

**SHARE MANAGEMENT AND SECURITIES EXCHANGE
LAWS OF BANGLADESH:
DETERMINING EFFICACY AND FALLOUTS**

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DECLARATION

This is to certify that I, Syeda Nasrin, am submitting this thesis in fulfillment of the requirements for the degree of Doctor of Philosophy. I do hereby affirm and confirm that I have not submitted this thesis for the award of a degree to any other university or institution other than the University of Dhaka. To the best of my knowledge and belief, this research work contains no copy or paraphrase of any work published by another person, except where due reference has been made in the text.

(Syeda Nasrin)

CERTIFICATE OF SUBMISSION

This is to certify that this PhD thesis entitled “Share Management and Securities Exchange Laws of Bangladesh: Determining Efficacy and Fallouts” has been written, planned and synthesized by the researcher Ms. Syeda Nasrin under my supervision. I also certify that I have gone through the draft and final version of the thesis and found it satisfactory for the submission to the Department of Law, University of Dhaka for fulfillment of the requirements for the degree of Doctor of Philosophy.

I believe that she has completed all the necessary procedures and sincerely honored all the stipulations in due compliance with laws and regulations of the University of Dhaka for pursuing this highest degree of honor. Being satisfied thereto, I do hereby recommend this thesis for submission for the award of the degree of Doctor of Philosophy.

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ABSTRACT

Securities market (also popularly known as financial market or capital market), one of the best alternatives for investment, has been one of the central areas of concern for past few decades in our country. Though the history of capital market (commonly known as stock/share market) predates the history of independent Bangladesh, it is still struggling to establish and prove itself as an efficient market for the investors. To address the cause behind the lack of acceptance of the securities market in the country (with major focus on share market), the perspectives and consequences of two major share market scams, one experienced in 1996 and other in 2010-2011 are examined in this thesis. Both the scams subjected the existing legal regime to serious doubts. Through the scams, general investors suffered unprecedented loss and the market manipulators stole a large amount of money. The investors and the regulators were equally at a loss at the sudden turn of events. All these factors have been the motivations of this thesis which is not only focused on analyzing and examining the existing legal regime of the securities market but also equally concerned about identifying the controlling perspective behind it. After the 1996 stock market crash, the securities market experienced tremendous reformations, but all those attempts fell short during 2010-2011 stock market crash.

After the gigantic crash in 2010-2011, the market went through frequent and massive reformations. Still the market has to gain public trust and confidence for healthy investment. Shortcomings in the legal structure and inefficiencies in the managerial authorities have been pointed as major reasons behind poor condition in our securities market. To that effect, this thesis addresses the efficacy and fallout of the legal structure (including governing laws and institutions) of securities market and pinpoints the areas which require reformations and further implementations for the enhancement of market efficiency, steady improvement, establishment of public faith and securing more investment.

In securities market, several kinds of securities are sold and purchased. Through the trading of securities, the ownership of the securities is mainly transferred. To give effect to this process of transferring fund and ownership of fund, several managerial institutions and laws have come into force which makes this area a complex one. For example, the Government of Bangladesh through its relevant Ministries is involved to the governance for the stock market along with other regulatory authorities. Amongst those, the

Bangladesh Securities and Exchange Commission (BSEC) plays the central role for the regulation and governance in stock market. At the same time, the Bangladesh Bank, the Investment Corporation of Bangladesh (ICB), the Micro-credit Regulatory Authority (MRA), the Insurance Development & Regulatory Authority (IDRA) and the Central Depository Bangladesh Limited (CDBL) also play significant roles.

In addition, the market intermediaries, such as, stock exchanges, stock brokers, sub-brokers, stock dealers, jobber, authorized dealer, securities houses, depository houses, merchant banks, portfolio managers, share transfer agents, bankers to an issue, financial institutions, insurance companies, trustees of trust deeds, registrars to an issues, underwriters, credit rating companies and other intermediaries play critically important roles in the securities market. Most notably, there are certain other players who play negative roles in the market. They are often known, and often unknown, and they are behind the market manipulation, better known as the 'ghosts in the stock market'. These ghosts mostly remain beyond control, and therefore, the remediation to the unjust loss sufferer becomes impractical.

Along with the aforesaid market regulators and players, there are considerable bundles of laws and regulations that guide the governance and management of the securities market. The laws are generally regarded as sub-standard and inadequate to ensure fair, effective, transparent and healthy governance in the market while the managerial institutions are seen to be corrupted and manipulated in many ways. Even the Judiciary is inactive in this regard. In fact, challenges are multifarious, countless and mostly unaddressed.

However, despite numerous challenges, obstacles and debacles in our stock market, the subsistence of stock market remains vital in our national economy. It not only helps the corporations to raise equity finance so as to meet the need of finance with fewer burdens and risks as opposed to debt finance, but also ensures public participation in industrialization. Having understood and admitted the significance of securities market in our national economy, it is highly felt that this sector should get more preferences and concentration for the betterment of the overall economy of our country. The obstacles, challenges, legal pitfalls and managerial failures can be defeated by the good attempts jointly undertaken by the regulators, market players and investors for the promotion and development of the securities market of our country.

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(Syeda Nasrin)

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Chapter 1

Introduction

1.1. Background to the Study

Securities market is one of the areas of major concern for the national economy of Bangladesh¹. Stock is the dominant of all the other securities in the market. Bangladesh, a financially developing country with a large base of potential consumers, positive foreign investors and increasing remittance, ought to develop a lucrative prospect for the securities market, especially for the stock. But, unfortunately, it is still struggling to establish and prove itself as a reliable, trustworthy, stable and public-fastened market. Especially, the two historical crashes in stock market in 1996 and 2010 – 2011 have raised skepticism and doubt in the minds of the mass. However, after 1996 scam, several reformations were brought in the legal framework; and from 1996 to 2009, various improvements were made to mitigate the crisis.

Sadly, all these developments fell short during the 2010 – 2011 scams in protecting the interest of the general investors and failed in preventing the crime of misappropriating and stealing money from the market. Hence, more significant reformations have been brought to the legal structure of securities market after the 2010 – 2011 scams. Yet, the crisis is far from being resolved. Under the circumstances, this thesis examines in details, to what extent the existing legal framework with its reformations anew are enough to shape the market comprehensively, to secure good governance in the market, to restore and enhance investors' confidence, to ensure transparency and fair trading, to redress the loss sufferer and also to prevent the scam and manipulation from the market. This thesis objectively addresses the questions mentioned above while providing a comprehensive study critically examining and analyzing the existing legal framework and the roles, efficacy and fallouts of the regulatory institutions.

There are numerous laws dictating the regulation and governance of securities market. Alongside, there are multiple governing institutions assisted by the various market intermediaries. Each of these institutions plays a different albeit crucial role in the market. The myriad of laws, multiple regulatory institutions and market intermediaries have made

¹ It is commonly known as the financial market or the capital market. It is also known as share/stock market. Though there are notable differences amongst the securities market, the financial market, the capital market and the share/stock market, the differences are not significant for examining and analyzing the legal regime of the securities market in Bangladesh.

this area extremely complex. Under the Government of Bangladesh, the Ministry of Finance, the Bangladesh Securities Exchange Commission (BSEC) and the Bangladesh Bank, amongst others, are the main regulatory authorities in the securities market. There are numerous market intermediaries, such as, stock brokers and sub-brokers, share transfer agents, bankers to an issue, trustees of trust deeds, registrars to an issue, merchant bankers, underwriters, portfolio managers, investment advisers, depositories and depository participants, custodians of securities, credit rating agencies, asset management companies, clearing members, trading members or any other intermediary who may be associated with securities markets in any manner.² In addition, the issuer corporations (both Government and private) play important functions by issuing securities through which surplus units of the investors are transferred to them in the way of meeting their demands for capital. Though there are bundles of laws, regulations and regulatory institutions, the Government and the Regulators have failed to ensure fair practice in the market and develop the market into a reasonably stable, investment-worthy and systematic sector. This thesis unveils the reasons behind the weak condition of the securities market by critically examining the relevant laws and the roles of the governing institutions in this field.

Surprisingly, there is no comprehensive research work significantly on the legal regime of the securities market in Bangladesh even though every issue of this field is governed by either the primary laws or secondary laws. The Probe Committee Reports after 1996 and 2010-2011 share market scams provided some analysis of the legal provisions and roles of governing institutions, but they are not comprehensive either. The Bangladesh Securities and Exchange Commission (BSEC) has published a book containing some important laws but it lacks any observation, critical evaluation or analysis.³ There are also some other Bangladeshi books of similar nature. Two such books, used mostly by the law practitioners, one by Md. Saiful Karim⁴ and other by Hasidul Alam⁵ are also the mere reproductions of some important laws not containing any analysis, observation or critical examination. A A Khan's book⁶ on banking companies laws along with allied laws and

² They are commonly known as the 'market intermediaries' in the market.

³ Bangladesh Securities and Exchange Commission, *Securities Related Ordinance, Act, Rules and - Regulations (Updated up to December 2015)* (Bangladesh Securities and Exchange Commission, 3rd ed, 2015).

⁴ Md. Saiful Karim, *A Compilation of Securities & Exchange Laws* (SHAMS Publications, 4th ed, 2010).

⁵ Hasidul Alam, *Securities and Exchange Manual* (Liton Publications, 1st ed, 2016).

⁶ A A Khan, *A Manual of Bank Company Laws and Allied Act, Regulations and Rules (Act XIV of 1991)* (Amin Book House, Revised Edition 2004).

Md Kawser Hossain's book of company law along with other relevant laws also styled in the same way.

M Zahir, who was a famous Bangladeshi practitioner in the company and securities law, had a major contribution in the area of corporate law. His book⁷ on company and securities law contains a distinctive part analyzing the securities laws. However, his work in this book is not extensive either and has already lost significance due to huge aftermath changes made in the securities laws and regulations. Nevertheless, his book analyzes some important securities laws prior to 2009. After that no updated version of his book has come out yet.

In another well written book⁸ by Abul Khair Al-Muqtadir, the different laws dealing with shares and functions of central depository system of Bangladesh are discussed. But this book does not provide any legal analysis about the over-all securities laws of our country. There are also some scholarly articles on capital market mostly from non-law backgrounds, which are referred in the footnotes with the course of discussion throughout this thesis. In these literatures, different issues of the capital market have been addressed in piecemeal manner. Amongst all, some important literatures are found in the field of corporate governance. Corporate governance for the listed companies is guided by separate guidelines framed by the Bangladesh Securities and Exchange Commission which has been discussed in details in a separate chapter in this thesis.

However, SM Solaiman did an extensive research comparing the investor protection rights in Australia and Bangladesh. His articles identifying the pitfalls in the legal regime and other causes behind the poor condition on Bangladeshi capital market are noteworthy. His articles provides some effective guidelines to this thesis but his works do not cover all the related laws, roles of governing institutions and contemporary development in this area. Moreover, his works predate 2009 whereas massive amendments have been brought in the existing legal provisions and several new laws and regulations have been enacted after 2011. To sum it up, there is indeed, no precise book providing a great deal of analysis or comprehensive examination of all the important securities laws of Bangladesh with critical exclaim of their efficacy and shortfall.

⁷ M Zahir, *Company and Securities Laws*, (The University Press Limited, Revised and Expanded, 3rd ed, 2015).

⁸ Abul Khair Al-Muqtadir, *All About Share Management Based on Laws, Rules, Practices and Conventions with Special focused on Central Depository System* (Author, 2002).

However, there are a significant number of articles and journal articles. Most of them are related to a particular issue of securities market and are written by writers coming from backgrounds that are not strictly legal. Before the 2010-2011 stock market crash, the securities market was not the central area of concern for the researchers or the reporters. But after the crash in 2010-2011, it attracted the researchers and news publishers. Now-a-days almost all the daily famous newspapers in Bangladesh, including the Financial Express, the Prothom Alo and the Daily Star publish news regarding securities market, especially share market and also publish special features on stock market. The research groups under the Bangladesh Bank also publish research articles regularly. The Bangladesh Bank also publishes policy papers and working papers on securities market which are available in the official website of the Bangladesh Bank.⁹ Those have also been an important source of literacy of this research paper.

There are other research organizations like the Center for Policy Dialogue, the Bangladesh Institute for Development Studies who publish research articles and working papers on securities market. Some of those articles and working papers have been great sources of materials for this thesis.¹⁰

In addition, the reports (quarterly, annually and others), research publications and other substantive materials published by the Bangladesh Securities and Exchange Commission (BSEC) in its website, and the information provided in the websites of the BSEC,¹¹ the

⁹ Such as, Md. Shahiduzzaman and Mahmud Salahuddin Naser, 'Volatility in the Overnight Money-Market Rate in Bangladesh: Recent Experiences' (2013) *Bangladesh Bank Policy Notes: PN 0707*.

Khan Md. Saidjada, Md. Shakhawat Hossain and Md. Habibour Rahman, 'Effects of Monetary Policy on Capital Market in Bangladesh' (2013) *Bangladesh Bank Working Paper Series: WP 1302*.

Mustafa K. Mujeri and Md. Habibour Rahman, 'Financing Long term Investments in Bangladesh: Capital Market Development Issues' (2008) *Bangladesh Bank Policy Paper: 0905*.

Md. Habibour Rahman, Md. Ezazul Islam, Md. Sakhawat Hossain and Mahmud Salahuddin Naser, 'Is the Capital Market of Bangladesh Efficient?' (2016) *Bangladesh Bank Working Paper Series: WP 1614*.

Shubhasish Barua and Md. Habibour Rahman, 'Monetary Policy and Capital Market Development in Bangladesh' (2008) *Bangladesh Bank Policy Note: PN 0708*.

Md. Abdul Wahab and Md. Omor Faruq, 'A Comprehensive Study on Capital Market Developments in Bangladesh' (2012) *Bangladesh Bank Working Paper Series: WP 1203*.

¹⁰ Such as, Khondaker Golam Moazzem and Md. Tariqur Rahman, 'Stabilizing the Capital Market of Bangladesh: Addressing the Structural, Institutional and Operational Issues' (2012), *CPD Working Paper: 95, Centre for Policy Dialogue (CPD)*.

Debapriya Bhattacharya, Shouro Dasgupta and Dwitiya Jawher Neethi, 'Does Democracy Impact Economic Growth? Exploring the Case Of Bangladesh – A Cointegrated VAR Approach' (2013) *CPD-CMI Working Paper 5, Centre for Policy Dialogue (CPD)*.

¹¹ <<http://www.sec.gov.bd/>> (19.04.2017).

Bangladesh Bank,¹² the Dhaka Stock Exchange (DSE),¹³ the Chittagong Stock Exchange (CSE),¹⁴ the Credit Rating Companies, the broker houses, the Investment Corporation of Bangladesh (ICB),¹⁵ the Micro-credit Regulatory Authority (MRA),¹⁶ the Insurance Development and Regulatory Authority (IDRA)¹⁷, the Bangladesh Institute of Capital Market (BICM),¹⁸ the Central Depository Bangladesh Limited (CDBL)¹⁹ and other depository houses and concerned authorities have also been significant sources of information for this research.

Besides, several journal articles published by the scholars have also contributed as the source of knowledge for modeling this thesis. Some of the important articles are, ‘Investor Protection By Securities Regulators Bangladesh: A Comparison and In the Primary Share Markets In Australia And Contrast’²⁰ by S M Solaiman, although it does not include the massive development after 2010-2011; some other articles by the author dealing with the legal provisions before 2010-2011 stock market crash ; ‘Underpricing of IPOs: The Case of Bangladesh’²¹ by Md. Aminul Islam, Ruhani Ali and Zamri Ahmad which analyzes the levels of underpricing in initial public offerings (IPOs) and its determinants of Dhaka Stock Exchange (DSE); ‘Relevance of Net Asset Value (NAV) in Determining the Volatility of Stock Returns: A Study on Dhaka Stock Exchange’²² by Md Saiful Islam and Md Lutfor Rahman which investigates the relevance of NAV per share in influencing the volatility of share prices using standard deviation as the measurement scale of volatility and comparing 92 companies for the period between 2000 to 2009; ‘Volatility of Stock Return in the Dhaka Stock Exchange’²³ by Md. Habibour Rahman and Md. Sakhawat

¹² <<https://www.bb.org.bd/>> (19.04.2017).

¹³ <<http://www.dsebd.org/>> (19.04.2017).

¹⁴ <<http://www.cse.com.bd/>> (19.04.2017).

¹⁵ <<http://icb.org.bd/zindex.php>> (19.04.2017).

¹⁶ <<http://www.mra.gov.bd/>> (19.04.2017).

¹⁷ <<http://www.idra.org.bd/idra-org/index.htm>> (19.04.2017).

¹⁸ <<http://bicm.ac.bd/>> (19.04.2017).

¹⁹ <<http://www.cdbl.com.bd/>> (19.04.2017).

²⁰ ²⁰ S M Solaiman, ‘Investor protection by securities regulators Bangladesh: a comparison and in the primary share markets in Australia and contrast’ (2009) 12(4) *Journal of Financial Crime*.

²¹ Md. Aminul Islam, Ruhani Ali and Zamri Ahmad, ‘Underpricing of IPOs: The Case of Bangladesh’ (2010) 3(1) *Global Economy and Finance Journal*.

²² Md Saiful Islam and Md Lutfor Rahman, ‘Relevance of Net Asset Value (NAV) in Determining the Volatility of Stock Returns: A Study on Dhaka Stock Exchange’ (2016) 2(1) *International Journal of Finance and Banking Research*.

²³ Md. Habibour Rahman and Md. Sakhawat Hossain, ‘Volatility of Stock Return in the Dhaka Stock Exchange’ *The Bangladesh Bank*.

<<https://www.bb.org.bd/pub/research/policynote/pn0806.pdf>> (18.04.2017).

Hossain which measures the volatility in the DSE using the stocks as sample for a limited period of time; 'Barriers to the Development of Bangladesh Capital Market'²⁴ by M. Serajur Rasul which addresses some barriers, mostly institutional issues, to the development of the capital market and also suggests some recommendations to develop the situation, but the scope of this article is very limited and mostly regarding development issues; 'Current Status of the Corporate Governance Guidelines in Bangladesh: A Critical Evaluation with Legal Aspect'²⁵ by Md. Gulam Saroar Hossain Khan, A. K. M. Zahirul Islam, Harun Ar Rashid and Md. Ashrafur Arafat Sufian which was published before the current corporate governance guidelines framed by the BSEC came into force; the OECD Principles of Corporate Governance, 2004 which provide the corporate governance guidelines for the listed companies in the securities market and these guidelines have been adopted by the most of the countries of the world in their domestic corporate governance legislation; 'Role of Investment Bank in Bangladesh'²⁶ by Shahidur Rahman which is basically addressing and analyzing the roles of the investment commercial bank in the economic growth and development in Bangladesh. Sadly, none of the articles mentioned make it a point to present a legal analysis of the incidents.

So, the existing literatures in this area have fallen short so far the identification and examination of the pitfalls in the overall legal provisions and regulatory failures are concerned.

Nevertheless, the Probe Committee Reports after 1996 stock market crash and 2010-2011 stock market crash have fundamentally helped to understand the critical issues of capital market. These have been the source of importance for this thesis. Moreover, the case laws, especially the cases as mentioned in the Chapter 9 of this thesis and all the existing laws from both primary and secondary sources as analyzed throughout this thesis, have been the core literacy of this thesis. My experience as a law practitioner in the Supreme Court of Bangladesh has added extra advantage in analyzing the legal provisions and determining their efficacy and fallout through an effective synthesis of reality and theory.

²⁴ M. Serajur Rasul, 'Barriers to the Development of Bangladesh Capital Market' (2013) 2(6) *International Journal of Economics, Finance and Management*.

²⁵ Md. Gulam Saroar Hossain Khan, A. K. M. Zahirul Islam, Harun Ar Rashid and Md. Ashrafur Arafat Sufian, 'Current Status of the Corporate Governance Guidelines in Bangladesh: A Critical Evaluation with Legal Aspect' (2009) 3 *Bangladesh Research Publications Journal*.

²⁶ Shahidur Rahman, 'Role of Investment Bank in Bangladesh' (April 2014).

<<http://www.scribd.com/doc/61420097/Role-of-Investmnet-Banks-in-Bangladesh>> (28.04.2014).

As previously mentioned, securities market, being one of the largest invested trade markets in our country, has been a major area of concern for the past decades. Generally, people do possess little idea about securities market. They generally consider it a corrupted field and often allege that only touts trade there. The tragic stock market crashes²⁷ of the recent past have spurred this orthodox negativity even more. Usually, people are enthusiastic about investing into securities when the prices are high and expected return is projected to be high within a short period of time. As a result, they become hopeless when price goes down and they suffer loss. This fluctuation of price makes the market more volatile and mysterious. Nevertheless, the stock market is one of the largest investment markets, not only in Bangladesh, but also in most of the countries of the world, and in many developed countries stock market is the biggest contributor in the national economy. So, it's safe to assume that in spite of its volatility and mysteriousness, the stock market is an integral part of the national economy. Therefore, the stock market is not simply a place for touts, as most people assume.

Moreover, the securities market is called the barometer of an economy because it reflects a comparatively correct statistics of the surplus units and deficit units of a country during a certain period of time. It reflects the net capital of a country. It helps to run the idle capital (savings) of households into investments. For this reason, securities market has been paid much attention in almost all developed and developing countries around the world. Securities market can be established as a secured and reliable platform for the investors and the corporations including Government for collecting debt finance, but some preconditions must be met in order to meet such an end.

These conditions require fair, transparent, duty-bound and systematic regulatory mechanisms. A sophisticated, well structured and comprehensive legal framework can better control the market by preventing unfair practice, corruption, dishonesty and other illegal activities in the market. Hence, the need to come up with a comprehensive research work analyzing the laws and the roles governing institutions in the securities and other aspects of capital market in Bangladesh is long overdue. With that end in mind, the

²⁷ Two tragic crashes were happened in the securities market in Bangladesh, one in 1996 and the other in 2010-2011. Both the crashes have left the entire country in deep frustration and enigma. Still there are many people who can sense the trauma caused by the said crashes which were scams basically, intentionally caused by some ill-motivated market manipulators.

efficacy and fallout of the regulatory institutions and laws has been examined from legal and factual perspective in this thesis.

1.2. Statement of Problems

In securities market, as suggested by the term itself, securities are traded, through which ownership of the securities is transferred between the parties. Securities are backed by value that can be converted into money. In securities market, the securities are traded as the instrument of transfer of ownership. The securities issuers sell security to collect money and the purchasers (investors) purchase the security in the hope of gaining profit. As with any other investments with risks, securities investments are not always profitable. These securities may be of multiple kinds, and may be issued by different issuers and traded by millions of investors. Some securities are secured and some are not. Secured securities definitely cast no risk with less profit.

On the other hand, unsecured securities may lead to high profit with high risk in most of the cases. This risk can be systematic and unsystematic. Systematic loss depends on financial policy of a country or other unavoidable circumstances. Unsystematic loss is made up, and sometimes maybe well planned. Systematic loss cannot always be avoided but unsystematic loss can be avoided because it is artificial. It is the result of corruption and unfair market practice, which may lead to serious market falls, or even crashes. It may give birth to scams. In order to avoid such unsystematic loss and scams, and ensure fair practice and sound trading in the market, a well organized, systematic and fair regulation is essential. For such regulation, there are several managerial institutions, including, the Government of Bangladesh through its relevant Ministries, the Bangladesh Securities and Exchange Commission (BSEC), the Investment Corporation of Bangladesh (ICB), the Micro-credit Regulatory Authority (MRA), the Insurance Development and Regulatory Authority (IDRA), the Central Depository Bangladesh Limited (CDBL) and others.

In addition, there are multiple intermediaries and other associations like stock brokers, stock dealer, portfolio managers, issue managers, valuers, credit rating agencies, investment banks, insurance companies, merchant bankers or corporations, trustees, issuers, depositories, securities houses, sub-brokers, dealers, etc. There are also numerous statutes that play a vital role in regulating the securities market. All these controlling

factors have made securities market a baffling and unpopular one. Hence, people prefer to remain aloof from the market and are happy to store their money in bank or invest in the secured securities, like, bond or real estate.

Bangladesh financial market is generally regarded to be an unsafe one. Its securities market is not sufficiently secured, though it has seen a consistent financial growth rate in recent years. It also has a very lucrative financial prospect with its vast consumers, both inside and outside the country. Despite its contribution to the national economic growth, our security market is still in poor condition and fails to attract the investors. Regulatory failure and weak provisions of existing laws have been observed as the main reasons behind this poor and unattractive condition.

Most fundamentally, it is the investor's indolence and their self emotions that play against them in stock market. Lack of consciousness, believing in rumors, applying own projection, being emotionally biased for certain stocks without any particular reason and buying shares without reading the profile of the issuer and its prospect are also important factors which contribute to stock market crash. Most of the investors do not conduct any market inspection and do not compare the information roaming around the market about any stock. This ignorance does not just help the market manipulators to achieve their fraudulent goals but also makes the regulators reluctant to promote and disseminate stock market related knowledge to all.

After the 1996 stock market crash, several reformations were made in the regulatory structure and legal regime of securities market. From 1996 to 2010, the Bangladesh Securities and Exchange Commission (BSEC), the Bangladesh Bank and the Legislature were concerned in enacting new Acts and Regulations. Consequently, several laws and regulations for capital market governance came into being, but they failed to protect the interest of the investors entirely. The existent legal mechanisms proved to be inadequate to meet the challenges created during and after the 2010-2011 stock market crash. In the Probe Committee Report, 2012, the poor legal structure and the institutional failure were identified as the main causes behind the crash. The penal provisions for holding the perpetrators liable and bringing them to sentence were also found inappropriate. A complete apathy was observed in the legal provision for redressing or compensating those who suffered unjust loss.

Thereafter, drastic changes/reformations have already been made in the regulatory structure and legal system. Several new Acts, Rules and Regulations have been formulated. A separate Tribunal has been established to try the offences under the security laws. Significant amendments have been brought with regard to financial reporting, enforcement of corporate governance of the listed companies, improvement of market surveillance, ensuring accountability of the regulatory institutions along with market intermediaries, prevention of disclosure of market sensitive information and insider trading, disclosure of more information in the prospectus of the issuer company, regulation of debt securities in private placement, regulation of public issue, assurance of more participation of the small and medium size investors by opening different avenues for investment, restoring public confidence and many more.

Despite several amendments and positive steps ahead after 2010-2011 scam, to what extent the existing legal framework with its reformations anew are enough to ensure good governance in the securities market, restore or build public confidence afresh, ensure transparency and fair trading, prevent insider trading and disclosure of price sensitive information, hold the regulatory institutions, intermediaries and other market players accountable, redress the loss sufferer, punish the actual perpetrators, prevent the doubtful trading and also to prevent the scam and manipulation from the market are still questionable; these are the arguments and areas of research in this thesis.

Thus, the research question is, ‘whether the existing legal framework is capable of ensuring good governance in the securities market and to secure investors’ right and interest properly’.

1.3. Motivation and Rationale

The motivation amongst others behind this study is the event of great turmoil in stock market in 2010-2011; especially the aftermath legal helplessness in order to bring the market back into position and also redressing the loss sufferer and awarding punishment to the perpetrators. The accused persons of 1996 share market scam are still moving openly, dominating the stock market and grabbing money from the market but the existing legal framework *prima facie* fails to prevent them and ensure healthy, fair and proper business

in stock market. All these things together have acted as motivations behind this thesis, which led to have following basic contributions in the relevant pasture through this thesis-

- i. It has addressed some major areas of securities market where there are complete legal apathy and it has also identified the issues which need to be brought under the legal purview.
- ii. It is not just a review of the existing laws and roles of governing institutions in the securities market of Bangladesh; it is morefully about specifically indentifying the major areas of stock market governance and the strengths and shortcomings of the existing legal regime.
- iii. It also provides some important recommendations to get over the existing shortfalls.

Therefore, this is not a one-sided study either doing appraisal or criticizing the existing legal regime of share management and securities exchange of Bangladesh. It is for examining the existing legal provisions and functions of governing institutions of share management and securities exchange, and thereby determining the efficacy and fallout of the present framework. This is the elixir of entire thesis. In doing so, this thesis claims its value-free and neutral stand so far describing the facts and events of stock market and other related issues while maintains its originality so far analyzing and examining the causes and reasons behind the regulatory failures and pitfalls in existing laws and regulations. In addition, this thesis also unveils the existing challenges and obstacles for the securities market and the investors. Some possible ways of having a better, fair and corruption-free system for the securities market are forwarded as a part of original contribution of this thesis.

1.4. Research Methodology

Theoretically, a simple analytical approach is followed as the methodology in this thesis. During this course, my research methodologies was to read and think, re-read and re-think, and then to comprehend my thinking in light of facts, circumstances, references and legal provisions in black and white.

When I started this process, my knowledge about securities market and its related laws and institutions was very little. I barely knew a person who could give me a conspicuous idea of what the securities market is and what the business of stock market is. My blank knowledge inspired me to read almost everything related to the topic which were *prima facie* available. Thereafter, I crossed my learning with some of the experts of securities market in our country. I also met with some of the employees of stock exchanges, broker houses, public limited companies and other associated bodies. I must say, my blank knowledge directed me so correctly that whatever I acquired as knowledge about stock market was not biased. I have gone through all primary and secondary laws relating to capital market. I have also examined the roles and activities of the regulatory institutions. I also attended some training programmes, seminars, conferences and dialogues on securities market.

I have also learnt about the capital market business, its nature, role of investors and many other associated issues. Then, I have analyzed the market altogether from legal perspectives. All these things together helped me examine the existing legal regime (laws and governing institutions) of capital market and thereby, determine efficacy and fallout. Moreover, my study as a law student and experience as a law practitioner in the Supreme Court of Bangladesh over the years contributed a lot on development of my analytical power. These made me argumentative and developed my sense of rationalism. It also helped me in justifying and corroborating the findings of my research work. I believe the method was scientific and correctly reflects the basic output of this thesis. It also justifies the cause of doing this research.

Besides the analytical approach followed throughout the thesis, it was quite challenging to correlate all the existing laws and regulations with the tasks and functions of the regulatory institutions and all the market intermediaries, and thereby analyzing all those together in light of eventful perspective of Bangladeshi stock market. Moreover, the whole paper is a key to understand the stock market of Bangladesh and the associated laws and institutions therewith. Both qualitative analysis of archival materials and quantitative approach for corroborating the arguments and presenting the actual picture of share market have been carried out to achieve the objective of the paper.

As far as the sources of information are concerned, I relied on both primary and secondary sources that include journals, online information, newspaper disclosure, interview exposure, report, books, etc.

In case of materials involved, I sorted useful and relevant materials examining their sources, recognition, usefulness and authenticity. I was cautious and selective while materials in this thesis. I have made sure that only the pertinent information has got attention in the discussion. For this reason, I believe that this paper is a fundamental piece correctly analyzing and determining the efficacy and fallout of the existing legal regime and managerial institutions in securities market of Bangladesh. Correct and recognized sources of all relevant data and information are provided here to make the information of this thesis more authentic and trustworthy. Ideas and expressions provided with original source, either in footnotes or in the main text belongs to others, but the rest are mine. However, some ideas and expressions may match; any such similarities are free of any intention to reproduce any original work. Likewise, while referring to the works of others', I have tried to reproduce the same in the language and expression as originally used. I followed this direct method, not only to avoid plagiarism but also to show my respect to the original authors.

In conclusion, it can be said that, extensive reading and analyzing helped me examine the legal regime of capital market of our country more comprehensively. I do believe the methodology I followed was scientific which rightly lead me securing the objective and destination of this study.

1.5. Scope and Limitation

This thesis is for examining and determining the share management and securities exchange laws of Bangladesh. Determining the securities laws also includes the laws governing the managerial institutions in the relevant field. However, scope of this thesis is extended to the analysis of the legal regime (laws and institutions) of the securities market of Bangladesh, mostly focusing on the capital market i.e. share market of Bangladesh. Though some examples have been drawn from other countries, this thesis mainly focuses on the legal and factual issues of securities market in Bangladesh. It contends analysis and examination of the role of the governing institutions and the provisions of existing laws in the securities market by determining the strength and weakness thereof. In this thesis, a

comprehensive study analyzing the roles and activities of the managerial institutions of securities market and the legal provisions has been given. In doing so, this thesis has taken all the related laws (coming from both the primary and the secondary sources) updated till May 2017.

This research work makes a critical investigation by placing decisive arguments behind the regulatory disappointments and legal abortivenesses by identifying the areas which require improvements and reformations for confirming the consistent and complete legal outline regarding the securities market in our country. After an elaborated discussion containing material criticisms, this work proceeds to provide some recommendations which may be useful for ensuring good governance, effective control, governance and management of securities exchange and share regulation from other countries legal mechanisms to this effect, and *vice versa*.

However, those recommendations for the structural improvement as presented throughout the thesis are by no means exhaustive. For a country as large with a huge population and a great prospect for future investment in the securities market as well as capital growth of the country, and for a capital market with high volatility, speculation, rumor based trading, short-term traders, manipulation, ethical shortcomings, uncontrolled ghosts along with several named and unnamed challenges and obstacles, etc, it may not be possible to devise a set of exhaustive remedies and reformations to be proposed at a time. The researchers can only work responsively according to the dynamics of change and flow of investment. To that effect, this research takes console to be a part of it by at least thinking and contributing some basics to this arena.

As this thesis is fundamentally concerned with the legal regime of the securities market, it may lack some important issues which are purely matter of finance and accounting. It is not prudent to include these non-legal issues of securities in this thesis as many of them demand huge analysis and separate research studies. Hence, this thesis will only provide a comprehensive legal examination and analysis of the existing legal regime of stock market of Bangladesh.

Chapter 2

About Securities Market and Share Pricing in Bangladesh

2.1. Introduction

This Chapter provides a brief analysis of the theoretical aspects of securities, securities market, share and stock, share pricing and market crash. It further elucidates some important factors of stock market from the perspective of Bangladesh for the purpose of properly understanding the legal provisions and activities of the regulatory authorities thereof. In securities market, (also known as financial market) the financial assets i.e. securities are sold and purchased. There are different types of securities e.g. bond, mutual fund, share¹, stock² etc. Through the trading of securities, mainly the ownership of the securities is transferred. The buyers, as investors, invest their savings in exchange of ownership of the securities backed by assets, and the sellers, as issuers, get the capital they need. It is a process of transferring fund from those who have excess fund and want to transfer their fund for profit to those who need fund. Through the exchange of funds, the investors become the creditors and the issuers of securities become the borrowers. The borrowers owe liability to the creditors against the securities they issued. Hence, in finance, it is known as debt securities; trading of which surplus units are transferred to deficit units. In short, the securities are kind of guarantees of assets against the investment the investors made.

There are different kinds of securities.³ Securities include any note, stock, bond, debenture, evidence of indebtedness, transferable share, investment contract, certificate of deposit for a security, a certificate of interest or participation in any profit sharing

¹ Share means share of any joint stock company registered in Bangladesh.

[The Investment Corporation of Bangladesh Act, 2014 s 2(19)].

² Stock is the bundles of shares.

³ 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, scrip, note, debenture, debentures stock, bond, investment contract, derivative, commodity futures contract, options contract, exchange-traded fund and pre-organization 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 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 like-wise limited."

[The Securities and Exchange Ordinance, 1969 s 2(1)].

agreement.⁴ Shares/stocks⁵ (bundles of shares) are the securities which play the central role in the stock market. Moreover, there are Government securities, which “mean promissory notes (including treasury bills), stock-certificates, bearer bonds and all other securities issued by the Government in respect of any loan contracted either before or after the passing of the Act, but does not include a currency-note”.⁶ The securities issued by the corporations in the stock market are mostly equity security which 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.⁷ Not all these securities are traded in the stock market. Only the securities allowed by the BSEC, the Bangladesh Bank, the ICB and other legally approved authorities as approved by the Government can be traded in the stock market.

Having discussed the nature of securities in Bangladesh above, this Chapter will provide a brief picture of the historical emergence, foundation, characteristics, features of our capital market along with stock valuation, driving issues of share prices in capital market, contributories in price fluctuation in stock market, natural crash, purposeful scam and some other related issues for the proper understanding of the legal provisions in the relevant field and the importance of effective management and legal framework in the securities market of Bangladesh.

2.2. Historical Background in Short

The history of Securities Market in this region precedes the birth of Bangladesh. Securities Market was first established back in 1960s when Bangladesh was a part of Pakistan. Before 1954, there was no organized institution where securities could be traded in East

⁴ The Investment Corporation of Bangladesh Act, 2014 s 2(19) and s 2(20).

⁵ The Companies Act, 1994, the Securities and Exchange Ordinance, 1969 and the General Clauses Act, 1897 do not define either share or stock. Abul Khair Al-Muqtadir, a share management analyst describes share in a company is the interest of a shareholder, recognized by a sum of money and consists of a series of mutual covenants entered into by all shareholders among themselves. He also describes, stock is a bundle of fully paid shares put together for convenience, so that it may be transformed into any amount and transformed into any fractions and/or sub-divisions without regard to the original face value of the shares. It represents a consolidated portion of capital and is used for suitability.

[Abul Khair Al-Muqtadir, *All about Shares Management: based on laws, Rules, Practices and Conventions with Special Focused on Central Depository*, (Self Publication, 1st ed, 2002) 20 – 23].

⁶ The Securities Act, 1920 s 2(a).

⁷ The Securities and Exchange Ordinance, 1969 s 2(d).

Pakistan. Earlier, securities were traded through Calcutta Stock Exchange, who stopped the trading of Pakistani shares and securities after 1948. Thereafter, in 1954 erstwhile Government established the East Pakistan Stock Exchange Association Limited on April 28 in Narayanganj and it started trading in 1956. It was shifted to Motijheel, Dhaka in 1958. In 1964, it was renamed as the Dhaka Stock Exchange (DSE). After the independence, another stock exchange, namely, the Chittagong Stock Exchange (CSE) was established on 10th October, 1995 in Chittagong.

In 1969, the Securities and Exchange Ordinance was promulgated as the first special law for the protection of investors, regulation of capital markets, procedures for issuance and dealing in securities. This law emphasized on having a separate governing body/commission in the relevant field, but it was not established until 1993, when the Securities and Exchange Commission Act, 1993 was enacted with the aim to establish a Commission by the name of the Securities and Exchange Commission (shortly known as the 'SEC'), exclusively for the purpose of providing for the protection of the interests of investors in securities, the development of the securities market and for matters connected therewith or ancillary thereto. In 2012, this Commission was named as Bangladesh Securities and Exchange Commission (*shortly known as 'the BSEC' or 'the Commission'*), which is an autonomous body, established under law and absolutely entrusted with the regulation of the capital market. Thus, the history of trading in securities in Bangladesh is not new, though the establishment of BSEC is a relatively recent development. However, the roles of BSEC, along with the DSE and the CSE and other market intermediaries, have already been criticized and proven as weak. The high officials of the BSEC, the DSE and the CSE are found involved with corruption and manipulation in the market after much-shocking stock market crash in 1996 and 2010-2011.

2.3. The Foundation of the Securities or Stock Market

The foundation of the securities market is not the securities, but the 'capital'⁸. It is the capital, gaining which the issuer issues securities, and it is also the capital that is transferred from the surplus units to the deficits through trading of securities, thus

⁸ Though the securities are the subject matter of the securities market, it is always the capital (reflection of asset which has a value in market) is the most important subject-matter in securities market, because it is the capital which is reflected and transferred through securities. In the ordinary language, capital is used in the sense of money. Capital serves as an instrument of production. Anything which is used in production is capital.

transferring of the ownership of securities. It is also the profit, or, capital, which the investors expect in return of their investment.

The capital is formed when certain resources available in the current period are used for the creation of intermediate goods which can be used for further production. It is also formed by the piling up of inventories of finished goods which are not intended to be consumed immediately. This concept of capital formation is in fact, a postponement of consumption for the formation and enhancement of savings.⁹ Some portion of savings remains idle in bank lockers or in some other forms of custody, where no decision has been taken to invest them.¹⁰ Instead of saving in the bank, invest into the securities (including stocks) can be a better plan to handle the capital more actively. Capital is invested in stock market in the form of purchasing goods/shares with undertaking for future capital. It may be invested from savings or from any capital. Nevertheless, all capital invested in the stock market is net capital. The capital is solid in present and there is no contingency or absurdity. This is why stock market is also called by some economists as capital market where capital is invested for capital saving in exchange of stocks for future consumption. Stock market, a part of capital market, is one of highest sectors of investment into securities market all over the world.

In the process of transferring funds from the savers to the users, i.e., from the investors to the corporations, various types of securities have come into existence. These become the main instrument (financed assets) of trade in the capital market. These securities carry the evidence of transfer of funds and the entitlement to the repayment of the capital and the periodic income in the meantime. Therefore, various types of institutions play one role or another in the process of transfer of funds, such as, stock exchanges, merchant bankers, issue house, share registrars, commercial banks, underwriters, stock broker, insurance companies, etc.¹¹ These institutions perform different functions and are not located in one place. So, the stock market becomes an aggregate of institutions and mechanism. Long-

⁹ Capital formation is expressed in monetary terms, but is not actually the money saved but the underlying goods produced, which have been intentionally set aside for undertaking future production. Therefore, capital formation is not necessarily equal to total savings, but it is only that part which is represented by goods.

¹⁰ J N Dhankhar, *Pricing of Securities in the Indian Stock Market* (Bharat Publishing House New Delhi, 1st ed, 1994) 6.

¹¹ They are the market intermediaries under the superior market authorities. They are, altogether, the market regulators in the securities market.

term funds are pooled and made available to business, government and individuals and instruments already outstanding are transferred.¹² Moreover, the issuer companies also play significant role in stock market.

The companies live and die with their stock price, yet for the most part they do not actively participate in trading their stocks within the market. Companies receive money from the securities market only when they first sell a security to the public in the primary market, which is commonly referred to as an initial public offering (IPO). In the subsequent trading of these shares on the secondary market, it is the regular investors, buying and selling the stock, who benefit from any appreciation in stock price. Fluctuating prices are translated into gains or losses for these investors as they shift ownership of stock. Individual traders receive the full capital gain or loss after transaction costs. The liquidity created by market manipulation creates an illusion of perceived wealth, and in some cases, where shares are sold in time, real wealth.

Considering the importance of securities market in any economy, the emergence of the securities market in Bangladesh appears to be a natural outcome of conditions, such as, a result of the economic reform and open-door policy.¹³ Though the securitization of state enterprises and the establishment of a securities market in Bangladesh are not in conflict with any of its ideology or fundamental economic policy, initially this market was not well perceived widely by the people. Most people are still reluctant to invest in stock market.

2.4. About Stock Market

Generally, the terms ‘securities market’ and ‘stock market’ are used interchangeably. Depending on the nature of market, there are mainly two types of securities market: Primary Market and Secondary Market. Primary market facilitates the issuance of new shares/stocks, whereas, in secondary market, the existing shares which were initially issued through primary market are traded. On the other hand, depending on the nature of

¹² J N Dhankhar, *Pricing of Securities in the Indian Stock Market* (Bharat Publishing House New Delhi, 1st ed, 1994) 6.

¹³ Syeda Nasrin, ‘Share market: The myth and reality’, *The Financial Express* (online) 22 August 2013. <<http://print.thefinancialexpress-bd.com/old/index.php?ref=MjBfMDhfMjJfMTNfMV8yN18xODA2Mjk=>> (20.04.2017).

the securities, the financial market can be classified into three categories, such as, money market¹⁴, capital market¹⁵ and derivatives¹⁶. The OTC market is also a popular one.

The securities traded in the capital market through primary and secondary markets are the areas of concern of this thesis. Capital market is known as share/stock market to the general people and the share market is known as the stock exchanges in Bangladesh.¹⁷ Generally, shares, debentures, mutual funds, bonds, derivatives, mortgage backed securities, etc are traded in the primary and the secondary financial markets of Bangladesh. The issuance and trading system of the securities in primary and secondary market are governed by the laws along with regulations and directives given by the BSEC, the Bangladesh Bank, the CDBL and the stock exchanges amongst the others. Securities are mainly traded through the DSE and the CSE, and through private placement and otherwise.

