
fraudulent acts,
etc.

17. No person shall, for the purpose of inducing, dissuading, effecting, preventing or in any manner influencing or turning to his advantage, the sale or purchase of any security, directly or indirectly,-

- (a) employ any device, scheme or artifice, or engage in any act, practice or course of business, which operates or is intended or calculated to operate as a fraud or deceit upon any person; or
- (b) make any suggestion or statement as a fact of that which he does not believe to be true; or
- (c) omit to state or actively conceal a fact having knowledge or belief of such fact; or
- (d) induce any person by deceiving him to do or omit to do anything which he would not do or omit if he were not so deceived; or
- (e) do any act or practice or engage in a course of business, or omit to do any act which operates or would operate as a fraud, deceit or manipulation upon any person, in particular-
 - (i) make any fictitious quotation;
 - (ii) create a false and misleading appearance of active trading in any security;

- (iii) effect any transaction in such security which involves no change in its beneficial ownership;
- (iv) enter into an order or orders for the purchase and sale of security which will ultimately cancel out each other and will not result in any change in the beneficial ownership of such security;
- (v) directly or indirectly effect a series of transactions in any security creating the appearance of active trading therein or of raising of price for the purpose of inducing its purchase by others or depressing its price for the purpose of inducing its sale by others;
- (vi) directly or indirectly effect a series of transactions in any security creating the appearance of active trading therein or of raising of price for the purpose of inducing its purchase by others or depressing its price for the purpose of inducing its sale by others;
- (vii) being a director or an officer of the issuer of a listed equity security or a beneficial owner of not less than ten per cent of such security who is in possession of material facts omit to disclose any such facts while buying or selling such security.

18. No person shall, in any document, paper, accounts, information or explanation which he is, by or under this Ordinance, required to furnish, or in any application made under this Ordinance, make any statement or give any information which he knows or has reasonable cause to believe to be false or incorrect in any material particular.

Prohibition of false statements, etc.

19. No person shall, except with the permission of the Commission, communicate or otherwise disclose to any person not legally entitled thereto any information which has been entrusted to him or which he has obtained or to which he had access in the course of the performance of any functions under this Ordinance.

Maintenance of secrecy

Maintenance of
secrecy by the
Commission, etc.

¹[**19A.** The existing and former Chairman, Member and employee of the Commission shall not disclose or communicate to any person not legally entitled thereto any information which has been entrusted to him or which he has obtained or to which he had access in the course of the performance of any functions under this Ordinance.

Penalty for
disclosure of
information

19B. (1) The disclosure of any information in contravention of section 19 or 19A for the purpose of making profit through insider trading shall be an offence.

(2) Whoever contravene sub-section (1) shall be punishable with imprisonment for a term which may extend to five years, or with fine not less than taka five lakh, or with both.]

Prohibitory
orders

20. (1) Where the Commission is of opinion that any person is engaged or is about to be engaged in any act or practice which constitutes or is calculated to constitute a contravention of the provisions of this Ordinance or of any rules made thereunder, or that any person has neglected, or is not likely, to do an act the omission or failure to do which constitutes such contravention, it may, by order in writing, direct such person to abstain from doing the act or committing the practice which constitutes or is calculated to constitute such contravention, or to do the act, the omission or failure to do which constitutes such contravention.

(2) Every person to whom a direction under sub-section (1) is given shall comply therewith in such manner, if any, and within such time, as may be specified therein.

¹ Sections 19A and 19B were added by section 7 of the Securities and Exchange (Amendment) Act, 2012 (Act No. XLVI of 2012).

¹[20A. ²[Notwithstanding anything contained in any other law for the time being in force, where] the commission is satisfied that in the interest of investors or securities market or for the development of securities market it is necessary so to do, it may, by order in writing, issue such directions as it deems fit to any Stock Exchange, stock broker, stock dealer, issuer or investor or any other person associated with the capital market.]