However, the main difference between stock and other kinds of securities is that investing in stock will ensure ownership in the issuer company, while investing in other securities will make the investor as the creditors, not the owners. Ownership comes with rights and liabilities. A creditor does not share any liability.

Below listed are brief descriptions of each kind of Securities Market:

a. The Primary Market

Primary Market is a market where newly issued shares are sold by the companies, for which it is also called New Issue Market. A Primary Share Market is a meeting point of

¹⁴ In money market, short-term debt securities are traded, and the maturity of those securities is generally one year or less. This type of securities includes treasury bills, commercial paper, negotiable certificates of deposits, etc.

¹⁵ In capital market, long-term securities are traded in order to transfer deficit units to surplus units. There are several types of securities traded here, e.g. bond, stock, mortgage backed securities, mortgages, mutual fund, etc.

¹⁶ The market for the trading of derivative securities facilitates trading of some sort of securities whose value derives from the underlying assets.

¹⁷ Stock market is a place where shares/stocks of the companies are traded between the buyers and the sellers. Stock market is popularly known in our country as 'stock exchange'. 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 [Bangladesh Securities and Exchange Commission (Research Analyst) Rules, 2013 r 2(m)].

The stock exchanges play the role of an intermediary, which is an important role. They can even influence the market and control the trading of stocks. As already stated Bangladesh has two stock exchanges now, which are the DSE and the CSE. They are the stock markets in Bangladesh.

two different economic agents, one needing funds for productive purposes, whilst the other is the saver of surpluses. In short, the Primary Market is where securities are created or issued for the public. In this market, the issuer corporations sell (float out) new stocks and bonds to the public for the first time. Hence, this market is mainly known as the Market for Initial Public Offering (IPO). “Initial Public Offer or IPO” means first offer of securities by an issuer to the general public.¹⁸ The IPO holders sell their shares in the secondary market, which is different in nature, from the primary market. There may be discrepancies in the flow of information between these two markets. Interestingly, one is paradoxically unknown and also unequal to the other in respect to ‘material information’ regarding investment decisions. This inequality, where the need for regulation lies, paves the way for taking undue advantage of innocence of the gullible investors by the issuers.¹⁹

IPO is the most popular method of collecting equity for the corporation from the public all over the world, but it is not often fair. IPO under-pricing and High IPO return is a common phenomenon,²⁰ which may lead to unfair trading at improper rate. However, it is largely appreciated by the people because IPO provides them a direct chance to be the shareholders of reputed and profitable corporations at a lower cost. An Initial Public Offer may be capable of satisfying the capital needs of the company and other requirements of existing shareholders. It can provide a company with funds for future growth and also facilitate future fund-raising activities. To present shareholders, the listing process provides a return on capital for founders, liquidity and readily ascertainable valuation of their shareholding. The process of listing in IPO is generally governed by prescribed laws and regulations.

There are many process of issuing shares through IPO. One of the most favorable processes is the book building method.²¹ Book Building Process of IPO pricing is a free

¹⁸ The Bangladesh Securities and Exchange Commission (Public Issue) Rules, 2015 r 2(i).

¹⁹ S M Solaiman, ‘Investor Protection by Securities Regulators Bangladesh: A Comparison and in the Primary Share Markets in Australia and Contrast’ (2009) 12(4) *Journal of Financial Crime* 360.

²⁰ Md. Aminul Islam, Ruhani Ali and Zamri Ahmad, ‘Underpricing of IPOs: The Case of Bangladesh’ (2010) 3(1) *Global Economy and Finance Journal* 44.
<<http://www.wbiaus.org/4.Aminul.pdf>> (15.01.2016).

²¹ It is a process of fixing the price of stock in primary market. Rule 2(b) of the Bangladesh Securities and Exchange Commission (Public Issue) Rules, 2015 defines “book-building method” means the process by which an issuer attempts to determine the price to offer its securities based on demand from the eligible investors. By this process, basically the cut-off price is determined. Rule 2(d) defines that “cut-off price” means the lowest price offered by the bidders at which the EI (eligible investors) portion of total issue could be exhausted.

pricing regime that values the company on its performance, both past and future, keeping in mind its investment, earning forecast, economic scenario etc. It is different from fixed price method.²² In addition, private placement of shares, issue of preferential, rights and bonus shares are also considered as methods of raising equity finance of company in primary market. IPO market may be of different kinds. It is mainly of four kinds- public market, spot market, block market, odd lot market.²³ Detailed information about this market is discussed in another Chapter.

b. The Secondary Market

The primary market refers to the market where securities are created, while the secondary market is where they are traded among investors. The secondary market is what people mean when they refer to the "stock market".²⁴ It actually refers to the stock exchanges. The defining characteristic of the secondary market is that the investors trade among themselves. That is, in the secondary market the investors do trade previously issued securities without the issuing companies' involvement. For example, if one buys Grameenphone stock, they are dealing only with another investor who owns shares in Grameenphone. Grameenphone (the company) itself is in no way involved with the transaction.

For this reason, secondary market is the central area of concern for the investors who find it lucrative to invest their capital. Investors do profit or lose by trading amongst themselves. Investors generally take-part in IPO to sell stocks in secondary market. Hence, market analyst often says that if there were no secondary market, there would not be any primary market either.

The secondary market may be an 'auction market'²⁵ or a 'dealer market'²⁶. In the auction market, all individuals and institutions that want to trade securities congregate in one area

²² Rule 2(g) of the Bangladesh Securities and Exchange Commission (Public Issue) Rules, 2015 defines "fixed price method" means the process by which an issuer offers its securities at par value.

²³ Definition of these markets (public market, spot market, block market, odd lot market) will be given while analyzing and examining the roles of stock exchanges.

²⁴ Investopedia, (last updated January 2017).

<<http://www.investopedia.com/terms/s/secondarymarket.asp>> (20.04.2017).

²⁵ The auction market is a place where buyers and sellers convene at a place and announce the rate at which they are willing to sell or buy securities. They offer either the 'bid' or 'ask' prices, publicly. Since all buyers and sellers are convening at the same place, there is no need for investors to seek out profitable options. Everything is announced publicly and interested investors can make their choice easily.

and announce the prices at which they are willing to buy and sell. These are referred to as bid and ask prices. The idea is that an efficient market should prevail by bringing together all parties and having them declared their prices publicly. Thus, theoretically, the best price of a good security needs not be bargained because the convergence of buyers and sellers will cause mutually-agreeable prices to emerge. The best example of an auction market was once the Dhaka Stock Market when the market was commonly known as Kerb market. In the dealers market, traders trade openly through telephonic or other communication.

c. The OTC Market

The expression “Over the Counter” itself suggests that it is a market place where the securities are bought and sold over the counter. A traditional stock exchange is an auction market in which buyers and sellers bid an offer together on the exchange floor to arrive at the price. In contrast, the OTC market has no fixed trading place. Unlike the traditional stock exchange, it has no trading hall. In fact, the buyers and sellers may rarely meet face to face. The deal may be concluded through telephone, telex, teleprinter or any other electronic device. The OTC market is a less formal, albeit well-organized networks of trading relationships centered round one or more dealers who act as market makers by quoting prices at which they will sell (ask or offer) or buy (bid) to other dealers and to their clients or customers.²⁷

An OTC market is also known as the dealers market, where the prices are settled by negotiations between the buyers and the sellers. The negotiations may, however, take place directly or through brokers. Trading on a traditional stock exchange takes place during fixed hours when all the prospective buyers and sellers collect and make their bids and offer but the OTC market can operate at any time of the day or even at night.

Avadhut Nigrudkar, *FINANCEWALK*, (last updated April 2017).

<<http://www.financewalk.com/primary-market-secondary-market/>> (11.04.2017).

²⁶ In a dealer market, none of the parties convene at a common location. Instead, buying and selling of securities happen through electronic networks which are usually fax machines, telephones or custom order-matching machines. Interested sellers deliver their offer through these mediums, which are then relayed over to the buyers through the medium of dealers. The dealers possess an inventory of securities and earn their profit through the selling. A lot of dealers operate within this market and therefore, a competition exists between them to deliver the best offer to their investors.

Avadhut Nigrudkar, *FINANCEWALK*, (last updated April 2017).

<<http://www.financewalk.com/primary-market-secondary-market/>> (11.04.2017).

²⁷ Randall Dodd, ‘Markets: Exchange or Over-the-Counter’, *International Monetary Fund: Finance & Development* (online) 28 March 2012.

<<http://www.imf.org/external/pubs/ft/fandd/basics/markets.htm>> (20.04.2017).

2.5. Salient Features of the Securities Market

It is claimed that the stock market of Bangladesh has been modeled upon the stock market of United States of America (USA). But, to what extent the stock markets of both these countries show similarities, is controversial. Bangladesh stock market is largely volatile and dominated by the powerful investors. Medium and small investors have very little role to play here. Regulatory failures and fragile legal system are the common features of our securities market. Good governance is acutely missing. Market is frequently manipulated by the powerful stakeholders in collusion with the market regulators and law implementing agencies. Excessive volatility, uncontrolled price movement, corruption, bribery, lack of accountability and transparency are also common in our stock market. Under such circumstances, it may not be entirely reasonable to call it a model of the USA Stock Market. Without going into that debate, some salient features of Bangladesh stock market are summarized below.

(i) Excessive Volatility

Volatility is a common feature in the stock market. In the absence of price volatility, potential investors become reluctant to participate in the stock market.²⁸ Volatility keeps the market moving, but excessive volatility is counter-productive. Because high volatility unaccompanied by any genuine change in real market, may lead to a general erosion of investors' confidence in the market and redirect the flow of capital away from the stock market.²⁹ Excessive volatility also reduces the usefulness of stock price as a reflector of the real worth of the firm.³⁰ Bangladesh has a mixed economy and contains multifarious factors, such as, industries, agriculture, trade and commerce, which are reflected in the Stock Market in the form of excessive volatility and uncontrolled price movements.

Bangladesh is presently in a transitional phase of industrial development, which may be the reason behind the inconsistent rate of investment in the capital market. The capital market has witnessed a very significant uncertain volatility in the recent past. Unsystematic loss and weak legal structure enhances this volatility more.

²⁸ Md Saiful Islam and Md Lutfor Rahman, 'Relevance of Net Asset Value (NAV) in Determining the Volatility of Stock Returns: A Study on Dhaka Stock Exchange' (2016) 2(1) *International Journal of Finance and Banking Research* 7-12.

<<http://article.sciencepublishinggroup.com/html/10.11648.j.ijfbr.20160201.12.html>> (19.04.2017).

²⁹ Ibid.

³⁰ Md. Habibour Rahman and Md. Sakhawat Hossain, 'Volatility of Stock Return in the Dhaka Stock Exchange' *The Bangladesh Bank*.

<<https://www.bb.org.bd/pub/research/policynote/pn0806.pdf>> (18.04.2017).

(ii) Short-term Trading³¹

In contrast to long-term investment, stock market in Bangladesh is still basically speculative and dominated by short-term trading with high turnover ratio. Most of the traders prefer short-term trading to long term investment. Loss and profit are natural for the investors who take it as a part of business while the traders in shares mainly tend to manage quick income from the deal in the shares. Bangladeshi stock market mainly consists of the investment of small and medium type investors. They tend to expect profit from short-term investment. Meanwhile, most of the investors tend to have relatively short investing periods with frequent trading pattern. They are after dividend and earning capital gain in the short-run. They do not have plan in the long run. They do not have any business plan for or by investing in the capital market. They do not mean for participating in the management or control of the company in the long run. Thus, stock market in Bangladesh mainly regarded as a mean to gain some ready made money as alternative to earning money for regular livelihood.

(iii) Private Dominance vs. State's Vulnerability

Since Bangladeshi stock market, especially share market is mainly moved on and developed at the initiative of private stakeholders; the same is ruled by some private stakeholders, though prima facie the share market is governed under the authority of the Government through the BSEC and under the laws and regulations formulated by the regulators. The Government's securities are not traded in the stock market. Therefore, the private stakeholder's dominance in the market can neither be ignored nor can be suppressed. In this situation, state control may be desirable to ensure the quality of issuers.

(iv) Upper Class/Powerful Investors vs. Lower Class/General Investors

The gap between the upper class investors (who are financially and otherwise powerful) and the general investors (lower class investors who are financially and otherwise weak) in stock market is very acute in Bangladesh. In true sense, poor class has very little

³¹ It means when trading takes place frequently within a short period of time, where entry into any stock and exit thereby takes place within a very short period of time. It means that the investor buy any share with the intention to sell the same immediately or after a few while. These kinds of traders keep shifting and changing the shares frequently within a limited span of time. They are often addressed as "the traders" comparing to "the investors".

involvement in the stock market. Generally, middle class and rich class invest in the market. With the growing demand of various kinds of investors, the share market of Bangladesh has become more concentrated than dispersed. In recent past, the middle class has been seen to invest a lot, but the market is still dominated by the rich class. It is the rich class people who manage, control and guide stock market. They constitute the managerial body of the market and have ample opportunities to pollute and abuse the market. Some notable industrialists were found responsible for the 2011 scam, as per the Probe Committee Report. Their influences are extended not only in the secondary market but also in the primary market. In primary market, their most common influences are on initial return, trading volume, stabilization activity of underwriters, institutional investors, lock-in period, demand for and supply of shares in the immediate aftermarket, quality of IPO issue and the behavior of investors.³²

(v) Inequality in Disclosure of Information

The power of disclosure of information about the securities and financial condition of the issuer companies remains absolutely with the management of the company. This is the central disparity that causes manipulation and results in the commission of most of the offences in securities market. General investors have very little access to the information of the issuer companies. Bangladeshi stock market has no obligation to disclose necessary information to the general investors.³³

(vi) Leaking of Price Sensitive Information, Insider Trading and Market Manipulation

Leaking of price sensitive information, insider trading and market manipulation have become the common features of our stock market. These issues will be discussed in the Chapter dealing with investors' protection and pitfalls in the legal framework of securities market. However, leaking of price sensitive information, buyers and sellers of any shares, changes in the management, etc are the common features of our capital market.

³² M Sadiqul Islam and Sirajum Munira, 'IPO Flipping and Its Determinants in Bangladesh' 2. <http://cassknowledge.co.uk/sites/default/files/article-attachments/220~~220_sirajummunira_ipo_flipping_and_its_determinants_in_bangladesh.pdf> (12.02.2017).

³³ S M Solaiman, 'Adoption of the Disclosure-Based Regulation for Investor Protection in the Primary Share Market in Bangladesh: Putting the Cart Before the Horse?' (2005) 1 (1) *The Corporate Governance Law Review* 115-146. <<http://ro.uow.edu.au/cgi/viewcontent.cgi?article=1452&context=lawpapers>> (15.01.2017).

(vii) Unskilled Share Market Experts, Dealers and Investors

It is a well-established allegation against the controllers, managers and governing authorities that they are unskilled, inoperative and out of order. There are lack of adequate amount of experts and well trained officials and personals working as the market intermediaries or under the market regulatory institutions.

(viii) Lack of Future Projection

There is no well described, well assessed and straightforward share market future calculation. This is because, there is severe dearth of market analysts, researchers or independent research institute who analyse the market behavior and transaction on regular basis based on reality and disclosed/un-disclosed information about the stocks, issuers, traders and market regulators. Lack of market based more correct projection and assumption is also responsible for share market crash.

(ix) No Play of the General Investors on Share Pricing

Poor class investors have nothing to do in share pricing in stock market. Especially in Bangladesh, the lower class and middle class investors have no say in the share price movement. Usually, the financially dominant classes who mainly control the market often seem to control the share price and its movement.

(x) Weak Regulators and Legal Provisions

The regulatory mechanisms of the Bangladesh stock market are weak.³⁴ They are also faulty, fragile and inefficient³⁵. The existing mechanisms fail to develop and ensure 'fair price making system' in the Bangladeshi stock market.³⁶ In an efficient stock market, the prices are driven by the forces of demand and supply within the broad framework of policies, rules, regulations and bye-laws. There is, therefore, a need to ensure that control mechanisms are in place to mitigate risks. A well regulated framework is necessary to maintain a fair and orderly market to make the playing field even for all the players. Detailed analysis of the regulatory efficacy and deficiency in the securities market has

³⁴ M. Serajur Rasul, 'Barriers to the Development of Bangladesh Capital Market' (2013) 2(6) *International Journal of Economics, Finance and Management* 392-402.

<http://www.ejournalofbusiness.org/archive/vol2no6/vol2no6_2.pdf> (19.04.2017).

³⁵ Tarun Kanti Bose, Md. Reaz Uddin, Md. Wahidul Islam, 'Measuring and Comparing the Efficiency of Dhaka Stock Exchange and Chittagong Stock Exchange' (2014) 4(3) *International Journal of Scientific and Research Publications* 1-14.

<<http://www.ijsrp.org/research-paper-0314/ijsrp-p2716.pdf>> (20.04.2017).

³⁶ Ibid.

been made throughout this thesis. Laws are weak, backdated, complex, inconsistent and not well-thought of.

(xi) Top-to-bottom Regulation

Bangladeshi stock market is completely regulated by the laws, regulations and guidelines formulated by the superior authorities. The general investors and small intermediaries have no functions in the regulation process. The BSEC, the Bangladesh Bank, the ICB and the other superior authorities have all sorts of control and regulation over the securities market. Along with them, the rich market players who are in coherence or in collusion with the higher authorities of the regulatory institutions manipulate market. Both after 1996 and 2010-2011 stock market scam, it was reported that the culprits behind crash either directly or indirectly related with the superior authorities of the governing institutions.³⁷ Since there are major shortcomings and escape-gates in the legal provisions, they are taking the benefit of it.

For that reason, an extensive critical analysis of the existing legal provisions and the activities of the governing institutions is crucial in order to improve legal structure and enhance regulatory efficacy more in the relevant field. As stated earlier, this thesis is a little attempt towards that journey. Moreover, the valuation of share price, reasons of issuing shares, contributories on share price, etc are also necessary to know for proper understanding of the stock market business, which are discussed below.

2.6. Valuation of Share Price and the Reasons of Issuing Shares

Valuation of share price is the main factor which keeps the stocks moving around. It is for the money that the issuers issue shares in the market. The investors invest capital as desired by the issuers. The share issued by the issuer company represents a partial ownership to the extent of share in the firm. This ownership feature attracts many investors who want to have an equity interest in a firm but do not necessarily want to manage their own firm. Owners of stock can benefit from the growth in the value of the firm and therefore have more to gain than creditors. The investors cum owners are also susceptible to large losses; as the values of even the most respected corporations have

³⁷ Some references of such report have been given in Chapter 3 of this thesis.

substantially in some periods. They can also gain profit.³⁸ How the private limited companies and the public limited companies issue shares have been discussed below.

a. Private Limited Corporations

Private Limited Companies/Corporations can determine the share price and amount of issued shares as the management of the companies want. However, the face value of the share cannot exceed the ceiling as determined by law. In our country the companies are free to determine their authorized and paid up capital and per share value may be of any amount between Tk. 10 to Tk. 100. However, companies can add new subscribers of shares at higher price as agreed between the parties concerned.

b. Public Limited Corporations

This situation regarding share price in public limited companies is rather ironic. A company cannot issue shares more than its paid up capital. Currently, all the listed public limited companies issue shares at fixed price face value Taka 10 each following a regulatory directive issued in August, 2011.³⁹ After the 2010-2011 stock market crash, this uniform face value of share is now fixed by law⁴⁰ and when listed companies first issue their listed shares in primary market for raising equity capital then the market value generally exceeds the face value of the shares. They determine the trading price depending on the market response they got from the pre-IPO process. Thereafter, when those shares are again issued in the secondary market, the share price may exceed the face value and the primary market value of the shares. In secondary market the share price is determined by many factors and theoretically, the issued companies have very little to play in determining share price in the secondary market.

The original company that issues the stock does not participate in any profits or losses resulting from these transactions because this company has no vested monetary interest.

³⁸ J N Dhankhar, *Pricing of Securities in the Indian Stock Market* (Bharat Publishing House New Delhi, 1st ed, 1994) 6.

³⁹ LankaBangla Financial Portal 'Almost All Cos Complete the Process of Face Value Conversion' *The Financial Express Bangladesh* (online) 26 January 2015. <<http://lankabd.com/dse/stock-market/news/Almost-all-cos-complete-the-process-of-face-value-conversion?storyId=28354>> (21.04.2017).

⁴⁰ BSEC Order dated 15 September 2011 related to Uniform face value of shares of Tk. 10 each. Clause 39 of the Dhaka Stock Exchange (Listing) Regulations, 2015 provides that "Unless otherwise prescribed by the Commission, face/par value of any equity securities and mutual funds listed or to be listed with the Exchange shall be Taka 10.00 (ten) only". <<http://www.secbd.org/Directive%20for%20Face%20Value%20Value%2015.09.2011.pdf>> (21.04.2017).

This is what confuses many people. Why, then, does a company, or more specifically its management, care about a stock's performance in the secondary market when this company has already received its money in the IPO?⁴¹ This question attracts multiple complex answers. The theoretical answer is that the secondary market ensures wide participation of all kinds of investors from any corner irrespective of having any direct link between the company and the investor. It helps companies to raise equity finance. On the other hand, this market can be described as speculative market as in fact in secondary market there is uncontrolled trading and transfer of share which basically creates no direct link between the company/enterprises and the 3rd graded/multiple graded⁴² investors in genuine sense.

The companies might have other interests too. The interests may be direct or indirect, explicit or implicit, countable or uncountable, real or perceived. The interest becomes direct when its share market performance really effects and influences the commercial investment and marketing of its business. It makes the companies competitive. It acts like a mirror of the overall economic performance of the companies. Investors become more curious in investing in those companies whose stocks perform well in stock market competition. Hence, the performance of shares of a particular company is really important. This is also why the stock market is called the barometer of national economy.

The indirect interest may sometimes be more important and more profitable than direct ones. Those who are in the management are often the shareholders too and can retain large number of primary shares and secondary shares at the convenient/spring time of a company.⁴³ They can get involved in insider trading and they can leak sensitive information relating to share price or share price movement. They can also conduct fake account or can do business using unnamed account and thereby, they can get indirect benefit from market. The first and most obvious reason why those in management care about the stock market is that they typically have a monetary interest in the company.

⁴¹ Investopedia, 'Why Do Companies Care About Their Stock Prices?', (last updated April, 2017). <<http://www.investopedia.com/articles/basics/03/020703.asp>> (21.04.2017).

⁴² As there is no restriction in secondary market on trading and transfer of shares and one share can be transferred for unlimited times; hence the buyers (ultimately the investors against those shares) can be named as 3rd graded/multiple graded investors.

⁴³ The word spring time is used to mean that time of company when the price of its shares in market (either in primary market or secondary market) is at peak and in market it is in predominant position with highest demand in trade.

Moreover, it is also observed that the founders of a public company own a significant number of the outstanding shares (being sponsor shareholders or otherwise), and the management of a company have salary incentives or stock options tied to the company's stock prices, and the stock demand of a company may also positively influence on the products of the company in the market.⁴⁴ For the aforesaid three reasons, the management of the issuer company acts as stakeholders and thus pay attention to their stock price. There are other interests which provoke the issuer company to have close interest in its stock performance in share market.

It is also noteworthy that too often the investors forget that stock means ownership. They are more concerned about dividend and stock price rather than enjoying ownership in the company. The job of management is to produce gains for the shareholders against their respective shares. Although a manager has little or no control of share price in the short run, over the long run, the poor stock performance may be attributed to mismanagement of the company.⁴⁵ Nevertheless, the executives must always factor in the desires of shareholders since these shareholders are part owners of the company. There may be other interests as well.⁴⁶ Moreover, the public limited companies whose shares are traded in the stock market have limited control over the ownership of the shares traded in the stock market.⁴⁷ To accumulate shares for the purpose of takeover, potential bidders are better able to make offers to shareholders when they are trading at lower prices. As a result, the companies want their stock price to remain relatively stable, so that they remain strong and deter interested corporations from taking them.

Likewise, a publicly traded company having hot stock in the market definitely attracts more prestige and exposure to the public. Though a company's stock or other

⁴⁴ Matt Comyn, a representative of Commonwealth Securities Limited (CommSec), 'Why do companies care when their share price falls?' *thebull.com.au* (online) 21 April 2017. <<http://www.thebull.com.au/experts/a/227-why-do-companies-care-when-their-share-price-falls-.html>> (21.04.2017).

⁴⁵ It is because of the reason that if the stock price underperforms consistently, the shareholders are eventually going to look for other alternatives. In extreme cases, the shareholders may threaten to leave the company and demand a change of management. Anyway, to what extent shareholders can control management is debatable.

⁴⁶ For instance, the management or the directors of the issuer company often hold large number of shares/stocks through their subsidiaries and nearest concern.

⁴⁷ Unlike private limited companies, the public limited companies who issue shares for trading publicly are more vulnerable to be taken-over by another company or strong shareholders who purchase a large number of shares from the market. If private owners don't want to sell, the company cannot be taken over since most of them are family members, relatives, friends or closely held, but the publicly traded companies have less control over the shares to be bought by any investor.

performances in the market may not always be positive and exclusively interdependent, it cannot be denied that their relationship is positive and influential on each other's performance and behavior to quite an extent. For these reasons, a company's stock price is a matter of concern. If the stock performance of a company is ignored, the life of the company and its management may be threatened with adverse consequences, such as, the disdain of individual investors and difficulties in raising capital in the future.

2.7. Constituents and Factors causing Share Price Movement

The question “what makes the share price go up or down?” is a very pertinent in stock market. The simplest answer to this question would be the factors of demand and supply. When demand outstrips supply, share price goes up and the reverse is true when the price goes down. Besides this, many investors know that investment analysts talk of fundamental factors and other technical factors make the price job about on the charts.

a. Demand and Supply

As with any other market, the most dominant arbiters of movement in prices in the stock market are the forces of demand and supply.⁴⁸ There might be a bundle of shares in market but all shares may not be available for trading. The total number of shares in terms of paid up capital of the company is counted as all shares listed in the stock exchange with a specific market lot. However, at any particular point of time, only a portion of this listed stock can be available in market for trading, which is called “Floating Stock”. “Floating Stock” is available for purchase at or near the latest quoted/recorded price. Therefore, any increase or decrease in the demand and supply will produce fluctuations in the price. If, due to some reason, buyers become more active, the demand will increase, and if the floating stock remains unchanged or fails to grow in line with the demand, the price will fall down. However, this theory only applies in a stable and efficient market with majority good shares, adequate disclosure of information and the issuer declare dividend regularly.

Interestingly, there is no direct relationship between a share's market value and its book value. The intrinsic value of a going concern far exceeds the value of the physical assets of

⁴⁸ ‘What are the key factors that cause the market to go up and down?’ *Investopedia* (online) 3 October 2014. <<http://www.investopedia.com/ask/answers/100314/what-are-key-factors-cause-market-go-and-down.asp>> (15.01.2016).

the firm. However, a profitable company has the capability to produce or earn income. Generally, earnings per share, dividend, and some other factors are the elements which constitute the market price of equities and also cause fluctuation.⁴⁹

Of course, the demand and supply cycle refits the real situation of capital market so far as investment of the capital of a country is reflected. However, the spirit of capital market reflects the real amount in public hand, as public invest net capital in stock market apart from their other balance. Capital market is also considered an alternative to savings scheme. It leads public to save their net capital by keeping the capital up and running in commerce and trading, rather than keeping the net capital idle in the bank or any financial institution. The more people invest in capital market, the more will be the demand of securities and the more it reflects economic viability/solvency of people. On this ground, the relationship between demand of securities and financial capability of people is positive and simultaneous. It means people will invest more in capital market when they are more solvent financially. More investment in capital market bears the mark of economic solvency of people and less investment proves otherwise. This is the main reason why the capital market is called the mirror of economic status of a country.

b. Other Factors Contributing Share Price Up and Down

Few other factors also should be examined, which are discussed below-

(i) Fundamental Factors

The investment analysts talk about fundamental factors that contribute in the price fluctuation in the market. Fundamental factors are those which determine intrinsic price of a share over a long period of time. Fundamental factors are not just limited to the figures in the balance sheet of a company i.e. the financial strength of the issuer.⁵⁰ In fact, they go beyond the horizons of the company's financial strength. They include political stability,

⁴⁹ Dividends are decided at the management's discretion and have nothing to do with a share's true worth. Thus, the dividends are discretionary; managements do not give them at random from year to year. Most companies have target payout ratios (the amount out of earning that they will pay to the shareholders) which varies from year to year depending upon the assessment of the management of future performance. The company was thus able to convey to its shareholders that the current earnings did not show a true picture of future worth because the situation would be reversed. The market responded to this because its share price stayed steady after the results were announced in spite of other factors at work especially expectations about the result versus the actual result.

⁵⁰ They mainly relate to the sales, gross profit, gross profit margin, net profit, earning per share, bonus prospects, rights prospects, expansion, diversification plans of the company, change in the management of the company, new taking-over, extension of business, financial loss of the company, and other factors.

economic climate, business conditions, partners of a particular industry to which the shares belong and the quality of the management, etc.

(ii) Technical Factors

Technical factors are those factors, which are, to a large extent, directly or indirectly related to demand and supply cycle. This may include disclosure of price sensitive information, or disclosure of any information which may influence the demand and price of stock in market. There are certain other factors both exogenous and endogenous to the company which combines to influence investor's reaction to the shares of a company. These factors are all those which are pertinent to the profitability of the concerned company or the industry in which it operates. For example: any news or information about changes in the management of a company, the company's current half-yearly results or sudden gain in a business project, etc. The investors give instructions accordingly to their various stock brokers at the price at which the stock brokers are willing to buy and sell security.

(iii) Prospect of the Companies

Generally, the stocks of the companies who do profitable business and have good prospects also do well in the stock market. For that reason while making analysis of individual security, it is necessary to make issuer company analysis also. The performance of the industry is closely related to the stock performance.⁵¹ It is more prudent to invest in a growth industry than in a declining industry. The average stocks in growth industry normally do better than the best stocks in a sluggish industry. Stocks of financially secured company having promising prospect with wealth and stability in the long run perform better than the financially weak companies in the capital market.

(iv) Business Cycles

It is also observed that the share market moves under the influence of business cycles. The share prices and business cycles move simultaneously. Business cycles do not shift its gears suddenly and abruptly. No growing business can turn into sunset industry overnight. All industries go through different stages, wherein, before the growth phase is underway,

⁵¹ GetSmarterAboutMoney.ca, 'Factors that can affect stock prices' Ontario Securities Commission (online) 2017.

<<http://www.getsmarteraboutmoney.ca/en/managing-your-money/investing/stocks/Pages/Factors-that-can-affect-stock-prices.aspx#.WPmpdGfYXIU>> (18.04.2017).

there is a period of recovery, growth and expansion and similarly in the downward move, the stages are contraction, recession and slumps. This cycle goes on between growth and slump.⁵²

(v) Government Policies and Political Climate⁵³

The Bangladesh Stock Market is influenced greatly by industrial policy, fiscal policy and budget proposals made by the Government. On the other hand, imposition of tax, VAT, massive price change in the market controlling products/commodities, etc may have an effect on stock price.

(vi) Price Selling

Price selling can have high influence in actual price movement and can enhance bubbles in the market. Price selling can lead the market to boost up suddenly and fall down drastically within a span of minutes. It might not even leave enough time for apprehension and extends the scope for the perpetrators/ghosts of stock market to take away huge amount of money from stock market before the regulators and investors can catch up. It can also lead to massive stock market crash. As such, price selling can have significant impact on share price movement.

(vii) Insider Trading

Despite having several mechanisms prohibiting insider trading, the issue of insider trading⁵⁴ remains totally uncontrolled and also proves to be one of the biggest menaces to the investor. The provisions of the Companies Act 1994 and listing Regulations are not

⁵² The fact is when any industry gets into a growth phase, almost everyone in the industry simultaneously go in for expansion and the mass perception of huge demand for utilization, increased burden of interest and higher equity capital to service leads the growth industry into the slump cycle before the demand supply curves cross each other to put the industry back firmly on the growth phase. The excesses on either phases help in developing the next cycle. On the other hand, business can face such a tremendous loss and destruction that it may not be able to run properly. Counting loss or profit is a part of business. If there is balance between loss and profit, and after loss if there is a hope to survive with profit, the investors feel interested in moving forward with the business. If so, then business cycle survives, otherwise it may not work.

⁵³ GetSmarterAboutMoney.ca, 'Factors that can affect stock prices' Ontario Securities Commission (online) 2017.

<<http://www.getsmarteraboutmoney.ca/en/managing-your-money/investing/stocks/Pages/Factors-that-can-affect-stock-prices.aspx#.WPmpdGfYXIU>> (18.04.2017).

⁵⁴ It refers trading in securities by persons in possession of material non-public information relating to such securities which are price sensitive strongly.

sufficient to prevent insider trading.⁵⁵ There are several types of insider trading, including trading between company's insiders like management, auditors, etc, intra-group parent and subsidiary companies stock brokers, persons in government and investors, officials and managerial authorities of stock exchanges, etc. Insider trading can have severe harmful impact on share price and can negatively control the share price movement.

(viii) Management Buying and Selling

In some cases, when an existing company comes out with a public issue, heavy management interferes in this process for ensuring the success of public issue. In this situation, the price of the security becomes high temporarily due to the artificial demand created by the management. Once the public issue is over and the management support is withdrawn, the price of such share normally starts declining. In most of the cases, this technique is adopted by the management and is responsible for the upward and downward trend in the security without any fundamental change in its intrinsic worth. There are many examples to support this tendency of pricing of securities.

(ix) Entry of New Companies and Winding Up of Companies

Entry of new companies, especially, high profile companies, can have direct effect in share price movement. For example: when Grameenphone entered in stock market in 2010, the stock market of Bangladesh witnessed the highest price up in its history. Declaration of issuing IPO by GMG Airlines Limited also increased its share price in private placement.

(x) Takeovers and Mergers

The announcement of takeover of any existing company by any renowned group may affect the fortune of scrip adversely or positively. For example merging of Nokia with Microsoft Corporation largely affected their share prices. Shinepukur Holdings Limited made a huge profit from stock market during 1996 by branding itself as a sister concern of Beximco Group.

⁵⁵ An elaborated discussion on the relevant laws preventing insider trading in Bangladesh and how insider trading is causing market manipulation will be discussed later on in this thesis while analyzing the laws preventing insider trading.

(xi) Floating Stock Position

This is one of the important factors which influence the market price of scrip. Continuous buying in scrip where there is an acute shortage of floating stock can bring a sharp spurt in share prices. The fraction of the paid up equity capital of a company which normally participates in day to day trading is called floating stock. The problem of floating stock is generally aggravated whenever there is book closure and the buyer is to send the shares purchased by him to the company for effecting registration of transfer in his favour. As per the listing agreement of the company with the stock Exchange, the company is to effect the transfer as early as possible, but in practice, some unscrupulous management take a long time and cause delay in transferring the shares. This situation creates artificial scarcity of scrip in the market and prices tend to go up without any link with its actual worth.

(xiii) Sudden Political Events

Important political events in the country have a definite bearing on the pricing of securities. For example, it is often said that the share market crashes when Awamileague Government is in power, as the most two disgraceful scams of Bangladeshi stock market took place during the Awamileague regime.⁵⁶

(xiv) Stock Supply and Control Efficacy

If the stock market operates within the regulations framed, the price which it records for various securities should reflect the market's collective judgment of the relative worth of each security, vis-à-vis other available securities. In ideal conditions, each security is able to command a price which ensures the capital flows into that company. There remains a system of check and balance amongst the number of issuers, number of stocks, regular price movement and distribution among the investors.

⁵⁶ It is not a fixed assumption. It is a rumor or there may be basis of it. Anyway, at the time when Bangladeshi share market faced two terrible scams one in 1996 and other in 2010-2011, eventually the country was ruling by the Awamileague Government. The dichotomy is that most of the developments and crashes in the stock market faced during when Awamileague Government.

The price of the security in the secondary market influences the allocative process only in so far this price serves security will generally tend to sell a new issue at a price. Any further issue of a listed security will generally tend to sell at a price approximating the prevailing price of that security on the stock exchange. Prevailing price levels generally tend to have on the markets and industries with some discrimination for characteristics of individual company as industry. Generally the depth of the market,⁵⁷ the nature of freedom from restrictions,⁵⁸ the quality of information,⁵⁹ the degree of investor rationality,⁶⁰ and the participation of stocks, issuers and investors in the market⁶¹ influence the allocative efficiency of a stock exchange. Unless there is sufficient supply of securities at all times to sustain continuous trading for the investors to exercise their choice as often as they desire, there will be little or no opportunity for individual security values to be put into the market test, hence their “efficient prices”⁶² cannot emerge. Restrictions in any form on the market process for determination of security by an external authority would also tend to distort the working of the market process.

(xv) Liquidity and Continuity in Stocks and Prices

Lack of liquidity in a stock may cause prospective owners of any stock to buy it at a higher price rate. Too many of such stocks in the market would, in turn, seriously affect and shake the confidence of investors. In Bangladesh, stock exchanges are still far from

⁵⁷ Depth of market refers to a situation where every movement of the market is analyzed in dept. There is fair disclosure of information regarding the allocation of stock amongst the investors and stock movement in every moment.

⁵⁸ The nature of freedom from restrictions is highly important in order to understand the stock movement, participation of investors, difference between institutional and individual investors, the legal interference, regulatory control, undue interference of doubtful market players, prohibition on certain transactions, restrictive areas and some other related issues which ultimately defines to what extent there is freedom in stock dealings.

⁵⁹ Quality of information about the management, financial condition, share price movement and share trading and other issues of the stock market should be available in the market.

⁶⁰ It is to be measured that to what extent the investors are rational in making decision for investment in a particular stock. Do they apply their knowledge based on market realities? Do they collect news about the issuer company? Do the investors are guided by rumors or by market realities? Do they have any projection about the stocks they are interested in investing? Do they collect information and statement from true or confidential source? Investors’ rationality and clear knowledge about the stocks, Issuer Company, share movement, market players, involvement of governing institutions and other issues with proper information based on true facts are highly important, but it often doubted how far they have in our country. As discussed earlier, there remains huge gap and disparity between the management and the investors so far accessing and disclosing of the information in stock market.

⁶¹ In a certain period of time how many stocks, issuer companies, investors of all kinds and money supply are fairly available in the market also contribute on the effective allocation of the stock dealings in the market.

⁶² It is a competitive term, refers to a situation where the supply of good stock will be available for the investors and the price will be fixed through real competition.

providing liquidity and continuous market in securities. Therefore, Bangladesh Stock Exchanges must make efforts for tailoring out a suitable mechanism in order to ensure price continuity and easy liquidity to scrips, on the promise of which, investors can enter the market in large number.

(xvi) National Budget, Economic Environment of the Country, Regulatory Decision and some other Factors⁶³

Finance scheme, determined by national budget, causes direct effect in the share price. National budget reflects the economic condition of a country. If economic conditions are good and expected to continue better way, investors do feel confident. The Companies are more likely to perform well and deliver strong profits when the economic climate is benign and they are more likely to pay rising dividends. Under such circumstances, demand for shares tends to rise and prices increase.⁶⁴ On the other hand, if the economic climate is difficult, the investors may feel nervous. They may worry that a company's profitability will suffer if economic conditions are difficult. Fears about future profits tend to reduce demand for shares, so prices may fall.⁶⁵

In addition, bank rate movement, finance policy, decision of the regulators including the Bangladesh Bank, the BSEC, the Finance Ministry and others, overall GDP rate, national savings scheme, entry of new company and outgoing of trading companies, companies' own performances, dividend, share market's self performance and other factors contributed significantly in share price movement. Moreover, the macroeconomic variables such as Bangladesh Bank's monetary policy, inflation rate, interest rate, money supply and other factors related with monetary movement in the money market can have direct or indirect influences on the stock market prices.⁶⁶

⁶³ 'What influences a share price', *London Stock Exchange* (online) 2013.
<<http://www.londonstockexchange.com/traders-and-brokers/private-investors/private-investors/about-share/what-influence-share-price/what-influence-share-price.htm>> (21.04.2017).

⁶⁴ Ibid.

⁶⁵ Ibid.

⁶⁶ The fact is, in the real market situation there are certain other factors both exogenous and endogenous to the corporate company combine to influence investors' reaction to the share of a company. These factors are all embracing and they include any things whatsoever which are pertinent to the profitability of the company concerned or the industry in which it operates. Investors' biases are generally reflected in their respective instruction to their various stock brokers which culminate in the price at which the stock brokers are willing to buy and sell shares. All these factors are brought to bear on the market during the trading house and every time a transaction is made, or a new price is quoted, it is recorded in the register of rates and the board. If at

Although, in efficient markets, the prices are driven by the forces of supply and demand within the broad framework of policies, rules and regulations, a well-regulated framework is necessary to maintain a fair and orderly market in order to make the playing field even for all the market players. However, the regulations cannot and should not dictate what needs to be done in the market at every fleeting situation on a trading day when buyers and sellers exert continuous influence on the price of the stock.

(xvi) Role of the Investors

Regarding the role of investors in the capital market, two important questions are often asked- “Do the ‘independent investors’⁶⁷ have any contribution in share pricing?” and “Is the number still significant, despite there being millions of independent investors? The reality is if the millions of people whose investment were truly independent of each other, any faulty thinking would tend to be balanced out, and such thinking would have no effect on prices. But, if irrational thinking is in fact similar over large numbers of people, such thinking can indeed be the source of stock market booms and busts. Bangladeshi stock markets are not efficient in the prices, and investors' behavior is not necessarily driven by fundamental values of listed firms. Sometimes, stock prices are more “synchronous” (stock prices move up and down together)⁶⁸ in Bangladesh than in developed countries. This phenomenon is attributed to poor minority investor protection and imperfect regulation of markets in emerging markets. Lack of share pricing controlling mechanisms and minimum benchmark with maximum threshold is mainly responsible for this.

Excessive market fluctuation out of presumption has also played a big role in this case. Gap of nominal/face value of share in primary market and secondary market is rampant, and it creates a threat to the ‘real value of share’⁶⁹. With a large data set of individual

the close of that transaction, no new price is quoted the rate becomes the market price of the security as at the end of that day's transactions.

⁶⁷ Independent investors are those who invested money in share market (either primary market or secondary or both) independent from any syndicate or concerted investment. They do investment only from their own endeavor with a hope to recover essay gain in substitution to saving, deposit, business or investing the money otherwise.

⁶⁸ Frequent up and down of share price of regularly trading shares of large companies.

⁶⁹ It means the practical value of share which ensures the percentage and ownership of shareholder in a company/firm (percentage in the assets and capital of a company/firm). It satisfies both subjective and objective form of ownership in deed.

trading, it is even revealed that buy and sell trades are highly correlated in Bangladesh. Critics referred 'to the behavior of some Bangladeshi investors as "betting" or putting stock in "Lady Luck"'⁷⁰. Other than the obvious explanation that people have nothing better to do with their money, share trading offers ordinary Bangladeshi the chance to gamble. While the stock frenzy shows that citizens may have the taste for gambling, statistical evidence shows that it may be an irrational choice. Though there is no comprehensive statistics that what percentage of people could gain abstract benefit from the stock market and what percentage have suffered loss; who wins and who losses, but recent scenario reveals out that loss in investment in stock market cannot be easily counted even. Unfortunately, in our country, the investors mostly invest into stocks based on rumor and apply their own prediction (illogical emotion) without any real knowledge about the stocks and their issuers. They do not conduct any field work before making choice of investment, and they do not try to learn about the concerted practice amongst the corrupted market player when the market behaves abnormally.

(xvii) Role of the Market Intermediaries⁷¹

The market intermediaries can also influence the share pricing in market. Stock exchanges may play a role in determining share price in stock market by allowing "the companies to understand the market sentiments accurately. Their future strategies and approach are often influenced by the way their corporate activities are received by the public and reflected in their share prices. If investors view a management decision favorably, they will want to buy shares in the company to take advantage of expected future success. This will push share prices up. Similarly, the management can also draw conclusions from falling share prices and align policies accordingly."⁷²

(xvii) Declaration of Initial Public Offering

Declaration of issuing of new shares influences the stock price in secondary market. Frequent declaration of equity shares may give a message of commercial viability of the

⁷⁰ Xiao Huang, 'Modernising the Chinese Capital Market: Old Problems and New Legal Responses' (2010), 21(1) *International Company and Commercial Law Review* 26.

⁷¹ The roles and activities of market intermediaries and their related laws have been examined and analyzed in details in Chapter 5 and 6 of this thesis.

⁷² Jalal M Hussain, 'The Role of Stock Market in Bangladesh Economy', *The Financial Express* (online) 20 February 2012.

<http://www.thefinancialexpress-bd.com/more.php?news_id=120722&date=2012-02-20> (12.03.2015).

company which can influence the stock price. This message could be misleading. A company can declare its last IPO in a wide banner in order to collect huge equity finance, and after collection, may go for winding up or the same can be found suffering huge financial loss. This is what GMG Airlines and few other companies did in 2010-2011 when they collected huge amount of money from public through private placement with the promise to go for IPO, but subsequently failed to come with IPO due to several intervening causes and the tremendous financial loss suffered by the company.

With the declaration of IPO in the primary market, the share price of the secondary market goes up generally; so when after collecting money through last IPO the company goes to wind up its business or becomes commercially insolvent, then growing or already grown share price in secondary market falls automatically. Ultimately, that particular share crashes and the investors suffer loss, and on the other hand, the ghosts gain huge, unjust money in the most legal way. This is, of course, an abhorrent and unfair practice, but there is hardly any scope of saying it is illegal.

(xix) Declaration of Profit, Right Shares, Bonus, Dividend, etc

Declaration of any kind of profit, right shares, bonus shares, dividend, preferential shares always have a direct or indirect impact on the stock price in secondary market; detailed discussion on these issues are provided in the next Chapter along with practical instances.

(xx) Rumor and Artificial Trading

Rumor can greatly influence the share price.⁷³ In a country like ours, where most of the general investors do not think it's essential to have accurate knowledge about the stock before investing into, the rumor has an acute influence on stock price movement.⁷⁴ Rumor in stock market is often created intentionally by the ghosts or market manipulators who want to manipulate the stock market price in their favour. It is often said that rumors

⁷³ Fábio Marques da Cruz, Maria Yêda Falcão Soares de Filgueiras Gomes, 'The influence of rumors in the stock market: a case study with *Petrobras*' (2013) 25(3) *Transinformação* 187-193.

<http://www.scielo.br/scielo.php?script=sci_arttext&pid=S0103-37862013000300001> (11.04.2017).

⁷⁴ Halil Kiyamaz, 'The effects of stock market rumors on stock prices: evidence from an emerging market' (2001) 11(1) *Journal of Multinational Financial Management* 105-115.

<https://www.researchgate.net/publication/222555570_The_effects_of_stock_market_rumors_on_stock_prices_Evidence_from_an_emerging_market> (15.04.2017).

spread faster than light, which is exactly why market manipulators utilize them in order to impact the stock price in secondary market. Besides, some manipulators create artificial active trading environment among themselves through bulk transaction to increase share prices in an artificial way. Moreover, serial trading and price manipulation by many buy-sell transaction (which are in fact fake) through different accounts and broker houses can overheat the market. With rumors, market manipulation and artificial trading comes stock market crash and scam.

2.8. Stock Market Crash and Share Market Scam: Factors and Reasons

Stock market crash is a natural outcome of stock market business, but scam is not a natural outcome. Crash may be systematic or unsystematic, but scam is always unsystematic and intentionally caused. These issues, their reasons and contributory factors behind are discussed below.

a. About Stock Market Crash

A stock market crash can be defined as a sudden dramatic decline of stock prices in a significant number of shares, at a time, resulting in a significant loss of paper wealth attached to shares. Stock crash is caused from sudden declination in price of bundle of shares. This declination arises not from a declined price, but from a highest rise-up of share price to the lowest price at the relevant period of time. This declination destroys the balance between normal fall and rise in share price.

‘Traditionally, panicked sellers caused a crash⁷⁵ because the crashes are driven by panic as much as by underlying economic factors. They often follow speculative stock market bubbles. There is no numeric definition of a stock market crash but the term commonly applies to steep double-digit percentage losses in a stock market index over a period of several days.⁷⁶ The double digit percentage starts with 10. Loss or price declination at 10% may result in a crash. Stock market crash is a sharp and unexpected decline of stock market prices for a very short period of time, usually accompanied with the decline of

⁷⁵ Kimberly Amadeo, *Stock Market Crash: Examples, Cause, Impact (What Not to Do in a Stock Market Crash)* (online) (8 September 2016).

<<https://www.thebalance.com/stock-market-crash-examples-cause-impact-3305864>> (21.04.2017).

⁷⁶ Wikipedia-the free encyclopedia, *Stock Market Crash* (23 December 2013).

<http://en.wikipedia.org/wiki/Stock_market_crash> (25.12.2016).

many other assets' prices. Amadeo, a famous stock market analyst defines 'stock market crash as more than 10% loss within few days in a stock market. But stock market crash has differentiated from stock market correction where the loss is 10% or less'.⁷⁷ However, to understand the concept of a stock market crash, it is very essential to have a clear idea about the 'significant loss of paper wealth' and the 'speculative stock market bubbles'.

(i) Significant Loss of Paper Wealth

Before understanding what significant loss of paper wealth means, it is pertinent to understand what the paper wealth of the stock/share mean and include. Paper wealth means the actual value of something that corresponds to exchange value (value that can be realized in exchanging a good for something else). Regarding share/stock, it refers to the actual value of share/stock. It may or may not indicate the real value of share/stock in terms of the wealth and asset associated with each share. Of course, it is measured by monetary or pecuniary value. It does not include imaginary value but may indicate speculative value. It may not represent the net or nominal value of share, below which the share price cannot be fallen. Though, in present economy, no stringent distinction is made between real value and paper wealth, some distinctions exist.⁷⁸

Paper wealth of share in a company means the price or consideration value in which the share is trading. For example: a private limited company may have paid up capital of Tk. 5,00,000 dividing into 5000 shares, each share valuing Tk. 100 which is the face value of each share. This is the real value of each share. Here the paper wealth of each share may be of Tk. 100 or more but not less than Tk. 100. It may not represent the real wealth associated with that share i.e. each share possesses/represents the real property (asset/capital) of a company. If anyone holds 10% shares in company, in one sense it does mean that the person is holding 500 shares valuing Tk. 5000, but it does not mean that the person merely holds properties/assets of Tk. 5000 in the company.

⁷⁷ Kimberly Amadeo, *Stock Market Crash* (5 September 2013).

<http://useconomy.about.com/od/glossary/g/Market_Crash.htm> (25.12.2016).

⁷⁸ Drawing a simple example let's assume Tk. 10. Tk 10 is worth for Tk. 10. Tk. 10 can be exchanged for Tk. 10. Things equivalent to Tk. 10 can be exchanged/purchased by Tk. 10. Tk. 10 is Tk. 10 because it is provided as Tk. 10 by the authority in a printed piece of paper. If we would spilt that piece of paper printed as Tk. 10 then it would have no value at all. So, real value and actual value for Tk. 10 is Tk. 10. From this perspective there is no difference between real value and paper wealth but assuming Tk. 10 for five balloons in a shop and Tk. 10 for seven same categories balloons in another shop. Now, the difference between the paper wealth and the real value surely does follow and it does matter in economy, and so in the capital market.

Therefore, the person holding 10% shares means and includes that the person is holding 10% shares in the company's overall assets, properties, real capital and liabilities of the company. The same example can also be referred to for the public limited company but, the complex issue is that the real value of each share is of Tk. 100 but paper wealth may be of Tk. 100 or much more than it. For that reason, share in secondary market is sold at a much higher price, though the real value of each share is still the same, valuing Tk. 100.⁷⁹ Basically, the stock market is construing and existing on this point of trading of shares in higher price which is called as paper wealth of each share. Therefore, the significant loss in paper wealth of shares means the significant decline in the real value and real asset associated with the shares/stocks. When earning or asset associated with the stock becomes less than its face value, or becomes minus/negative, or liability and loss associated with the stock become higher than income/earning, it is deemed as the significant loss the real value or paper wealth of the stocks.

Now, the question is, what calls for higher value of share in secondary market and primary share market? This is truly a confusing point of share and its valuation but this is what the share market is standing on. A brief discussion on this issue has already been given earlier.

(ii) Speculative Stock Market Bubbles⁸⁰

Now, let's address the other reason of share market crash in addition to the factors as stated earlier. 'Speculative stock market bubbles' indicates a situation of long rising of stock price which is not in harmony with the fundamental or intrinsic share. The term "speculative" is self-explanatory. Speculation may cause speculative stock market bubbles. The bubbles, as created by speculation, may not apparently be speculative; but may be so in fact. Bubbles indicate rising prices in most of the categories so promptly and simultaneously either on speculation on some basis of real cause. If bubbles breathe, not on the basis of real cause or substantive basis, they will certainly burst out, this might

⁷⁹ Fixed face value for the public limited listed companies is now Tk. 10. Here, only for the purpose of example, Tk. 100 is used causing no prejudice to the purpose of the example.

⁸⁰ The term "bubble," in the financial context, generally refers to a situation where the price for an asset exceeds its fundamental value by a large margin. During a bubble, prices for a financial asset or asset class are highly inflated, bearing little relation to the intrinsic value of the asset. The terms "asset price bubble," "financial bubble" or "speculative bubble" are interchangeable and are often shortened simply to "bubble." '5 Steps of a Bubble' *Investopedia* (online) 2017. <<http://www.investopedia.com/articles/stocks/10/5-steps-of-a-bubble.asp#ixzz4eryIpbq7>> (15.04.2017).

cause crash. Scammers generally take the benefit of speculation and wait for bursting out of bubbles that have been grown up on the basis of speculation.⁸¹

In case of share market, a stock market bubble is a type of economic bubble forming in stock markets when market participants drive stock prices above their value in relation to some system of stock valuation. Economic bubble is commonly known as speculative bubble, a market bubble, a price bubble, a financial bubble, a speculative mania or a balloon.⁸² It is traded in high volumes at prices (paper wealth) that are considerably at variance with intrinsic values (real value). It could also be described as a situation in which asset prices appear to be based on implausible or inconsistent views about the future. Huge excitement in investing lots of money by many investors at the same time when number of shares in market are not increasing comparative to the investment may cause bubbles. In short, sudden rise of price is bubbles and huge excitement is the “speculation”.

Explaining the bubbles very correctly in case of stock market, Paul Krugman⁸³ has given an astute explanation. “What is a bubble, anyway?”- answering this question, he replied “surprisingly, there’s no standard definition. But I’d define it as a situation in which asset prices appear to be based on implausible or inconsistent views about the future. Dot-com prices in 1999 made sense only if you believed that many companies would all turn out to be a Microsoft; housing prices in 2006 only made sense if you believed that home prices could keep rising much faster than buyers’ incomes for years to come.”⁸⁴ He added “because it is often difficult to observe intrinsic values in real-life markets, bubbles are often conclusively identified only in retrospect, when a sudden drop in prices appears. Such a drop is known as a *crash* or a *bubble burst*. Both the boom and the burst phases of the bubble are examples of a positive feedback mechanism in contrast to the negative

⁸¹ Let’s think about the bubbles of rice or bubbles of soap. The bigger bubbles rise up suddenly and the more the bubbles are the high chance of bursting out immediately.

⁸² Wikipedia-the free encyclopedia, *Economic Bubble* (29 December 2013).

<http://en.wikipedia.org/wiki/Economic_bubble> (26.12.2016).

⁸³ A famous America stock market analyst.

⁸⁴ Paul Krugman, ‘Bernanke, Blower of Bubbles?’, *New York Times* (online), 9 May 2013.

<http://www.nytimes.com/2013/05/10/opinion/krugman-bernanke-blower-of-bubbles.html?src=me&ref=general&_r=0> (26.12.2016).

feedback mechanism that determines the equilibrium price under normal market circumstances”⁸⁵.

Prices in an economic bubble can fluctuate erratically, and become impossible to predict from supply and demand curve alone. While some economists deny that bubbles occur,⁸⁶ the cause of bubbles remains disputed by those who are convinced that asset prices often deviate strongly from intrinsic values. Many explanations have been suggested, and research has recently shown that bubbles may appear even without uncertainty, speculation, or bounded rationality. It has also been suggested that bubbles might ultimately be caused by ‘processes of price coordination’⁸⁷ or ‘emerging social norms’⁸⁸.

As discussed earlier, the shares of company in stock are offered publicly in primary stock market. Persons who purchased those in primary market through IPO are the paid up shareholders. These shareholders can either retain those or sell those. Once the shares in stock are sold by the primary holders, it becomes secondary. The new purchasers are the secondary holders. The secondary shares can only be traded in secondary stock market. These shares in stock are traded through stock exchanges. All these shares/stock available in stock market are paid up shares. The real value initially paid during the first purchase of shares from the company may represent the real value i.e. paper wealth of those shares/stock. Sometimes the initial value may be higher than the real value/paper wealth. For that very reason, primary stock market remains largely unaffected by the share market crash, but in 2010-2011 a different nature of share crash occurred in Bangladesh which was initiated in the primary market and ended in the secondary market taking out huge amount of money and life of many.⁸⁹

However, primary share market faces less number of crashes. Generally speaking, speculative share bubbles cause huge difference in genuine share price and trading price at

⁸⁵ Ibid.

⁸⁶ Peter Garber, *Famous First Bubbles: The Fundamentals of Early Manias*, (Cambridge, MA: MIT Press, 2001) in Ibid.

⁸⁷ Cars Hommes, Joep Sonnemans, Jan Tuinstra and Henk van de Velden, ‘Coordination of Expectations in Asset Pricing Experiments’ (2005), 18 (3) *Review of Financial Studies* 955–980.

⁸⁸ Sheen S Levine and Edward J Zajac, *The Institutional Nature of Price Bubbles* (2007) in Paul Krugman, ‘Bernanke, Blower of Bubbles?’, *New York Times* (online), 9 May 2013.

<http://www.nytimes.com/2013/05/10/opinion/krugman-bernanke-blower-of-bubbles.html?src=me&ref=general&_r=0> (2.10.2015).

⁸⁹ ‘Stock Market Crash 2016 Bangladesh’, *IQOption Ltd* (online) (last updated 10.03.2017).

<<http://northwesternflipside.com/wp-optiotrade/Stock+Market+Crash+2016+Bangladesh-9018.html>> (10.03.2017).

market which crashes the market. It usually occurs under the conditions of a prolonged period of rising stock prices and excessive economic optimism, a market where price and demand ratios exceed long-term averages, and extensive use of margin debt and leverage by market participants is extensively used. In this way, speculative share bubbles may cause share market crash which may lead to scam.

b. Reasons of Stock Market Crash

There are various reasons of share market crash, such as, inflation, winding up of companies, merging or amalgamation of companies, corruption, decrease of paper wealth of shares of dominant companies in stock market, change of government, economic starvation across the world, insider trading, trading in fake and anonymous accounts, liquidation of companies, etc. Stock market crashes are ‘social phenomena where external economic events combine with crowd behavior and psychology in a positive feedback loop where selling by some market participants drives more market participants to sell’.⁹⁰

On the contrary, sudden rise of share price and its continuation to rise may lead to share market crash. But, share market crash should be distinguished from share market scam. Market crash is a normal phenomenon in stock business but scam is not a natural phenomenon. Share scam does not happen automatically and it is not a consequence of share market crash. Rather, scam may lead to crash, more correctly ‘intentional and deceitful crash’ which gives birth to share market scam. It is also correctly observed in the Probe Committee Report.⁹¹

c. Comparative analysis of Stock Market Crash and Scam

As observed, share market crash when formed of natural consequence, may not be too adverse, catastrophic and long-lasting but a scam can dismantles the backbone of the market. Adverse impact of scam is so far reaching, catastrophic and disastrous that it

⁹⁰ Wikipedia-the free encyclopedia, *Stock Market Crash* (23 December 2013).
<http://en.wikipedia.org/wiki/Stock_market_crash> (25.12.2016).

⁹¹ In stock market, up and down is a common feature but suddenly the market’s steep rise and steep fall is not a natural event. The more the steep rise the more the crash is. Massive crash becomes the concern of general people. But, the massive crash never happens unless the market faces abnormal steep rise. Therefore, the more the market will face steep rise the more the crash will be. This is not suddenly made. This is what happened during 2010-2011 stock market crash. [In Bangla].

Probe Committee Report on Stock Market Crash, 2010-2011, Pp. 18-19.

<http://www.mof.gov.bd/en/index.php?option=com_content&view=article&id=169&Itemid=1> (23.04.2016).

cannot even be properly presumed and counted. Scams destroy healthy market practice. They create discrimination. They cause illegalities, unjustness and unfairness. They enrich some culprits unjustly, unfairly and improperly at the cost of victims who lost their dear investments unjustly, improperly and without any real cause. Crash is a curse on the market. It destroys market stability. It is an output of some ill minded and greedy people. Consequently, it makes the market risky and people lose their confidence in investing in the market. It gives birth to a scandalous fate for a nation. Scam is neither encouraged nor expected. Its atrocity may be so disastrous that it can compel many to quit.⁹²

Clearly, share market scam is neither predictable not desirable and should not be encouraged. Share market scam is not a part of healthy stock business. It is neither a part of business nor a part of corporate practice. It is a malpractice; or even worse, more than a malpractice. It is an offence and it should be identified as an offence. It should be penalized and punished. Share market scam proves the unhealthy stock business practice. It mostly proves the institutional and legal abortiveness. It hits the existing governing regime badly. It gives the culprits scopes to benefit unjustly. Some perpetrators make money from the money of others. It is called unjust enrichment. It proves the uncertainty in stock business. It breaches the trust and confidence of investors in stock business. For the recent stock market business, especially for 2010-2011 crash the Bangladeshi Stock Exchange (DSE and CSE) is recorded as the world's least safe stock exchange in share business.

Stock market is often compared to gambling. But from the size, magnitude and diversity of the world-wide stock market and its multi-fetched positive impact on the economy of any country, there is no scope and reason to justify such views.⁹³ The stock market is not a 'casino' of playful or foolish gamblers. It is primarily, the vehicle of fluid exchanges allowing the efficient functioning of capitalistic and competitive free market.⁹⁴ In the 21st

⁹² It can cause an express threat to the overall economy of a nation. It can ruin up stock market completely because it take huge amount of money from market totally leaving no proof and giving no prior hints or any kind of assumption just within a moment, even in the blink of an eye. In the year of 2014 Bangladesh stock exchanges are still struggling to come out from the ever bitter experience of scam that took place between late 2010 and early 2011, which is generally known as 2010-2011 share market scam of Bangladesh.

⁹³ M Jalal Hussain, 'The Role of Stock Market in Bangladesh Economy', *The Financial Express* (online), 20 February 2012.

< http://www.thefinancialexpress-bd.com/more.php?news_id=120722&date=2012-02-20 > (3.2.2016).

⁹⁴ M Toufique Hossain, 'Share Market Crashes of 2011 and 1996', *The Daily Sun* (online), 3 July 2011.

century, no country can afford to undermine and discourage stock market activities and not to realize the importance of having strong and stable stock market. If any country does, it would be an "economic suicidal act", killing and destroying its economy and growth. Thus the stock market of any country should be nourished, taken care of and supported for its proliferation in order to become a smart, fast-growing, politically and economically stable and culturally vibrant country.”⁹⁵

d. Obviousness of Stock Market in Bangladesh despite of Crash and Scam

It is often said, “when fall in share price is inevitable and general consequence of share trading then it should be banned”. But, this is a foolish thing that should never be encouraged. Fall in share price is one of the consequences like rise in share price but fall in share price is not always obvious. It is not the ultimate result. Business without risk is impossible to think. Risk enhances the possibility of great profit and great loss in business. For that reason, there is neither any timeline nor any ceiling of loss and profit in business. It is endless and that is because business is perpetual. But, this theory does not justify the legal abortiveness and failure in ensuring greater security. A stable stock market indicates healthy trading activity and strength of the country's economy. Rising prices of stocks and other securities are indicators or predictors to the level of economic growth. The performance of the stock market can also be seen as a barometer of public sentiment, and conversely, the general perception of investors about the economy can also influence the stock market significantly.

A fall in stock prices indicates pessimism among investors and an expectation of subdued industrial activity in the near future. Any uncertainty in the country, like an impending change or deviation in the policy and strategy of the government, central bank and other statutory bodies, political instability, can also subdue prices in the stock market. In fact, the stock market is often considered the primary indicator of a country's economic strength and development. Rising share prices, for instance, tend to be associated with increased business investment and vice-versa. Share prices also affect the wealth of households and their consumption. Therefore, central banks tend to keep an eye on the control and

<http://www.daily-sun.com/details_yes_03-07-2011_Stock-market-crashes-of-1996-and-2011_269_1_3_1_9.html> (3.2.2016).

⁹⁵M Jalal Hussain, ‘The Role of Stock Market in Bangladesh Economy’, *The Financial Express* (online), 20 February 2012.

<http://www.thefinancialexpress-bd.com/more.php?news_id=120722&date=2012-02-20> (3.2.2016).

behavior of the stock market and, in general, on the smooth operation of the functions of the financial system. Financial stability is the ultimate aim of all central banks.”⁹⁶

Now, there is no scope to exclude stock business from world’s economy. Stock business has become the natural outcome of present economy. As it is evident that “the size of the world stock market or equity market is more than US\$55 trillion and the total derivatives market has been estimated at about \$850 trillion at the end of December 2010, 12 times the size of the world economy. The enormous size of the value of stock market simply justifies the economic magnitude and diversity of the stock market. The stock market has been playing a very significant role in the economy of a country since the 12th century and has flourished the global economy in the 21st century. Virtually every developed, developing and underdeveloped economy has stock markets handling billions of dollars, trading of stocks of listed companies throughout every business day. The world’s largest stock markets are in the United States, United Kingdom, Japan, India, China, Germany, France, South Korea and the Netherlands.”⁹⁷

Before 2010-2011 Bangladeshi stock market ranked as one of top stock market in the world. It was credited to be one the best, most stable and reliable market, not only in the Asia but also in the world. Its contribution was about 40% to 50% in overall GDP (Gross Development Product). After great crash in 1996, Bangladesh had to incur several efforts to stabilize the market. After continuous struggle of 10 years finally, from 2007 share prices of Bangladesh stock market was continued increasing steadily over the next four years and it outperformed almost all the world’s markets.⁹⁸ For instance, it performed as 2nd best in the world after Srilanka in 2010 gaining nearly 83%. The financial year 2008-09 is known for the global financial and economic crisis. Many developed and developing countries fall into recession. However, it could not affect Bangladesh economy greatly. So, the stock market of Bangladesh did not see any significant changes or fall.

⁹⁶ M Jalal Hussain, ‘The Role of Stock Market in Bangladesh Economy’, *The Financial Express* (online), 20 February 2012.

<http://www.thefinancialexpress-bd.com/more.php?news_id=120722&date=2012-02-20> (15.07.2016).

⁹⁷ Ibid.

⁹⁸ Sangit Saha, *Stock market crash of Bangladesh in 2010-11: Reasons & roles of regulators*, International Business (2012) [Degree thesis].

<http://www.theseus.fi/bitstream/handle/10024/47195/saha_sangit.pdf?sequence=1> (23.02.2016).

As CPD reported, financial year 2008-09 was a volatile year but during this year Bangladesh economy benefited from low prices of import-able and was able to avoid negative pressure on its export of goods and services.⁹⁹ The consecutive outstanding performance of Bangladesh stock market in recent years before the crash lured millions of investors to the stock market to invest their little savings. Before the stock market crash the market had become a route of easy money for too many new individual investors. That is why millions of fresh investors invested their small saving in the market during this period. For these fresh investors investing in this market provided a way to avoid working a job. Even some Beneficiary Owner (BO) account holders worked as intermediaries of friends, relatives to invest their money in the stock market.¹⁰⁰

The market was quite successful in maintaining the stability and healthy practice. People were feeling safe and secure investing in share market. No one even the share market analyst even could think of the sudden fall of price in third week of December 2010. Sudden fall was so sudden and shocking that millions investors suffered huge loss in the blink of an eye without understanding what was happening and why it was happening. There were no hints/clues at all. It was unanticipated and totally un-projected. It was not a mere crash, it was a scam. It was a very scandalous, catastrophic and most pathetic share scam in Bangladesh. It put the existing legal framework into serious question. It challenged the roles of the governing institutions. It made the investors completely hopeless and left them almost un-redressed while leaving the perpetrators un-chastised mostly. A details analysis of the efficacy and fallout of the existing legal framework in securities market in Bangladesh is provided in the following Chapters.

2.9. A Glimpse of Managerial Institutions and Securities Laws in Bangladesh

As will be discussed in details in the upcoming chapters of this thesis, there are a large number of institutions who are directly or indirectly involved in the securities market business which is an important part of capital market and money market. The money

⁹⁹ Centre for Policy Dialogues (CPD) and Independent Review of Bangladesh's Development (IRBD), *Expert Group Meeting on CPD IRBD 2011 (First Reading)* (2011) (online) 8.

<http://www.cpd.org.bd/downloads/IRBD%20FY11_First%20Reading.pdf> (25.12.2016).

¹⁰⁰ Sangit Saha, *Stock market crash of Bangladesh in 2010-11: Reasons & roles of regulators*, International Business (2012) [Degree thesis].

<http://www.theseus.fi/bitstream/handle/10024/47195/saha_sangit.pdf?sequence=1> (23.02.2016).

market and capital market play the most important role in our national economy. So, the involvement of multiple institutions is not unexpected since capital market embraces huge areas governed by different regulatory institutions and intermediaries. There are a large numbers of institutions, be it market regulators or intermediaries or government organs, those are mostly created by statute, rules, regulations and by-laws.

The complex functions, affairs and transactions in securities market, the high involvement of diversified stakeholders thereof and the imminent significance of this market do justify the very existence of multiple institutions and regulatory bodies along with several sets of laws in the securities market. Though, principally everything is under the Government of Bangladesh and its relevant ministries who are the superior authorities in capital market and money market, there are other important organs, bodies and institutions who are playing active role in the management and governance of the securities market in Bangladesh.

Under that surveillance, the Bangladesh Bank,¹⁰¹ the Bangladesh Securities and Exchange Commission,¹⁰² the Insurance Development Regulatory Authority¹⁰³ under the Ministry of Finance and the Registrar of Joint Stock Companies and Firms,¹⁰⁴ the Institute of Chartered Accountants of Bangladesh,¹⁰⁵ the Institute of Chartered Management and Accounting of Bangladesh¹⁰⁶ and the Institute of Chartered Secretaries of Bangladesh¹⁰⁷ under the Ministry of Commerce and Ministry of Finance play very important role.

Under their supervision, several intermediaries including stock exchanges (Dhaka Stock Exchange¹⁰⁸ and Chittagong Stock Exchange¹⁰⁹), custodians, depositories, trustees, banks, investment corporations, leasing companies, underwriter, portfolio manager,¹¹⁰ asset management companies,¹¹¹ merchant bank,¹¹² credit rating companies,¹¹³ security houses,

¹⁰¹ Shortly referred to as the BB.

¹⁰² Shortly referred to as the BSEC.

¹⁰³ Shortly referred to as the IDRA.

¹⁰⁴ Shortly referred to as the RJSC.

¹⁰⁵ Shortly referred to as the ICAB.

¹⁰⁶ Shortly referred to as the ICAMB.

¹⁰⁷ Shortly referred to as the ICSB.

¹⁰⁸ Shortly referred to as the DSE.

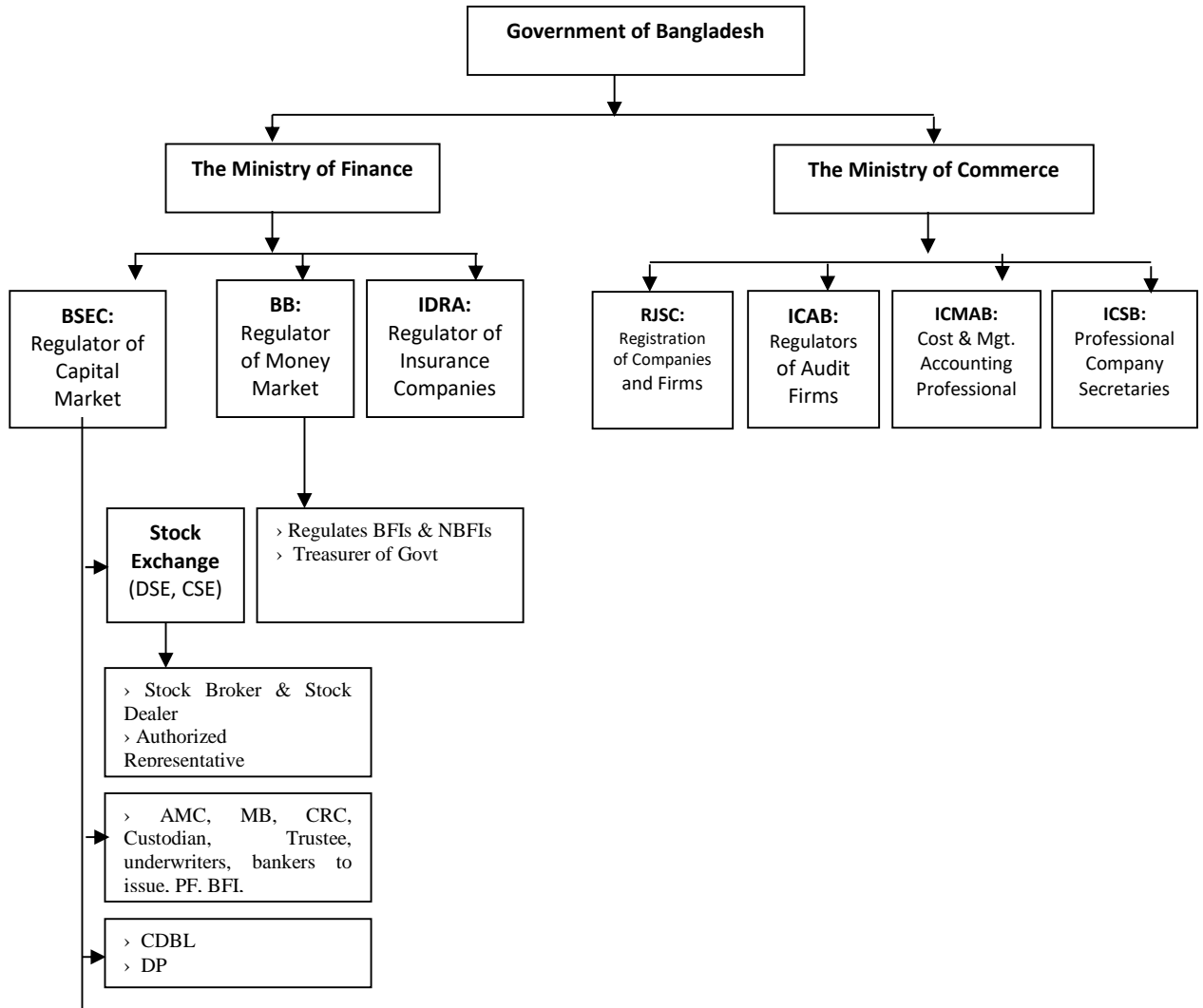
¹⁰⁹ Shortly referred to as the CSE.

¹¹⁰ Shortly referred to as the PF.

¹¹¹ Shortly referred to as the AMC.

¹¹² Shortly referred to as the MB.

Bangladesh Foreign Investors,¹¹⁴ Non-resident Bangladeshi Foreign Investors,¹¹⁵ broker, dealer, authorized representative, Central Depository of Bangladesh Limited,¹¹⁶ depository houses, depository participants, etc play important role each in the securities market. For ready reference as short view of all the institutions are depicted below-



For regulation of the above, there are huge numbers of laws, which will be examined in details throughout this thesis. All those regulatory institutions and complex volumes of laws and regulations certainly make the securities market a complex and sensitive one. It also widens the scope of the by-passers (ghosts) as discussed above. For that reason, a

¹¹³ Shortly referred to as the CRC.
¹¹⁴ Shortly referred to as the BFI.
¹¹⁵ Shortly referred to as the NBF.
¹¹⁶ Shortly referred to as the CDBL.

necessary glimpse of those bundles of laws, thus a short picture of the legal framework is given below-

Sources of law according to priority	Basic Securities Laws	Rules/regulations framed by the Commission
<ul style="list-style-type: none"> - Constitution, - Act of Parliament or Ordinance passed by the President, -Rules issued by the BSEC, -Regulations issued by the BSEC, -Conditions imposed, directives, order and notification issued by the BSEC, -Regulations and bye-laws issued by the stock exchanges and Depository Company, -Memorandum of Association and Articles of Associations of Stock Exchanges and Depository Companies. 	<ul style="list-style-type: none"> -Securities Act, 1920 -Securities and Exchange Ordinance, 1969 -Bangladesh Securities and Exchange Commission Act, 1993 -Depository Act, 1999 -The Exchanges Demutualization Act, 2013 -Depository Act, 1999 -Investment Corporation of Bangladesh Act 2014. 	<ul style="list-style-type: none"> - Securities and Exchange Rules,1987 - Credit Rating Companies Rules, 1996 - Margin Rules, 1999 - Securities and Exchange Commission (Issue of Capital) Rules, 2001 - Securities and Exchange Commission (Over-the-Counter) Rules, 2001 - Bangladesh Securities and Exchange Commission (Public Issue) Rules, 2015 - Securities and Exchange Commission (Rights Issue) Rules, 2006 -SEC (Insider Trading Prohibition) Rules, 1995 -SEC (Merger and Takeover) Rules, 2002 -SEC (Merchant Banker and Portfolio Manager) Rules, 1996 -SEC (Stock-dealer, Stock broker and Authorized Representative) Rules, 2000 -SEC (Mutual Fund) Rules, 2001 -SEC (Market Maker) Rules, 2000 -SEC (Security Custodian Services) Rules, 2003 -SEC (Asset Backed Security Issue) Rules, 2004 - Securities and Exchange Commission (Private Placement of Debt Securities) Rules, 2012 - Bangladesh Securities and Exchange Commission (Research Analysis) Rules, 2013 - Bangladesh Securities and Exchange Commission (Alternative Investment) Rules, 2015 -Bangladesh Securities and Exchange Commission (Promotion of Investment Education and Training) Rules, 2016 - Bangladesh Securities and Exchange Commission (Qualified Investor Offer by Small Capital Companies) Rules, 2016
	<p>Other Relevant Laws</p>	<p>Regulations by the Stock Exchange and Others</p>
	<ul style="list-style-type: none"> -Companies Act, 1994 -Bank Companies Act, 1991 -Trust Act, 1882 -Insurance Act, 2010 	<ul style="list-style-type: none"> -Memorandum of Association and Articles of Association of Stock Exchange -General Rules and Regulations of Stock Exchange -Listing Regulations of Stock Exchange-

	-Insurance Regulatory Development Authority Act, 2010 -Financial Institutions Act, 1993 -Money Laundering Prevention Act, 2012	2015 -Direct Listing Regulations of Stock Exchange -Stock Exchange Transactions Regulations -Investors Protection Fund Regulations -Short Sale Regulations -Automated Trading Regulations -Board and Administrations Regulations -Stock Exchange bye laws -Depository Regulations, 2000 -Depository (Users) Regulations, 2003 -CDBL bye-laws
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2.10. Concluding Remarks

To conclude, it can be said that stock market is an interesting and lucrative business area for the investors. Despite multifarious challenges, obstacles and debacles in our stock market, the subsistence of stock market is a must in our national economy. It is the barometer of a country. It not only helps the corporations to raise equity finance so as to meet the need of finance with fewer burdens and risks as opposite to debt finance but also ensures public participation in the industrialization and private sector. Though there are some negative patterns as observed in our stock market, even so, it is not in a condition to be aborted completely. Its contribution on our national economy is not insignificant. There are bundles of laws and regulatory authorities. Though the quality and efficacy of the legal framework and roles played by the regulatory authorities are often questioned, however several important reformations have already been made. The Government and the other regulatory authorities are trying to improve the market condition and restore public confidence. Though the improvement in the legal structure is slow, it is moving on and people are not abandoning the market. With the faster economic growth, production uprising, capital in the hand of people and growing investment scope in securities and stock market, there is a good prospect for expansion of capital market in Bangladesh.

Considering the prospect and essence of stock market in our country, a wide-ranging analysis of the efficacy and fallout of the existing legal framework in securities market has been made through-out this thesis as a part of sincere effort contributing on the way to improve the legal composition, ensure adequate protection to the investors, guarantee, good governance and restore/hold public confidence in market as well as legal sanctity of the country.

Chapter 3

A Short Overview of the Laws and Governing Institutions in Securities Market

3.1. Introduction

As discussed earlier, there are multiple institutions involved in the process of giving effect to the transaction in securities market. The trading system is a complex one. There is a huge disparity between the investors and the issuer companies regarding various matters, such as, disclosure of information, stock price movement, price determination and exposure/availability of information in primary and secondary market, and controlling authority in the market. Therefore, a bundle of laws, rules and regulations have been placed for the proper governance of the market; and multiple institutions have come into play for effective administration in the securities of Bangladesh. This Chapter will provide a short overview of the relevant laws and institutions that play a role in the regulation of the securities market with a view to portraying a complete picture of the functioning of securities market.

For better evaluation, an elaborate discussion and analysis of the efficacy and fallout of those legal mechanisms and the roles of principal administrative institutions will be discussed in separate Chapters that follow.

3.2. About the Regulatory Authorities and the Associated Institutions

The Government of Bangladesh is the highest authority in the administration of the securities market. The Ministry of Finance, the Ministry of Law, Justice and Parliamentary Affairs and the Ministry of Commerce are also important wings of the Government in stock market. Under the Ministry of Finance, the Bangladesh Securities and Exchange Commission (BSEC)¹ has been established for the exclusive regulation and control of the securities/capital market. It is an autonomous institution established under statute for the protection of the investors, regulation of the capital markets and issuing and dealing of the securities. Therefore, the BSEC plays the central role in the regulation and governance of the stock market.

¹ It is established under the Securities and Exchange Commission Act, 1993. It is an independent autonomous statutory body. It is governed under law. Its roles and activities are discussed in the next Chapter.

<<http://www.secdb.org/>> (19.04.2017).

The Bangladesh Bank² also plays a significant role in the regulation of the market, since the decision and activity of the Bangladesh Bank influences the capital market. There are some other regulatory institutions that are also worth analysis. Amongst these, the Investment Corporation of Bangladesh (ICB),³ the Micro-credit Regulatory Authority (MRA),⁴ the Insurance Development and Regulatory Authority (IDRA)⁵ and the Central Depository Bangladesh Limited (CDBL)⁶ are noteworthy. Besides, the Bangladesh Institute of Capital Market (BICM)⁷ also performs a crucial function by providing institutional education to the investors through different types of free and paid courses and training programmes.

In addition to the institutions listed above, there are some entities who play critical roles in giving effect to the business and transaction in the securities/stock market. Without them, the securities market cannot function. They are commonly known as “market intermediaries”. They include stock exchanges – (Dhaka Stock Exchange (DSE) and Chittagong Stock Exchange (CSE)), stock brokers, sub-brokers, stock dealers, jobber, authorized dealer, securities houses, depository houses, merchant banks, portfolio managers, share transfer agents, bankers to an issue, financial institutions, insurance companies, trustees of trust deeds, registrars to an issues, underwriters, credit rating companies, investment advisors, market analyst, depository participants, asset management companies, clearing members, trading members, and any other intermediary who may be associated in any manner in any legal transaction in the securities market. Each of these intermediaries has their distinct but crucial functions in the market.

² It is established under the Bangladesh Bank Order, 1972.
<<https://www.bb.org.bd/>> (19.04.2017).

³ It is established under the Investment Corporation of Bangladesh Ordinance, 1976. However, this Ordinance was repealed by the Investment Corporation of Bangladesh Act, 2014.
<<http://icb.org.bd/zindex.php>> (19.04.2017).

⁴ It is established under the Microcredit Regulatory Authority Act 2006.
<<http://www.mra.gov.bd/>> (19.04.2017).

⁵ It is established under the Insurance Act 2010 and Insurance Development Regulatory Authority Act, 2010.
<<http://www.idra.org.bd/idra-org/index.htm>> (19.04.2017).

⁶ The CDBL is regulated by the BSEC.
<<http://www.cdbl.com.bd/>> (19.04.2017).

⁷ The BICM was established as a national institution for imparting practical capital market education and training on July 24, 2008. In 2010, the government approved organogram of BICM that has similarity to a public university.
<<http://bicm.ac.bd/>> (19.04.2017).

Furthermore, there are some associations, such as, the Institute of Chartered Accountants of Bangladesh (ICAB),⁸ the Institute of Chartered Secretaries of Bangladesh (ICSB),⁹ the Federation of Bangladesh Chambers of Commerce and Industries (FBCCI),¹⁰ the Metropolitan Chambers of Commerce and Industries,¹¹ that are involved in the stock market affairs and business.

Above all, there are the issuers/corporations, the shares/stocks and the investors/traders along with their capital who are the most important subjects of the stock market. The stock market functions centering these subjects. The performances of issuer companies' are also vital, because they influence the stock performance to quite an extent. However, stock performances can sometimes be irrelevant to the performances of its issuer company. Stocks and their performances/movements are the determinants of the stock market. Investors, of course, play the most important role as they are driving force of the market.

While many of these institutions play their designated roles, there are certain other players who assume the harmful roles in the market. Their malpractices are undeniable. They manipulate the market secretly, and sometimes openly. They are often known, and often unknown and are better addressed as 'ghosts in the stock market'. They manipulate the market, ruin healthy business and steal money from the market. They are often syndicated and always act in their common interest. Their prime interest is to steal money from the market. Their roles will be examined critically in this Chapter.

⁸ It was established under the Bangladesh Chartered Engineers Order 1973 (Presidential Order No. 2 of 1973). The Ministry of Commerce, Government of the People's Republic of Bangladesh is the administrative Ministry of ICAB.

<www.icab.org.bd> (19.04.2017).

⁹ The ICSB established under an Act of Parliament i.e. Chartered Secretaries Act 2010 is the only recognized professional body to develop, promote and regulate the profession of Chartered Secretary in Bangladesh.

<<http://www.icsb.edu.bd/about-icsb/>> (19.04.2017).

¹⁰ The FBCCI is the apex body of the business community safeguarding the interest of the private sector in trade and industry in Bangladesh. It was established in 1973 under the Trade Organizations Ordinance, 1961 and the Companies Act, 1913 (continued under the Companies Act, 1994).

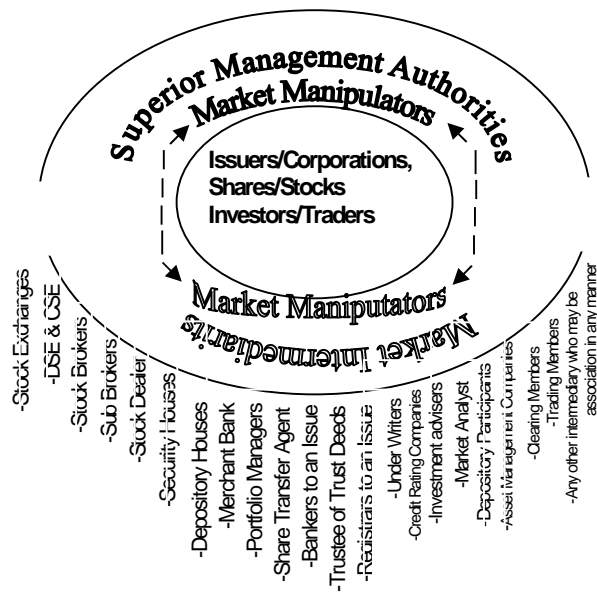
<<http://www.fbcci-bd.org/fbcci/>> (19.04.2017).