Power of
commission to
issue
directions in
certain cases

CHAPTER V

ENQUIRIES, PENALTIES, ORDERS AND APPEALS

21. (1) The Commission may, on its own motion or, in the case of the issuer of a listed security, on representation of holders of not less than ³[five per cent] of equity securities at any time by order in writing, cause an enquiry to be made by any person appointed in this behalf into-

Enquiry

- (a) the affairs of any Stock Exchange, or of any issuer of a listed security; or
- (b) the business or any transaction in securities by any member, director or officer of a Stock Exchange or of an issuer, or of a director or an officer thereof, or by any person ⁴[***].

¹ Section 20A was inserted by section 4 of the Securities and Exchange (Amendment) Act, 2000 (Act No. XXXVII of 2000).

² The words and comma “Notwithstanding anything contained in any other law for the time being in force, where” were substituted for the word “Where” by section 8 of the Securities and Exchange (Amendment) Act, 2012 (Act No. XLVI of 2012).

³ The words “five per cent” were substituted for the words “ten percent” by section 7 of the Securities and Exchange (Amendment) Act, 1993 (Act No. XVI of 1993).

⁴ The words “who is directly or indirectly the beneficial owner of not less than ten per cent of a listed security” were omitted by section 9(a) of the Securities and Exchange (Amendment) Act, 2012 (Act No. XLVI of 2012).

¹[(2) Where an enquiry under sub-section (1) has been undertaken, every member, director, manager or other officers of the Stock Exchange or the issuer to which, or to whose member, director, auditor or officer of the enquiry relates, an insurance company as defined in the Insurance Act, 2010, a bank, a financial institution as defined in the Financial Institutions Act, 1993, and every other person considered by the person conducting the enquiry to be capable of providing information which is, or may be relevant to that enquiry, shall furnish such information as the person conducting the enquiry may require.

(2a) Notwithstanding anything contained in any other law for the time being in force in conducting enquiry under sub-section (1), the Commission, keeping the Bangladesh Bank informed, may seek information regarding bank account from any bank, or any financial institution or organization, as the case may be, so far as it relates to the transaction of security.]

(3) The person conducting an enquiry under sub-section (1) may, for the purpose of such enquiry, enter into any premises belonging to or in the occupation of the Stock Exchange or the issuer or of the person to whom the enquiry relates, and call for and inspect and seize books of accounts or documents in the possession of any such Stock Exchange, issuer or person.

(4) The person holding an enquiry under sub-section (1) shall, for the purpose of such enquiry have the same powers as are vested in a Court under the Code of Civil Procedure, 1908, when trying a suit, in respect of the following matters, namely:-

- (a) enforcing the attendance of a person and examining him on oath or affirmation;

¹ Sub-sections (2) and (2a) were substituted for the sub-section (2) by section 9(b) of the Securities and Exchange (Amendment) Act, 2012 (Act No. XLVI of 2012).

- (b) compelling the production of documents;
- (c) issuing commissions for the examination of witnesses;

and any proceedings before such person shall be deemed to be “judicial proceeding” within the meaning of sections 193 and 228 of the ¹[* * *] Penal Code (Act XLV of 1860).

²[(5) The Commission may recover any expense incurred for an enquiry under this section from the person or the institution against whose affairs, business or transaction, as the case may be, the enquiry was conducted or, where the Commission considers it to be appropriate, from the holders of securities making the representation.]

22. (1) If any person-

- (a) refuses or fails to furnish any document, paper or information which he is required to furnish by or under this Ordinance; or
- (b) refuses or fails to comply with any order or direction of the Commission made or issued under this Ordinance; or
- (c) contravenes or otherwise fails to comply with the provisions of this Ordinance;

Penalty for
certain refusal
or failure

the Commission may, if it is satisfied after giving the person an opportunity of being heard that the refusal, failure or contravention was wilful, by order direct that such person shall pay to the Commission by way of penalty such sum not exceeding ³[one lakh taka] as may be specified in the order and, in the case of a continuing default, a further sum calculated at the rate of ⁴[ten thousand taka] for every day after the issue of such order during which the refusal, failure or contravention continues.

¹ The word “Pakistan” was omitted by Article 6 of the Bangladesh (Adaptation of Existing Laws) Order, 1972 (President’s Order No. 48 of 1972).

² Clause (5) was added by section 7 of the Securities and Exchange (Amendment) Act, 1993 (Act No. XVI of 1993).