¹¹ Founded in 1904, the Metropolitan Chamber of Commerce and Industry, Dhaka (MCCI) is the oldest and the pre-eminent trade organization of Bangladesh. Its membership roll encompasses leading commercial and large industrial organizations of the country, including public sector corporations and local as well as multinational companies. Presently, almost all major enterprises of the manufacturing and service sector are among its members. The Chamber provides a wide range of professional services to its members.

<<http://www.mccibd.org/pages/brief-history-of-the-chamber.php>> (19.04.2017).

Therefore, with the regulatory authorities, governing institutions, market intermediaries, investors, stocks and issuers, the stock market look like the following-

Apex Regulatory Authorities	Other Superior Institutions
1. Government of Bangladesh, Ministry of Finance, Ministry of Finance, Ministry of Law & Parliamentary Affairs & Others.	5. ICB
2. BSEC	6. MRA
3. Bangladesh Bank	7. IDRA
4. RJSC	8. CDBL
	9. BICM



*. Market Manipulators can stand anywhere in syndicate which moves around the money going with stocks and investors.¹²

3.3. Analyzing the Role of the above Institutions

The central roles in the stock market regulations are played by the BSEC and the market intermediaries. Their roles and activities, along with critical analysis of their efficacy and fallout, will be discussed in two separate Chapters following the instant. For now, the roles and activities of other regulatory and associated players are analyzed below.

¹² Market manipulators always move in a syndicate. They move around the stock market. They move everywhere. They stand within the market regulators as well as within the investors. They generally enter into the market as the investors, and they often come in the guise of issuers as well. They are associated or acted as regulators too. Their combined force is so strong, steady and long planned that they can be dormant in the market for a long period of time looking for appropriate time and when the appropriate time comes they play game so fast and quickly that before the same can be figured out properly market already faced massive fall and manipulation. They often put the existing legal protective forces into question and dare to make the regulators vulnerable for a certain period of time to tackle the adverse situation.

(i) The Government of Bangladesh

Generally, all the Government wings represent the Government of the People's Republic of Bangladesh. The relevant Ministries for specific purposes are primarily responsible for the representation of the Government. For securities and shares management, the Ministry of Finance, the Ministry of Commerce and the Ministry of Law, Justice and Parliamentary Affairs are particularly relevant. These authorities have the right and power to control, interfere and make decisions regarding the money market and capital market. Shares and securities constitute the capital market, which is one of the most vital part of money market of our country. These two are fundamentally subjects of finance, which are under the jurisdiction of the Ministry of Finance; on the other hand, trading of shares and securities are part of business and commerce under the jurisdiction of the Ministry of Commerce, while, formulation of the Finance Act, the Budget and the primary laws including the Companies Act, 1994, the Securities and Exchange Ordinance, 1969, the Securities and Exchange Commission Act, 1993, etc are part of Legislature, which is the Ministry of Law, Justice and Parliamentary Affairs. Therefore, these three Ministries play an essential role in share and securities management in our country.

However, there appears to be a lack of coordination and coherence in the regulatory decisions amongst the activities in the Ministries and the BSEC. It is reported by the CPD¹³ that “the relationship between SEC,¹⁴ the Ministry of Finance (MoF) and other market-related institutions have worked against the interest of market regulation. The Parliamentary Standing Committee for the MoF, in some instances, has taken an ‘adversarial position’, thus creating unwarranted pressure on SEC’s functioning. The relationship between two leading regulatory bodies of the financial sector, Bangladesh Bank and SEC, is still not clearly defined, and has acted against the development of the financial sector of Bangladesh.”¹⁵

¹³ The Centre for Policy Dialogue (CPD), established in 1993, with objective is to contribute to the emergence of an inclusive society in Bangladesh which is based on equity, justice, fairness and good governance. To this end, CPD strives to service the growing demand of the civil society of Bangladesh for a demand-driven and accountable development process by stimulating informed debate, generating knowledge, and influencing policymaking through research, dialogue, dissemination and policy advocacy. <<http://cpd.org.bd/>> (15.04.2017).

¹⁴ The Bangladesh Securities and Exchange Commission (BSEC).

¹⁵ Khondaker Golam Moazzem and Md. Tariqur Rahman, “Stabilizing the Capital Market of Bangladesh: Addressing the Structural, Institutional and Operational Issues” (2012), *CPD Working Paper: 95Centre for Policy Dialogue (CPD)* 8-9. <http://www.cpd.org.bd/pub_attach/WP95.pdf> (24.02.2016).

(ii) The Bangladesh Bank

The Bangladesh Bank, being the central bank of Bangladesh and the leader of all schedule banks and chief controller of money, plays a vital role in the regulation of stock market. For the last few years, the major participants in the money market have been the commercial banks, development finance institutions (DFIs) and non-bank financial institutions operating in the country. The Bangladesh Bank, as the leader of this money market and armed with the instruments of monetary management, can effectively control and guide the stock market. The money market and the capital market are two different but interlinked markets. Stock prices are generally believed to be affected by several macroeconomic variables, such as, interest rate, inflation, money supply transmitted by different economic policies etc. So, it is necessary for the central bank to determine the impact of such variables.¹⁶ Every decision, directive, guideline, notification, rule and regulation framed by the Government and the Bangladesh Bank relating to money may have direct or indirect impact in the stock market; since, the basis of stock market is money and stock market is basically a money making market.

Therefore, the Bangladesh Bank should be prudent and cautious while formulating any steps. It is imperative that it consults with the BSEC while making such decisions. For the effective regulation of the securities market, co-ordination of the Bangladesh Bank and the BSEC is highly important. But unfortunately, it was observed by the Probe Committee after the 2010-2011 stock market crash that lack of co-ordination of these authorities is one of responsible cause behind stock market crash. Instead of acting in harmony, they are often seen to blame each other and act separately with their own gadget, which is highly undesirable. The same was also observed by some other researchers, research organizations, market analysts and media.¹⁷

¹⁶ Dewan Muktadir-Al-Mukit, 'An Econometric Analysis of the Impact of Monetary Policy on Stock Market Performance in Bangladesh' (2013) 3(3) *World Review of Business Research* 16.

¹⁷ For example: Center for Policy Dialogues (CPD) reported that "There is no doubt that, it was the responsibility of the Central Bank to monitor involvement of commercial banks in the stock market, identify activities that were not in line with Central Bank's guidelines, and take appropriate legal measures in view of this. The Central Bank, however, did not exercise the expected due diligence and failed to take timely measures. It is also difficult to justify Central Bank's nod to allow a large number of banks to open respective subsidiary merchant banks without proper needs assessment, and without drawing effective legal framework particularly between subsidiaries and their commercial banks. The Central Bank perhaps could not fully appreciate and comprehend the extent of their oversight, and was 'hesitant' to take the required measures. When the situation was on the verge of getting out of hand, the Central Bank took only tentative measures to enforce discipline with regard to commercial bank's involvement in the capital market.

It was reported that “the lack of co-ordination between the two authorities was marked in the share market inquiry report in 2011 as major cause for share market disaster in late 2010. There was astronomical rise in the share market in 2009-2010 periods due to over investment by banks. Maximum bank had invested above 10% of their liabilities. The Bangladesh Bank asked the banks to cut down their investment from capital market and tighten their supervision. The central bank took the decision without discussing with the capital market regulator. As a result, the market fell into debacle”.¹⁸

Some wrong and defective decisions taken by Bangladesh Bank at that time were largely responsible for the sudden decline in the share prices. Aantaki Raisa¹⁹ correctly pointed out that the Bangladesh Bank got a complaint that Banks are investing money in the stock market from their reserve. On the 1st day of December 2010, the Bangladesh Bank sent 50 teams in different banks of Dhaka and Chittagong to investigate and found some banks involved with such irregularities. The most important directives initiated by the Bangladesh Bank in December 2010 are withdrawal of illegally invested industrial loans, increasing Statutory Liquidity Ratio (SLR) and Case Reserve Ratio (CRR). On 15th December, the Bangladesh Bank increased CRR and SLR by 0.5 to 19 and 6 percent respectively, seemingly without any consultation with the BSEC. Another important directive initiated by the Bangladesh Bank was the withdrawal of illegally invested industrial loans by 31 December 2010. As a lot of the reserved money was invested in capital market, banks started selling shares and withdrawing that money from the market, causing the investors to panic. In order to mitigate the mishap and reassure the panicked investors, the Bangladesh Bank extended its deadline for submitting and adjusting loans. For the merchant banks, the deadline was till 15 January 2011 and for the commercial bank it was till 15 February 2011. Institutional investors, including financial institutions, started selling shares from the beginning of December 2010 to show high return on investment at their balance sheet. As the financial institutions and banks started selling their shares from the beginning of December 2010, the turnover of DSE was the highest

Khondaker Golam Moazzem and Md. Tariqur Rahman, “Stablising The Capital Market of Bangladesh: Addressing the Structural, Institutional and Operational Issues” (2012), *CPD Working Paper: 95Centre for Policy Dialogue (CPD)* 6.

<http://www.cpd.org.bd/pub_attach/WP95.pdf> (24.02.2016).

¹⁸Jebun Nesa Alo, ‘BB and BSEC lock in heated debate’, *Dhaka Tribune* (online) 3 March 2014.

<<http://www.dhakatribune.com/stock-market/2014/mar/03/bb-and-bsec-lock-heated-debate>> (3.04.2016).

¹⁹ Feature Reporter of the Daily Star.

ever in its history on 5th December.²⁰ This ultimately led to huge fall in share price because of “bubble burst”.²¹ As a result, the BSEC and Bangladesh Bank failed to control the share price.

Nevertheless, immediately after the scam, both the BSEC and the Bangladesh Bank, in cooperation with each other, applied a lot of directives in order to keep the market under control in 2010-2011, but it was already too late. The market had already faced irreparable loss because of frequent changes in directives by both the BSEC and the Bangladesh Bank in December 2010. On 6th December 2010, the BSEC introduced a directive that buy orders would be performed after encashment of investors’ cheques. On the following day, another directive called “netting facilities” was applied. This indicates that no investor will be able to purchase securities against the sale proceedings of any other securities during the settlement and clearance period. But both directives of 6th and 7th December were cancelled and withdrawn on 8th December. The reason of cancelling these directives was a significant fall of share prices on 8th December. The BSEC changed the directive of margin loan ratio by increasing it from 1:0.5 to 1:1 on 13th December, and it was again hiked to 1:1.5 and 1:2 because of free fall of share prices.²²

The Bangladesh Bank, being the regulatory of all the financial and bank companies, also failed to ensure coordination amongst the schedule banks and financial institutions. The Probe Committee found the Bangladesh Bank responsible behind the stock market crash in 2010-2011. Non-cooperation and lack of prior consultancy or joint efforts of the BSEC, and the Bangladesh Bank were also held responsible in the Probe Committee Report²³, which have been supported by several market analysts, researchers, investors and critics. However, after the crash, the Bangladesh Bank took several attempts to justify its position, by holding multiple meetings, sponsoring research works and publishing working papers, policy notes, reports etc.²⁴ Such attempts were meant to avoid legal liability and other

²⁰ Aantaki Raisa, ‘Behind the Scenes the Stock Market Saga’, *The Star Magazine* (online), 21 January 2011 <<http://archive.thedailystar.net/magazine/2011/01/03/cover.htm>> (23.04.2016).

²¹ Ibid.

²² Kauser Bhuiyan, ‘Small investors’ anger may turn into big issue!’, *Bangladesh Inside* (online), 21 December 2010.

<<http://bangladeshinside.com/business-en/small-investors-anger-may-turn-into-big-issue-63>> (23.04.2016).

²³ The Probe Committee, *Share Market Inquiry Report, 2011*, Inquiry Report (2011).

<http://www.mof.gov.bd/en/index.php?option=com_content&view=article&id=169&Itemid=1> (23.04.2016).

²⁴ For example, few articles are-

controversies. In fact, it was needless because there was none to punish the Bangladesh Bank or the BSEC for their regulatory failure.

In a national economy, the capital market and the money market are so closely linked that they are often supplementary to each other. Many of their issues influence the performance of the other. The BSEC controls capital market and the Bangladesh Bank controls money market. Both these markets are about money, and the dealers with money are the investors and the consumers. For the better securing of the greater interest of our national economy and individual investors, the Bangladesh Bank and the BSEC should act in cooperation and before making any decision regarding the market, they should establish mutual understanding and common projection regarding the immediate and far reaching consequences in the market.

(iii) The Investment Corporation of Bangladesh (ICB)

a. Constitution and Composition

The ICB is an autonomous statutory body established under the Investment Corporation of Bangladesh Ordinance, 1976 (Ordinance No. XI of 1976) with the objectives to encourage and broaden the base of investments, develop the capital market and mobilize savings and to provide for matters ancillary thereto. This Ordinance was repealed by the Investment Corporation of Bangladesh Act, 2014 (*henceforth referred to as “the said Act” for this part relating to the ICB*). Under this Act, the ICB is established and can operate like a bank by obtaining a banking license under the Bank Company Act, 1991. The ICB possesses all the liabilities and rights of the earlier ICB established under the aforesaid Ordinance. It has perpetual succession, is capable of suing and being sued upon, governs its function and is not subject to wind up without the authority of Government.²⁵ It can promote and establish branches and subsidiaries with the prior permission of the Government.²⁶ It has its own shareholders and customers and enjoys absolute authority

Md. Shahiduzzaman and Mahmud Salahuddin Naser, ‘Volatility in the Overnight Money-Market Rate in Bangladesh: Recent Experiences’ (2013) *Bangladesh Bank Policy Notes: PN 0707*.
<<https://www.bb.org.bd/pub/research/policynote/pn0707.pdf>> (19.12.2015).

Khan Md. Saidjada, Md. Shakhawat Hossain and Md. Habibour Rahman, ‘Effects of Monetary Policy on Capital Market in Bangladesh’ (2013) *Bangladesh Bank Working Paper Series: WP 1302*.
<<https://www.bb.org.bd/pub/research/workingpaper/wp1302.pdf>> (19.12.2015).

²⁵ The Investment Corporation of Bangladesh Act, 2014 s 38.

²⁶ *Ibid* s 5.

with its names. No one can use the name of the ICB without taking its prior permission, and using its name without its permission is a punishable offence which may extend to two two years imprisonment or fine or both.²⁷ It also enjoys exemption from taxes and duties.²⁸ It can frame its own regulations²⁹, and only the Government can formulate Rules for it³⁰. In 2017, the ICB framed a regulation for it, titled “the Investment Corporation of Bangladesh (General) Regulations, 2017”. Any dues to the ICB shall be regarded as public demand, and the ICB can recover it under the Public Demands Recovery Act, 1913.³¹ It means, any due to the ICB becomes a public demand which is recoverable under the Public Demands Recovery Act, 1913.

The Board of Directors is constituted in the manner prescribed under Sections 7 and 9 of the aforesaid Act.³² The Board mainly governs the functions of the ICB. Alongside the Board, there shall be an Executive Committee for the governance and management of the ICB. No person who is in the opinion of the Government convicted of an offence involving moral turpitude can be a Director in the ICB Board.³³ This provision is highly defective. The offence involving “moral turpitude” is an ambiguous term and is not defined under the law, and the Government’s wide discretion in forming opinion regarding the conviction of an offence including moral turpitude may be very arbitrary and unreasonable. Thereafter, under the aforesaid provision, even a convicted person may be the Director is the ICB Board with the Government’s approval. The nature of the offence for which the person was convicted is immaterial in this regard.

Besides, a minor, a person of unsound mind declared by a competent court, an insolvent, a person with suspended payment or compounded with his creditors, an existing director absent from three consecutive meetings of the Board, a salaried employee or anyone having financial or other interest in an industrial concern financed by the ICB and without

²⁷ Ibid s 37.

²⁸ Ibid s 35.

²⁹ Ibid s 40.

³⁰ Ibid s 9.

³¹ Ibid s 32.

³² The composition of the Board of Directors, the qualifications and disqualification of the directors, powers of the Board, Managing Director, management of the ICB by the Board, Executive Committee and other managerial things are provided under sections 6-15 of the aforesaid Act, 2014.

³³ Ibid s 9.

having qualifying shares (at least having shares nominal value Tk. Twenty Five Thousand) can be appointed or continued to be a Director in the ICB.³⁴

b. Powers, Functions and Objectives

The ICB intends to capitalize on the broad economic prospects of the country and aims at optimizing benefits for the capital market by using the opportunities that are bound to open up. The ultimate aim is to develop new and exciting investment opportunities and products that raise the bar and exceed the expectations in terms of innovation and performance.

The basic function of the ICB is to raise capital and invest the same in the capital market. It aids the small investors of the capital market. It can raise capital by issuing different form of securities and selling the same in market. It can also raise capital by holding the securities on trust for the beneficiaries (investors) and use their capital by investing the same in the capital market. The beneficiaries/investors will receive benefit at a fixed rate as agreed between the ICB and the investors. It also provides loan/credit facilities to the borrowers with interest against the same.³⁵ The investors can also purchase shares of the ICB and become the shareholders of the ICB.³⁶

Moreover, the ICB facilitates the investors in opening the Investor's Deposit Account and keeping money there as investment. It further invests that money in capital market and provides interest upon the capital of the account-holders. Generally, investment in capital market through the ICB can be treated as safe investment because most the deposit is maintained by the investors with the ICB at a fixed rate; henceforth, loss or damage if suffered by the ICB in investment that does not affect the fixed rate of interest. With its huge customer base, the ICB can influence the stock price movement in our capital market. It may also provide support to market through contribution to government's 'Affected Retailed Investors Re-Financing Scheme' and injection of funds to the capital market in various forms.

³⁴ Ibid s 9.

³⁵ Ibid s 17.

³⁶ The Investment Corporation of Bangladesh (General) Regulations, 2017 cc 6-7.

Under Section 17 of the Act, it can carry on, transact and do businesses of underwriter,³⁷ trust funds,³⁸ maintain investors account,³⁹ invest in securities,⁴⁰ merchandise shares,⁴¹ participate in the management of capital market with BSEC,⁴² do any other business as the Board of ICB decides, appoint attorneys and agents, receive and pay commission, fees and brokerage in connection with its business and also, generally, do all such acts and things as may be necessary or incidental or subsidiary to the transacting of any of the aforesaid business or acts including proceedings in courts of law. It can do any business relating to the securities as approved by the BSEC.

Therefore, the ICB has wide-ranging powers and functions in the capital market. To this effect, it has adopted several business policies, such as, to act on commercial consideration with due regard to the interest of industry, commerce, depositors, investors and to the public in general, to provide financial assistance to projects subject to their economic and commercial viability, to arrange equity support and loans for projects singly or through consortium of financial institutions including banks. It aims to encourage and develop entrepreneurship in the country, diversify investments, inspire small and medium savers to invest in securities, create employment opportunities and encourage and broaden the base of Investment in Agro and Information and Communication Technology (ICT) sectors.

It may, for its purposes, raise finances by issuing and selling mutual fund, bonds and debentures in and outside Bangladesh with the permission of the Government, borrow

³⁷ Such as: to underwrite, manage and distribute the issue of stocks, shares, bonds, debentures and other securities either directly or through or jointly with one or more institutions.

³⁸ Such as: to promote, organise, manage trusts or funds of any type or character or to acquire, hold, sell or deal in certificates or securities of any trust or funds; to act as trustees of any deeds and to undertake and execute any trusts and also to undertake the office of or exercise the powers of executor, administrator, receiver, treasurer, custodian or secretary; to constitute any trusts with a view to the issue of any stocks, securities, certificates, or other documents, based on or representing any or all assets appropriated for the purpose of any such trust and to settle and regulate any such trusts and to issue, hold or dispose of any such stocks, securities, certificates or documents; to appoint trustees to hold shares, stocks, debentures, debenture stocks, bonds, obligations and securities on behalf of the Corporation; etc.

³⁹ Such as: to open and maintain Investors' Deposit Accounts and other term Deposit Accounts and to purchase and sell shares to the Investors' Deposit Account holders over the counter.

⁴⁰ Such as: to make advances for purchase of shares and investment in such other securities as may be approved in each case; to engage in the business of investing and re-investing in and the owning and holding of securities; to facilitate investments by selling new floatations of existing or new companies without underwriting obligations; to help generally in broadening the base of investment and encourage investments in sound projects; to manage investment portfolios on behalf of individuals or institutions; to provide professional counsel regarding investments and other.

⁴¹ To merchandise shares and other securities in any manner as a principal or an agent.

⁴² Such as: to be a member of the Stock Exchange in Bangladesh and undertake all the functions of a member; to take part in the formation, management or supervision or control of the business or operations, of any company or undertaking.

money from Bangladesh Bank or any other bank and other institutions and sources with or without security and also from the Government on long-term basis.

Theoretically and practically, the ICB enjoys ample powers for regulating and controlling its business. It also provides certain special powers, including, power to appoint officers, advisers, consultants, against to enter into negotiations with regard to placement of issue of share, to raise finance, to dispose of finance, to impose conditions as it may think necessary or expedient to protect its interest, to maintain audit reports, to hold AGM, to submit returns, to recover corporation's dues, to delegate powers, to make rule and regulations. Details procedures for the governance are provided in the Investment Corporation of Bangladesh (General) Regulations, 2017.⁴³

c. Distribution of Profits

The ICB disposes of its profits in the manner as specified under section 27 of the Act, 2014, which states that the ICB shall establish a reserve fund which shall be credited such amount out of its net annual profit as the Board may determine. After deducting the said amount and making necessary provisions for depreciation of assets and other matters as are usually provided for by investment companies and institutions or are considered expedient in their interest the ICB may, out of the surplus remaining from that net annual profit, declare such dividends as may be approved by the Board.⁴⁴ The detailed procedures for declaration of profits are provided in the Investment Corporation of Bangladesh (General) Regulations, 2017.⁴⁵

The aforesaid provisions relating to distribution of the revenues/profits are not thorough enough to secure the rights of the shareholders and other investors. The scope of this provision is very limited. The ICB bears no institutional liability if the shareholders and investors suffer loss due to the manipulation and illegal activities of the ICB. There is no provision obliging the ICB to declare dividend or other sorts of interest over the revenues/profits of the corporation regularly, in default of which the ICB should face legal

⁴³ Under the Investment Corporation of Bangladesh Ordinance, 1976 there were no rules or regulations. The Investment Corporation of Bangladesh (General) Regulations, 2017 is promulgated by the ICB under the new enactment the Investment Corporation of Bangladesh Act, 2014 in exercise of the power and authority provided under section 40. The scope of the Regulations is wide providing details governing procedures of the ICB along with describing the liabilities of the ICB towards the shareholders and the investors.

⁴⁴ The Investment Corporation of Bangladesh Act, 2014 s 27.

⁴⁵ The Investment Corporation of Bangladesh (General) Regulations, 2017 c 67.

consequences and should also be accountable to the shareholders and investors. There is also no provision obliging the ICB to disclose fair, true and authentic financial statement and other transaction to its shareholders and investors. All these pitfalls have already been addressed by the investors, but no positive attempt in this regard has been taken yet.

d. Obligations

Under the said Act, all the officials of the ICB are expected to be trustworthy and capable of maintaining secrecy.⁴⁶ Section 16 provides that, every director, member of committee, adviser, auditor, consultant, agent, officer or servant of the corporation shall before entering upon his duties; make declaration of fidelity and secrecy in the form set in the schedule. Generally, no other Act contains such requirements. The Act also requires all of its employees and officers to sign a Declaration of Fidelity and Secrecy as prescribed in the Schedule.⁴⁷

Under the earlier Ordinance, 1976, the breach of this declaration of fidelity was an offence, which would lead to punishment up-to six month imprisonment or fine of Taka One Thousand or both.⁴⁸ But under the Investment Corporation of Bangladesh Act, 2014, this is no longer an offence and no penal provision is given, which is highly controversial and dubious. Several ICB employees were found involved during 2010-2011 stock market scam despite the aforesaid declaration of fidelity and secrecy, but none was sentenced with exemplary punishment.

⁴⁶ Ibid s 16.

⁴⁷

Declaration of Fidelity and Secrecy

I hereby declare that I will faithfully, truly and to the best of my judgment, skill and ability, execute and perform and duties required of me as a Director, member of a Committee, officer, employee, consultant, advisor, agent pr auditor, as the case may be, of the Investment Corporation or Bangladesh and which properly relate to any office or position in the said Corporation held by me.

I further declare that I will not communicate or allow to be communicated to any person not legally entitled thereto any information relating to the affairs or the Corporation nor will I allow any such person to inspector have access to any books or documents belonging to in the possession or the Corporation and relating to the business of the Corporation.

Signature.....

Signed before me

Signature.....

Designation.....

Date.....

⁴⁸ Section 33(2) of the Investment Corporation of Bangladesh Ordinance, 1976 provides that whoever being a Chairman, Managing Director, Director, Adviser, auditor, officer or servant of the Corporation contravenes his declaration of fidelity and secrecy shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to Taka one thousand, or with both.

Though the earlier Ordinance required high volume of trustworthiness, professional commitment and accountability, such conditions were far from realized. After 2010-2011 stock market crash, the Probe Committee exposed the direct involvement of the high officials of the ICB with the scam and also identified ICB as one of the market manipulators⁴⁹, but no criminal or civil action was taken against the ICB except termination/suspension of few officers.

The ICB is to follow the corporate governance guidelines as framed by the BSEC. However, by a subsequent Notification No. SEC/CMRRCD/2009-193/159/Admin dated 28.05.2015, BSEC grants exemption to ICB from the provisions of the condition Nos. 1.2, 1.3, 1.4, 3.2 (i) and 4 (ix) of the Commission's Notification (on Corporate Governance Guidelines) No. SEC/CMRRCD/2006-158/134/Admin/44 dated 07 August 2012 (Published in the Bangladesh Gazette on 30 August 2012) and SEC/CMRRCD/2006-147/Admin/48 dated 21 July 2013 (Published in the Bangladesh Gazette on 20 August 2013). Here, once again, lenience in dealing with the ICB is observed.

The ICB has reporting obligations. It shall furnish to the Government the returns, reports and statements as needed. The ICB shall, as soon as possible after the end of every financial year, furnish to the Government a statement of accounts audited by the auditors under section 30, together with an annual report on the working of the ICB during that year. The copies of the audited accounts and annual report received by the Government shall be published in the official Gazette.⁵⁰

e. Indemnity Provision and Restriction on Filing Suits without Permission

Under the earlier Ordinance of 1976, there was indemnity clause.⁵¹ The provision of the clause was far too wide and provided indemnity not only to the ICB but also to its employees, officers, directors or authorized representative. It also provided that no suit,

⁴⁹ The Probe Committee, *Share Market Inquiry Report, 2011*, Inquiry Report (2011) 33,36. <http://www.mof.gov.bd/en/index.php?option=com_content&view=article&id=169&Itemid=1> (23.04.2016).

⁵⁰ The Investment Corporation of Bangladesh Act, 2014 s 30.

⁵¹ In this regard Section 19 of the Investment Corporation of Bangladesh Ordinance, 1976 stated that – “(1) Ever Director, officer or other employee of the Corporation shall be indemnified by the Corporation against all losses and expenses reasonably incurred by him in the discharge of his duties except such as are caused by own willful act or default.

(2) No suit, prosecution or other legal proceedings shall lie against the Chairman, the Managing Director, or any officer or employee of the Corporation or any other person authorized by the Corporation to discharge any function for anything done or intended to be done in good faith under this Ordinance.”

[The Investment Corporation of Bangladesh Ordinance, 1976 s 19].

proceeding, or other legal action could be drawn up against employees, officers, directors or authorized representative of the ICB for doing anything in the course of discharging any function for anything done or intended to be done in good faith.

Under the new Act, 2014 there are no such indemnity clause or any restrictive clause upon filing suit or case against any employers, employees or officers of the ICB, which is a positive development encouraging accountability of the ICB officials.

f. The Investment Corporation of Bangladesh Regulations, 2017

Some important provisions are provided in the Investment Corporation of Bangladesh Regulations. For example, the holdings by the general shareholders are transferrable. The ICB is to maintain and update proper records of the share register and other documents relating to the shareholders. Before fixing the record date of registration, the ICB has to inform the BSEC of the shareholders names with shares, and publish notices in at least two wide circulated newspapers, and make the same available online in the manner as prescribed in the Regulations. One most important provision is that the ICB can now forfeit any share of its shareholder if the called up money against the share is not paid by the shareholder within stipulated time and manner.⁵²

The most rigorous provision of the Regulation is regarding the process of recovery by the ICB. Any claim of the ICB will get priority over its shareholders and others under contractual obligation.⁵³ The Regulations also provide the procedures for the maintenance of the ICB Mutual Fund.⁵⁴ The process of holding election, different kinds of meetings and forming quorum are also provided in the Regulations.⁵⁵ These Regulations mainly supplement the Investment Corporation of Bangladesh Act, 2014 by lying down some guidelines for the governance and management of the ICB. However, these guidelines are not comprehensive enough to ensure procedural fairness, transparency and accountability of the ICB management and its role in the capital market.

⁵² The Investment Corporation of Bangladesh (General) Regulations, 2017 c 26.

⁵³ Ibid c 27.

⁵⁴ Ibid cc 30-32.

⁵⁵ Ibid cc 33-62.

g. Other Major Shortcomings

As already elucidated, the legal provisions regarding the ICB are far from an all-inclusive system. To name a few more, the following are some other flaws in the provisions-

- They do not provide any explanation regarding the relation between investors and ICB,
- They do not specify the duty of the ICB towards the investors for protecting their interests,
- They do not provide any provision prescribing the default action in failure/breach of duty or special mechanism protecting the investors,
- They do not describe institutional liability, duty of fair trading, duty of transparent dealing, accountability and professional disclosure obligation of the ICB and its employers / employees to the investors, and others, and
- They fail to prevent transaction/interference of superior employees and their family and relatives in stock market manipulation,
- They provide no provision for filing suit, case or complaint against the ICB, its Directors, employers, officers and authorized representative,
- They do not prescribe any punishment for the Chairman, Managing Director, Director, Adviser, auditor, officer or servant of the Corporation found guilty of contravening his declaration of fidelity and secrecy,
- They do not require any reporting obligation of the ICB to the Government about its business or other dealings,
- They do not allow the aggrieved person to file a suit against the ICB or its Board of Directors.

It is alleged by the Probe Committee of 2011 that the superior employers of the ICB were directly involved in 2010-2011 stock market crash. The Probe Committee, 2011 found that the omnibus accounts of the ICB and merchant banks as one of the major reasons behind the stock market debacle. It published name of the top 30 (thirty) involved parties which included the ICB for a lot of suspicious transactions and noted that most of the manipulators traded from the omnibus accounts. It was reported that at least 2.5 billion BDT has been traded from hidden or omnibus accounts.⁵⁶ Based on these evidences, the

⁵⁶ Sangit Saha, *Stock market crash of Bangladesh in 2010-11: Reasons & roles of regulators*, International Business (2012) [Degree thesis].
<http://www.theseus.fi/bitstream/handle/10024/47195/saha_sangit.pdf?sequence=1> (25.04.2016).

ICB cannot rightfully be termed a successful institute and the laws governing ICB cannot be said adequate and exhaustive.

(iv) The Insurance Development and Regulatory Authority (IDRA)

Insurance companies, some of the largest corporate investors in stock market, has a crucial role in regulating their own share prices which consequently influences the overall share price in stock market. Sudden fall and rise in share price may affect the interest of the donor companies like the insurance companies. If they suffer great loss by investing money in stock market, the total insurance business may experience adversities. Hence, the Insurance Development and Regulatory Authority (IDRA)⁵⁷ as the central authority of insurance companies is a necessary party. Recently, it has been found that the IDRA is participating in meetings and contributing in the decision making process of Bangladesh Bank and the BSEC regarding stock market.

(v) The Micro-credit Regulatory Authority (MRA)

The Micro-credit Regulatory Authority (MRA)⁵⁸ represents the small and micro-credit institutions in Bangladesh, the MRA also attends the meetings and decision making process of the Bangladesh Bank and the BSEC regarding stock market as the representative of the small investors and micro-credit institutions.

(vi) The Central Depository Bangladesh Limited (CDBL)

The only depository system for the transaction and settlement of financial securities, the Central Depository Bangladesh Ltd (CDBL), was formed in 2000. It conducts its

⁵⁷ At present there are 77 insurance companies operating in the country and they need to be regulated under comprehensive laws and guidelines and supervised by a strong regulatory authority. For the regulation of the insurance companies centrally, the Parliament on 03 March 2010 passed two insurance laws in a bid to further strengthen the regulatory framework and make the industry operationally vibrant. The new laws, came in to effect on 18 March 2010, are the Insurance Act 2010 and the Insurance Development Regulatory Authority Act, 2010. The Insurance Act 2010 said the sector needs to be managed properly and he strengthened by reducing business risks, and local and international insurance laws need to be harmonized considering the socio-economic aspect of the country, and protect the interest of policy holders and other beneficiaries. The Insurance Development Regulatory Authority Act, 2010 provides the powers, roles, responsibilities and procedures for governance and management of the IDRA.

⁵⁸ To bring Non-government Microfinance Institutions (NGO-MFIs) under a regulatory framework, the government of Bangladesh enacted "Microcredit Regulatory Authority Act, 2006" (Act no. 32 of 2006) on July 2006 with effective from August 27, 2006. Under this Act, the government established Microcredit Regulatory Authority (MRA) with a view to ensuring transparency and accountability of microcredit activities of the NGO-MFIs in the country. The Authority is empowered and responsible to implement the said act and to bring the microcredit sector of the country under a full-fledged regulatory framework.

operations under the Depositories Act 1999, the Depositories Regulations 2000, the Depository (User) Regulations 2003, and the CDBL by-laws. The CDBL provides services to the Bangladesh Capital Market, covering Settlement of trades on the Dhaka and Chittagong Stock Exchanges. It has been established with its own vision⁵⁹ and mission⁶⁰. There are 456 depository participants, 2,982,310 Investor BO Accounts and 316 CDBL enlisted companies till 13 May, 2014.⁶¹

The CDBL's core services cover the efficient delivery, settlement and transfer of securities through computerized book entry system i.e. recording and maintaining securities accounts and registering transfer of securities, changing the ownership without any physical movement or endorsement of certificates and execution of transfer instruments. The Central Depository System (CDS) is operated by the CDBL for settling the securities transaction.⁶²

The CDBL's operations are carried out in its Main Data Centre which is linked to a remote Disaster Recovery Centre operating as a backup where data update takes place simultaneously. Network connectivity to Depository Participants, Issuers, Banks, Stock Exchanges and Bangladesh Bank takes place through Front End interfaces accessed by WAN link and dial-up telephone lines. There are several CDBL participants who participate in giving effect to the service of the CDBL including stock brokers and dealers,⁶³ banks, financial institutions, insurance companies, statutory organizations,

⁵⁹ In its office website, its mission is stated as “Central Depository Bangladesh Limited (CDBL) shall be a dynamic, forward looking institution committed to adding value to the business of its clients. It will be equipped with up-to-date Information Technology to ensure prompt customer response and provide innovative solutions to the needs of the capital market playing a pivotal role in Bangladesh’s financial services sector”.

<<http://www.cdbl.com.bd/>> (3.02.2017).

⁶⁰ In its office website, its mission is stated as “CDBL will have a sound management team with carefully-chosen, highly-motivated staff fostering a spirit of enthusiasm balanced with prudent policies to achieve a high level of sophistication and expertise in the performance of its personnel by consistently striving to provide high quality services that are reliable, transparent and efficient by: emphasizing the importance of the customer, unleashing employee initiative by empowering them, viewing activities of the business as processes and the goal of continuous improvement”.

<<http://www.cdbl.com.bd/>> (3.02.2017).

⁶¹ Information is taken from the official website of CDBL.

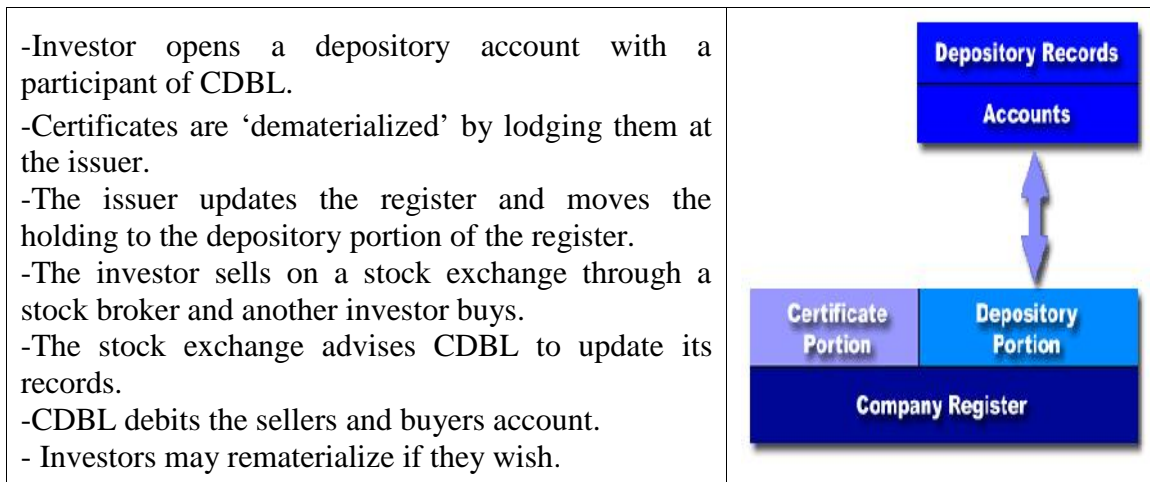
<<http://www.cdbl.com.bd/>> (3.02.2017).

⁶² It is claimed by the CDBL that the CDS has already been proved to be a convenient and reliable way of settling securities transaction. Through it, the investors have been freed from the hassles of physical handling of certificates, errors in paper work and the risks associated with damaged, lost and forged certificates.

<<http://www.cdbl.com.bd/>> (3.02.2017).

⁶³ Members of the Dhaka and Chittagong Stock Exchanges.

merchant bankers, custodians and any other capital market intermediaries registered with the BSEC. These participants are divided into four categories i.e. trading participant,⁶⁴ full service participant,⁶⁵ custody participant,⁶⁶ and settlement agent participant⁶⁷.



Therefore, the roles of the CDBL is in merely preserving records and giving effect of the transfer of ownership of stocks from one investor owner to another and also settling their account with up-date trading record in electronic form. It keeps and maintains records according to the transaction forwarded by the participants. Therefore, the CDBL has no obligation to check whether any transaction is doubtful or contaminated. This is frustrating. Therefore, it almost play passive role of recording rather than active role in controlling or monitoring the transaction. However, it can suspend or freeze any account as per direction of any other authority or the account holder. It is often alleged that the CDBL fails to prevent leaking the trading related information.

(vii) The Bangladesh Institute of Capital Market (BICM)

The Bangladesh Institute of Capital Market (BICM) is the national institution for imparting “practical capital market education and training”.⁶⁸ It was established on 24 July, 2008. It has been set up on Public Private Partnership as a not for profit company and it doesn’t have a share capital. The idea for setting up a securities institute in Bangladesh was mooted by the Chittagong Sock Exchange Limited and a study was done by the same

⁶⁴ May only settle stock exchange trades and cannot maintain accounts on behalf of customers.
⁶⁵ This is a stock exchange member who may hold shares and operate accounts on behalf of customers.
⁶⁶ May hold shares and operates accounts on behalf of customers but is not a stock exchange member.
⁶⁷ May settle stock exchange trades on behalf of stock exchange members.
⁶⁸ <<http://bicm.ac.bd/>> (5.1.2017).

with the assistance of FIRST Initiative – a World Bank, the IMF⁶⁹ and the Dutch joint initiative. Based on the study, a Steering Committee was formed in 2005 consisting of the representatives of all the key stakeholders of Bangladesh financial markets. The BSEC, the ICB, the DSE, the CSE, the CDBL, the Finance Department of University of Dhaka and the Ministry of Finance played proactive roles in establishing the Institute. It is registered with the Registrar of Joint Stock Companies and Firms as a company limited by guarantee.⁷⁰

The Bangladesh Government has provided a considerable amount of funding to hire the BICM premises and procure its facilities and logistics. BICM plays a vital role by providing different kinds of institutional training, courses, meetings, symposiums, programmes. It also offers post-graduate diploma and other certified courses to the investors or others interested in learning about the capital market.⁷¹ The Government is right in promoting it as it imparts valuable knowledge on the aspects of capital market to the mass.

Besides BICM, the BSEC is planning to establish a Bangladesh Academy Securities Market (BASM) as provided under the Bangladesh Securities and Exchange Commission (Promotion of Investment Education and Training) Rules, 2016. Under the Rules, several kinds of education programmes and trainings are mandated to be provided by the BSEC for the dissemination knowledge regarding capital market across the country.

(viii) The Registrar of Joint Stock Companies and Firms (RJSC)

The Registrar of Joint Stock Companies and Firms (RJSC), established under the Companies Act 1994 does not play a direct role in the securities market. It performs as the functionary of registering the companies, maintaining records, preserving all documents about the meetings, shareholders, directors and other managerial documents of the

⁶⁹ International Monetary Fund.

⁷⁰ Ibid.

⁷¹ <<http://bicm.ac.bd/education-program/>> (5.01.2017).

companies. It also gives effect to the share transfer, but does not play a part in the transfer of shares in the securities market by the listed public limited companies.⁷²

(ix) Issuers/corporations

Issuer companies issue stocks in the market. They only get the earning against share in the primary market through IPO. Beyond that, the issuer company has no direct relation to the pecuniary earning per share in the stock market. In secondary market, stocks are traded between the investors, and the issuer companies have nothing to do there. Why companies issue shares and how they get benefit through the stock performances in the market have already been discussed in previous Chapter. In this Chapter, the roles of the issuer companies will be discussed in short.

The financial condition and managerial status of the issuer companies are vital to the condition of the market. Investors' choices of investment often depend on the financial condition of the company. Financially well-off companies declare dividend or other benefits on regular basis for attracting the investors. Of course, declaring dividend or other benefits on the stocks depend on the managerial decision of the corporations. For that reason, in an ideal market, stocks of consistently well-off companies do better than financially weak issuers. While discussing the factors contributing to the movement of share prices and valuation of stock, it was found that the performance of the issuer companies does influence the stock price, investors' choice and stock valuation. Stocks of the financially solvent companies or the companies with a good track record of declaring dividend regularly or a good management and good prospect generally perform better than others in the market.

Moreover, the issuer corporations have to comply with several legal obligations to be categorized as secured issuers in the market. For example: basing on the performances and responses to the legal requirements time to time, the DSE categorizes issuer companies into five kinds, which are, A⁷³, B⁷⁴, G⁷⁵, N⁷⁶ and Z⁷⁷. Therefore, the performances of the

⁷² Though the RJSC has very little role to play in the stock market, the role of the RJSC still is of very importance so far collecting information about the issuer company whether it is holding Annual General Meeting (AGM) regularly, submitting audited financial report timely, rectifying the share register of the company and also updating other information and documents of the company time to time in compliance with the obligations under the Companies Act, 1994.

⁷³ A-category companies" means companies which are regular in holding the annual general meetings and have declared dividend at the rate of ten percent or more in the last English calendar year.

issuer companies are highly important in the healthy regulation of the stock market and the protection of positive interests of the investors in the market.

(x) Shares/stocks

Stocks/shares are the cornerstones of the stock market. It is often claimed that stocks perform independent from their issuers. In some cases, stock prices of some corporation do move independently. In these instances, stock prices may be low though the issuer company is a profitable one. Simultaneously, stock prices may be high though the issuer company is not doing well in its business. However, the relationship between the issuers and their stock in stock market is undeniable.

(xi) Investors/traders

In securities market there are investors and traders who invest into and trade with securities. Many people use the words "trading" and "investing" interchangeably whereas, they are actually two very different activities. Though the traders and the investors participate in the same marketplace, they perform two very different tasks applying very different strategies. Both of these parties are necessary, for the market to function smoothly.⁷⁸ The stock traders⁷⁹ are often temporary in market and invest into any stock for

[The Dhaka Stock Exchange (Settlement of Transactions) Regulations, 2013 c 2(1)(a)].

⁷⁴ B-category companies" means companies which are regular in holding the annual general meetings but have failed to declare dividend at least at the rate of ten percent in the last English calendar year.

[The Dhaka Stock Exchange (Settlement of Transactions) Regulations, 2013 c 2(1)(b)].

⁷⁵ G-category Companies" means green-field companies of which shares are listed with the DSE before the company goes into commercial operation and prior to listing the said company declares the year of first declaration of dividend.

[The Dhaka Stock Exchange (Settlement of Transactions) Regulations, 2013 c 2(1)(s)].

⁷⁶ N-category Companies" means newly listed companies except green-field companies which shall be transferred to other categories in accordance with their first dividend declaration and respective compliance after listing of their shares.

[The Dhaka Stock Exchange (Settlement of Transactions) Regulations, 2013 c 2(1)(t)].

⁷⁷Z-category Companies" means companies which have failed to hold the annual general meeting when due or have failed to declare any dividend based on annual performance or which are not in operation continuously for more than six months or whose accumulated loss after adjustment of revenue reserve, if any, exceeds its paid up capital:

Provided that the Managing Director of the Exchange may bring any other company under this category, if deemed necessary, with the prior written consent from the Commission:

Provided further that the words, 'or whose accumulated loss after adjustment of revenue reserve, if any, exceeds its paid up capital' shall not be applicable for the companies which have declared dividend out of the current profits in the last English calendar year and held annual general meeting(s) relating to all outstanding financial year(s) despite having such accumulated loss exceeding the paid up capital.

[The Dhaka Stock Exchange (Settlement of Transactions) Regulations, 2013 c 2(1)(z)].

⁷⁸ Ian Harvey, 'Stock Traders' vs. Stock Investors' Roles in the Marketplace' Investopedia (online) 2017.

a temporary period. They are usually concerned with the temporary gain from a stock. On the contrary, the stock investors⁸⁰ invest into stock with the long-term return in mind. They are more concerned with ensuring ownership in the issuer company and its management rather than gaining temporary capital against the particular stock or stocks.

It is the investors who keep the stock alive by moving them around. Once the corporations issue their shares in the market, they cannot call it back because corporations cannot buy its own shares, as it is prohibited under the law of Bangladesh.⁸¹ Therefore, in the stock market, the ownership of the stocks moves from one owner to another. So, the issuer corporations have no choice in selecting the owners of their issued stocks in the market. Investors are the owners of the stocks. They may be individual investors, institutional investors, group investors, community investors, and investors through the ICB, the merchant bank, the stock dealers or the stock brokers, etc. The investors may be large, medium and small. Number of investors can have direct influence on demand and supply curve of the stocks in the market. Large scale investors can influence the share price, but small investors can hardly do the same.

Investors' role is very important in the market. Investors basically own the company as shareholders. They may be good investors or bad investors. Bad investors invest into the

<<http://www.investopedia.com/university/introduction-stock-trader-types/stock-traders-vs-stock-investors-roles-marketplace.asp-0#ixzz4etYCO0Fc>> (21.04.2017).

⁷⁹ Individuals or entities engaging in the trading of equity securities, or the transfer of financial assets in any financial market, either for themselves, or on behalf of someone else. They operate in the capacity of agent, hedger, arbitrageur, speculator or investor.

[Ibid].

⁸⁰ Individuals or entities who use their own money to purchase equity securities, which offer potential profitable returns in the form of interest, income or appreciation in value (capital gains).

[Ibid].

⁸¹ Purchase of own shares by a company is treated as reduction of share capital, which is prohibited under the law of Bangladesh. It is barred under section 58 of the Companies Act, 1994.

[Section 58: Restriction on purchase by company or loans by Company for purchase of its own shares-

(1) No company limited by shares shall have power to buy its own shares or the shares of a public company of which it is a subsidiary company, unless the consequent reduction of capital is effected and sanctioned in the manner provided by sections 59 to 70.

(2) No company limited by shares other than private company or a subsidiary company of a public company, shall give whether directly or indirectly, and whether by means of a loan guarantee the provision of security or otherwise any financial assistance for the purpose of or in connection with a purchase made or to be made by any person of any shares in the company:

Provided that nothing in this section shall, where the lending of money is part of the ordinary business of a company, be taken to prohibit the lending of money by the company in the ordinary course of its business.

(3) If a company acts in contravention of this section, the company, are every officer of the company who is knowingly and willfully in default shall be liable to a fine not exceeding five thousand taka.

(4) Nothing in this section shall affect the right of a company to redeem any shares issued under section 154.]

market with the intent to manipulate it. However, most of the general investors possess very little knowledge about any stock. They are often indolent and do not do any homework or prior analysis about the stocks in which they want to invest. Poor knowledge of the investors may cause poor performance of the stocks and give wider chances to the manipulators to manipulate the market. That is why, for the enhancement of the market performance, assurance of fair and transparent trading, and good governance in the market, the enhancement of investors' knowledge and active participation is highly necessary.

Warren Buffett⁸² has correctly suggested that for improving the condition of the stock market, the stockholders should think of themselves as "part owners" of the business in which they are investing. Hagstrom⁸³ and Buffett argue that investors will tend to avoid making off-the-cuff investment decisions, and become more focused on the longer term profit if they do so. Furthermore, longer-term "owners" tend to analyze situations in greater details, and put a great deal of thought into their buy and sell decisions. Hagstrom says, this increased thought and analysis tends to lead to improved investment returns.⁸⁴ The main problem is that the investors do not think of themselves as the owners of the company. They do not participate in the companies affairs regardless of their loss or profit. They attend the Annual General Meeting (AGM) merely for short term benefits like prizes and news of dividend. They display little interest in participating in the management of the company and neglect their duties of casting vote or creating pressure upon the company for true disclosure of information. This is really frustrating and works as a major barrier to the structural development of stock market.

⁸² Warren Edward Buffett (born August 30, 1930) is an American business magnate, investor and philanthropist. He is the most successful investor of the 20th century. Buffett is the Chairman, CEO and largest shareholder of Berkshire Hathaway, and consistently ranked among the world's wealthiest people. He was ranked as the world's wealthiest person in 2008 and as the third wealthiest in 2015. In 2012 Time named Buffett one of the world's most influential people.

Wikipedia, *Warren Buffett* (8 February 2017).

<https://en.wikipedia.org/wiki/Warren_Buffett (17.07.2016).

⁸³ Robert G. Hagstrom is Senior Vice President and Director of Legg Mason Focus Capital. He has authored the New York Times best-selling *The Warren Buffett Way* and *The Warren Buffett Portfolio*, as well as *The Nascar Way*.

Goodreads, *Robert G. Hagstrom* (31 December 2016).

https://www.goodreads.com/author/show/739.Robert_G_Hagstrom (17.07.2016).

⁸⁴ Glenn Curtis, *Think Like Warren Buffet* (9 February 2017).

<http://www.investopedia.com/articles/stocks/08/buffett-style.asp> (9.02.2017).

Hence, the investors' involvement is highly necessary for the development of the stock market. Investors should be more careful before investing into a security. Buffett is a firm believer that investors must first do their homework before investing in any security. But after that due diligence process is completed, the investors should feel comfortable enough to dedicate a sizable portion of assets to that stock. They should also feel comfortable in winnowing down their overall investment portfolio to a handful of good companies with excellent growth prospects.⁸⁵ The investors must think long term. The investors should keep eyes on the financial condition of the issuer company. They should keep their eyes sharp on examining the movement and managerial changes in the company. The investors need to be more careful and do homework about the prospect and financial viability of the issuers companies.

Investors should avoid impulsive decisions guided by rumors and speculations.. Hence, wide dissemination of stock market knowledge is one the pre-requisites in the stock market development of our country. Buffett contends that the key to overcoming emotions is being able to retain your belief in the 'real fundamentals of the business'⁸⁶, and not get too concerned about the stock market. Investors should avoid the doomsayers. Similarly, excessive optimism should be ignored. In all this confusion, Buffett suggests that the investors should focus their efforts on isolating and investing in shares that are not currently being accurately valued by the market. The logic here is that as the stock market begins to realize the company's intrinsic value (through higher prices and greater demand), the investor will stand to make a lot of money. Successful investors must look at the companies they own and study their true earnings potential. If the fundamentals are solid and the company is enhancing shareholder value by generating consistent bottom-line growth, the share price, in the long term, should reflect that. If a share is now undervalued but the company has adequate assets with less liabilities and promising prospect under

⁸⁵ Glenn Curtis, *Think Like Warren Buffet* (9 February 2017).

<http://www.investopedia.com/articles/stocks/08/buffett-style.asp> (9.02.2017).

⁸⁶ In the broadest terms, fundamental analysis involves looking at any data, besides the trading patterns of the stock itself, which can be expected to impact the price or perceived value of a stock. As the name implies, it means getting down to basics. Fundamental analysis focuses on creating a portrait of a company, identifying the intrinsic, or fundamental, value of its shares and buying or selling the stock based on that information. Some of the indicators commonly used to assess company fundamentals include: cash flow, return on assets, conservative gearing, history of profit retention for funding future growth and soundness of capital management for the maximization of shareholder earnings and returns.

Ben McClure, *What Are A Stock's "Fundamentals"?* (10 February 2017).

<http://www.investopedia.com/articles/fundamental/03/022603.asp#ixzz3cvInKN6Y> (10.02.2017).

good management in long-run, the investor should invest in this share even though its price is low now and there is minimum possibility of earning immediate profit. If the investors make good choices and do not buy bad stock; the bad stocks will automatically leave the market. In this way, the investors can have significant influence over the stock market.

(xii) Market Manipulators/Ghosts in Stock Market

Market manipulators always play a villainous role in the market. They manipulate the market only to gain huge amount of money from the market. This is regarded as ‘stealing money from the money market’. Ironically, they can do it legally and illegally. Legally, they take the benefit of the shortcoming in the existing legal provisions and market regulation. Otherwise, they steal the money through illegal transactions. In both ways, the market manipulators are tightly syndicated in different level of stock market. Sometime they are known. Sometime they are unknown. The manipulators function secretly, but leave drastic results for all to see. Their malpractices leave the general investors in a gutter and disrupt the state of the market. Such loss is not simply unjust, but destructive for many investors. But sadly, there remains little to do after the things are already set in motion. The ghosts remain unidentified, and even when they are identified, they receive no exemplary punishment. The affected investors are also far from redressed. The prevalence of market manipulators in almost every stage is daunting. They may be traders or regulators, or even someone at the top of the chain. These “master minds”⁸⁷ pre-plan the sudden rise of the stock price at abnormal rate and falling down at abnormal level through market syndication. They create scams causing serious crash in the market.

One of the best examples of such manipulation can be found from the 2010-2011 stock market crash. The Center for Policy Dialogue reported that “the artificial rise in the share prices prior to the collapse of the market in December 2010, was influenced by a number of bull cartels as reported in the Probe Committee Report (CPD 2011b). These cartels are reported to be formed with some members of DSE/CSE, officials of the SEC, political leaders, high-profile businessmen, officials of financial institutions, and owners of brokerage houses, etc. Lack of proper monitoring of the various market-related activities such as trading operation at the DSE or the CSE, activities of merchant banks and

⁸⁷ The master-minds are those who manipulate and misuse the market for their personal gain.

brokerage houses, activities of officials of regulatory bodies, made the market by and large ‘unprotected’ from possible market manipulators. The weak regulatory role of SEC was further accentuated because of strong linkage of the bull cartels with various political parties, both ruling and opposition.”⁸⁸

After the tragic 2010-2011 scam, no immediate legal step was taken by either the Government or any other regulatory authority. Thereafter, on huge protests and acute hatred by the investors and people from all concern, the Government formed a Probe Committee.⁸⁹ It produced a detailed report comprising of 296 pages, out of which the main report contained 147 pages and annexures contained 149 pages covering the perspectives and causes behind crash and also analyzing the sequences of crash with data, examples, interviews and names of persons, institutions and authorities involved with the crash.⁹⁰ Initially, the report identified the perpetrators and contained the names of scammers/scam offenders,⁹¹ but later in consultation with the Government the names of scammers had intentionally been removed from the report. People demanded for publication of the report but Government remained silent on the issue. Later, the report was published under the direction of Hon’ble High Court Division after omitting the name of culprits. However, the Chairman of the Committee Mr. Khondokar Ibrahim Khaled in some interviews disclosed few names of the perpetrators.

On the occasion of the crash, the printing and electronic media of the country played very important roles and disclosed names of a few people involved in market manipulation. Amongst others, the Daily Star published an important report disclosing the names of some manipulators. It was reported that “some 60 individuals, many associated with Awamileague and BNP, have made fortunes through stock market manipulations, found the probe into the recent share debacle. Many of them can be tried under the existing laws

⁸⁸ Khondaker Golam Moazzem and Md. Tariqur Rahman, “Stabilizing the Capital Market of Bangladesh: Addressing the Structural, Institutional and Operational Issues” (2012), *CPD Working Paper: 95Centre for Policy Dialogue (CPD)* 3.

<http://www.cpd.org.bd/pub_attach/WP95.pdf> (24.02.2016).

⁸⁹ Consisting of one Chairman, Khondoker Ibrahim Khaled, Chairman of Bangladesh Krishi Bank and ex-Deputy Governor of Bangladesh Bank along with two members, Dr. Toufique Ahmed Chowdhury and Md. Abdul Bari.

⁹⁰ The report is now available at:

<http://www.mof.gov.bd/en/index.php?option=com_content&view=article&id=169&Itemid=1> (3.02.2017).

⁹¹ The Probe Committee identified 100 people, all belonging to the economically and politically solvent class and some well-known companies involving with the scam. The report had come down strongly on the lack of oversight and collusive role of the SEC.

of the Securities and Exchange Commission, Khondkar Ibrahim Khaled, who headed the probe, told *The Daily Star* yesterday. This view runs counter to that of the finance minister, who said he would not make the names public until he is convinced about the allegations. Arguing for disclosure, Khaled said in many cases suspects' names are published on the basis of first information report. He, however, stressed the need for detailed investigations to bring them to trial.”⁹²

It was also reported that the Probe Committee expressed their apprehension that the influential stakeholders might manipulate the subsequent proceedings and policy makings.⁹³ The Report also added “the probe body also found involvement of opposition-linked influential businessmen and traders in the stock market debacle. It observed that the SEC will remain ineffective and exposed to manipulations as long as the market players are able to influence the regulator. The Committee named Salman and Rakibur as suspects in the probe report on the stock manipulation in 1996. The investigation into the recent bourse debacle found their roles to be under widespread public suspicion. There have been allegations that the two influenced the SEC and lobbied for the appointment of Ziaul Haque Khandaker as SEC Chairman and reappointment of Mansur Alam as SEC member. Salman lobbied the Bangladesh Bank governor to soften the central bank's stance on BD-Thai Aluminum that had been involved in money laundering, said the report. Besides, he was linked to the overpricing of shares and overvaluation of assets of GMG Airlines and Unique Hotel, it said”.⁹⁴

⁹² Rejaul Karim Byron and Md Fazlur Rahman, ‘Finger pointed at 60 individuals’, *The Daily Star* (online) 9 April 2011.

<<http://archive.thedailystar.net/newDesign/news-details.php?nid=181073>> (20.05.2016).

This report is exclusively prepared by and for *The Daily Star* that owes its liability.

⁹³ The committee has warned the government high-ups against the influence of market players like pro-AL business tycoon Salman F Rahman and former DSE president Rakibur Rahman. “The government must stay watchful so that Salman, Rakibur and other top market players cannot influence policymaking or appointments to the SEC through recommendations or lobbying,” said Khaled. During the two-month investigation, the committee had talked to over 500 traders including all members of Dhaka and Chittagong stock exchanges, and also journalists, professors and researchers. “We got the impression after talking to people,” said Khaled, also chairman of Bangladesh Krishi Bank. He said though the committee has named the individuals as suspects, there are strong grounds for the allegations. The SEC, however, has to conduct further investigation. “In the report, we have detailed how the regulator should conduct investigation,” Khaled said. “It [SEC] has to be completely restructured and its current leadership removed.” Khaled's comments came a day after the four-member committee submitted its 320-page report to Finance Minister AMA Muhith.

[Ibid].

⁹⁴ Ibid.

The Report went on saying that “Salman and Rakibur exerted undue influence on the SEC and tarnished the government's image in the process, the report said. When contacted, Salman, now in London, said he would return home soon and go through the probe report. “Whatever I did in the stock market had the approval of the SEC,” said the influential businessman. He could not find any reason why the probe committee has warned the government about him. “I will look into the matter on my return home,” he said. Rakibur, a DSE director, has denied the allegation of influencing the SEC in any way. “I have no power to influence the SEC. Is there any proof that I influenced it?” he questioned. The probe has found instances of fraudulence in omnibus accounts. It traced existence of several lakh shadow accounts that had been used as tools for trickery. But the committee could not look into them properly for lack of adequate time. It however sampled some accounts and examined them. The report said the shadow accounts shown as omnibus accounts⁹⁵ with merchant banks did not reflect deposits and withdrawals properly.”⁹⁶

The Report also alleged that the then SEC Member Mansur Alam had a pivotal role in legitimizing the irregularities. The Chairman is also responsible for the wrongdoing, as the Commission's approval could not come without his consent, said the report. Executive directors Anwarul Kabir Bhuiyan and Tariquzzaman were at fault for supporting the Chairman and the SEC member. Many SEC officials took undue advantage under the shelter of these four top officials, according to the report. It was further alleged that “SEC Chairman Ziaul Haque Khandaker and executive directors Anwarul Kabir Bhuiyan and Tariquzzaman should be removed from the SEC and Mansur Alam should be investigated for irregularities,” the Report said.⁹⁷ The Government has cancelled the contractual

⁹⁵ Some of the accounts belong to former BNP lawmaker Mosaddeq Ali Falu, Unique Hotel and Resorts Ltd, former Awami League lawmaker HBM Iqbal, Muniruddin Ahmad, Roksana Amjad, Golam Mostafa, Ahsan Imam, Yakub Ali Khandaker, New England Equity Ltd, Md Lutfar Rahman (Badol) and Shoma Alam Rahman. It was also told by Mr. Khaled that trading through beneficiary owner accounts had been transparent in the secondary market, thanks to Central Depository Bangladesh Ltd. But suspicious trading had been done from omnibus accounts.” These omnibus accounts must be examined after reforming the SEC, said the former deputy governor of Bangladesh Bank. The committee recommended that the government turn these omnibus accounts into beneficiary owners (BO) accounts, otherwise the SEC would block them. When the stockmarket was on a bullish run, some individual accounts showed high levels of transaction. The individuals include Golam Mostafa, Abu Sadat Md Sayem, Yakub Ali Khandaker, Syed Sirajuddoula, Md Kholiluzzaman, Md Shahidullah, Arifur Rahman, and Shoma Alam Rahman, said the report.

⁹⁶ Ibid.

⁹⁷ Ibid.

appointment of Mansur Alam for his involvement in irregularities. The probe found that Roksana Akter, wife of Anwarul Kabir Bhuiyan, traded shares worth a huge sum from her four accounts in a breach of SEC rules. Bhuiyan, however, claimed he was unaware of his wife's involvement in share business. "My wife is not financially dependent on me. She might be involved in stock business," he said. Khaled said the SEC rules impose bar on wife, children, parents or dependents of SEC officials from getting involved in share business.⁹⁸

BanglaNews24 in its official website also disclosed names of some alleged persons.⁹⁹ It is reported that fake and doubtful transactions were found in the BO accounts of Golam Mostofa, Abu Sadat Md. Sayem, Mosaddek Ali Falu, Md. Lutfar Rahman (Badal), Soma Alam Rahman, Roksana Azad, Salman F Rahman, Dr. HBM Iqbal, Monir Uddin Ahmed, Ahsan Imam, Mahjabin Mostafa Imam, Yakub Ali Khandakar, Sarah Khandakar, Syed Sirajuddowla, Md. Khaliluzzaman, Md. Shahidullah, Arifur Rahman, Shamima Sharif, Monsur Billah and some others, but no legal actions against them were taken.¹⁰⁰

⁹⁸ Ibid.

⁹⁹ It is reported that "Banglanews correspondent through an investigation found out 18 persons and merchant banks named in the investigative reports submitted to the ministry of finance on Thursday. A confidential source based on the probe report said banglanews apart from these twenty some more manipulators might have been involved in the share scam. Among the names mentioned in the probe report are: incumbent chairman of Securities and Exchange Commission Khandoker Ziaul Huq, two executive directors Anwarul Karim Bhuiyan and Tarequzzaman, former executive director Mansurul Alam, Salman F Rahman of Beximco Group, BNP politician Mosaddek Ali Falu, Lutfar Rahman Badol and his wife Soma Alam Rahman, KPCL of the brother of commerce minister Faruq Khan, BCB chairman and chairman of the parliamentary standing committee for ministry of finance AHM Mostafa Kamal MP, ICB deputy managing director Kafir Uddin Ahmed Chowdhury his wife Farzana Akhter and brother in law Masur Billah, former president of DSE Rakibur Rahman his nephew Arifur Rahman, stock market investor Golam Mostafa, Abu Sadat Mohammad Sayem, Yakub Ali Khandaker and two merchant banks Race and LR Global. It is specially mentioned in the report the SEC chairman and executive directors are directly involved in the manipulation of capital market that led it to the crash. The probe report has recommended to withdraw them from SEC. The committee believes more investigation into Mansur Alam's involvement might make a way to get more names of big shots who were involved in stock market debacle. There are specific evidence of involvement of Mosaddek Ali Falu, Lutfar Rahman Badol and his wife Soma Islam in the scam, the report mentions. ICB deputy managing director Kafir Uddin has fixed deposited most of the money collected from stock market."

Fuad Khan, 'Probe report mentions 20 masterminds of stock-market scam', *BanglaNews24.com* (online) 8 April 2011. This report is exclusively prepared by and for BanglaNews24.com and it owes its liability. Mr. Fad Khan is a reporter of BanglaNews24.com.

<<http://news.priyo.com/business/2011/04/08/probe-report-mentions-20-maste-23372.html>> (17.05.2016).

¹⁰⁰Probe Committee, *Share Market Inquiry Report, 2011*, Inquiry Report (2011) 43-44.

<http://www.mof.gov.bd/en/index.php?option=com_content&view=article&id=169&Itemid=1> (3.02.2017).

3.4. A Short Overview of the Governing Laws and Regulations

A comprehensive critical analysis of the legal provisions relating to the main market regulatory authorities and associated institutions giving effect the basic functionalities and transactions of the securities/stock markets will be discussed in the following two Chapters. Before that, a short picture of the sources of related laws and regulations, their nature and summary is given below for better understanding of the analysis and examinations made in following Chapters.

a. Sources of Laws

The sources of law includes the Parliament, the Ministry, the BSEC, the Bangladesh Bank, the internal policies of Stock Exchanges, depositories, custodians and other associated bodies in the securities market. Judiciary is also a contributory in this arena.

b. Nature of Laws

As it is seen from the above, there are both primary and secondary sources of producing laws for stock market. Therefore, the laws include Ordinance, Act of Parliament, Rules, Regulations, Directions, Guidelines, Notifications, and Institutional internal policies.

c. Summary of Laws

Since this thesis is about securities, especially stock, all the related laws are summarized for a short orientation. The Securities Act, 1920¹⁰¹ deals only with the Government Securities; therefore it has limited scope in stock market. On the other hand, most other laws in the capital market deal with securities other than government securities. Amongst all, the Companies Act, 1994¹⁰² is particularly important and provides guidelines for the regulation of securities. Besides, there are some other laws which are also relevant.¹⁰³

¹⁰¹ Published in the official gazette on 1.04.1920.

¹⁰² Published in the official gazette on 1.12.1994.

¹⁰³ Such as, the Bank Companies Act, 1991, the Trust Act, 1882, the Insurance Act, 2010, the Insurance Regulatory Development Authority Act, 2010, the Financial Institutions Act, 1993 and the Anti-money Laundering Act, 2012 are also relevant.

The Securities and Exchange Ordinance, 1969¹⁰⁴ was formulated for the protection of the investors, regulations of the capital markets and issue and dealing with the securities. To give effect to the purposes of this Ordinance, the Securities and Exchange Commission Act, 1993¹⁰⁵ came into being. Under this Act, in 1993 the Bangladesh Securities and Exchange Commission has been established. The Securities and Exchange Commission (Appeal) Regulations, 1995¹⁰⁶ provide provisions for filing appeal. The Securities and Exchange Commission (Meeting) Rules, 1994¹⁰⁷ and the Bangladesh Securities and Exchange Commission (Employers and Officers) Service Rules, 2014¹⁰⁸ have been framed only for internal governance and management of the BSEC. For the propagation of stock market related knowledge, the BSEC formulated the Bangladesh Securities and Exchange Commission (Promotion of Investment Education and Training) Rules, 2016¹⁰⁹.

In order to encourage investors and broaden the base of investments, develop the capital market and mobilize savings, the Investment Corporation of Bangladesh Act, 2014¹¹⁰ came into force, under which the Investment Corporation Bangladesh (ICB) has been established which inherits the earlier ICB established under the Investment Corporation of Bangladesh Ordinance, 1976. Under this Act, the ICB promulgated the Investment Corporation of Bangladesh (General) Regulations, 2017¹¹¹ providing the detailed procedures for the governance and regulation of the ICB. Roles and activities of the ICB along with critical analysis of the said Act, 2014 has already been made earlier.

For the regulation of the market intermediaries, several Acts, Rules, Regulations and Guidelines have been enacted and formulated. For the purpose of regulating the depositories, maintenance of securities and effecting and recording the securities transfer the Depositories Act, 1999¹¹² came into force in 1999. In this connection, the Depository Regulations, 2000¹¹³ and the Depository (User) Regulations, 2003¹¹⁴ have been formulated

¹⁰⁴ It came into effect on 28.06.1969.

¹⁰⁵ Published in the official gazette on 3.05.1993.

¹⁰⁶ Published in the official gazette on 25.05.1995.

¹⁰⁷ Published in the official gazette on 10.02.1994.

¹⁰⁸ Published in the official gazette on 10.02.1994.

¹⁰⁹ Published in the official gazette on 26.12.2016.

¹¹⁰ Published in the official gazette on 22.09.2014.

¹¹¹ It came into effect in the year 2017.

¹¹² Published in the official gazette on 24.05.1999.

¹¹³ Published in the official gazette on 28.06.2000.

by the BSEC. The Securities and Exchange Commission (Security Custodial Service) Rules, 2003¹¹⁵ and the Securities and Exchange Commission (Asset Backed Issue) Rules, 2004¹¹⁶ were framed by BSEC in 2003 and 2004, respectively for providing regulations for the security custodians and trustees in respect of certain issues as mentioned therein.

The Securities and Exchange Rules, 1987¹¹⁷ provides detailed provisions of stock market thus stock exchanges governance. These Rules are of great importance and several crucial and necessary amendments have been brought to these Rules after 2010-2011 stock market scam. For the regulation of the OTC market, the Securities and Exchange Commission (Over-The-Counter) Rules came into effect in 2001¹¹⁸. The Securities and Exchange Commission (Market Making) Rules, 2000¹¹⁹ has come into operation for regulation of the stock exchanges. For regulation of mutual fund market, the Securities and Exchange Commission (Mutual Fund) Rules¹²⁰ were framed by BSEC in 2001.

For the regulation of the stock-dealer, stock-broker and authorized representative, the BSEC framed the Securities and Exchange Commission (Stock-dealers, Stock-Brokers and Authorized Representatives) Rules in 2000¹²¹. Credit Rating Agencies, Merchant Bakers and the Portfolio Manager are also the market intermediaries who are governed under the Credit Rating Companies Rules, 1996¹²² and the Securities and Exchange Commission (Merchant Banks and Portfolio Managers) Rules, 1996¹²³, respectively. These Rules are frequently changed by the BSEC time to time for setting out the margin limit of the investors depending on the context.

Margin Rules, 1999¹²⁴ came into force for providing the investors with margin facility. In order to ensure fair trading and protecting the investors' interest another important Rules prohibiting the insider trading and disclosure of price sensitive information have been

¹¹⁴ Published in the official gazette on 4.05.2003.

¹¹⁵ Published in the official gazette on 13.03.2003.

¹¹⁶ Published in the official gazette on 16.04.2004.

¹¹⁷ Published in the official gazette on 29.09.1987.

¹¹⁸ Published in the official gazette on 3.01.1987.

¹¹⁹ Published in the official gazette on 18.01.2001.

¹²⁰ Published in the official gazette on 10.07.2001.

¹²¹ Published in the official gazette on 29.11.2000.

¹²² Published in the official gazette on 30.07.1996.

¹²³ Published in the official gazette on 26.05.1996.

¹²⁴ Published in the official gazette on 28.04.1999.

framed by the BSEC in the name and style the Securities and Exchange Commission (Prohibition of Insider-Trading) Rules, 1995¹²⁵.

The Securities and Exchange Commission (Substantial Share Acquisition and Takeover) Rules, 2002¹²⁶ is meant to regulate the acquisition and taking-over of shares. In 2001 the Securities and Exchange Commission (Capital Issue of Public Limited Company) Rules¹²⁷ was promulgated for the regulation of the public issue of the stocks by the public limited company. Two important rules relating to issue of right issue and public issue were formulated by the BSEC in 2006, which are known as the Securities and Exchange Commission (Right issue) Rules, 2006¹²⁸ and the Securities and Exchange Commission (Public Issue) Rules, 2006. In 2015, comparatively a comprehensive piece of law has been framed by the BSEC namely Bangladesh Securities and Exchange (Public Issue) Rules, 2015¹²⁹. After these Rules coming into force, the processes of public issue of shares are now being governed and regulated under these Rules.

After stock market crashes in 2010-2011, the Securities and Exchange Commission (Private Placement of Debt Securities) Rules, 2012¹³⁰ has been enacted for regulating the issuance of shares through private placement after experiencing the threatening misuse of private placement in primary market during 2010-2011. For the small investors, the BSEC framed Bangladesh Securities and Exchange Commission (Qualified Investor Offer by Small Capital Companies) Rules, 2016¹³¹ by opening different avenues and scope of opportunities for them.

For effective market regulation and digitalized updating, the Exchanges Demutualization Act, 2013¹³² came into effect on 2 May 2013. Market analysts were not properly recognized in our stock earlier. By promulgating the Bangladesh Securities and Exchange Commission (Research Analysis) Rules, 2013, the research analysts are now recognized in paper.

¹²⁵ Published in the official gazette on 12.09.1995.

¹²⁶ Published in the official gazette on 15.04.2002.

¹²⁷ Published in the official gazette on 29.04.2001.

¹²⁸ Published in the official gazette on 26.04.2006.

¹²⁹ Published in the official gazette on 22.06.2015.

¹³⁰ Published in the official gazette on 30.01.2012.

¹³¹ Published in the official gazette on 26.12.2016.

¹³² Published in the official gazette on 2.05.2013.

Observing the lacunae in the field reporting of the financial status of the issuer corporations, the Government enacted the Financial Reporting Act, 2015 in public interest. This is an important step positive ahead. New enactment entitling the Bangladesh Securities and Exchange Commission (Alternative Investment) Rules, 2015¹³³ are also very important ones for the extension of the scope of the market and the creation of new avenues for investment.

Along with statutes mentioned above, a large number of guidelines, circulars, notifications, directives, orders, and decisions of the Ministry, the BSEC, the Bangladesh Bank, the ICB, the CDBL formulated and prescribed from time to time play crucial roles in the securities market governance. These legal instruments are generally formulated to meet the immediate needs of the market. They contribute significantly not only in the market regulation but also in the share price movement and stock transaction in the market. Amongst these, margin related directives, trading related directives, list of authorized valuers, credit rating agencies, auditors or authorized representatives, corporate governance guidelines, public issue, directives for the stock exchanges, etc are highly important.

3.5. Concluding Remarks

This Chapter comprehends the entire scenario of the regulatory institutions and governing legal provisions in the stocks/securities market of Bangladesh. Every statement made in this Chapter is substantive and related to the securities market governance in Bangladesh. Every analysis and observation is based on reason and importance. Amongst the superior managerial institutions, the BSEC, the Bangladesh Bank and the ICB play critically important roles. The BSEC controls and regulates the stock securities market. The market intermediaries also play significant roles in stock market. For effective market regulation coordinated and togetherness of the regulatory authorities and their joint act in cooperation is a pre-requisite. Hence, a widespread analysis and close examination of the activities and functions along with the related law will be discussed in next two Chapters.

¹³³ Published in the official gazette on 22.08.2013.

Chapter 4

The BSEC and the Related Laws: Determining their Efficacy and Fallout

4.1. Introduction

The Bangladesh Securities and Exchange Commission (BSEC)¹ is the superior managerial authority exclusively established for the capital market regulation.² It is an autonomous body mainly regulated by the Securities and Exchange Ordinance, 1969³ (*shortly referred to as 'the Ordinance'*) and the Bangladesh Securities and Exchange Commission Act, 1993⁴ (*shortly referred to as 'the Act'*) along with other related laws and regulations modeling the securities market in Bangladesh. It is a Government institution and answerable to the Government only. All other market intermediaries are controlled and regulated by the BSEC. No company can issue shares without the permission of the BSEC. Likewise, no intermediary can deal with the shares/stocks in stock market without obtaining the consent from the BSEC. The main objective of the BSEC is to protect the interest of the investors. In order to protect the interest of the investors, the BSEC is entrusted with necessary powers to regulate the market, administer the intermediaries and control the stock market. It has ample powers to make any decision for the effective regulation of the market. Therefore, it plays the central role in controlling the business, affairs and functions of the capital market.

Though it is expected that the BSEC will perform its functions and duties with utmost responsibility, accountability and honest way, it is often questioned for its poor performance, weak regulations and failures. Following the stock market crash in 1996 and 2010-2011, the involvement of the superior authorities and officers of the BSEC with the market manipulators were apparent and some of its corrupted officers were terminated. On the other hand, the BSEC has made admirable efforts that contributed to the promotion

¹ Earlier it was known as the Securities and Exchange Commission (shortly as the SEC). Through an amendment of the Securities and Exchange Commission Act, 1993, on December 10, 2012, its name has been changed as the Bangladesh Securities and Exchange Commission (shortly as the BSEC) from previous the Securities and Exchange Commission (shortly as SEC).

² The Preamble of the Bangladesh Securities and Exchange Commission Act, 1994 provides that for securing the interest of the investors, improvement of the securities market and for other ancillary purposes it is necessary and expedient to establish a commission namely the Bangladesh Securities and Exchange Commission.

³ Ordinance No. XVII of 1969 which was published in the Extraordinary Gazette of Pakistan, Extraordinary on 28 June 1969.

⁴ Act No. XV of 1993 which was published in the Gazette Notification by the Bangladesh Government on 8 June 1993.

and development of the market. Before the scam 2010-2011, Bangladesh stock market was accredited as one of most stable and consistently growing market in South Asia.⁵

The BSEC is marching ahead with all the appraisals, controversies, shortcomings and challenges. To ensure the good governance and restore of public confidence, prevent the manipulators and make market consistently growing well, there needs to be an effective, transparent, sincere, all-embracing effort of the BSEC in the capital market. As discussed earlier, the Bangladesh stock market has excellent prospects since the economic growth of our country is consistent and people are more interested to invest than ever. Its contribution to our national economy is also significant and it is besieged as the barometer of a country. Therefore, being the superior and uncontested autonomous regulatory in the capital market, the BSEC plays a fundamental role in our overall economic development. Therefore, its functions, affairs, power, authority, shortcomings and efficacies together with the effectiveness and fallout of the related laws need to be examined comprehensively. In this Chapter, the roles and activities of the BSEC and the related laws have been critically examined with an important analysis of the related laws.

4.2. Establishment and Composition

The Bangladesh Securities and Exchange Commission (BSEC) is the principal governmental body for the maintenance and regulation of securities market in Bangladesh. It was established on 8 June 1993 under the Securities and Exchange Commission Act, 1993⁶ in order “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”⁷.

Thereafter, through an amendment of the Act on 10 December 2012, it has been renamed as Bangladesh Securities and Exchange Commission (*henceforth referred to as ‘the BSEC’ or as ‘the Commission’*). The BSEC is constituted with a Chairman and four Commissioners. Amongst the four Commissioners, one has to be from the private sector

⁵ Khadiza Tul Tahera, ‘Share Market in Bangladesh; Its Impulsive Attitude towards Investors and the reasons behind these Spontaneous Changes’ (2014) 2(4) *International Journal of Social Science and Humanities Research* 284-290.

⁶ Act No. XV of 1993.

⁷ The Securities and Exchange Commission Act, 1993 Preamble.

with the qualifications and experience in the relevant field.⁸ They are appointed by the Government and are responsible for the administration and formulation securities legislation.⁹ They are the chief controllers of the BSEC. The Chairman is the executive head of the BSEC.¹⁰ Other employees and officers shall be appointed by the BSEC in according to organogram approved by the Government.¹¹

Very interestingly, the post of Chairman and the Commissioners are directly appointed under a contract with the Government.¹² No officer or authority working under the BSEC can be promoted to the post of the Chairman or Commissioner of the BSEC.¹³ The term 'working under the BSEC's apparently means and includes the person currently working under the BSEC. There is no provision clarifying whether this bar shall extend to the ex-employee or ex-officer of the BSEC. However, there is no bar to the appointment of any person as a Chairman or Commissioner. The post of the Chairman and the Commissioners of the BSEC are full time. They cannot do any other public service. They can be appointed for four years, and they can be re-appointed afterwards.¹⁴ Like their appointment, they can be terminated only by the Government.¹⁵ They can also resign from their offices by notifying the government at least three months ahead.¹⁶ However, they have to continue the office until the resignation is accepted by the Government. Practically, the Government enjoys unfettered power in terms of appointment, resignation and dismissal of the Chairman and the Commissioners in the BSEC.¹⁷

The BSEC is a statutory body attached to the Ministry of Finance. It has perpetual succession and a common seal, and holds the power to acquire, hold and transfer of properties, both movable and immovable, and can sue on its behalf and can be sued upon.¹⁸ It is the main regulatory institution that controls and manages the capital market. It has been attributed with ample duty, power and responsibility under the securities laws and regulations of the land.

⁸ Ibid s 5(2).

⁹ Ibid s 5.

¹⁰ Ibid d 5(5).

¹¹ Ibid s 9.

¹² Ibid s 5(1).

¹³ Ibid.

¹⁴ Ibid s 5(6).

¹⁵ Ibid s 5(7).

¹⁶ Ibid s 5(7).

¹⁷ Ibid s 4.

¹⁸ Ibid s 3(2).

4.3. Missions and Functions of the BSEC

The missions and functions of the BSEC are to protect the interests of securities investors, to develop and maintain fair, transparent and efficient securities markets and to ensure proper issuance of securities and compliance with the securities laws.¹⁹ For the implementation of the aforesaid missions, the BSEC can carry out any functions and activities as long as they don't prejudice the aforesaid missions. Its functions are very wide in the manner as provided under law.²⁰ It can regulate the business of stock exchange or any securities market. In doing so, it can take any decisions, steps, carry out any functions and activities which are necessary for the effective regulation and governance of stock market.²¹

It can regulate the market intermediaries i.e. 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 associated with the securities market by stipulating regulations, procedures, formalities and describing their functions, roles and activities.²²

As stated earlier, no intermediary can operate in the market except without the permission or consent of the BSEC.²³ In order to operate in the securities market, the intermediary has to obtain mandatory registration from the BSEC in compliance with all the provisions of law. It is not only the supervising authority of all other market intermediaries in the capital market but also their controlling authority.²⁴ It also has the task to develop, monitor and regulate all authorized self-regulatory organizations.

Only the securities approved by the BSEC can be traded in the market.²⁵ The BSEC also regulates the issues related to any type of collective investment schemes like mutual funds. To regulate the collective investment schemes, the BSEC can also provide any guidelines,

¹⁹ Ibid s 8(1).

²⁰ Ibid s 8(2).

²¹ The Securities and Exchange Ordinance, 1969 s 3.

²² The Securities and Exchange Commission Act, 1993 s 8.

²³ Ibid.

²⁴ Ibid.

²⁵ The Securities and Exchange Ordinance, 1969 s 3.

directives, notifications or circulars as may be necessary for the effective regulation of the collective investment schemes in the securities market.²⁶

The BSEC is also authorized to take proper steps prohibiting fraudulent and unfair business related to securities or securities markets;²⁷ promoting investment related education and training of all segments of the securities market; prohibiting insider trading in securities;²⁸ and regulating substantial acquisition of shares or stocks and take-over or control of companies. It can call 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 compiling, analyzing and publishing information related to the financial performance of issuer of securities. It can impose fees or other charges to accomplish the purposes of as authorized by law. It can do research and publish information and data to fulfill the above purposes; etc.²⁹

It can also supervise and regulate the activities of clearing corporations established for the settlement of transaction of securities including derivatives, etc. It also possesses the power to conduct enquiry and inspection into matter related to securities market.³⁰ The BSEC may seek information regarding bank account from any bank, insurance company and financial institution or other authority so far as the same relates to the transaction of security in conducting enquiry by informing the Bangladesh Bank.³¹ It can also enter into any agreement, dealings, transaction and act in cooperation with other authorities, domestic or foreign. To that effect, it can sign agreements related to securities transaction, exchange of information and cooperation with local and foreign authority or organization after taking prior approval of the government.³²

In short, it can be said that the BSEC can perform any functions and duties as prescribed by the related laws and regulations in order to achieve the objectives and accomplish the

²⁶ Ibid s 9.

²⁷ Ibid s 17.

²⁸ Ibid s 13.

²⁹ The BSEC can exercise and carry out all powers and functions as provided under the Securities and Exchange Ordinance, 1969 and the Securities and Exchange Commission Act, 1993 along with such other laws and regulations which authorized the BSEC to exercise such powers and functions as specified thereon.

³⁰ The Securities and Exchange Ordinance, 1969 s 21.

³¹ It was not in the original statute. It was inserted by the Securities and Exchange (Amendment) Act, 2012, published in the official gazette on December 10, 2012. This provision was inserted after the stock market crash 2010-2011.

[The Securities and Exchange Ordinance, 1969 s 21(2a)].

³² Ibid.

missions behind the establishment of the BSEC. The BSEC has wide-ranging powers and jurisdiction in the securities markets. For the regulation, maintenance, control and supervision of the capital market, the BSEC can exercise ample authority as provided under law. Practically, it is answerable to none except the Government. Some of its important functions, powers, obligations and activities will be discussed in details in continuation with the instant.

4.4. Working Departments of the BSEC

To carry out the functions and activities of the BSEC and to accomplish its missions, there are several departments working under different heads. These are, (i) Administration and Finance Department³³, (ii) Capital Issue Department³⁴ (iii) Capital Market Regulatory Reforms and Compliance Department³⁵, (iv) the Central Depository System Department,³⁶ (v) Chairman's Office,³⁷ (vi) Corporate Finance Department,³⁸ (vii) Enforcement Department, (viii) Financial Literacy Department, (ix) International Affairs Department, (x) Law Department, (xi) Management Information Systems Department,³⁹ (xii) Department for Special Purpose Vehicle, (xiii) Registration and Licensing Department, (xiv) Research and Development Department,⁴⁰ (xv) Department for Supervision and Regulation of Markets and Issuer Companies,⁴¹ (xvi) Supervision and Regulation of Intermediaries Department,⁴² and (xvii) Surveillance Department. There is also another department for implementing the ADB Project calling ADB Project: Improvement of Capital Market Governance.⁴³

Amongst the above, the Administrative and Finance Department is mainly entrusted with the internal administrative regulation of the BSEC. The department deals with human resources, all sorts of logistical activities, day to day executive functions as well as finance

³³ In short A&F Department under the BSEC.