³ The words “one lakh Taka” were substituted for the words “ten thousand rupees” by section 8 of the Securities and Exchange (Amendment) Act, 1993 (Act No. XVI of 1993).

⁴ The words “ten thousand Taka” were substituted for the words “one thousand rupees” by section 8 of the Securities and Exchange (Amendment) Act, 1993 (Act No. XVI of 1993).

(2) Any sum directed to be paid under sub-section (1) shall be recoverable as an arrear of land revenue.

(3) No prosecution for an offence against this Ordinance shall be instituted in respect of the same facts on which a penalty has been imposed under this section.

Restriction in respect of filing of suit

¹[**22A.** Notwithstanding anything contained in any other law for the time being in force, no legal proceeding before any Court can be brought challenging an order of penalty imposed by the Commission unless an amount of 15% (fifteen percent) of such penalty is deposited in the Commission.]

Civil liabilities

23. (1) Every contract made in contravention of any provision of this Ordinance or any rule made thereunder shall be voidable as regards the rights of any party to the contract contravening such provision or any person not being a party to the contract who acquires any right under the contract with actual knowledge of the facts by reason of which its making or performance was in such contravention and any person affected by such contract not being himself a party to the contravention may sue to rescind any such contract to the extent it has been consummated, or for damages when rescission is not possible.

(2) Any person who makes or causes to be made, in any application, report, or document filed with the Commission or a Stock Exchange pursuant to this Ordinance or any rule made thereunder, any statement which was false or misleading with respect to any material fact, at the time and in the light of the circumstances under which it was made, shall be liable to any person who has purchased or sold a security in reliance on such statement for damages caused by such reliance, without regard to the presence or absence of any contractual relationship between the two, unless the person who made or caused to be made the application, report or document proves that he acted in good faith and had no knowledge or reasonable ground to believe that the statement was false or misleading.

¹ Section 22A was added by section 10 of the Securities and Exchange (Amendment) Act, 2012 (Act No. XLVI of 2012).

(3) Any person who participates in any act or transaction in contravention of section 17 shall be liable to any person who has purchased or sold a security in reliance on such act or transaction for damages caused by such reliance, without regard to the presence or absence of any contractual relationship between the two, unless the person so contravening proves that he acted in good faith and had no knowledge or reasonable ground to believe that there was any fraud, untruth or omission.

(4) Every person who directly or indirectly exercises control over the affairs of any person liable under this section shall also be liable to the same extent as the person whose affairs are so controlled, unless he proves that he acted in good faith and did not directly or indirectly induce the act or acts giving rise to the cause of action.

(5) Liability under this section shall be joint and several, and every person who becomes liable may recover contribution as in cases of contract from any person who, if joined in the original suit, would have been liable to make the same payment, unless the plaintiff was, and the defendant was not, guilty of fraudulent misrepresentation.

(6) No suit for the enforcement of any right or remedy provided for in this section shall lie after the expiry of three years from the date of the accrual of the cause of action.

(7) The rights and remedies provided by this Ordinance shall be in addition to any other rights and remedies available under any other law for the time being in force.

24. (1) Whoever contravenes the provisions of section 17 shall be punishable with imprisonment for a term which may extend to ¹[five years, or with fine which may extend to five lakh Taka,] or with both. Penalty

¹ The words and commas “five years, or with fine which may extend to five lakh Taka,” were substituted for the words and comma “three years, or with fine which may extend to ten thousand rupees,” by section 9 of the Securities and Exchange (Amendment) Act, 1993 (Act No. XVI of 1993).

Cognizance of
offence

(2) Where the person guilty of an offence referred to in sub-section (1) is a company or other body corporate, every director, manager or other officer responsible for the conduct of its affairs shall, unless he proves that the offence was committed without his knowledge or that he exercised all diligence to prevent its commission, be deemed to be guilty of the offence.

25. No Court shall take cognizance of any offence punishable under this Ordinance except on a report in writing of the facts constituting the offence by an officer authorised in this behalf by the Commission; and no Court inferior to that of a Court of Session shall try any such offence.