³⁴ Earlier it was known as the Initial Public Offering Department.

³⁵ In short the CMRRC Department.

³⁶ In short the CDS Department.

³⁷ Function of the department is to conduct Commission Meeting and Coordination Meeting.

³⁸ In short CFD.

³⁹ In short the MIS Department.

⁴⁰ In short the R&D Department.

⁴¹ In short SRMIC Department.

⁴² In short SRI Department.

⁴³ The project is a loan project financed by Asian Development Bank under the Improvement of Capital Market and Insurance Governance Project ADB TA Loan-2232 BAN. Main objective of the project is the development of the capital market in Bangladesh.

and accounts. It looks after the administration and internal governance of the employers and employees of the BSEC. As a part of its administrative functions, the administration officials perform activities regarding correspondence with concerned ministries, recruitment and training of human resources, procurement, motor pool etc. In connection with financial activities, finance and accounts officials prepare budget and financial statement of the BSEC, collect revenue and disburse payments, maintain Gratuity/Pension Fund, General and Contributory Provident Fund etc. Besides, the MIS⁴⁴ also carries out the administrative functions by managing a computerized data system about all the functions under the BSEC.⁴⁵

The international affairs department is for the maintenance of foreign relationships and promotion of foreign investment in our capital market. It is also concerned with maintaining relationship with all the capital market regulators of the world and constant liaison with the International Organization of Securities Commissions (IOSCO), including all its Committees and Working Groups.

Apart from the aforesaid two departments, the other departments are involved in the business of capital market. Each department has its distinctive power, functions, obligations and role to play; however all the departments together construct the BSEC and contribute in the capital market regulation by the BSEC. So their roles should be taken as conjunctives. Some of their important roles are related entirely to the regulation and supervision of the securities market and will be discussed separately with more elaboration while analyzing the power, obligations and jurisdiction of the BSEC.

4.5. Control over the Issue of Capital

No issuer can issue share or make any public offer of share for selling in the stock market in Bangladesh without the consent of the BSEC, and no issuer company registered in Bangladesh can make an issue of capital outside Bangladesh without obtaining prior permission from the BSEC.⁴⁶ Similarly, 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

⁴⁴ Management Information System (MIS).

⁴⁵ Functions of MIS department are development of automation for assisting different departments' activities, development of capital market monitoring system based on computerized data analysis, informing all about securities laws and other related matters through its website www.secbd.org, planning, operating, administering and supporting IT infrastructure at the BSEC and assisting the BSEC in related areas.

⁴⁶ The Securities and Exchange Ordinance, 1969 s 2B.

Bangladesh or elsewhere unless the consent or recognition of the BSEC has been accorded to such issue of capital.⁴⁷ The Capital Issue Department (Initial Public Offering) is responsible for granting permission to issue capital.⁴⁸ Therefore, the Capital Issue Department carries very important role in the market.

In order to collect money from the public by issuing equity securities or debt securities through public offering and also issuing the same in stock market, the issuer company has to go through several procedures in compliance with the provisions law. To enhance paid up capital, the issuer company has to follow the prescribed sets of rules by the BSEC who mainly gives permission to enhance paid up capital by the company basing on the documents submitted by the company. While giving permission for enhancement of paid up capital, the BSEC imposes certain conditions in the sanction paper in the manner it deems fit in accordance with law.⁴⁹ Under law, to have control over issue of capital, prospectus, other documents and purchase of securities, the BSEC enjoys unfettered power to impose conditions under Section 2CC of the Securities and Exchange Ordinance, 1969.⁵⁰ This power to impose conditions is unfettered and unconditional. Therefore, it has ample scope to abuse this power.

The aforesaid Section was challenged in writ petitions filed by some companies impugning a directive issued by the BSEC imposing upon the directors of public limited companies to have mandatory 2% shares in the company. The lawyers argued that this Section vests unfettered powers and jurisdictions upon the BSEC to impose any kind of condition (be it logical or illogical, be it contradictory to the Companies Act, 1994) in respect of its powers and control over issue of capital, prospectus, other documents and purchase of securities under Section 2A, 2B and 2C of the said Ordinance. Their main submission before the Court was that Section 2CC delegated unguided and unfettered power to the BSEC to pass any directive that can override or negate any legislature.

⁴⁷ Ibid s 2C.

⁴⁸ It accords consent to issue equity and debt securities through initial public offer and also other than public offer. Public and private limited companies are required to take consent of the BSEC for raising capital whose capital exceeds Tk. 10 million and Tk. 100 million respectively. This department also approves the issuance of listed companies' rights share and repeat public offer.

⁴⁹ The Securities and Exchange Ordinance, 1969 s 2C.

⁵⁰ Section 2CC provides that "Notwithstanding anything contained in the Companies Act, 1994 (Act No. 18 of 1994) 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".

Moreover, Section 2CC was not in the original Ordinance. It was inserted after 1996 stock market crash by an amendment in 1997 but there is no guideline or criteria, under which the BSEC can exercise its ample power under the section. Learned Senior Advocate Dr Kamal Hossain⁵¹ opined that such ‘notwithstanding anything contained in other laws’ concept is a martial law concept.⁵²

Learned Senior Advocate Mahmudul Islam⁵³ said that the securities regulator was delegated ample power to exercise the Section 2CC arbitrarily as there was no condition or guideline in exercising the section by the BSEC. Under the section, the BSEC can impose 10 per cent mandatory share holding directive or anything arbitrarily, he argued before the Court.⁵⁴

Opposing the aforesaid arguments of petitioners’ lawyers about “no guideline”, learned Attorney General Mahbubey Alam told the Court, ‘the purpose of the Section 2CC is very clear’. Referring the Preamble of the Ordinance, he said that the law was made to protect interests of the investors and regulate the stock market properly. Section 2CC was inserted in the law long ago; in the meantime, the BSEC passed many orders/directives/notifications under this section, he said. If any order is passed for examining the 2CC, a wrong signal will reach to the share market and there will be devastating affect in the market, the Attorney General added.⁵⁵

Anyway, after hearing the parties and perusing the documents, a Division Bench of the Hon’ble High Court Division delivered the verdict after rejecting five petitions filed by 24 sponsors and directors of five listed firms challenging the legality of the aforesaid Section 2CC. The learned Attorney General Mahbubey Alam told journalists that the Section 2CC is legal and not unconstitutional. He said that “the SEC can impose conditions on listed companies for the interest of the market as well as the investors,” and further added that

⁵¹ A famous lawyer in Bangladesh. He was a former member of the Constituent Assembly in Bangladesh.

⁵² Published by Akhtar Imam & Associates, A Law Firm in Bangladesh (online) 4 June 2012. <<http://www.akhtarimam.com/high-court-questions-legality-of-sec-2cc-of-seo-1969/>> (21.11.2015).

⁵³ A famous senior lawyer in Bangladesh. He has famous books on Constitutional Law of Bangladesh, Interpretation of Statutes and the Code of Civil Procedure, 1908.

⁵⁴ Published by Akhtar Imam & Associates, A Law Firm in Bangladesh (online) 4 June 2012.

<<http://www.akhtarimam.com/high-court-questions-legality-of-sec-2cc-of-seo-1969/>> (21.11.2015).

⁵⁵ Ibid.

the Section 2CC will be helpful in ensuring accountability and transparency in the stock market.⁵⁶

Though the BSEC enjoys unfettered and unconditional power to impose any condition upon the listed corporation while exercising power under section 2A, 2B and 2C for ensuing control over issue of capital, prospectus, other documents and purchase of securities, it is expected that the BSEC will only exercise it for the benefit of the investors and ensuring better regulation in the capital market. The perspective of inserting this Section was the historic stock market scam that occurred in the 1996. After that massive fall, the BSEC started imposing more rigorous conditions upon the issuers for issuing prospectus and coming with IPO. Till 2012, this section was not challenged by anyone. But it was challenged in 2012 when the BSEC issued a common directive for all requiring that a director shall have at least 2% for being qualified a director in a listed company. It became a tragic concern for all because it somehow prevented the directors from selling their shares up-to a minimum level and leaving the market. This directive is still in force.

It is pertinent to mention that at the time of granting permission to enhance paid up capital, the BSEC mainly rely on the documents submitted by the company. In doing so, the BSEC generally does not do any field inspection or physical verification of these documents though it calls for any information and documents as needed. These documents are highly important because these provide a complete scenario of the management, board of directors, accountants, financial situation, yearly turnover, financial record of past few years, company's prospect and earning per share, etc. These documents may often be misleading, false and completely different from the real financial condition and management of the company. Moreover, there is no provision in law regarding their strict obligation of fair and true disclosure of all information in the documents, and there is no provision obliging them to face rigorous legal consequences for any manipulation, misuse, fraudulent activity or illegalities with the permission accorded by the company.

Simultaneously, for issuing shares, the issuer company has to obtain permission/consent for the prospectus or any document in lieu of prospectus from the BSEC who enjoys absolute control over the prospectus or prospectus like documents.⁵⁷ It can examine

⁵⁶ Ibid 22 June 2012.

<<http://www.akhtarimam.com/high-court-upholds-security-exchange-commission-power/>> (21.11.2015).

⁵⁷ The Securities and Exchange Ordinance, 1969 s 2B.

whether the issuer company has complied with all the procedures under law and whether the issuer company has followed all the requirements in the prescribed manner or whether the issuer has not concealed true information. The issue of giving permission or not, it totally depends on the satisfaction of the BSEC who can impose extra conditions along with these as contained expressly in the law.⁵⁸ Similarly, it can exempt and condone contraventions specified in the official gazette.⁵⁹ It also possesses the power to call for information about the accounts, books or other documents or such other information as the BSEC thinks fit and proper.⁶⁰ In providing information, no person shall provide any documents which he knows or has reasonable believe to know that information or document to be false or not true in any material particular.⁶¹

The listed companies also have several reporting obligations regarding compliance with the provisions of the securities laws. The Corporate Finance Department (CFD) supervises and monitors the listed companies after issuance of primary shares in light of the securities laws.⁶² It oversees the reporting obligations of the issuers, submission of audited financial statements in time, submission of half yearly financial statements and annual reports/minutes, examination of the aforesaid financial statements and reports/minutes, appointment of statutory auditors in compliance with securities laws, utilization of fund (IPO and Rights), compliance of conditions of notification regarding corporate governance, compliance of other securities laws, supervision and follow-up of the special audits conducted by the BSEC, and review of existing securities laws, rules and regulations concerning CFD and proposed amendments thereto. This Department is concerned with the post compliance obligations of law by the issuers, which are vital in monitoring whether the issuer company is acting in accordance with law. If this Department work properly and actively, no issuer company may avoid the provision of law regarding post compliance obligations.

The provisions of the securities laws and conditions imposed by the BSEC have primacy in giving permission to prospectus or any document in lieu of prospectus notwithstanding anything contained in any other law or the Companies Act, 1994. No other authority can

⁵⁸ Ibid s 2C.

⁵⁹ Ibid s 2D.

⁶⁰ Ibid s 2E.

⁶¹ Ibid s 2F.

⁶² <<http://www.sec bd.org/>> (23.04.2016).

interfere into this. Any false or fraudulent information published in the prospectus warrants both civil and criminal liability as provided under the Companies Act, 1994. The issue of prospectus relates to the public issue of shares and investors protection, which will be examined later in relevant chapter.

4.6. Control over the Market Intermediaries

No market intermediary can operate in the stock market without the prior approval from the BSEC.⁶³ No stock exchange or stock market can be created without the prior permission of the BSEC.⁶⁴ The Regulating and Licensing Department is authorized to register, renew or give license to the market intermediaries in the market.⁶⁵ It can inspect into the accounts and activities of the stock exchanges and also call for information or explanation about any of its activities and official at any reasonable time. It has the power to cancel the registration or keep the business of the any stock exchange suspended. This power can also be exercised by the BSEC with any other intermediary in the securities market.⁶⁶

Besides, the Supervision and Regulation of Intermediaries (SRI) Department is responsible for the controlling, monitoring and supervising the functions and affairs of all the market intermediaries in handling the transaction in the securities market. It is a multi-tasking department. The functions of this department include the supervision of performing activities of merchant bankers, stock dealers/stock brokers, depository participants, security custodian banks, merchant bankers, security lenders and borrowers and other market intermediaries.

In addition, the Central Depository Department (CDS) supervises and regulates the activities of the depositories, clearing houses and central depository.⁶⁷ It does not only

⁶³ The Securities and Exchange Commission Act, 1993 ss 8(2)(ka) and 10.

⁶⁴ Ibid s 8(2)(kha).

⁶⁵ Registration and Licensing Department looks after registration, licensing and renewal of all stock brokers, stock dealers, merchant bankers, credit rating agencies, depository participants, authorized representatives, asset management companies, trustees, custodians, and permission regarding branch opening of stock brokers. Licensing of intermediaries helps the Commission to discharge its oversight functions more effectively.

⁶⁶ The Securities and Exchange Commission Act, 1993 s 8.

⁶⁷ Central Depository System (CDS) department supervises activities of Central Depository Bangladesh Limited (CDBL), activities of depository participants, dematerialization of listed companies' shares under depository system, issue and transfer of securities in dematerialized form, beneficiary owners (BO) accounts, and issue order/notification etc. related to depository system, under the Depository Act, 1999, the Depository Regulation, 2000 and Depository (User) Regulation 2003.

supervise whether the depositories or market intermediaries are keeping the trading report updated but also oversees their internal and external functions, management, activities and affairs. It regulates the activities of the clearing corporations established for settlement of the securities transaction including derivatives.⁶⁸

The Supervision and Regulation of Markets and Issuer Companies Department⁶⁹ also carry out an important role in supervising the conduct and activities of the issuers in the market. For securing the best interest of the investors thus shareholders in the secondary market, it is highly pertinent to check the activity of the issuer companies time to time. Whether the issuer company is holding annual general meeting (AGM), declaring dividend, submitting reports to the BSEC, maintaining up-to-date records of the accounts and management of the companies or performing other formalities in dealing with the market intermediaries as prescribed under law are to be checked and monitored. The Supervision and Regulation of Markets and Issuer Companies Department supervise stock exchanges and deals with complaints lodged against issuer companies as per securities laws.

In relation to dealing with the different kinds of securities and accumulated security scheme, the BSEC is concerned with the control over the securities like mutual fund. The Departments of Mutual Fund and Special Purpose Vehicle deals with the registration of mutual funds and special purpose vehicles, their monitoring, supervision and compliance, and any other function related to them. The BSEC can also regulate the business of investment advisers and investment companies in such manner as may be prescribed.⁷⁰ It also possesses the power to regulate the business of Commodity Futures Contract⁷¹ or Options Contract, in the Commodity Exchange in such manner and on payment of such fees and charges as may be prescribed.⁷²

4.7. Some Important Regulations Governing the Stock Exchanges

⁶⁸ <<http://www.sec bd.org/>> (26.04.2016).

⁶⁹ The functions of this department include monitoring of declaration about sale/purchase/transfer of securities by the sponsor /director of the listed companies, monitoring of monthly shareholding position of sponsors/directors, monitoring of disclosure of price sensitive information of listed companies, approval of transfer of shares of listed companies outside the stock exchange, monitoring all activities of stock exchanges (except securities transactions), taking effective measure to address complaints against issuer, monitoring of AGMs/EGMs and dividend payments for all listed companies.

⁷⁰ The Securities and Exchange Ordinance, 1969 s 32.

⁷¹ “Commodity Exchange” means a company that provides or, proposes to provide, the physical facilities necessary for trading in Commodity Futures Contract or Options Contract.

⁷² The Securities and Exchange Ordinance, 1969 s 33.

As stated earlier, no stock exchange can do business as stock exchange without being registered as a stock exchange under the BSEC.⁷³ There are two exchanges in Bangladesh i.e. the Dhaka Stock Exchange (DSE) and the Chittagong Stock Exchange (CSE). Both the stock exchanges are public limited companies registered under the laws of Bangladesh operating business with the permission of the BSEC.

The first eligibility criteria of securing permission for any stock exchange is to fulfill the conditions as prescribed in order to ensure fair dealings and to protect investors in the securities market.⁷⁴ In addition to this, the BSEC can impose any conditions related to the establishment and regulation of the stock market.⁷⁵ Stock exchanges are also subject to reporting to the BSEC about its all functions, affairs, financial statements, annual reports, returns and other things.⁷⁶ The BSEC can also inquire into the business of the stock exchanges and also call for information when require in writing.

The BSEC can also suspend or rescind the business of the stock exchanges and cancel their registration and can remove any director, officer or member of the stock exchanges or can supersede the governing body of the stock exchange. Any such decision shall be informed in writing to the concerned stock exchange. No such decision of rescission, suspension or removal shall be taken by the BSEC unless without giving the concerned stock exchange a reasonable opportunity to be heard. However, such decision can be taken when the BSEC is of the opinion that the stock exchange or its any member, director or officer has contravened the provision of laws or neglected the provisions of laws or failed to comply with the provisions of laws or when the BSEC considers it necessary to rescind, remove or suspend for the protection of investors or to ensure fair dealings or fair administration of the stock exchanges.⁷⁷

⁷³ No Stock Exchange shall operate or carry on its functions, and no person shall use or utilize, 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.

[The Securities and Exchange Ordinance, 1969 s 3].

⁷⁴ Ibid ss 4-5.

⁷⁵ Ibid.

⁷⁶ Ibid s 6.

⁷⁷ Ibid s 7.

The stock exchanges shall have to inform the BSEC of any listing or trading of security or doing business of any kind of security in the stock market.⁷⁸ Without the permission of the BSEC, no security can be dealt with by the stock exchanges. However, any issuer applicant wishing to enlist any security with the stock exchange shall have to file an application in the prescribed manner and send a copy to the BSEC.⁷⁹ In case of refusing to enlist any security by the stock exchange, the BSEC can direct the stock exchange to enlist it either on its own motion or on the application of the issuer applicant. The BSEC can also direct the applicant to correct the deficiency, if any is found in the application. The BSEC can also direct the stock exchange to enlist any security compulsorily.⁸⁰ Simultaneously, if the stock exchange refuses to delist any security, the BSEC can direct the stock exchange to delist the security. The BSEC or the stock exchange can suspend trading of any security for the interest of the trading or for the interest of the public at large.⁸¹

4.8. Promoting Market related Knowledge

One of the main purposes and functions of the BSEC is to disseminate securities market related knowledge amongst all, thus to enable the investors to make their own choices in investing by applying their own knowledge based on market realities. To educate the investors with sufficient information of the ongoing of the market, the BSEC can undertake multiple educational programmes, trainings, seminars, symposiums, dialogue and other learning lessons for the investors. It can also publish research materials, journals, reports and other things of enlightening value to the investors. It encourages doing research on securities market.

The BSEC also has a research and publication department called the Research and Development Department. To impart capital market related knowledge, the BSEC has recently opened another department called Financial Literacy Department for extending capital market related knowledge all around Bangladesh.⁸² This is a praiseworthy attempt,

⁷⁸ Ibid s 9.

⁷⁹ Ibid.

⁸⁰ Ibid s 10.

⁸¹ Ibid s 9(7).

⁸² Financial Literacy department deals with training, education and allied matter related to Nationwide Financial Literacy Program of the BSEC. The vision of the Financial Literacy Program is to provide financial education to each and every people of Bangladesh. More precisely, the BSEC wants to make individuals understood at their level of needs, the role of money in their lives, the need and use of savings,

and several educational programmes and trainings have already been launched under this Department. For the promotion and dissemination of knowledge of the capital market, the BSEC framed Bangladesh Securities and Exchange Commission (Promotion of Investment Education and Training) Rules, 2016, which is also praiseworthy.

This Department conducts investors' education program twice a month for the general investors, organize capital market related presentation/seminar for various government and non-government organizations, deals with the BSEC's various publications like annual report (Bangla and English), quarterly report (Bangla and English), quarterly Bangla news, furnishes various reports and information to the Government and other institutions including Ministry of Finance and different regulatory authorities.

4.9. Power for the Regulations of the Issuer

As stated earlier, no issuer can issue shares to deal with the stock exchanges without the express permission of the BSEC. Every issuer company shall have to submit an annual report of its affairs and such statements and other reports as may be prescribed to the stock exchanges and the BSEC. The issuer is also under obligation to submit any other documents or information as required or prescribed by the BSEC time to time.⁸³

Moreover, every director or officer of an issuer who is or has been the beneficial owner of any class of its listed equity securities or who is directly or indirectly the beneficial owner of more than ten per cent of any class of such securities shall submit returns pertaining to the beneficial ownership of such securities in such form and at such times or at such intervals as may be prescribed.⁸⁴ In case of acquiring any benefit by sale or purchase, or purchase or sale 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, though it shall apply to a security acquired in good faith in satisfaction of a debt previously contracted. If they fail or neglect to tender, or the issuer fails to recover, any

the advantages of using formal financial sectors, various ways to convert their savings into investments, develop self-protection through understanding risks and a realistic recognition of the attributes of these options. Financial literacy gives the twin benefit of protecting from financial frauds as well as planning for financially secured future. Financial literacy gives consumers the necessary knowledge and skills required to assess the suitability of various financial products and investment opportunities available in the financial market.

⁸³ Ibid s 11.

⁸⁴ Ibid s 12.

such gain 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 BSEC who may recover the same as an arrear of land revenue as public demand.⁸⁵

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 practice directly or indirectly short-selling such securities.⁸⁶ Short-selling is a sort of transaction by a trader of any security borrowed from others at the stage when there is high possibility of price declination of that security.

Investopedia defines short-selling is the sale of a security that is not owned by the seller, or that the seller has borrowed.⁸⁷ Short selling is motivated by the belief that a security's price will decline, enabling it to be bought back at a lower price to make a profit. Short selling may be prompted by speculation, or by the desire to hedge⁸⁸ the downside risk⁸⁹ of a long position⁹⁰ in the same security or a related one. Since the risk of loss on a short sale is theoretically infinite, short selling should only be used by experienced traders who are familiar with its risks. Short-selling is a risky endeavor, and is often prevented in market to stop the price steep up.

⁸⁵ Ibid s 14.

⁸⁶ Ibid s 13.

⁸⁷ <<http://www.investopedia.com/terms/s/shortselling.asp>> (28.10.2016).

⁸⁸ A hedge is an investment to reduce the risk of adverse price movements in an asset. Normally, a hedge consists of taking an offsetting position in a related security, such as a futures contract. <<http://www.investopedia.com/terms/h/hedge.asp>> (14.03.2016).

⁸⁹ Downside risk is an estimation of a security's potential to suffer a decline in value if the market conditions change, or the amount of loss that could be sustained as a result of the decline. Depending on the measure used, downside risk explains a worst case scenario for an investment or indicates how much the investor stands to lose. Some investments have a finite amount of downside risk, while others have infinite risk. The purchase of a stock, for example, has a finite amount of downside risk; the investor can lose his entire investment. A short position of a stock, however, as accomplished through a short sale entails unlimited downside risk, since the price of the security could continue rising indefinitely.

⁹⁰ A long (or long position) is the buying of a security such as a stock, commodity or currency with the expectation the asset will rise in value. In the context of options, it is the buying of an options contract. A long position is the opposite of a short (or short position). Buying a call (or put) options contract from an options writer entitles you the right, not the obligation, to buy (or sell) a specific commodity or asset for a specified amount at a specified date. With a long position investment, the investor purchases a commodity and owns it with the expectation the price is going to rise. He normally has no plan to sell the commodity in the near future. A key component of long position investment is the ownership of the stock or bond. This contrasts with the short position investment, where an investor does not own the stock but borrows it with the expectation of selling it and then repurchasing it at a lower price. A key difference between a long position and a short position in investments is what the investor expects to happen to the price of a commodity.

<<http://www.investopedia.com/terms/l/long.asp>> (14.03.2016).

4.10. Power to Delegate

The BSEC can delegate its powers to any of its officer or authority subject to such limitation, restriction or condition as the BSEC think fit and proper through an official gazette.⁹¹ The delegation of power absolutely depends on the discretion of the BSEC. No one can ask for delegation, nor is the BSEC bound to delegate its power. The delegation may be made for the carrying out of one or more purposes. The terms and conditions and to extent of power to be delegated depends on the BSEC.

4.11. Market Surveillance

Market surveillance includes the overall supervision and scrutiny of the activities of all the intermediaries and other market players in the securities market. The Surveillance Department of the BSEC keeps vigil on securities transaction in Bangladesh. To identify unlawful trading activities, surveillance department watch and analyze the trading in both the stock exchanges through on-line and off-line surveillance system and prepare daily, weekly and monthly trade reports at the end of trading by pointing market condition and observation of surveillance officials. In order to ensure proper compliance of securities related laws, surveillance department conducts investigation and enquiry against involving parties regarding market manipulation, insider trading and other malpractices, if any; but to what extent the BSEC is successful in preventing insider trading or disclosing of price sensitive information and other malpractices in the market is questionable.⁹²

The main purposes of the said activities are to ensure fair-trading and develop confidence amongst the investors of the securities market. It's most important function is that of overseeing the market. Sadly, it fails to carry out its duties and responsibilities, which

⁹¹ The Securities and Exchange Ordinance, 1969 s 28.

⁹² It is reported by the CPD that "Price-sensitive information are supposed to be made public through daily trading operations. However, it is seen that such information is leaked out earlier or rumours are intentionally spread to influence the market. It was reported that stock brokers and their employees, and sometimes even officials within the SEC were involved in spreading rumours. Leaking transaction-related information to influential quarters from different offices such as DSE/CSE, or monitoring, surveillance and information technology (IT) departments, and even from the Central Depository Bangladesh Limited (CDBL) was not uncommon. About 80 per cent business executives stated in a recent survey that insider trading is pervasive in the country's stock market (CPD 2011c). Weak monitoring and enforcement of existing rules as well as absence of specific rules related to these practices help manipulate the market, and act as a major obstacle for rule-based operation of the market.

Khondaker Golam Moazzem and Md. Tariqur Rahman, "Stabilizing the Capital Market of Bangladesh: Addressing the Structural, Institutional and Operational Issues" (2012), *CPD Working Paper: 95Centre for Policy Dialogue (CPD)* 4.

<http://www.cpd.org.bd/pub_attach/WP95.pdf> (24.02.2016).

were acutely criticized in the Probe Committee Report, 2011.⁹³ The Probe Committee Report disclosed through several case studies that the BSEC failed vehemently in ensuring proper market surveillance through the years and how the surveillance department was inefficient and corrupted.

For example: one account holder or a trader should have a single BO (beneficiary owner) account for market trade, but it is often observed that one trader has many accounts. It is suspected that a trader having multiple BO Accounts may be involved in wrongful gain and doubtful transaction. It is reported by the Centre for Policy Dialogue (CPD) that “there is serious dearth of transparency in terms of using the Beneficiary Owner (BO) accounts. This includes the use of multiple accounts by an accountholder over the authorized number of accounts, authenticity of information about the accountholders, and misreporting of income earned through capital market in the annual income statement submitted to the National Board of Revenue (NBR). CPD (2011b) reported that there was a tendency among a large number of market participants to hold accounts beyond the stipulated level (i.e. two accounts). This is maintained in order to take advantage of multiple transactions and make windfall gain. It was found among the samples selected by the Probe Committee that one investor was involved in DSE transactions through as many as 12 BO accounts. Appendix Table 1 explains how an investor had maintained so many multiple accounts with fictitious personal information. This hints to some serious procedural weaknesses involving registration and opening of accounts, the process of scrutiny that is followed to check the authenticity of information about accountholders, and about the absence of appropriate mechanisms to share information with the NBR. Establishing transparency in the use of BO accounts is one of the most critical challenges for the regulatory body of the capital market of Bangladesh.”⁹⁴

⁹³ The Report disclosed that one of main functions of the BSEC is to supervise the market activity regularly and to give effect its market surveillance and enforcement function properly; but the BSEC failed to do so during 2009-2010. It appears that during 2009-2010 stock market crash, the market surveillance and enforcement functionaries of the BSEC was not working properly. Some examples are given in the case studies of this Report.

The Probe Committee, *Share Market Inquiry Report, 2011*, Inquiry Report (2011) 54.

<http://www.mof.gov.bd/en/index.php?option=com_content&view=article&id=169&Itemid=1> (2.11.2016).

⁹⁴ Khondaker Golam Moazzem and Md. Tariqur Rahman, “Stabilizing the Capital Market of Bangladesh: Addressing the Structural, Institutional and Operational Issues” (2012), *CPD Working Paper: 95Centre for Policy Dialogue (CPD) 2-3*.

<http://www.cpd.org.bd/pub_attach/WP95.pdf> (24.02.2016).

It is further reported that “given the prevalence of unauthorized BO accounts, the opportunities to indulge in illegal activities such as serial trading is quite high. In the absence of proper monitoring, it is rather easy to manipulate market prices using several accounts with a view to create artificial demand for some shares at first, raise prices through hectic buying of the shares, and then selling these shares when small investors start to buy these shares, and thereby reap windfall gains within a short period of time”.⁹⁵

The BSEC adopted electronic market surveillance in late 2012, which is still under development. For proper and well-rounded market surveillance, high technological support, experts hands, modern equipments, latest software, own shadowing maintenance/watchdog and other modern supports are compulsory. A High standard market surveillance system is rather necessary for fair and transparent governance in the market. The BSEC’s surveillance system is still underway, so they are not technologically advanced, resourceful, or modern yet. However, the surveillance system is being updated. Special attention paid to the development of the system encompassing all the regulatory institutions, intermediaries and all market players in the market.

4.12. Legal Enforcement

The BSEC has its own arrangement for the legal enforcement of its powers and functions, and for carrying out the purposes which it is established for. It has a Law Department⁹⁶ that is authorized to formulate rules, directives, notifications and other guidelines, and also to direct the stock exchanges to frame regulations. It has the power to review the related laws and propose necessary corrections and In addition, The Capital Market Regulatory Reforms and Compliance Department (CMRRC)⁹⁷ proposes amendments of securities

⁹⁵ Ibid p 3.

⁹⁶ Functions of Legal department are assisting the lawyers engaged by the BSEC to conduct the cases filed by or against the BSEC in different courts, preparing written objection and statement on cases filed against the BSEC, preparing para wise comments on writ petition filed against the BSEC, signing case related documents with affidavit before the concerned officer of the court, preparing plaint/requisition for certificate cases, filing certificate cases and conducting these to realize the penalty imposed by the BSEC, vetting the letters, orders, directives sent from different departments of the BSEC and providing legal opinion on different matters sent from different departments of the BSEC.
<<http://www.secbd.org/>> (27.04.2017).

⁹⁷ The CMRRC department drafts amendments of securities laws, suggests reforms of the market and provides clarification.
<<http://www.secbd.org/>> (27.04.2017).

laws, applies the securities laws, prepares draft copies of new laws, suggests reforms of the market and provides clarifications.

Besides the BSEC contains an Enforcement Department⁹⁸ who also supervises the activities of the subordinate institutions and the market intermediaries. Under the Securities laws, it takes legal measures including imposition of penalty against those who breach/violate securities laws in consideration of nature of crimes they commit. Prior to taking measures, it follows due process, which includes giving the accused an opportunity to be heard. All departments of the BSEC send referral to Enforcement Department if they observe any violation of securities laws.

The CMRRC, Law Department and the Enforcement Department should be more proactive in amending the defective legal provisions and provide a comprehensive guideline for the capital market operation. Many of the rules, regulations and statutes in the capital market are complex, ambiguous, and not to mention clearly with expectation. The legal department should take a bold attempt to review all the securities laws and make the legal provisions easier and more accessible for the general people.

As a part of legal enforcement and also for maintaining order in the market, the BSEC plays role in filing cases against the perpetrators and also imposing punishment upon them. After the 2010-2011 stock market crash, several reformations have been brought upon the legal regime of Securities Market. Amongst others, one significant reformation is the, insertion of Section 25B of the Securities and Exchange Commission Ordinance, 1969 authorizing the Government for establishing one or more Tribunal for the purpose of this Ordinance. The Government can, by publication in the official gazette, establish one or more Tribunals consisting of a Sessions Judge or Additional Sessions Judge who shall exercise all the powers under the Code of Criminal Procedure, 1898.⁹⁹ However, no court including the Tribunal(s) shall take cognizance of any offence punishable under this Ordinance without receiving in writing, a report of the facts constituting the offence by an

⁹⁸ Under the Securities laws, the Enforcement Department takes legal measures including imposition of penalty against these who breach/violate securities laws in consideration of nature of crimes they commit. Prior to taking measures, it follows due process that includes giving the accused an opportunity to be heard. All departments of the BSEC send referral to Enforcement Department if they see any violation of securities laws.

<<http://www.secbd.org/>> (27.04.2017).

⁹⁹ The Securities and Exchange Ordinance, 1969 s 25B.

officer authorized in this behalf by the BSEC; and no court inferior to that of a Court of Session shall try any such offence.¹⁰⁰

The Government has already established a Tribunal under the Ordinance. There are about 40–50 cases currently pending before the Tribunal.¹⁰¹ The Law Department of the BSEC plays a very significant role in this regard. The function of the Legal department is to assist the lawyers engaged by the BSEC for the cases filed by or against the BSEC in different courts. It also helps by preparing necessary petitions/applications for the cases whether filed by the BSEC or against the BSEC, preparing paragraph wise comments on writ petition filed against the BSEC, signing case related documents with affidavit before the concerned officer of the court, preparing plaint/requisition for certificate cases, filing certificate cases and conducting these to realize the penalty imposed by the BSEC, vetting the letters, orders, directives sent from different departments of the BSEC and providing legal opinion on different matters sent from different departments of the BSEC.

According to January-March Quarterly Review, 2016 of the BSEC the following enforcement action was taken¹⁰²-

Against the Issuers		
Reasons for taking action against	Numbers of Issuers	Nature of Penalty
For not reflecting true and transparent information in the financial statement	12	Fine
Failure to comply with the securities laws		Fine
Failure to file audited financial report	34	Fine
Failure to file half yearly financial report	14	Fine
Failure to file quarterly financial report	30	Fine
Failure to comply with the securities laws in time	3	Warning
Total	93	
Against Stock Brokers/Stock Dealers		
Failure to comply with the securities laws	13	Warning
Failure to comply with the securities laws	4	Fine
Total	17	

¹⁰⁰ Ibid s 25.

¹⁰¹ Few details of these cases with up-to-date information are given in Chapter 9.

¹⁰² January-March Quarterly Review, 2016, *The Bangladesh Securities and Exchange Commission*, 29. <<http://www.secbd.org/>> (17.12.2016).

Against Others		
Failure to comply with the securities laws	3	Warning
Total	3	
In Total = 93+17+3 = 113		

And, the status of the cases filed by or against the BSEC is as follows¹⁰³ -

Sl. No.	Name of Court	Numbers of Cases	
1.	Supreme Court of Bangladesh	Appellate Division	17
		High Court Division	229
2.	Metropolitan Sessions Judge, Dhaka and Special Tribunal, BSEC, Dhaka.	20	
3.	District Judge, Joint District Judge and Assistant Judge, Dhaka.	11	
4.	Chief Metropolitan Magistrate, Dhaka.	6	
5.	Labor Court, Dhaka.	2	
6.	General Certificate Court, Dhaka.	244	
Number of Total Cases		519	

4.13. Power to Enquiry and Impose Penalty

a. Inquiry or Investigation

The power to conduct inquiry and investigation has been vested upon the BSEC under section 21 of the Securities and Exchange Ordinance, 1969 and section 17A of the Bangladesh Securities and Exchange Commission Act, 1993.

The BSEC has the power to conduct inquiry as a committee consisting of more than one person appointed on its behalf for this purpose in respect of the affairs of any stock exchange or of any issuer of a listed security, or 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.¹⁰⁴ The BSEC can conduct inquiry on its own motion when it thinks fit or in the case of the issuer of a listed security, on representation of holders of not less than five percent of equity securities at any time by

¹⁰³ Ibid p. 30.

¹⁰⁴ The Securities and Exchange Ordinance, 1969 s 21(1).

order in writing.¹⁰⁵ During enquiry, the BSEC can ask for information from the relevant authorities.¹⁰⁶

The course of conducting inquiry shall be deemed to be a judicial proceeding as meant under the Penal Code, 1860.¹⁰⁷ The BSEC also has the power to recover any expense incurred during an enquiry made under this section from the person or the institution against whose affairs, business or transaction, as the case may be, the enquiry was conducted on, or where the BSEC considers it to be appropriate, from the holders of securities making the representation.¹⁰⁸ Moreover, the relevant institutions, brought to question in the process of inquiry is also bound to provide necessary information and documents for the proper accomplishment of the inquiry.¹⁰⁹ The BSEC can ask for any information and documents regarding bank account from any bank, or any financial institution or organization informing the Bangladesh Bank so far as the information or documents are related to the transaction of security.

The person conducting an enquiry 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

¹⁰⁵ Ibid.

¹⁰⁶ Earlier the BSEC has no such jurisdiction. In 2012, through an amendment by the Securities and Exchange Commission Act, 2012 a new clause was inserted providing that “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.”

[The Securities and Exchange Commission Act, 1993 s 21(2)].

¹⁰⁷ Section 21(4)(c) provides that “...any proceedings before such person shall be deemed to be “judicial proceeding” within the meaning of sections 193 and 228 of the Penal Code (Act XLV of 1860).

[The Securities and Exchange Ordinance, 1969 s 21(4)(c)].

¹⁰⁸ Ibid s 21(5).

¹⁰⁹ Sub-section (2) of section 21 has been replaced by section 9 of the Securities and Exchange (Amendment) Act, 2012, published in the official gazette on December 10, 2012. This provision is inserted newly after experiencing the non-cooperation by the other institutions in supplying information and documents to the inquiry committee constituted after stock market scam 2010-2011. For legal assurance that the other institutions shall also under legal obligations to provide necessary information and documents in order to accelerating the inquiry process, this clause has been inserted. This clause read out as “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.”

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.¹¹⁰

The enquiring person shall have the right to enter into premise of relevant authority, demand documents, demand attendance of persons, examine witnesses and relevant persons. In doing so, the person holding enquiry will exercise the powers under the Code of Civil Procedure, 1908 (*shortly as the CPC*) in respect to issuing summons for attendance of a person before the Commission and enforcing him for such attendance to the Commission and examining him on oath or providing any information or submitting any necessary documents.¹¹¹

Therefore, in conducting the inquiry, the BSEC enjoys extensive power under the CPC, and the BSEC can basically conduct inquiry into any matters related to the activities of the market intermediaries and affairs of the securities market.¹¹²

b. Impose Penalty

The BSEC has the power to impose penalty in certain cases. This power broadens the powers of the BSEC and makes it more self-reliant. It enables the BSEC to punish the law violator to some extent. It can provides penalty on the following reasons¹¹³-

- (i) If any person refuses or fails to furnish any document, paper or information which he is required to furnish by or under the Ordinance; or
- (ii) If any person refuses or fails to comply with any order or direction of the BSEC made or issued under the Ordinance; or
- (iii) If any person contravenes or otherwise fails to comply with the provisions of the Ordinance.

In addition to the above, the BSEC can also impose penalty on the following grounds¹¹⁴-

- (iv) Failure to comply with any order or direction, or
- (v) Failure to provide any necessary information, or

¹¹⁰ The Securities and Exchange Ordinance, 1969 s 21(3).

¹¹¹ Ibid s 21(4).

¹¹² Ibid s 21.

¹¹³ Ibid s 22.

¹¹⁴ The Securities and Exchange Commission Act, 1993 s 18.

(vi) Failure to give necessary facilities to the person holding investigation or inquiry during such investigation or inquiry.

Before imposing any penalty the BSEC has to satisfy itself after giving the person ‘an opportunity to be heard’¹¹⁵ that the refusal, failure or contravention was willful. It has the authority to impose penalty of any sum not less than taka one lakh. In the case of continuous default, a further sum calculated at the rate of ten thousand taka can be imposed for every day after the issue of such order during which the refusal, failure or contravention continues.¹¹⁶ This amount can be recovered by the BSEC as an arrear of land revenue, which can be recovered as public demand. Double prosecution for an offence is prohibited in respect of the same facts on which a penalty has been imposed under Section 22 of the Securities and Exchange Ordinance, 1969.¹¹⁷

For the first time and after a long waiting, the BSEC held one of the said perpetrators liable and punished him with fine of Tk. 1 (one) crore. This is obviously a good start and will work as a lesson for others as well. On 29.10.2014 BSEC ‘fined BNP chairperson’s advisor Mosaddek Ali Falu Tk 1 crore (10 million) for his involvement in share price manipulation in 2010-11 share market scam’¹¹⁸. According to a BSEC press release, the watchdog body in its 530th regular meeting, with Commission Chairman Professor M Khairul Hossain in the chair, made the decision when it found the allegation against Falu to be true. The BSEC also found Falu’s clarification unacceptable on some allegations of unusual transactions in the stock market. The BSEC said that on the basis of the findings of Khondkar Ibrahim Khaled inquiry committee, it brought allegations against Falu. The BSEC conducted its own comprehensive and detailed investigation twice. It also received clarification from Falu on the allegation. After analyzing all the evidences, it was beyond doubt that Mosaddek Ali Falu had influenced the prices of shares of IFIC Bank Ltd and Beximco Ltd by creating artificial crisis through unusual transaction of the shares of the

¹¹⁵ Giving an opportunity to be heard is a part of natural justice process. The person accused must be given a chance to show the reason of his/her action behind. It means the accused person must be served with a notice for showing causes why he/she has violated or contravened the provision of law. This is for ensuring fairness and justice between the parties. If the causes shown by the accused person do not justify the act of violation or contravention, then he/she will be punished.

¹¹⁶ The Securities and Exchange Ordinance, 1969 s 22(1).

¹¹⁷ The Securities and Exchange Ordinance, 1969 s 22(3).

¹¹⁸ <<http://unb.com.bd/bsec-falu>> (23.11.2016).

‘Falu fined Tk 10 million for share market fraud’, *Bdnews24.com* (online) (last updated 29.10.2014).

<<http://bdnews24.com/business/2014/10/29/falu-fined-tk-10-million-for-share-market-fraud>> (23.03.2017).

two companies in his omnibus account. The BSEC also fined one Golam Mostafa Tk 3 crore for influencing share prices of Eastland Insurance, Navana CNG, Olympic Industries, Union Capital, LankaBangla Finance, and First Lease International. The BSEC imposed the penalty against the duo (Mosaddek Ali Falu and Golam Mostafa) as per Section 17 of Securities and Exchange Ordinance, 1969, said the press release.¹¹⁹

After this case, the BSEC also imposed penalty upon some other issuer companies who were involved in the 2010-2011 crash. Besides, nowadays the BSEC is quite active in imposing penalty upon any institution, issuer or intermediary for violation any provision of law or failure to comply with any order/direction given by the BSEC. It imposed penalty of Tk 25 lakh to Bangladesh General Insurance Company Limited (BGIC) and trustee of LR Global, Tk 5 lakh to Hoda Vasi Chowdhury & Co., auditor of LR Global Asset Management Company Limited and Tk 50 lakh to LR Global Asset Management Company Limited for non-compliance with the Securities and Exchange Commission (Mutual Fund) Rules 2001 and the Bangladesh Securities and Exchange Commission Act 1993.¹²⁰

As a part of exercising supervisory and regulatory authority upon all the market intermediaries, the BSEC is now trying to monitor their activities and roles regularly. However, the opposing opinions claim that the BSEC is arbitrary and callous in imposing penalty and punishment upon the issuer companies and the market intermediaries, which is widening the scope of corruption on the other way.

4.14. Power of Hearing Appeal, Review or Revision

The BSEC has the power to entertain appeal from any person aggrieved by any order passed by any officer or authority under the BSEC.¹²¹ The aggrieved person has to file appeal within such period and manner along with fees and necessary copies of appeal as prescribed by law. No person is generally allowed to file appeal after the period of limitation. However, if the BSEC is satisfied that there was sufficient reason for not enabling the aggrieved person filing the appeal in time, then the BSEC can condone the delay.

¹¹⁹ Ibid.

¹²⁰ 'BSEC Imposes Penalty to Cos', *The Daily Observer* (online) (31.03.2015). <<http://www.observerd.com/2015/03/31/80927.php>> (23.03.2017).

¹²¹ The Securities and Exchange Commission Act, 1993 s 21.

The decision given by the BSEC on appeal shall be final. Every appeal shall be disposed off in a manner as determined by the rules; and no appeal shall be disposed off without giving the appellant a reasonable opportunity to be heard. Any order passed in appeal can be reviewed by the BSEC on its own motion or on representation, and in such a case, decision of the Commission shall be final. However, the filing of appeal or any legal proceeding is subject to payment of 15% of such penalty if the appeal is filed against imposition of penalty by the BSEC.¹²²

An aggrieved person can file for revision against any order passed or made by an officer or authority subordinate to the BSEC under the Securities and Exchange Ordinance, 1966. The revision has to be filed within 90 days of the passing of the Order, and the revision order shall be final. Moreover, the BSEC has the authority to review its own orders on its own motion or on an application within a period of six months from the date of any order passed by it.¹²³ Therefore, only the BSEC has review its own order or decision, and it has the power to revise any the order passed by any authority or officer subordinate to it.

4.15. Power to Appoint Advisory Committee

The BSEC may, if it thinks fit for the purpose of obtaining advice and assistance in carrying out the objectives of the Securities and Exchange Ordinance, 1969 can appoint Advisory Committee consisting of such persons representing interests affected by the Ordinance or having special knowledge of the subject-matter thereof.¹²⁴

4.16. Power to Pass Prohibitory Orders

The BSEC has the power to pass any order prohibiting any person on the ground that the person is in the opinion of BSEC 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 the Ordinance or of any Rules made thereunder. The BSEC can also pass prohibitory orders against any person if it is satisfied that the person has neglected to do any act which

¹²² Section 18(2A) of the Securities and Exchange Commission Act, 1993 provides that 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 there under unless an amount of 15% (fifteen percent) of such penalty is deposited with the BSEC.

¹²³ The Securities and Exchange Ordinance, 1969 s 26.

¹²⁴ Ibid s 27.

the person is under obligation to do or does anything which is not supposed to do under law and such act or omission or failure to do constitute contravention. The BSEC can pass prohibitory orders by writing directing the 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.¹²⁵ The scope of passing prohibitory order by the BSEC is very wide. The BSEC is authorized to pass any kind of prohibitory order against any person who is doing anything or likely to do anything contravening to the provisions of the BSEC laws.

4.17. Power to make Rules and Regulations

The major source of securities law is the BSEC, who has the power to formulate rules and regulations for the governance of the securities market and the market intermediaries. Most of the rules and regulations regarding market intermediaries have been framed by the BSEC. The BSEC can formulate any Rules for giving effect to the purposes of the Ordinance, 1969 and also can direct the stock exchanges to frame regulations.¹²⁶ Section 34 of the Securities and Exchange Ordinance, 1969 empowers the stock exchanges to make regulations with the permission of the BSEC.

Before finalizing any rules and publishing the same in the official gazette, the BSEC has to publish the Rules in at least two Bangla and one English widely circulated daily newspapers of the country inviting opinions, suggestions or objections from any corner. It also has to make the same available on its official website. In doing so, a period of minimum two weeks time has to be given to the public. The BSEC can accept any recommendations or may discard after having discussion on it in the BSEC meeting.¹²⁷ The obligation of publishing the proposed Rules widely in the national newspapers for taking recommendations, opinions or suggestions is praiseworthy. It ensures transparency and accountability in framing legislations. It also makes the Rules more acceptable to the public. This process ensures public participation in the governance in the stock market. The BSEC can accept any recommendation, opinion or objection in the interest of public. Therefore, the BSEC is under a legal obligation to publish the proposed Rules widely before making it final though this obligation does not apply in case of approving the

¹²⁵ Ibid s 20.

¹²⁶ The Securities and Exchange Ordinance, 1969 s 33 and the Securities and Exchange Commission Act, 1993 s 24.

¹²⁷ The Securities and Exchange Ordinance, 1969 s 33.

regulations or formulating regulations proposed by the stock exchanges.¹²⁸ This is a major shortcoming which obstructs fairness, comprehensiveness and public participation in framing regulations by the stock exchanges while most of the laws governing capital market have come out from this source.

The power of framing Rules and Regulations held by the BSEC is of vital. It enables the BSEC to formulate Rules and empower stock exchanges for framing Regulations without taking any prior permission or approval from the Government or any other authority. In framing Rules and Regulations, the BSEC is the only superior authority. By exercising this power, the BSEC can meet all the challenges and come up with immediate solutions by framing Rules or Regulations. To get any Act of Parliament passed by the Parliament takes time.¹²⁹ To that effect, the BSEC can come up with immediate legal policy to tackle any situation and also to fill-up the legal vacuum in securities market by exercising this power.

The BSEC can, by an 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. In failure to comply with the direction of the BSEC within the specified period, the BSEC can on its own motion can may make or amend, with or without modifications, or rescind, any regulation directed to be made, amended or rescinded. A regulation so made, amended or rescinded by the BSEC shall be deemed to have been made, amended or rescinded by the Sock Exchange in accordance with the provisions of this section and shall have effect accordingly.¹³⁰

As stated earlier, the stock exchanges can also frame Regulations and publish the same through official gazettes in order to carry out the purposes under the aforesaid Ordinance. The Regulations shall take immediate effect upon such publications. Such Regulations can be formulated for many purposes, including for providing constitution, powers and functions of the governing body of the Stock Exchange, qualifications for membership of

¹²⁸ Ibid s 34.

¹²⁹ This power is highly important and necessary for the better regulation of the capital market. Enacting laws by the Parliament requires rigorous procedures and time while framing rules by the BSEC and regulations by the stock exchanges are easier and convenient. Exercising this power, the BSEC can meet the immediate demands in the capital market. In fact, most of the securities laws in Bangladesh have come out from this source. This power is apparently unfettered; however it is no so in reality, because any provision of any rules or regulation inconsistent to the parent law or the act of parliament can be challenged before the Court who can declare such rules/regulations illegal.

¹³⁰ The Securities and Exchange Ordinance, 1969 s 34(5).

the Stock Exchange, admission, suspension and expulsion of members, disciplinary matters, including punishment of the members¹³¹ and also for other purposes.¹³²

The stock exchanges can formulate such Regulations by own or upon the direction of the BSEC. In both cases, for final publications of the Regulations, the stock exchanges shall have to take approval from the BSEC on the Regulations. The BSEC can examine the provisions and guide the stock exchanges making necessary changes thereon. The stock exchanges enjoy wider jurisdiction to make Regulations for governing and regulating the fictitious and numbered accounts, blank transfers, short sales, options, odd lots and margins, in relation to transactions and securities; lending and hypothecation of customers' securities; regarding brokerage and other charges, including fixation of minimum commission; regarding separation of the functions of broker and jobber or dealer; providing procedure for the settlement of claims or disputes, including arbitration; and/or related to any other matter for which a regulation is required to be or may be made.¹³³

The power of making Rules by the BSEC and the Regulations by the stock exchanges are very wide and all embracing. So, the BSEC carries out the superior governing role and the stock exchanges amongst all other intermediaries play very crucial role in the governance and management of the securities market. Hence, the roles of all other intermediaries have been discussed and critically examined in the succeeding chapter to the present with a special focus on the stock exchanges and the related laws.

¹³¹ 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.

¹³² Stock exchanges may also frame regulations in respect 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; methods of selection of officers and committees to ensure a fair representation of the membership; qualifications and functions of the directors, officers and other functionaries of the Stock Exchange, disciplinary matters, including punishment of the directors, officers and functionaries; etc. The Stock exchanges are also empowered to make directives describing the procedures of listing and delisting of securities; the procedure for registration of an issuer and particulars to be furnished for the purpose; the days and hours of trading in securities, suspension of trading; the types of contracts and settlements in the Stock Exchange and regulation of contracts generally, including the consequences of default or insolvency, confirmation of contracts; the forward trading, *badlas* and carry-over facilities in relation to transactions and securities; the manner of making and publishing quotations, fixing of trade units and differentials and publication of transactions both individually and by volume; and setting up of a clearing house in relation to transactions in securities.

[The Securities and Exchange Ordinance, 1969 s 34(5)].

¹³³ Areas for framing regulations in details have been provided under Section 34(2) of the Securities and Exchange Ordinance, 1969.

4.18. Some other Powers

The BSEC has the power to sue against any perpetrators before the court of law. It can also pass and circulate office circulars, notifications, directives, orders or any other instructions for the regulation of the market.¹³⁴ In fact, they may come with immediate steps to meet the instant challenges and prompt market need based on market realities. This power is not subject to anything contained in any other law for the time being in force.¹³⁵ Therefore, it is apparent that in terms of regulating securities market, the BSEC enjoys absolute power and authorities.

4.19. Reporting obligation to the Government

The Government may call for reports and statements on any matter related to the activities of the BSEC as and when required, and the BSEC shall be bound to furnish these to the Government. The BSEC 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.¹³⁶

4.20. Self-protecting Provisions

The BSEC can exercise the power to 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 the Securities and Exchange Ordinance, 1969 at its own discretion.¹³⁷ Such exemption has to be published in the official Gazette.¹³⁸ There is no provision for calling the BSEC into question if this exemption is given unreasonably, unjustifiably or arbitrarily to any person or class of persons or any security or class of

¹³⁴ Section 20A of the Securities and Exchange Ordinance, 1969 provides unfettered powers upon the BSEC who on its own satisfaction in the interest of investors or securities market or for the development of securities market if thinks necessary so to do 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.

¹³⁵ The Securities and Exchange Ordinance, 1969 s 20A.

¹³⁶ The Securities and Exchange Commission Act, 1993 s 15.

¹³⁷ The Securities and Exchange Ordinance, 1969 s 29 and the Securities and Exchange Commission Act, 1993 s 23.

Section 29 of the Ordinance provides that “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.”

¹³⁸ Ibid.

securities or any transaction or class of transactions. The BSEC is, seemingly, answerable to none; the investors cannot question the BSEC if this power or any other power is used/exercised by the BSEC unreasonably, discriminately and whimsically.

On the other hand, the Ordinance of 1969 has provided indemnity to any officer or authority of the BSEC against any suit, proceeding or other legal proceeding to be laid against it.¹³⁹ In fact, no suit, or other legal proceedings shall lie against the BSEC or an officer or authority subordinate to it or specially appointed for the purpose of the Ordinance, 1969 for anything which is done under the Ordinance or any rules or orders made thereunder in good faith done or intended to be so. This indemnity goes to a far extent in light of the provisions provided under Section 22 of the Securities and Exchange Commission Act, 1993 which imposes bar on filing any case/suit against the Government, or any Government officer or employee, or any Commissioner, officer or employee of the BSEC for any damage caused or likely to be caused to any person by anything done in good faith under the securities laws and rules. It means, anything done by any officer, authority or by the BSEC itself shall be deemed to be done in good faith or intended to be done in good faith. Such kind of wide indemnity clause causes difficulty in the legal enforcement against the BSEC. It also lacks encouraging transparency and accountability in the activities in the BSEC.

Aforesaid section 22 is a defective provision because it provides a presumption of innocence before proving in a trial. It unduly provides that even before the committing or proving of any act, omission and taking any decision, order, directive, all these activities should be considered to have been done in good faith and the aforesaid person cannot even be questioned. This provision unnecessarily provides double protection to the employers of the BSEC based on a presumption of innocence. Under the circumstances, there is no necessity to provide these double protections in name of 'indemnity' and 'good faith' to the employers of the BSEC.

¹³⁹ The Securities and Exchange Ordinance, 1969 s 30.

Section 30 of the Ordinance provides that "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".

There is no provision securing the rights of interest holders if they are aggrieved by any decision, order or inaction of the Chairman of the BSEC. Recently, a Special Tribunal has been established for the suits against perpetrators, but there is no provision for filing suit against the BSEC or its employees/officers in default of their performances. In short, a person cannot file a suit against the BSEC for any action taken under said section. Though it is stated earlier that where there is no other forum or equally efficacious remedy is not available the judicial review under Article 102 of the Constitution of People's Republic of Bangladesh can be invoked.¹⁴⁰ However, it would be more practical for the Special Tribunal to have special jurisdiction regarding the cognizance of all cases related to capital market, which includes the BSEC, securities management, etc.

4.21. Appeal Regulations

The Securities and Exchange Commission (Appeal) Regulations, 1995 specially provides for the filing of appeal under several laws. Appeal will be laid to the BSEC. These regulations provide the form, manner and legal procedures of filing appeal. Appeal can be filed against any order passed by any member or officer of the BSEC by any person aggrieved thereof within 30 (thirty) of the order. This time can be extended if the BSEC has become satisfied that the person-appellant has reasonable cause that prevents to file appeal in time. Appeal will be heard by the BSEC giving reasonable time and ensuring presence of both the parties (the appellant and the opposite party) or by their representatives. For every appeal a separate file shall be opened and maintained by the BSEC and it shall be preserved as least for 5 (five) years after disposal.¹⁴¹

4.22. Regulations for the Employees

The Bangladesh Securities and Exchange Commission (Employees and Officers) Service Rules, 2014 are for the internal governance and regulation of the employees served under the BSEC. It came into effect by repealing the earlier Securities and Exchange Commission Service Rules, 1995. Some provisions of these Rules are highly important because under these regulations some obligations imposed upon the employees of the

¹⁴⁰ Power of judicial review of the High Court Division of the Supreme Court of Bangladesh under Article 102 of the Constitution of the People's Republic of Bangladesh.

¹⁴¹ This provision for appeal is in consistent with the provisions as provided under section 21 of the Securities and Exchange Commission Act, 1993.

BSEC. Every employee or officer is expected to perform the duty diligently, honestly and sincerely.¹⁴² These obligations are pertinent so far as accountability and professionalism and good code of conduct are concerned. As observed in the share scam, direct or indirect involvement of the high officials and employers of BSEC were found, so it is important to know the departmental mechanisms to ensure fair service and practice from the BSEC employers. Some of the important provisions are analyzed below.

These Rules describe the expected conduct and discipline of the employees of the BSEC, which are very important for ensuring accountability, transparency and fair services on the part of the employees.¹⁴³ All employees are expected to obey the rules and regulations of the BSEC and orders passed by the superior authority, serve to the BSEC with honesty, sincerity and care.¹⁴⁴ No employee will take part in any political protestation, provide donation or fee and get involved in any activities contrary to the interest of the BSEC and will not leave the working place without taking permission from his/her immediate superior authority.¹⁴⁵ No employee will receive gift from any person or institution with whom trading is made under the BSEC or will work as an agent of any insurance Company.¹⁴⁶

No employee is allowed to do business either on their own or through agent or as an agent of others or will take job otherwise without or with salary without prior approval of the appropriate authority of the BSEC. No employee shall take any part-time job without taking prior permission from the Government or appropriate authority. No employee can submit any application involving private matters to the Board directly. He has to submit it through his immediate superior authority. No employee will use political or exterior influence upon the Board for the recovery of his claim. No employee will take shelter of a Minister directly for interfering into his matter. No employee will contact or publish anything regarding internal matters in any media. Employees will reduce their loan liability.¹⁴⁷

¹⁴²The Bangladesh Securities and Exchange Commission (Employees and Officers) Service Rules, 2014 r 36.

¹⁴³ Ibid.

¹⁴⁴ Ibid r 36(1).

¹⁴⁵ Ibid r 36(2).

¹⁴⁶ Ibid r 36(2).

¹⁴⁷ Ibid r 37.

However, as discussed above, the obligations are not enough to ensure sincere, honest, fair, transparent and accountable service on the part of the employees and officers of the BSEC.

The following will be the grounds of taking disciplinary action against an employee¹⁴⁸-

- (a) for negligence in duty,
- (b) for misconduct¹⁴⁹,
- (c) being absconder,
- (d) becoming insane or incompetent,
- (e) becoming corrupted or regarded as corrupted for following reasons-
 - (i) he or his dependants become owner and possessor of such wealth inconsistent with his income and he fails to justify the reason of so possessing;
 - (ii) having life standard not in consistent with his income.
- (f) for committing theft, misappropriation, cheating and fraud,
- (g) getting involved in any kind of anti-Commission or anti-State activity.

The following penalties may be imposed¹⁵⁰-

(a) Soft punishment: It may be of rebuke or suspension of salary or promotion for the time being or deduction of salary equivalent to 7 (seven) days.¹⁵¹

(b) Hard punishment: In provides demotion into a lower post or collecting money of compensation from him after proving guilty or suspension or termination. In case of suspension or termination from the BSEC the person penalized will not be allowed in future to work under the BSEC.¹⁵²

¹⁴⁸ Ibid r 37.

¹⁴⁹ Action can be taken against the officers/employees of the BSEC under the said Rules on the grounds of misconduct. Rule 2(1) of the Bangladesh Securities and Exchange Commission (Employees and Officers) Service Rules, 2014 defines misconduct means any behavior against service discipline or rules or which is not descent to any other employee or a gentle man and also includes the following-

(a) disobeying the order of superior authority, (b) negligence, (c) showing disrespect to any order, decision, circular or direction of the Commission without any lawful reason, and (d) filing false, unreasonable, disturbing or fake complain against any of the employee to the employer.

¹⁵⁰ Ibid r 38.

¹⁵¹ Ibid r 38(1)(au).

¹⁵² Ibid r 38(1)(aa).

Any employee once terminated from the job of the BSEC cannot be re-appointed in the BSEC again.¹⁵³ Appeal against any decision of penalty is appealable and reviewable in the manner as prescribed under these Rules.¹⁵⁴

The important issue under question is whether any aggrieved party can file appeal against any officer or employer (as stated above) to the BSEC. But these Rules do not clarify what to do if any person is aggrieved by the order of the BSEC passed and issued under the signature of the Chairman. No assertion is made in these regulations or any other regulations addressing this issue. Therefore, invoking jurisdiction of writ petition is probably the only alternative left.¹⁵⁵ The BSEC can review its decision on its own motion or on the application by any person but that is different from appeal or revision; for this reason the above stated question does not include review or power to review by the BSEC.

4.23. Some critical analysis about the Roles of the BSEC and the Related Laws

As discussed earlier, there are numerous institutions and personnel along with a vast set of governing laws who are involved in the securities market. All those construe the regulatory framework and governing mechanisms of securities market. However, sometime no strategy applies to control the price and the bubbles. Therefore, governing and regulating the entire securities market is dreadfully a difficult task for the BSEC. Moreover, the lack of technical support, rumor based traders, short-term investors, high volatility, corruption and dishonest market players have already made the task of the BSEC terrible and challenging.

However, the BSEC is trying its best to establish good governance, restore public confidence and make the market stable and investment-worthy in the capital market, which is appreciable. Significant reformations have already been brought, and several positive attempts have been taken as discussed earlier and also will be discussed later on where they are relevant. Nevertheless, there are some major shortcomings in the existing provisions of law directly related to the governance and empowerment of the BSEC. Hence, it is necessary to have some critical analysis closely examining the laws from different sides.

¹⁵³ Ibid r 38(2)

¹⁵⁴ Ibid r 46.

¹⁵⁵ The power of judicial review under Article 102 of the Constitution of People's Republic of Bangladesh.

On examination of the relevant laws related to the BSEC, it can be concluded that the BSEC is entrusted with ample power and responsibility, but a very few provide scope of holding the BSEC accountable.¹⁵⁶ The BSEC is the ultimate and primary regulator of any function, affair, activity and decision of the stock market. Very unfortunately, there is no legal provision which enables the general investor to call the BSEC out or accountable for its deeds. There is no provision enabling an aggrieved person to sue the BSEC for any unjust and unfair loss suffered due to its wrong, erroneous and faulty decision and failure to perform diligently, protectively and effectively in the control, management and regulation of stock market.

There is no provision in the aforesaid enactments guarantying accountability of the BSEC. The BSEC bears no responsibility of mandatory disclosure of information of the affairs of the BSEC related to control and management of the securities market. This lacks ensuring transparency and answerability of the BSEC and its officers or employees. The most terrible issue is that the BSEC has been given legal effect as a legal person who can sue and can be sued upon¹⁵⁷, but there is no provision in this Act enabling a person become aggrieved with the decision or order of the BSEC can sue before the court of law. This leads to ask a vital question “if the BSEC fails to carry out its duty in accordance with law and fails to ensure the task under this Act could it be sued upon?” The answer is ‘no’. However, as a statutory body, any of the decision or activity of the BSEC can be challenged in the writ jurisdiction under Article 102 of the Constitution of the People’s Republic of Bangladesh.¹⁵⁸ The remedy as provided under Article 102 is limited and can

¹⁵⁶ Furthermore, the aforesaid enactments fundamentally add emphasis on the major task of the BSEC is to provide protection to the investors and regulate capital market. Regulating the capital market and providing protection to the investors both require that the BSEC need to carry out huge duties, responsibilities and burdens. Providing protection to the investors is also a part of the capital market management. Moreover, it is one of central issues of capital market regulation. Point of question is that does the BSEC can be hold responsible when it would fail to provide protection to the investors. Under the existing legal provision the answer is “No”. For this reason even though the BSEC’s failure to provide adequate protection to the investors was identified as one of main causes for 1996 share market scam and 2010-2011 share market scam in Bangladesh, but the BSEC was not called for or brought to answer.

¹⁵⁷ The Securities and Exchange Commission Act, 1993 s 3(2).

¹⁵⁸ Article 102 of our Constitution provides the power of judicial review to the High Court Division of the Supreme Court of Bangladesh. The High Court Division on the application of any person aggrieved, may give such directions or orders to any person or authority, including any person performing any function in connection with the affairs of the Republic, as may be appropriate for the enforcement of any the fundamental rights conferred by Part III of this Constitution. The High Court Division may, if satisfied that no other equally efficacious remedy is provided by law on the application of any person aggrieved, make an order of direction to do something or not to do something, declaring anything illegal, without lawful authority and of no legal effect, direction to bring a person before the Court and asking any person that under what authority the person is holding such post.

neither give adequate remedies to the loss sufferer nor provide appropriate punishment to the perpetrators which the civil and criminal law can do.

In addition, there is no provision in the said enactments determining the punishment that should be given to the Chairman, the Commissioners and the officers and staffs of the BSEC in case of breach of his/her duty, malpractice, unfair dealings, abuse of powers, abuse of office capacity, concerted practice, etc. As discussed earlier, a wide-ranging indemnity and exemption is given to the BSEC and its employers and officers under section 22 of the Securities and Exchange Commission Act, 1993.

Moreover, it is often claimed that the BSEC is not governed by people capable enough to run its complex functions. Most of the times, the decisions and actions taken by the BSEC have fallen inadequate, unripe and weak to meet the situation. It is observed by Md. Tariq and Khondker Golam that “over the last few years, the capital market of Bangladesh has witnessed a haughty growth which is not in line of development in the real sector of the economy. Although, the Securities and Exchange Commission (SEC) of Bangladesh has tried to correct the irregular behavior observed in the market, very often it is argued that lack of proper and firm decisions from the regulator’s side has contributed to make the market more unstable rather than to reduce it.... Using Vector Auto-regressive (VAR), statistically highly significant relationship was found between decisions taken by the regulatory authority and market volatility, although the direction of causality is in reverse order than theoretically and empirically expected. Again, though the number of decisions taken by the SEC immediately, with longer time the response was in opposite direction than expected.”¹⁵⁹

After 2010-2011 stock market crash, the roles and activities of BSEC were highly doubted. The BSEC was deemed to be a weak and inefficient regulator. It is reported by the Centre for Policy Dialogue that “during the period of boom and bust in the market over the last few years, the SEC has emerged as a weak institution which failed to regulate, monitor and enforce the appropriate measures adequately. At the time of crisis, SEC applied various instruments which were either inappropriate or inefficient; moreover,

¹⁵⁹ Md. Tariqur Rahman and Khondker Golam Moazzem, ‘Capital Market of Bangladesh: Volatility in the Dhaka Stock Exchange (DSE) and Role of Regulators’ (2011) 6 *International Journal of Business and Management* 86.

some of its steps were perceived to be meant to appease a section of so called ‘powerful’ market players. Frequent changes in the rules regarding margin loans in 2010 brought about unnecessary volatility in the market. Application of lock-in period in case of sale of placement shares was not properly maintained by the Commission; in a number of instances it relaxed the rules to favor to vested quarters. Sometimes listed companies have offered right shares mainly to mop up money from the market, and SEC could not deploy due diligence in this regard. The body did not use its authority to assess companies’ actual motivation in offering the right shares. Insider trading could not be controlled and discouraged without strong monitoring and surveillance by the SEC.”¹⁶⁰

As stated earlier, that there are multiple regulators in the securities market and all of them have hold significance. The Parliament has passed the main laws regulating money market and it has the Finance Act for every financial year. The provisions of the Finance Act and any decisions of the Parliament related to money market can have direct or indirect effect on the stock market. The Ministry of Finance, the Ministry of Commerce, the Bangladesh Bank and the BSEC can also take decision related to stock market and they issued notifications, directives, regulations, rules, etc from time to time; and any decision passed by the said authority regarding money can have express or circumlocutory effect on stock market. On the other hand, the stock exchanges are also entitled to frame regulations and there are several regulations, directive and notifications have already been framed by the exchanges. And other affiliates can take decision regarding trading in stock market within their limited purview. Regulations by combining all these institutions definitely increase the burden of the BSEC and make it complex.

As there are several regulators involved, co-ordination and co-operation amongst all is highly expected for a balanced and unitary regulation in the market. But, it is observed that existence of numerous regulators make the regulation policy of stock market more confusing and clumsy, and the BSEC fails to ensure proper harmony and coherence amongst these multiple regulators and institutions. Due to numerous authorities, real culprits are not found while others are held liable. Moreover, none can be held jointly

¹⁶⁰ Khondaker Golam Moazzem and Md. Tariqur Rahman, “Stabilizing the Capital Market of Bangladesh: Addressing the Structural, Institutional and Operational Issues” (2012), *CPD Working Paper: 95Centre for Policy Dialogue (CPD)* 8.
<http://www.cpd.org.bd/pub_attach/WP95.pdf> (24.02.2016).

liable as they do not work jointly. In a developed system, the existence of several regulators on a particular issue and joint workforce of them can ensure better check and balance, fairness, transparency and good governance; in our country existence of multiple heads is creating problem and it has opened a chance of avoiding one's liability rather than to solve the problem in more effective way by joint effort. For this very reason, none of the regulators was held liable after 2010-2011 share market scams.¹⁶¹

However, lack of efficient regulation over the securities market by the BSEC is viewed as a major reason hindering the healthy development of the securities market not only in Bangladesh but also around the world. The stock market is one of the major contributory sectors in the economic growth of Bangladesh and also in other countries of the world. It is also a significant contributory in the world economic development. Nevertheless, this sector suffers the most poor and sub-standard regulatory system. Several steps have been taken in Bangladesh and other countries for the sustainable development in this sector; but comprehensive development for the long-term stable and safe market for the investors is far from realized. Even to this day, the market is manipulated by the corrupted people who are often known or unknown, as discussed earlier. But, the BSEC fails to ensure adequate punishment for the perpetrators and compensate the unjust loss sufferer who suffered loss due the BSEC's failure to perform diligently and properly.

The BSEC and its governing legal provisions fail to prevent the ghosts¹⁶² from the market who manipulate the market at the cost of fair investors. Lack of coordinated, harmonized and combined force of all the money market regulators is the biggest cause behind stock market crashes. As stock market embraces money and money, decision and policy of each money-controlling regulator has to affect it. Any decision taken by Bangladesh Bank regarding money not in harmony with the BSEC can affect the stock market badly and vice-versa. It is generally agreed that restrictive monetary policy leads to lower stock prices and expansionary monetary policy leads to higher stock prices. Simultaneously, lower interest rates increase stock prices which in turn lead to increased business investment. Normally, a low interest rate leads higher capital flows to the stock market in

¹⁶¹ Details about the cases filed after 2010-2011 stock market crash have been discussed in Chapter 9 of this thesis.

¹⁶² As stated earlier the ghosts are the market manipulators who manipulate the market for gaining unfair advantage. They are known and often unknown. They can be identified sometime or often unidentified. Most of the time, they cannot be seen and they are left without punishment.

expectation for a higher rate of return where a high interest rate encourages more savings in banks and consequently reduces the flow of capital to the stock markets.¹⁶³ But, the BSEC fails to ensure its activities, functions and decisions to be harmonized with the Bangladesh Bank, and *vice-versa*.

Similarly, the inharmonious decisions of the Finance Ministry, the ICB and the other financial regulators can destroy the stability in stock market. In 2010, disharmony between the BSEC and the Bangladesh Bank was held one of the main causes in the Report of Probe Committee headed by Ibrahim Khaled.¹⁶⁴ It is also reported by other market analysts.¹⁶⁵ Earlier records show that there was a lack of co-ordination and co-operation between the Bangladesh Bank and the BSEC in the decision. They are often criticized for suffering from superiority complex. Critics allege that the relationship between the Bangladesh Bank and the BSEC is complex and not harmonious. They often fail to act in togetherness for taking any decision which may directly or indirectly affect the money market and capital market. After, the 2010-2011 share market scam the Ministry of Finance directed these two to act in harmony and in prior consultation with each other in taking any decision which may directly and indirectly affect the stock market.

However, the BSEC being the chief controller and regulator of stock market in Bangladesh drastically and empathetically failed to perform its duty properly in order to secure fair market system for the investors. Disgraceful activities and affairs of the superior employers of the BSEC have been blatantly revealed in the Probe Committee Report, 2011.¹⁶⁶ The inability of the BSEC to control and monitor capital market, working

¹⁶³ For example, if Bangladesh Bank decides to give less interest over the deposited amount with schedule banks or savings papers, then investment in share market will be high automatically; on the other hand, if Bangladesh Bank decides to give high interest over the deposited amount with schedule banks or savings papers, then investment in share market will be less consequently. The relationship of the interest rate and the exchange rate with equity returns is negative whereas the relationship between the money supply and the equity market return is positive. Through monetary policy, central bank not only influences interest rates but also inflation expectations. An unanticipated rise in inflation may lead to a decline in stock prices, as expectations of more restrictive monetary policy will increase. In fact, inflation is positively related to interest rates and negatively related to stock prices.

¹⁶⁴ The Probe Committee, *Share Market Inquiry Report, 2011*, Inquiry Report (2011) 42 [In Bangla]. <http://www.mof.gov.bd/en/index.php?option=com_content&view=article&id=169&Itemid=1> (25.02.2016).

¹⁶⁵ Jebun Nesa Alo, 'BB and BSEC lock in heated debate', *Dhaka Tribune* (online) 3 March 2014. <<http://www.dhakatribune.com/stock-market/2014/mar/03/bb-and-bsec-lock-heated-debate>> (3.04.2016).

¹⁶⁶ It is stated that outside the stock market there were some highly influential players who with the direct help of the BSEC and higher executive officer were involved with the market manipulation, which was really unaccepted, unethical and output of planned syndication of the perpetrators. In fact, an illegal activity

in favor of manipulators, approving unethical proposal and issuing wrong directives which are also held responsible for 2010-2011 share market scam. The Probe Committee Report revealed some names of corrupt employees of the market regulators who were directly or indirectly responsible in the market manipulation.¹⁶⁷ Observing the role of the BSEC the Probe Committee, 2011 certified it as an unsuccessful institution.¹⁶⁸

As per notification being No. SEC/Admin/53.00/2001-2002-2212 dated 11.04.2010, no officer or employee or his/her wife/husband, children, parents or dependants can do business in stock market or trade with securities in his/her name¹⁶⁹, but the Probe Committee found that Ms. Rukhsana Akhter, wife of said Anowarul Kabir Bhuiyan hold 4 (four) BO accounts where transaction of huge amount was taken place from January, 2009 to December, 2010, and these account earned huge amount of money unjustly.¹⁷⁰

On the other hand, there is a job overlapping between the BSEC and the exchanges, such as, the DSE/CSE and the BSEC both organizations have surveillance department for the same job but there is no co-ordination. Listing committee of the DSE and the CSE examines listing application of company but the BSEC does not do it properly. A company must obtain approval from the BSEC before issuing shares. It is observed that in 2009, some of the companies issued IPO in market and the BSEC overlooked the negative reports submitted by the stock exchanges about the financial and other conditions of these

was taken place under the shadow of the BSEC, where no share can be issued without the permission of the BSEC in demat format, there was trading of shares with the token of shares through share placement and private placement. Though without the permission of the BSEC issue of shares and trading thereof was not legal, it happened. The upper officials of the BSEC, members, DSE/CSE, their members and other upper stakeholders were involved with this manipulation. Unless a strong attempt/step would not be taken by the Government or from the superior authority, it is never possible to bring healthy practice in our stock market. [In Bangla].

The Probe Committee, *Share Market Inquiry Report, 2011*, Inquiry Report (2011) 44 [In Bangla].
<http://www.mof.gov.bd/en/index.php?option=com_content&view=article&id=169&Itemid=1>
(25.02.2016).

¹⁶⁷ These names include Rokibur Rahman (erstwhile Chairman of the DSE), Anowarul Kabir Bhuiyan (erstwhile Executive Director of the BSEC), Kafil Uddin Ahmed (erstwhile the Deputy Managing Director of the ICB) and some other high officials of the BSEC, the ICB and the DSE.

The Probe Committee, *Share Market Inquiry Report, 2011*, Inquiry Report (2011) 50 [In Bangla].
<http://www.mof.gov.bd/en/index.php?option=com_content&view=article&id=169&Itemid=1>
(25.02.2016).

¹⁶⁸ Ibid.

¹⁶⁹ Neither any employee or officer of the BSEC nor his/her husband/wife, children, parent or dependants can get involved with trading of securities in the market. [In Bangla].

¹⁷⁰ Probe Committee, *Share Market Inquiry Report, 2011*, Inquiry Report (2011) 113-114.
<http://www.mof.gov.bd/en/index.php?option=com_content&view=article&id=169&Itemid=1>
(25.02.2016).

companies and approved them to issue IPO. Amongst these, the Marico Bangladesh Ltd, R.N. Spinning Mills, Beacon Pharmaceuticals Ltd, Modern Poly Industries, Alliance Holdings Ltd and the Dacca Dyeing and manufacturing Company Ltd are notable.¹⁷¹

The Probe Committee also questioned the process through which the BSEC allows these companies to issue shares through IPO and thereafter trade stock in secondary market. The Committee reported that though the BSEC is the ultimate authority to secure fair trading in the market by preventing bad or poor companies to come with IPO and to examine every details and potential before allowing any company to go for IPO, the BSEC most often failed to carry out this job efficiently and effectively. The BSEC ultimately takes no responsibility as to the veracity and authenticity of the financial statement and other information disclosed in the prospectus or prospectus like documents for issuing IPO though being the supervisory and chief regulatory authority the BSEC should be more accountable.¹⁷²

Placement of Mutual Fund and IPO at a price lower than the market value has become a new method of bribery for powerful employees of regulators. There is another accusation that these senior level employees received placement by using other`s name which is very difficult to identify. The report states that the BSEC does not have enough employees e.g. qualified accountant, financial analyst and researcher to control and monitor the market.¹⁷³

Moreover, in many cases the BSEC plays an inactive role. In terms of asking for information or documents from any issuer or institution or intermediary, the BSEC has wide jurisdiction, but the BSEC works on the documents and information provided by the companies or intermediaries or anyone supplying the information and documents. When the market rate fluctuates abnormally, the BSEC neither calls for immediate explanation to the market players, nor does it have the proper surveillance system to check the movement of price or stock fluctuation each moment. Though there are multiple reasons, economic

¹⁷¹ Ibid.

¹⁷² Ibid 66-67. [In Bangla].

<http://www.mof.gov.bd/en/index.php?option=com_content&view=article&id=169&Itemid=1> (25.02.2016).

¹⁷³ Sangit Saha, *Stock market crash of Bangladesh in 2010-11: Reasons & roles of regulators*, International Business (2012) [Degree thesis].

<http://www.theseus.fi/bitstream/handle/10024/47195/saha_sangit.pdf?sequence=1> (13.03.2016).

situations and circumstances contributing on the price fluctuations and not always follow the system or prediction, it should be monitored and reasons should be checked.

Even when there are different economic influences over the market, questions rise on how a daily transaction of around Tk 100 crore to Tk 150 crore jumps to Tk 1200 to Tk 1300 crore in a single day. At the same time, a fluctuation in the indexes without any proper cause is also unnatural. It is said that this fluctuation has nothing to do with the fluctuation of the economic barometer. So, there must be a manipulation somewhere apart from the economic considerations. Apart from the market fluctuations, the unexpected rise in prices of shares of some companies provides additional grounds to think about such manipulations. It has to be said here that if there is an unusual rise in share prices of a company, the BSEC can write to the company asking for a proper explanation.¹⁷⁴

It is also observed that lack of proper and firm decisions from the regulator's side is also responsible for bad and disorganized regulation in stock market. Naturally, share market is volatile; therefore firm decision is necessary to stabilize it. Nevertheless, it is observed that both the Bangladesh Bank and the BSEC are very volatile in taking decisions regarding stock market. They take decisions readily and withdraw the same even faster. Moreover, frequent changes in regulators' decisions contribute negatively in the way of sustainable development of the market, but the discussion in earlier Chapter shows that the regulators barely understand this.

Most of these decisions are taken without proper market projection and without addressing the long-term volatility of stock market. They also fail to address the immediate recourses for preventing frequent and unusual short-term volatility. This may be for the lack of knowledge-able, specialized and experienced people in the decision making and regulation process of stock market. Commenting on the role of regulators in shaping the stock market of Bangladesh, Ahmed concluded that the regulations are not competent enough to promote the market. She also suggested major structural changes in the regulatory mechanism of this market for its future development.¹⁷⁵

¹⁷⁴ The Ittefaq, 14 August 2013,

<<http://www.clickitfaq.com/the-capital-market-and-the-role-of-the-bsec/>> (18.09.2016).

¹⁷⁵ S Ahmed, 'Reviving the Role of Regulators in Bangladesh Capital Market' (2005) 3 *Pakistan Journal of Social Sciences* 549.

It is also commented by researchers that “from our analysis we have found that major indicators of the country’s major stock exchange is becoming more volatile over time and the regulators are not efficient enough to guard this volatility.... In order to make the market less volatile, SEC itself should be strengthened both in terms of number of manpower and quality of the professionals involved with special focus on independent research, monitoring mechanism and prompt decision making.”¹⁷⁶

After an elaborative research and analyzing the role of regulators of stock market of Bangladesh and observing the failure on their part, Md. Tariq and Khondker Golam suggested that “the decisions taken by the regulatory authority should be made as much as predictable with providing adequate explanation for the investors. Again, before taking any major regulatory decisions a broad-based consultation among widely representative advisory committees, deliberations with the stock exchanges and intermediary associations, chambers of commerce and investor associations and the public which helped drive market consensus for the reforms could be considered by the SEC”¹⁷⁷.

Observing the problems of not having the multiple regulators in line, it can be concluded that for securing better regulation and also for minimizing/preventing existing problems in stock market co-ordination, organized and well-synchronized regulatory framework is obvious. Laws (primary or secondary) should be codified in line as well. Decisions taken by the regulators should be well-projected and firm. All decision and activities of the regulators should be promising in providing equal, fair, transparent and justified protection to the investors. Decisions should not be in a way giving scope to the perpetrators i.e. ghosts for manipulating the market and taking unjust benefit/huge amount of money from the market in the blink of an eye. For ensuring so, the BSEC has to play active role in more harmonized and organized way. The BSEC should play fairly and honestly without being biased or influenced by anyone. It should be more promising and more expressive in terms ensuring its transparency and accountability.

¹⁷⁶ Md Tariqur Rahman and Khondker Golam Moazzem, ‘Capital Market of Bangladesh: Volatility in the Dhaka Stock Exchange (DSE) and Role of Regulators’ (2011) 6 *International Journal of Business and Management* 86.

¹⁷⁷ Ibid.

Though the decisions and actions of the BSEC and other market regulators cannot not be guaranteed to be just and perfect, it is expected to be so. Stock market is not a play field for the regulators; it is a serious issue and one of the most important money-field of the country. So, any decision it should be well presumed, projected and judicial. The regulators should be careful, more promising, accountable, fair and impartial.

4.24. Concluding Remarks

Theoretically and practically, the BSEC is entrusted with plenty powers and jurisdictions under the provisions of law though to a notable extent the roles of the BSEC, the Bangladesh Bank, the ICB and other regulatory authorities intersect to each other so far functions in the securities market are concerned. It has many powers and jurisdictions in many areas including some unique fields which many other Government institutions do not have. The BSEC is the superior regulatory authority that has control over the entire capital market and all the authorities subordinate to it. Before, the 2010-2011 stock market crash, the role of the BSEC was virtually invisible and it was often scolded as an dormant institute; however after the said scam the BSEC has seen to be more active, which will bring a good change in the capital market regulation.

However, it is not the BSEC who gives effect to the real trade in the market. It is mainly the intermediaries and the investors who play the active roles in the field of securities market. Being the superior regulatory authority by embracing multiple subordinates and other regulatory authorities along with various laws, rules and regulations, the BSEC obviously carrying out very difficult functions in the securities market. However, the ghosts, corrupted officers, rumors, unconscious investors, poor logistics, sub-standard technology, volatile economy and influence of the rich investors over the market have multiplied the complexities and challenges for the BSEC. In spite of all the failures and shortcomings, the BSEC is advancing as a more investor-friendly institute. It is striving to make the market more stable, transparent, consistent and well regulated.

Chapter 5

Analysis of the Roles and Activities of the Stock Exchanges as the Market Intermediaries and the Related Laws: Determining their Efficacy and Fallout

5.1. Introduction

There have been some discussions regarding the importance and role of the market intermediaries in the stock market in the previous chapters. In this Chapter, the roles and related laws of the market intermediaries along with their efficacy and shortfall will be examined in details. Market intermediaries include stock exchanges - DSE¹ and CSE², stock brokers, sub-brokers, stock dealers, jobber, authorized representative, securities houses, depository houses, merchant banks, portfolio managers, share transfer agents, bankers to an issue, financial institutions, insurance companies, trustees of trust deeds, registrars to an issues, underwriters, credit rating companies, investment advisors, market analyst, depository participants, asset management companies, clearing members, trading members, and any other intermediary who may be associated in any manner in any legal transaction in the securities market. Additionally, the valuers and the auditors also play important roles in the market. Sometimes, their functions are overlapping, and one's performances are dependent on the others. Altogether, they perform critically important roles. They are often supplementary and complementary to each other.

For the convenience of the discussion, the roles, activities and relevant laws of the stock exchanges (DSE and CSE) are discussed here in Chapter 5 while the others will be examined in details in next Chapter.

5.2. Stock Exchanges

a. About stock exchanges

Stock exchanges play the most vital role in trading of securities/stock in market. Exchanges provide the place of dealing/trading with securities.³ Basically, this is what is called share/stock market. Stock market is one important constituent of the capital market. Stock Exchange is an organized market for the purchase and sale of industrial and financial security. It is like a registered or unregistered company. Mostly, it is registered

¹ The Dhaka Stock Exchange.

² The Chittagong Stock Exchange.