Burden of Proof

¹[**25A.** Where any person is prosecuted for contravention of any provision of this Ordinance or of any order made thereunder which prohibits him from doing any act without the consent or permission of the authority, the burden of proving that he had not contravened the provision or, as the case may be, the order shall lie on him.]

Power to
establish
Special Tribunal

²[**25B.** (1) For the purpose of this Ordinance, the Government may, by notification in the official gazette, establish one or more Special Tribunal.

(2) A Special Tribunal shall consist of a Sessions Judge or Additional Sessions Judge, who shall be appointed by the Government and shall have all the powers conferred by the Code of Criminal Procedure, 1898 (Act No. V of 1898), on a Court of Sessions exercising original jurisdiction.

(3) The Court of Sessions may, of its own, or upon an application made by the Commission, transfer at any stage of the trial, any case from his Court to another Special Tribunal.

(4) The Special Tribunal shall try the case from such stage wherefrom the case was so transferred.]

¹ Section 25A was inserted by section 10 of the Securities and Exchange (Amendment) Act, 1993 (Act No. XVI of 1993).

² Section 25B was added by section 11 of the Securities and Exchange (Amendment) Act, 2012 (Act No. XLVI of 2012).

26. (1) Any order passed or made under this Ordinance by an officer or authority subordinate to the Commission or exercising powers of the Commission in pursuance of a direction under section 28 shall be subject to revision by the Commission upon application being made by any aggrieved person within ninety days from the date of such order; and the Commission's order in revision shall be final.

Revision and
review

(2) The Commission may, upon an application being made to it within a period of six months from the date of any order passed by it otherwise than in revision under sub-section (1) or on its own motion, review such order; and the Commission's order in review shall be final.

CHAPTER VI

MISCELLANEOUS

27. The Commission may, for the purpose of obtaining advice and assistance in carrying out the purposes of this Ordinance, constitute an Advisory Committee consisting of such persons representing interests affected by this Ordinance or having special knowledge of the subject-matter thereof as it may think fit.

Advisory
Committee

28. The Commission may, by notification in the *official Gazette*, direct that all or any of its powers and functions under this Ordinance may, subject to such limitations, restrictions or conditions, if any, as it may from time to time impose, be exercised or performed also by any officer or authority subordinate to it or specially appointed for the purpose.

Delegation of
power

29. The Commission may, by notification in the *official Gazette*, exempt any person or class of persons or any security or class of securities or any transaction or class of transactions from the operation of all or any of the provisions of this Ordinance.

Exemption

30. No suit, prosecution or other legal proceedings shall lie against the Commission or an officer or authority subordinate to it or specially appointed for the purpose of this Ordinance for anything which is in good faith done or intended to be done under this Ordinance or any rules or orders made thereunder.

Indemnity

Securities
acquired in
good faith

31. (1) A person who, without fraud and for a lawful consideration, becomes the possessor of a certificate of an equity security, scrip, debenture, debenture stock or bond, and who is without notice that the title of the person from whom he derived his own title was defective shall hold such certificate and all rights attached thereto free from any defect of title of prior parties and free from defences available to prior parties among themselves.

(2) A Stock Exchange may regulate the documentation, procedures and guarantees required to transfer property in securities and the effects thereof on the respective rights and liabilities of the parties and such regulations, if approved by the Commission, shall constitute binding and enforceable terms and conditions of contracts effected on the exchange, shall govern the rights and liabilities of the parties thereto, and shall govern the rights and liabilities with respect to transfers of shares on its books of the issuer of listed securities notwithstanding any provisions to the contrary contained in the Contract Act, 1872, the Negotiable Instruments Act, 1881, the Transfer of Property Act, 1882, or the Companies Act, 1913, or any other law for the time being in force.

Regulation of
business of
investment
advisers and
investment
companies

32. The business of investment advisers and investment companies shall be regulated in such manner as may be prescribed.

Regulation of
business of
Commodity
Futures
Contract, etc.

¹[**32A.** The business of Commodity Futures Contract or Options Contract, in the Commodity Exchange, shall be regulated in such manner and on payment of such fees and charges as may be prescribed.]

Explanation: For the purpose of this section, “Commodity Exchange” means a company that provides or, proposes to provide, the physical facilities necessary for trading in Commodity Futures Contract or Options Contract.]

¹ Section 32A was added by section 12 of the Securities and Exchange (Amendment) Act, 2012 (Act No. XLVI of 2012).

33. (1) The Commission may, by notification in the *official Gazette*, make rules for carrying out the purposes of this Ordinance. Power to make rules

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

- (a) any of the matters which are to be or may be prescribed for the purposes of clause (d) of section 2 and sections 4, 5, 6, 9, 11, 12, 15, 16 and 32; and
- (b) any of the matters with respect to which a Stock Exchange may make regulations.

34. (1) A Stock Exchange may, subject to the previous approval of the Commission, make regulations not inconsistent with the rules to carry out the purposes of this Ordinance. Power to make regulations

(2) In particular and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:-

- (i) constitution, powers and functions of the governing body of the Stock Exchange;
- (ii) qualifications for membership of the Stock Exchange; admission, suspension and expulsion of members, disciplinary matters, including punishment of the members;
- (iii) classification of members into categories with regard to-
 - (a) whether they are or are not active in dealings on the Stock Exchange;
 - (b) whether they have or have not a place of business in the city where the Stock Exchange is located; and
 - (c) whether a substantial part of their business is in listed or unlisted securities;
- (iv) a member's financial responsibility whether by way of minimum capital or a ratio between net capital or aggregate indebtedness, or both;

- (v) regulation of dealing by members for their own account; method of soliciting business by members; manner of maintaining books of accounts and financial reports by members;
- (vi) methods of selection of officers and committees to ensure a fair representation of the membership;
- (vii) qualifications and functions of the directors, officers and other functionaries of the Stock Exchange; disciplinary matters, including punishment of the directors, officers and functionaries;
- (viii) listing and delisting of securities;
- (ix) the procedure for registration of an issuer and particulars to be furnished for the purpose;
- (x) regulation of days and hours of trading in securities, suspension of trading;
- (xi) types of contracts and settlements in the Stock Exchange and regulation of contracts generally, including the consequences of default or insolvency; confirmation of contracts;
- (xii) regulation of forward trading, *badlas* and carry-over facilities in relation to transactions and securities;
- (xiii) manner of making and publishing quotations, fixing of trade units and differentials and publication of transactions both individually and by volume;
- (xiv) setting up of a clearing house in relation to transactions in securities;
- (xv) regulation of fictitious and numbered accounts; blank transfers, sort sales, options, odd lots and margins, in relation to transactions and securities;
- (xvi) lending and hypothecation of customers' securities;
- (xvii) regulation of brokerage and other charges, including fixation of minimum commission;

- (xviii) separation of the functions of broker and ¹[jobber or dealer];
- (xix) procedure for the settlement of claims or disputes, including arbitration; and
- (xx) any other matter for which a regulation is required to be or may be made.

(3) All regulations made under this section shall be published in the *official Gazette* and shall take effect upon such publication.

(4) Where the Commission considers it expedient so to do, it may, by order in writing, direct a Stock Exchange to make any regulation, or to amend or rescind any regulation already made, within such period as it may specify in this behalf.

(5) If a Stock Exchange fails or neglects to comply with any direction under sub-section (4) within the specified period, the Commission may make or amend, with or without modifications, or rescind, any regulation directed to be made, amended or rescinded; and a regulation so made, amended or rescinded by the Commission shall be deemed to have been made, amended or rescinded by the Stock Exchange in accordance with the provisions of this section and shall have effect accordingly.

35. (1) A Stock Exchange which, immediately before the commencement of this Ordinance, was functioning, shall be deemed to have been registered under this Ordinance. Savings

(2) Any security which immediately before the commencement of this Ordinance, stood listed on any Stock Exchange shall be deemed to have been listed under this Ordinance.

¹ The words “jobber or dealer” were substituted for the word “jobber” by section 13 of the Securities and Exchange (Amendment) Act, 2012 (Act No. XLVI of 2012).

(3) Any rule, regulation, bye-law or order made or issued by a Stock Exchange which, immediately before the commencement of this Ordinance, was in force, shall, in so far as it is not inconsistent with the provisions of this Ordinance, continue in force as if made or issued under this Ordinance.