³ 'The role of the Exchange', London Stock Exchange (online) 2013.

<<http://www.londonstockexchange.com/traders-and-brokers/private-investors/private-investors/stock-markets/role-exchange/role-exchange.htm>> (11.04.2016).

and situated in a permanent place. It has a common seal and perpetual succession like the other companies. It cannot come into operation without obtaining permission from the Government or from proper authority of the Government. Like limited liability Company, a stock exchange can have limited liability. It is constituted with the aim to provide attractive, efficient and well-regulated markets for companies, investors and intermediaries like stockbrokers.⁴ It has several sub-offices or sub-dealers through whom the trading took place. It is mainly a convenient place where trading in securities is conducted in systematic manner i.e. as per certain rules and regulations.⁵ Stock exchanges do not buy or sell any securities on its self account. They merely provide the necessary infrastructure and facilities for trade in securities to its members and brokers who trade in securities.⁶

Stock exchanges contribute greatly to the national economic development and have become the barometer of national economic development.⁷ They measure and control the growth of a country.⁸ The roles and activities of stock exchanges are many and so are their contributions. The necessity of its existence is undeniable and unavoidable. All developed and developing countries have their own stock exchanges. Stock exchanges provide an alternative to bank investment and allow the corporations to raise equity at a lower cost and also allow the general public to take part in the interest of the company at a lower cost. In addition, companies in countries with developed stock markets are less dependent on bank financing, which can reduce the risk of a credit crunch and save financing cost to a great extent. Stock market therefore influences economic growth positively and dynamically by encouraging savings amongst the individuals and providing avenues for

⁴ Ibid.

⁵ It performs various functions and offers useful services to investors and borrowing companies. It is an investment intermediary and facilitates economic and industrial development of a country. It provides a ready and continuous market for purchase and sale of securities. It provides ready outlet for buying and selling of securities. Stock exchange also acts as an outlet/counter for the sale of listed securities. Henceforth, it deals with existing or second hand securities and hence it is called secondary market.

⁶ It regulates the trade activities so as to ensure free and fair trade. It allows only the listed companies with it to trade. All the transactions in securities at the stock exchange are took place only through its authorized brokers and members. Outsiders or direct investors are not allowed to enter in the trading circles of the stock exchange. Investors have to buy or sell the securities at the stock exchange through the authorized brokers only. Stock Exchanges act as the clearinghouse for each transaction, meaning that they collect and deliver the shares, and guarantee payment to the seller of a security. This eliminates the risk of an individual buyer or seller that the counterparty could default on the transaction.

⁷ S Samiksha, '9 Most Important Functions of Stock Exchange/Secondary Market' (online) 2016. <<http://www.yourarticlelibrary.com/economics/market/9-most-important-functions-of-stock-exchangessecondary-market/8766/>> (12.04.2016).

⁸ <<http://www.stock-trading-infocentre.com/role-of-stock-exchanges.html>> (31.5.2016).

the corporate financing.⁹ With a liquid market, the initial investors do not lose access to their savings for the duration of the investment project because they can easily and quickly sell their stake in the company.¹⁰ Hence, the stock exchanges are recognized as one of most important sectors in an economy.

b. About Stock Exchanges in Bangladesh and Their Common Functions

There are presently two stock exchanges in Bangladesh - the Dhaka Stock Exchange (DSE) and the Chittagong Stock Exchange (CSE). Though, it has been quite a long time since both markets started their operations, most of the studies related to their efficiency led to the conclusion that the markets are primarily weak.¹¹ They are registered under the Companies Act and registered as stock exchanges for stock market business under the BSEC. The DSE is situated at Dhaka while the CSE is in Chittagong. The DSE is bigger than CSE. Some of the common functions of these two are as follows-

- (a) Listing of Companies (as per Listing Regulations),
- (b) Providing the screen based automated trading of listed Securities,
- (c) Settlement of trading (as per Settlement of Transaction Regulations),
- (d) Gifting of share / granting approval to the transaction/transfer of share outside the trading system of the exchange (as per Listing Regulations),
- (e) Market Administration and Control and Market Surveillance,
- (f) Publication of Monthly and Yearly Review as prescribed under law,
- (g) Monitoring the activities of listed companies (as per Listing Regulations),
- (h) Hearing grievances by the Investors grievance Cell,
- (i) Giving protection to certain investors through Investors Protection Fund,
- (j) Announcement of Price sensitive or other information about listed companies through online,
- (k) Complying with the laws and regulations,

⁹ In principle, the stock market accelerates economic development and growth by providing a boost to domestic savings and increasing the quantity and the quality of investment. The stock market encourages savings by providing individuals with an additional financial instrument. The better savings mobilization may stimulate and increase the savings rate significantly and improve the economy. Stock market provides an avenue for growing companies to raise capital at lower cost.

¹⁰ Jalal M Hussain, 'The Role of Stock Market in Bangladesh Economy', *The Financial Express* (online) 20 February 2012.

<http://www.thefinancialexpress-bd.com/more.php?news_id=120722&date=2012-02-20>.

¹¹ Md Saiful Islam and Md Lutfor Rahman, 'Relevance of Net Asset Value (NAV) in Determining the Volatility of Stock Returns: A Study on Dhaka Stock Exchange' (2016) 2(1) *International Journal of Finance and Banking Research* 7-12.

<<http://article.sciencepublishinggroup.com/html/10.11648.j.ijfbr.20160201.12.html>> (19.04.2017).

- (l) Framing regulations with the approval of the BSEC,
- (m) Keep the BSEC updating about the activities in stock market, and other functions as provided under law.

c. Common Regulations for the Stock Exchanges under the Securities and Exchange Rules, 1987

The Securities and Exchange Rules, 1987¹² is one of the important piece of law for the regulation of the stock exchanges. It provides regulations for the trade of securities. It provides details provisions about the qualifications of being members of stock exchange and manner of transaction of the member's business. It also lays down provisions for the maintenance of accounts, audits, books of accounts and other documents by exchanges, their members, customer's accounts and securities. It also states details about the submission of returns (periodical or annual) to the BSEC, submission of annual or periodical reports by the issuers, listing of securities, risk based capital adequacy requirements and also for certain other guidelines for the stock exchanges. The Rules also prescribe several forms to be filled up for carrying out the aforesaid functions under the Rules.

The Rules provide certain disqualifications of the members of stock exchanges. Any person who is less than twenty one years of age or is a lunatic or of unsound mind or convicted of an offence involving moral turpitude or declared insolvent by any competent court or found guilty of misconduct in dealing or doing transaction in any security or any matter related to stock exchanges cannot be a member of the stock exchange.¹³ A continuing member can lose the membership due to subsequent exposure of any of the aforesaid disqualification. In that case, he/she may transfer his/her shares to any person within a period of six months of such cancellation of membership, in default his/her shares will be returned to the stock exchange who will sell the same and returned the proceeds to the person when the person has no dues to any customer or to the exchange, otherwise the exchange will give the sale proceeds to the customer or exchange to whom the person

¹² The Rules were published in the official gazette on 28.09.1987. In exercise of the powers conferred by section 33 of the Securities and Exchange Ordinance, 1969 (XVII of 1969), and in supersession of all rules and orders made in this behalf, the Government is pleased to make these rules vides SRO 237-L/87.

¹³ The Securities and Exchange Commission Rules, 1987 r 3(1).

owes liability.¹⁴ A reasonable opportunity of being heard is to be given to the person who attracts the disqualification. Moreover, a member shall have to maintain net capital balance not less than taka one hundred thousand only at all times, in case of falling short anytime, its license can be cancelled.¹⁵

The Rules also provide the manner of transaction of the member's business to carry out the trading by taking order of sale and purchase. Members can buy and sell only when they get confirmed instruction from the customers, and after carrying out the orders the members are under legal obligation to inform the customers.¹⁶ The trading in any stock exchange shall not follow any system which may enable any member, in any way whatsoever, to do trading in any security on the basis on any counter party identification.¹⁷

Every member is under a legal obligation to maintain its and its customers' periodical and annual books of accounts and audit reports. It is obligated to submit the same periodically and annually to the BSEC. The Rules provide detailed procedures regarding the maintenance of the registers, books of accounts and other statements of the exchanges and their members. The exchange will be maintained in consolidated bank with any schedule bank and also preserve separate accounts of customer's securities. The exchanges will also maintain annual or periodical reports submitted by the issuer under law.¹⁸ Additionally, the Rules prescribed in the Form I for registration of a stock exchange, Form IA for customer account information, Form II for submission of periodical return by the stock exchange, Form III for listing of any security and a Schedule stating the details requirements is to be disclosed in the returns and few other forms as mentioned in the Rules.

The form of auditor's report is really important as it takes a declaration from the auditor regarding the authenticity of the information as disclosed in the audit report in the tune "these financial statements which are in agreement with the Books of Account of the Company give a true and fair view of the state of is affairs as at and of the result of its operations and cash flows for the period/year then ended".¹⁹ This kind of statement

¹⁴ Ibid r 3(1A).

¹⁵ Ibid.

¹⁶ Ibid r 4.

¹⁷ Ibid r 4A.

¹⁸ Ibid r 7.

¹⁹ Form of the Auditors' Report, the Securities and Exchange Rules, 1987.

amounts to undertaking on the part of the auditor regarding the truthfulness and fairness of the information regarding books of accounts in the audit report. However, if any falsehood is be found later, it does not attract any penal provision under the Rules since these Rules do not prescribe any penal provision, which is one of the major shortcomings of the Rules. However, by dint of section 23 of the Securities and Exchange Ordinance, 1969 violation of any provision of the Ordinance or any Rules made thereunder shall attract civil liability as provided thereon. Therefore, the auditors are also under civil liability which warrants damages and other forms of civil remedies, though the nature and consequences of civil liability under the aforesaid Ordinance or anywhere in the securities laws is not clarified.

5.2.1. About DSE

a. Establishment, Mission, Vision and Objectives

The DSE is the first and biggest stock market in Bangladesh. It is the successor of East Pakistan Stock Exchange Association Limited which was established on April 28, 1954 with formal trading starting in 1956 at Narayanganj after obtaining the certificates of commencement of business. In 1958, it was shifted to Dhaka.²⁰ It is registered as a public limited company and its activities are regulated by its Articles of Association, Rules, Regulations and By-laws along with the Securities and Exchange Ordinance, 1969, the Companies Act, 1994 and the Securities and Exchange Commission Act, 1993. The DSE updates its system in consistence with the changing international systems. Before, 1998 it traded paper shares. In August 1998 it started automated trading system, which took long time in complete up-gradation. At present stocks are traded in demat format through electronic process.

Its main goal is to be the leading exchange in the region and a key driver of economic growth with state-of-art technology and to provide world class service to ensure highest level of confidence among stakeholders.²¹ In order to attain the mission, the DSE must adopt a proactive approach keeping pace with the continuous technological advancements, and must provide the highest standard of service through efficiency and introduction of new products. The DSE also aims to contribute to the national economy by ensuring superior corporate governance enhancing confidence of investors, regulators, issuers and

²⁰ Its head office is situated in Motijheel Commercial Area, Dhaka and the building is commonly known as 'DSE Building'.

²¹ <<http://www.dsebd.org/vision.php>> (23.4.2017).

intermediaries. To this effect, the DSE has set forth certain objectives amongst others mainly including commercial,²² knowledge based,²³ effective governance,²⁴ technological development,²⁵ and human resource development,²⁶ and others to be achieved by 2020.

b. Governance of the DSE

The DSE is regulated under the Dhaka Stock Exchange (Board and Administration) Regulations, 2013 and the Memorandum and Articles of Association of DSE. The composition of Board of Directors, appointment of the Directors, Managing Director/Chief Executive Officer and other officers and employees are done in accordance to the provisions of law. The Board is constituted with both Directors and ‘Independent Directors’²⁷ as provided under the law. No person shall be eligible to be elected or appointed as, or continue to occupy the office of a Director if²⁸-

- (a) He is found to be a lunatic or becomes of unsound mind or incapable of efficient attention to business; or
- (b) He remains absent in three consecutive meetings of the Board of Directors or in all meetings of the Board of Directors for a continuous period of three months, whichever is the longer, without leave of absence from the Board of Directors; or
- (c) He is convicted of any criminal offence and sentenced to imprisonment; or
- (d) He is a loan defaulter as per CIB (Credit Information Bureau) report of the Bangladesh Bank; or
- (e) He has entered into any business transaction with the Exchange; or

²² Achieve a sustainable average daily turnover of BDT 25 billion; ensure steady domestic and offshore institutional investments of at least three fourth of the total investments in the market; attract more foreign investments to attain a steady level of at least 30% of the total market capitalization; double the total number of listed securities (other than Government Bills and Bonds); increase depth and liquidity of bond market, including bringing in the Government Securities under trading net, and increase breadth by listing new products, i.e. Index futures, ETF, Sukuk and derivatives.

²³ Enhance knowledge of general investors to ensure an aware and educated investor base.

²⁴ Ensure effective separation of regulatory function from commercial operation; enhance corporate governance and ensure investors’ protection.

²⁵ Deploy State-of-Art technology through continuous but prudent and effective investment.

²⁶ Ensure continuous learning for employees through effective training and also ensure optimum organizational structure.

²⁷ “Independent Director” means an independent director of the Exchange as defined in the Demutualization Act. Section 2(1)(21) of the the Demutualization Act, 2013 defines Independent Director is a Director of Exchange who is not connected with the trade, services, business, maintenance and notable shareholders. [In Bangla].

²⁸ The Dhaka Stock Exchange (Board and Administration) Regulations, 2013 c 5.

(f) Without prejudice to the above he fails to pass “Fit and Proper”²⁹ criteria as may be framed by the BSEC from time to time.

In addition to the above, to be appointed as an independent director, the person should have the education qualification as provided under the Regulations. No person can be an Independent Director if the person is or has been an employee,³⁰ or the Managing Director³¹/Chief Executive Officer,³² or in material business relationship,³³ or received remuneration as Director³⁴ in last 3 (three) years from the DSE or any of its subsidiary, or if the person has a relationship with any of the Director of any TREC holders,³⁵ or the

²⁹ “Fit and proper criteria” means qualification criteria including educational and professional that may be required to be satisfied by each person to be eligible for the election or appointment as a Director of the Exchange.

[The Dhaka Stock Exchange (Board and Administration) Regulations, 2013 c 2(1)(j)].

Clause 5(1)-(4) provides details fit and proper criteria for the directors in the following manner-

(1) A Director elected by the shareholders shall hold office for no more than 2 (two) consecutive terms and shall be eligible to be elected as Director after a gap of 1 (one) year;

(2) An Independent Director shall be nominated for a term of 3 (three) years and may be renewed for another term by the Commission on recommendation of the Exchange. Thereafter however, he/she shall not be eligible to be nominated as an Independent Director until after a gap of 1 (one) year;

(3) The Managing Director shall be nominated for a term of not more than 3 (three) years and may be renewed for another term by the Commission on recommendation of the Board.

(4) No person shall be eligible to be elected or appointed as, or continue to occupy the office of a Director if:- (a) He is found lunatic or becomes of unsound mind or incapable of efficient attention to business; or (b) He remains absent in three consecutive meetings of the Board of Directors or in all meetings of the Board of Directors for a continuous period of three months, whichever is the longer, without leave of absence from the Board of Directors; or (c) He is convicted of any criminal offence and sentenced to imprisonment; or (d) He is a loan defaulter as per CIB (Credit Information Bureau) report of Bangladesh Bank; or (e) He has entered into any business transaction with the Exchange; or (f) Without prejudice to the above he fails to pass “Fit and Proper” criteria as may be framed by the Commission from time to time.

³⁰ He is or has been an employee of the Exchange, any of its subsidiaries or holding company within the preceding 3 (three) years of his proposed date of appointment.

[The Dhaka Stock Exchange (Board and Administration) Regulations, 2013 c 5(5)(a)].

³¹ “Managing Director” or “MD” means an officer of the Exchange, by whatever name called including without limitation, Chief Executive Officer, appointed by the Board in accordance with the Articles and these Regulations.

[Ibid c 2(1)(n)].

³² He is or has been the MD/CEO of any subsidiary, associated company, associated undertaking or holding company of the Exchange within the preceding 3(three) years of his proposed date of appointment.

[Ibid c 5(5)(b)].

³³ He has, or had within the preceding 3 (three) years of his proposed date of appointment, a material business relationship with the Exchange either directly or indirectly as a partner, substantial shareholder or director of a body that has such a relationship with the Exchange.

[Ibid c 5(5)(c)].

³⁴ He has received remuneration within the preceding 3 (three) years of his/her appointment as a director or receives additional remuneration, excluding retirement benefits from the Exchange apart from a director’s fee or has participated in the Exchange’s share option or a performance-related pay scheme.

[Ibid c 5(5)(d)].

³⁵ He is a family member or connected person, as defined in the Exchanges Demutualization Act, 2013, of any of the Directors, TREC holders or shareholders of the Exchange or the Exchange itself, or he has or had any relationship with any of the TREC holders or Shareholders of the Exchange or Directors thereof.

[Ibid c 5(5)(e)].

person acts as an employee or director of any capital market intermediary,³⁶ or as a Director of any other exchange or holds any office of a listed company or as an employee of any shareholder of any exchange or any regulatory organization.³⁷

The aforesaid provisions related to the disqualifications are made quite wide in order to ensure fair, neutral and interest-free management in the Board of Directors of the DSE. This Regulation has come into effect after 2010-2011 stock market scams, where the direct involvement of few superior authorities of the DSE had been reported in the Probe Committee Report, 2012. Formulating these Regulations is a good attempt, but to what extent this is ensuring transparency and fairness in the management of the DSE in reality is questionable.

c. Important Obligations for the Board of Directors

The regulations provide some important obligations upon the Board. It provides a code of conduct regarding meetings and minutes,³⁸ regulatory compliance and other general issues. As a part of regulatory compliances, the Directors shall ensure that the Exchange abides by all the provisions of securities laws, rules and regulations framed there under and circulars, directions issued by the BSEC and other authorities in such manner that at all levels the regulatory system do not suffer any breaches. The DSE will commensurate steps to honor the time limit prescribed by the BSEC for corrective action. It will always act for protecting the interest of the investors and shall not support any decision in the meeting of the Board which may adversely affect the interest of investors and shall report forthwith any such decision to the BSEC.³⁹

Additionally, the code of conduct as stated above, there are some important responsibilities lies upon the Board of Directors of DSE. The Board shall ensure the performances of the Exchange in upholding the interest of public, i.e. the investors; and give priority to the interest of public, i.e. the investors; even it appears to be conflicting

³⁶ He is or has been an employee or director of any capital market intermediary including Merchant Banker or Asset Management Company within the preceding 3 (three) years of his proposed date of appointment. [Ibid c 5(5)(g)].

³⁷ Ibid c 5(5).

³⁸ Meetings of the Board of Directors and General Meetings, notices, agenda, minutes of the meetings shall be in accordance with the Companies Act, 1994.

³⁹ The Dhaka Stock Exchange (Board and Administration) Regulations, 2013 c 8(2).

with the interest of the Exchange or its shareholders.⁴⁰ It shall prioritize redressing investor grievances and encourage fair practices in dealings and trading in securities and matters ancillary thereto.⁴¹

The Directors shall carry out their fiduciary duties with a sense of objective judgment and independence in the best interests of the Exchange and investors. The Board shall submit necessary disclosures/ statement of holdings/dealings in securities as required by the BSEC and the Exchange from time to time as per their rules, regulations and bye-laws. The Directors shall unless otherwise required by law, maintain confidentiality and shall not divulge/disclose any information obtained in discharging their duties.⁴²

Moreover, a Director shall not use any confidential information for his personal gain, directly or indirectly, received or obtained by him in his capacity as a member of the Board. The Directors shall perform their duties in an independent and objective manner and avoid activities that may impair, or may appear to impair, their independence or objectivity or official responsibilities. They shall put in place a mechanism for an annual evaluation of the Board's own performance. They shall not, in any way, interfere in the activities of the management of the Exchange.⁴³

The Regulations also provide a code of ethics for the directors, which is highly praiseworthy. Though under 'the code of ethics' it is expected that the Directors shall uphold the sincerest level of honesty, fidelity, secrecy, transparency and accountability in order to protect the best interest of the market and the investors,⁴⁴ to what extent the DSE and its officials and superior authorities are functioning fairly which is highly questionable.

d. Code of Ethics for the Directors

The code of ethics for the Directors of the Exchange intends to establish the highest level of business/professional ethics to be followed for establishing a fair and transparent exchange. In discharging functions, the Directors shall adhere to the fundamental principles of ensuring fairness and transparency in dealing with matters related to the

⁴⁰ Ibid c 8(1)-(3).

⁴¹ Ibid c 8(3).

⁴² Ibid.

⁴³ Ibid c 8(4).

⁴⁴ Ibid c 9.

Exchange and the investors,⁴⁵ compliance with all laws/rules/regulations laid down by the Exchange and BSEC, exercising due diligence in the performance of duties, and avoidance of conflict of interest between self interests of directors and interests of the Exchange and investors⁴⁶.

There shall be a Conflict Mitigation Committee who shall be responsible for overseeing whether the Directors are complying with the provisions of the Regulations. To this Committee, all the directors upon assuming office and during their tenure in office, whenever arises shall disclose about any fiduciary relationship of self and family members and directorship/partnership of self and family members in any issuer or with any capital market intermediary, shareholding or any changes thereof, directly or through his family, in any listed company on the Exchange or in other entities related to the capital markets, and any other business interests which may affect price movements of the listed securities.⁴⁷

Generally, the Directors shall not have access to any undisclosed price sensitive information, surveillance or any matter related to the market operation unless the matter is placed before a committee or board meeting. However, any information related to the business/operations of the Exchange, which may come to the knowledge of directors during performance of their duties shall be held in strict confidence and shall not be divulged to any third party and shall not be used for any purpose except for the performance of their duties. All such information, especially which is non-public and price sensitive, shall be kept confidential and not be used for any personal gain.⁴⁸

The Mitigation Committee shall bear the responsibility to see whether the directors are complying with the provisions of the regulations. The term ‘responsibility’ is a powerful

⁴⁵ In doing so, the Directors shall disclose on a periodic basis, with an interval of not more than one month, their trading activities including personal and institutional portfolio investment where such director has direct or indirect interest to the Conflict Mitigation Committee. They shall also disclose on a periodic basis as above, the trading conducted by firms/corporate entities in which they hold 10% or more beneficial interest or hold a controlling interest, to the Conflict Mitigation Committee.

[Ibid c 9(2)].

⁴⁶ No director of the Board or member of any committee of the Exchange shall participate in any decision-making/adjudication process in respect of any person/matter in which he is in any way, directly or indirectly, concerned or interested. No director shall be involved in any business transaction with the Exchange except transaction related to the trading of securities. Any decision of the Conflict Mitigation Committee as to the existence of conflict of interest shall be final.

[Ibid c 9(3)].

⁴⁷ Ibid 15(5).

⁴⁸ [Ibid c 9(4)].

one. It denotes that failure to carry out the provisions may lead to punishment. Unfortunately, these are the Regulations which are directory in nature. There is also no time limit providing for implementing these regulations. There are also no binding or enabling provisions giving the regulations an effect as an Act, violation of which definitely offers legal protection.

e. Functions of the DSE

One unique provision of this regulation is that the Board of Directors of the DSE and the managerial officers who regulate the functionaries, affairs and transactions of the DSE has been kept separated. The Directors are different from the managerial officers of the DSE. This has been done to ensure transparency, prevent syndication, curb insider trading and disclosure of price sensitive information, and also to make the superior controller of DSE more value free and neutral.

The functions and affairs of the DSE is mainly controlled by and under the authority of the Regulatory Affairs Division (RAD), represented by the Chief Regulatory Officer (CRO)⁴⁹. Along with the CRO, there is the Managing Director/Chief Executive Officer who shall be responsible for all kinds of administrative control and management of the DSE. This includes effective administration and efficient financial and general management of the Exchange including management of its human resource functions, controlling and directing the officers and staff of the Exchange, discharging all other duties and responsibilities delegated by the Board occasionally, representing the Exchange before the BSEC and any other authority concerned, forming management committee(s) to oversee the selection, promoting and demoting employees below the rank of Company Secretary and equivalent, of the Exchange, and carrying out the policy, directive, guideline or order issued by the BSEC.⁵⁰ Besides, the Board of Directors also carries out several important functions as provided under the regulations.⁵¹

⁴⁹ “Chief Regulatory Officer” or “CRO” means an officer of the Exchange responsible for discharging regulatory functions of the Exchange.

[Ibid c 2(1)(f)].

⁵⁰ Ibid c 16.

⁵¹ Clause 6 of the DSE (Board and Administration) Regulations, 2013 provides that-

(1) Without prejudice to the generality of the powers conferred upon the Board in pursuance of the Articles, the Board shall be vested with the policy making and resource mobilization powers necessary for the governance of the Exchange.

(2) The Board shall approve the business plan, annual budget statements of the Exchange and take all measures necessary for the promotion of the objects and purposes of the Exchange.

The Managing Director shall also be responsible for designing measures to protect the interest of the investors and the shareholders of the Exchange, ensuring free, fair, transparent and efficient management and operation of the Exchange, promoting market related information technology of the Exchange, ensuring disclosure of all price sensitive/material information in the manner prescribed by the BSEC or the Exchange, adopting necessary measures to pre-empt conflict of interest, providing extensive financial education to investors, general public, market intermediaries, listed companies and others related to the capital market and others.⁵²

The person appointed as Managing Director/Chief Executive Officer shall not be a shareholder of the Exchange, nor shall he, in any way whatsoever, be associated with any shareholder or TREC holder (Trading Right Entitlement Certificate) of the Exchange or with any issuer, and shall not engage himself in any business, directly or indirectly, including trading or dealing in any securities. This provision tries to ensure neutral and value free appointment of the Managing Director in DSE.⁵³

Apart from the Managing Directors, some other important roles will be played by the Independent Directors of DSE. The Independent Directors shall play the most important role in the Board Committees by ensuring neutrality, improving corporate governance and enhancing business efficiency through their diverse experience and expertise. Independent Directors shall be majority in all the Board Committees including the Chairman in all the committees and thus their strong role will be ensured in decisions and functions of these committees.⁵⁴

(3) The Board shall make and amend all regulations and bye-laws of the Exchange subject to approval of the Commission and issue such orders and directions and make such decisions as it may deem appropriate for the purposes of the Exchange.

(4) The Board shall prescribe and impose penalties for the violation of regulations and bye-laws adopted by the Exchange and for neglect of or refusal to comply with the orders, directions or decisions issued or made by it thereunder.

(5) The Board shall have the power to issue, revoke, vary, and suspend any TREC issued in favour of any person subject to compliance with the applicable Regulations as may be framed for such purposes.

(6) In the discharge of its functions, the Board shall not, in any manner, interfere with the exercise of powers and discharge of functions by the Managing Director and other officers.

(7) The Board shall exercise such other powers as required under the Demutualization Act

⁵² Ibid c 10.

⁵³ Ibid c 5(5).

⁵⁴ Ibid c 14.

f. DSE Working Departments and Other Staffs

For handling the overall functions and affairs of the DSE there are several departments under the management of the Managing Director, such as, Internal Audit Department, Human Recourses and Admin Division,⁵⁵ Market Development Division,⁵⁶ Finance and Accounts Division,⁵⁷ Information and Communication Technology Division,⁵⁸ Company Affairs Division,⁵⁹, Regulatory Affairs Division⁶⁰ and also DSE Chittagong and Sylhet Offices. Important functions of some of the departments' are directly related to investors are summarized below with critical observations.

g. Surveillance at DSE

This is one of important and major tasks of the DSE. This is very important for the monitoring and detection of the abuse and malpractice in the market. The DSE has its own surveillance system to control and monitor the market activities particularly regarding the scrip traded. Surveillance Department keeps a close watch on price-movement of scrip, detects market manipulation and monitor abnormal prices and volumes (volatility) which are not consistent with the normal trading system. It also manages default risk by taking timely actions.⁶¹

Market Abuse is a broad term which includes abnormal price/volume movement, artificial transactions, false or misleading impressions, insider trading, etc. In order to detect aberrant behavior/ movement, it is necessary to know the normal market behavior. The department carries out investigation, if necessary, based on the preliminary examination/analysis and suitable actions are taken against members involved based on the investigation. All the instruments traded in the market come under the Surveillance

⁵⁵ It comprises of Human Resources Department, Common Services Department, DSE Training Academy, Maintenance Admin Department, Security Department , DSE Tower Project, Nikunja.

⁵⁶ It comprises of Market Operations Department, Product & Market Development Department, OTC Market Department, Research & Information Department.

⁵⁷ It comprises of Clearing Accounts Department, General Accounts Department, DSE FSDP Department, Treasury Management Department, Risk Management Department.

⁵⁸ It comprises of Application Support Department, Backoffice Development Department, IT Infrastructure Department, MIS & Development Department, Network Development Department (Local Communication), Network Development Department (Distance Communication), System & Market Administration Department, Web Development Department, IT Strategy & Security Department.

⁵⁹ It comprises of Board & Corporate Affairs Department, Legal Affairs Department, PR & Publication Department , TREC Affairs Department.

⁶⁰ It comprises of Surveillance Department, Monitoring & Compliance Department, Investigation & Enforcement Department, Listing Affairs Department, Investor Complaints, Arbitration & Litigation Department, Corporate Governance & Financial Reporting Compliance Department.

⁶¹ The DSE (Board and Administration) Regulations, 2013 c 16(3)(c).

umbrella of DSE. Surveillance activities at the Exchange are divided broadly into two major segments e.g. price monitoring⁶² and position monitoring⁶³. Price monitoring can be online⁶⁴ and off-line surveillance⁶⁵.

Under the price monitoring surveillance, the DSE can conduct in-depth and close investigation of trading of scrip time to time. If any irregularity is observed, the DSE can immediately inform the BSEC and also take immediate steps by giving verbal/written warning to the members or imposing penalty or suspending the member's transaction based on the investigation report. As a part of price monitoring, the DSE can also monitor and verify the rumor⁶⁶ and also apply market intelligence⁶⁷. It can also investigate into the matters coming from rumor to detect of suspected insider trading.

The DSE can also monitor the position of its members and traders. It closely monitors outstanding exposure of members on a daily basis. For this purpose, it observes various off-line and on-line market monitoring reports. The reports are scrutinized to ascertain whether there is excessive purchase or sale position build up compared to the normal business of the member, whether there are concentrated purchases or sales, whether the purchases have been made by inactive or financially weak members and even the quality of scrips is considered to assess the quality of exposure. In doing so, the DSE closely monitors brokers' gross turnover exposure to ensure margin calls in time and also

⁶² Price Monitoring: Price monitoring is mainly related to the price movement/ abnormal fluctuation in prices or volumes, etc.

<<http://www.dsebd.org/surv.php>> (25.05.2016).

⁶³ Position Monitoring: The position monitoring relates mainly to abnormal positions of members, etc. in order to manage default risk.

[Ibid].

⁶⁴ Online surveillance is one of the most important tools of the Surveillance. It acts with main objectives of detecting potential market abuses at a nascent stage, reducing the ability of the market participants, preventing undue influence on the price and volumes of the scrips traded at the Exchange, improving the risk management system and strengthening the self regulatory mechanism at the Exchange. The system provides facility to access trades and orders of members.

[Ibid].

⁶⁵ The Off-Line Surveillance system comprises of the various reports based on different parameters and scrutiny thereof which include high/ Low Difference in prices, % change in prices over a week/ fortnight/ month, top N scrips by Turnover over a week/ fortnight/ month, top N scrips by Volume over a week/ fortnight/ month, trading in infrequently traded scrips and scrips hitting New High / Low etc.

[Ibid].

⁶⁶ Any rumor about liaising with Compliance Officers of companies to obtain comments of the company on various price sensitive corporate news items appearing in selected News Papers. It can also verify any comments received from the companies are disseminated to the market by way of online news bulletin.

[Ibid].

⁶⁷ The rumors floating in the market are verified with the data available with DSE, Newspapers, Television news channels & Reuters to ascertain the national & global factors affecting the market sentiments. This enables the Exchange to avert market problems before it causes a serious damage.

[Ibid].

scrutinizes the statement on daily basis. In case of risky issue or high risky trading in any security, the fundamentals of the scrips, their daily turnover, and their nature of transactions are ascertained. Thereafter, based on the market risk perception, appropriate surveillance actions are taken.⁶⁸

Under the surveillance, the institutional trades, foreign trades, report crossing trades, dealers' own trades, sponsor trading and other sort of trading are verified to ascertain the authenticity of trades. The DSE can carry out all necessary investigation of certain dealings in order to verify irregularities, and take further actions including referring the case for detailed investigation, referring the case to the BSEC, depending on the findings of preliminary investigation. It can also review block trades, list of settlement failures, verify company accounts, scrutinize media information, monitor newly listed stocks, develop good liaison and other things as the DSE thinks fit for proper market surveillance.⁶⁹ The Surveillance Department of DSE carries out the most important task; their task is to monitor the market trading, prevent fake, abnormal, unfair and unhealthy trading, prevent market abuse and manipulation, etc. These tasks are to be carried out in cooperation with the surveillance under the BSEC though the surveillances of the BSEC and the DSE overlap to some extent. However, both can ensure better monitoring over the market activities by working together as a unit.

If the authorities of stock exchanges were cautious enough the terrible market crash could have been prevented. Fairness, transparency and healthy practice in carrying out the role and activities of this department have also been questioned by the Probe Committee formed after 2010-2011 share scams. Basically after the scam, the authorities became more proactive in developing the market surveillance in order to bring fair, transparent system and to prevent malpractice and false/fictitious trading from the market.

h. Concluding Remarks about DSE Administrative Regulations

These Regulations are far more comprehensive than the Dhaka Stock Exchange (Board and Administration) Regulations, 2000 which were very restrictive. The new Regulations came into force in 2013. These Regulations are made after Exchanges Demutualization

⁶⁸ Information collected from the DSE website and also from the relevant laws and regulations. <<http://www.dsebd.org/surv.php>> (23.07.2016).

⁶⁹ Ibid.

Act, 2013 which was formulated upon the involvement of the DSE and its managerial authorities and staffs in the 2010-2011 share market scams. These Regulations have been made in compliance with the CSR⁷⁰ Guidelines as provided by the BSEC vide Notification No. SEC/CMRRCD/2006-158/134/Admin/44 dated 7.08.2012.⁷¹ Though these Regulations provide some restrictive provisions on the qualifications of Directors, Managing Directors and Independent Director for ensuring transparency, fairness and lack of involvement of the DSE core members and managerial authorities in stock market trading; they fail to cover all possible scope of the directors or managerial authorities to manipulate the stock market and to ensure fair trading. Except the independent directors, other directors and staffs of the DSE are left to trade easily in market and they can trade through others. There is no penal provision for the perpetrators who by abuse of his post in the DSE can manipulate and influence the trading of market and can take unfair advantage from market.

It is apparent from the trading system in stock market that the companies issuing shares in market have little to do in the control of prices of securities in the market. The close examination of overall market management system shows that the owners, the controllers and the directors of dominant and the ruling companies have various scopes and link to create a close connection in stock market management system and to control the price and also to dominate the trading in securities. It is shown that the directors, the shareholders, the managers or the controllers of market dominating companies get involved in the direct management of stock market by opening broker house, being member of stock exchange and its management and trustee board, being in the management board of bank, clearing house, depositories, and other associated institutions. In this way, the issuer companies can play a supervisory role in controlling the trading in stock market.

i. DSE Listing Regulations

Experiencing several shortcomings in the earlier listing regulations, a new listing regulations has been formulated by the DSE in 2015 namely Dhaka Stock Exchange (Listing) Regulations, 2015 which is more comprehensive and conclusive By the

⁷⁰ Corporate Social Responsibility.

⁷¹ These Guidelines have been analyzed in details in another Chapter.

Regulations 2015, the “Listing Regulations of Dhaka Stock Exchange” and “Dhaka Stock Exchange (Direct Listing Regulations), 2006” have been repealed.⁷²

No security can be traded and no issuer can trade in security with the DSE unless the same is listed with the DSE in accordance to the provision under the aforesaid Regulations.⁷³ It provides different procedures for equity securities⁷⁴, mutual fund⁷⁵ and debt securities⁷⁶. It also provides rigorous procedures for direct listing of unlisted or re-listed⁷⁷ of de-listed securities and publication of information document or public offer document.⁷⁸ No listing of securities shall be permitted unless the Managing Director/Chief Executive Officer (CEO)/authorized person(s) on behalf of the issuer of securities has provided an undertaking under a common seal and signature to abide by these Regulations.⁷⁹ Some important obligations regarding disposal of shares have been laid down under the regulations.⁸⁰ Most importantly, the Regulations provide various post listing continuous compliances for the issuers in order to disclose the material information about the financial and managerial conditions of the issuers periodically and yearly.

The issuers are under obligations to submit audited financial reports to the stock exchanges.⁸¹ Any un-audited financial statements of the issuer of listed securities shall be authenticated on behalf of the Board of Directors/Trustee signed by the Chief Executive Officer/Managing Director, at least two Directors including Chairman, Chief Financial Officer/Head of Finance and Accounts and the Company Secretary/Compliance Officer of the fund manager until and unless otherwise required by applicable primary regulators.⁸² Issuer companies will make their financial reports available in the website.⁸³ The regulations also provide detailed obligations regarding holding annual general meeting, declaring dividend, fixing record date, Submitting annual report and dividend compliance report, submission of visual recording of AGM, conditions of buying and selling sponsor’s

⁷² The Dhaka Stock Exchange (Listing) Regulations, 2015 c 57.

⁷³ Ibid c 5.

⁷⁴ Ibid c 6(1).

⁷⁵ Ibid c 6(2).

⁷⁶ Ibid c 6(3).

⁷⁷ Ibid c 10.

⁷⁸ Ibid cc 4-6.

⁷⁹ Ibid c 7. This undertaking is of very importance. It provides several guarantees as to financial condition and other status of the issuer.

⁸⁰ Ibid c 12.

⁸¹ Ibid cc 14-19.

⁸² Ibid c 20.

⁸³ Ibid c 21.

or director's shares, disclosing price sensitive information, submitting statement of monthly shareholding position, free float reporting, submission of corporate governance guidelines report and materially changed information about the issuer to the DSE.⁸⁴

The per value of share of the public limited company and mutual fund is now fixed at Tk. 10,⁸⁵ and any security can be transferrable unless charge or lien is created by the owner over the security⁸⁶. The information under the Regulations will also be filed in prescribed electronic format to the BSEC and to the exchanges.⁸⁷ It also prescribes necessary fees to be submitted to be listed and the procedures under the Regulations.⁸⁸ The issuer company also needs to submit its membership with Bangladesh Association of Public Listed Companies (BAPLC)⁸⁹ and answer the queries made by exchanges regarding unusual movement on price and volumes as such securities as the exchanges require time to time.

The Regulations also obliges the issuer and all other concerned to disclose all true and authentic information as meant and provided under the Regulations. No issuer of listed securities or its directors, sponsors and officers or members of Trustee Board or directors, sponsors and officers of asset manager, Auditors of the issuers shall, in any document, paper, financial statements, information or explanation which he is, by or under these regulations, required to furnish or in any application made under these regulations, make any statement or give any information which he knows or has reasonable cause to believe to be false or incorrect or misleading or motivated in any material particular.⁹⁰ This obligation is very important for the prevention of untrue and false statement or motivated information of the management of the issuer company and other important persons in any important documents of the issuer.

Moreover, the Exchange, on cause, may inspect at any time, if it is necessary to conduct an inspection for the interest of investors, the affairs of any issuer of listed securities with prior approval of the BSEC and shall report to the BSEC within fifteen days of completion of such inspection.⁹¹ Every issuer and its directors, officers, auditors or authorized persons

⁸⁴ Ibid cc 22-38.

⁸⁵ Ibid c 39.

⁸⁶ Ibid c 40.

⁸⁷ Ibid c 41.

⁸⁸ Ibid cc 42-43.

⁸⁹ Ibid c 46.

⁹⁰ Ibid c 45.

⁹¹ Ibid c 54.

thereof shall furnish such documents, information or explanation related to the affairs of the issuer of listed securities as the Exchange may require, at any time, by request in writing with intimation to the BSEC.

Along with the above, the Regulations empower the DSE with some important punitive powers. It has the power to halt the trading or direct the issuer to take corrective steps as necessary when any unusual market action occurs for a listed security and reported to the Chief Regulatory Officer of the Exchange and if the action appears to be attributable to a rumor or report or material information that has not been publicly disseminated or any other manipulation.⁹²

In case of contravention of the provisions of these regulations, the Exchange can suspend trading of any listed security of the concerned issuer. Trading can also be suspended if the Exchange has reason to believe that not all material information is available to the public for efficient price discovery.⁹³ The suspension news will be immediately communicated with the issuer and the BSEC will make wide publication of this suspension through trading system and websites of BSEC and exchanges within 5 (five) minutes of such suspension. Suspension can be made for thirty days at a time, which can be extended for further fifteen days.⁹⁴ After that period, there is no further explanation of what will happen to the security. However, no suspended security shall be restored and re-quoted until the issuer rectifies the causes of suspension and receives the assent of the Exchange for such restoration.⁹⁵

By giving reasonable opportunity of being heard, the Exchanges can de-list any security if the issuer fails to declare dividend,⁹⁶ fails to hold AGM,⁹⁷ goes into liquidation or does not come into commercial operation,⁹⁸ fails to pay annual listing fee,⁹⁹ or fails to comply with

⁹² Ibid c 49.

⁹³ Ibid c 50.

⁹⁴ Ibid.

⁹⁵ Ibid.

⁹⁶ If the issuer has failed to declare dividend (cash/stock) for a period of five years from the date of declaration of last dividend or the date of listing with the Exchange.

[Ibid c 51(1)1(a)].

⁹⁷ If the issuer has failed to hold its Annual General Meeting for a consecutive period of three years.

[Ibid c 51(1)1(b)].

⁹⁸ If the issuer has gone into liquidation either voluntarily or under court order or has stopped its commercial operation/production/exploration for a period of consecutive three years.

[Ibid c 51(1)1(c)].

⁹⁹ If the issuer has failed to pay the annual listing fees as prescribed in these regulations or any other dues payable to the Exchange for a period of 3 years.

the obligations under laws¹⁰⁰.¹⁰¹ Instead of suspending trade of any listed securities instantly upon closure of operation of the issuer, the Exchange shall regularly disseminate on the trading monitor to the effect that if the situation of the issuer which failed to hold its Annual General Meeting(s) and issue Annual Report(s), and simultaneously the operation of the issuer remains closed for more than six months, is not improved within the next six months from the 1st date of such dissemination, the Exchange shall de-list the securities upon completion of the said six months of dissemination.¹⁰²

Any issuer can also apply for voluntary de-listing of the security subject to conditions and compliance with the all the requirements as provided under these regulations.¹⁰³ A complex set of rules are provided for voluntary de-listing.¹⁰⁴ The essence of those provisions put stress on securing the interest of the investors and public at large. On the other hand, the fixed term securities, such as, mutual funds, bonds, debentures, etc can be de-listed upon their maturities.¹⁰⁵

One of the most important features of these regulations is that it takes personal undertaking from the directors, the Managing Director or the Chief Executive Officer and the management of the company for the financial documents and audit report submitted by the issuer company to the DSE.¹⁰⁶ In the undertaking, it is clearly stated that “after making all reasonable inquiries, that all conditions concerning this public offer and Information

[Ibid c 51(1)(d)].

¹⁰⁰ If the Commission or the Exchange issues any order to de-list the securities for non-compliances of any provision of these Regulations or any other securities laws in force.

[Ibid c 51(1)(e)].

¹⁰¹ Ibid c 51.

¹⁰² Ibid c 51.

¹⁰³ Ibid c 52.

¹⁰⁴ Ibid.

¹⁰⁵ Ibid c 53.

¹⁰⁶

Annexure-12 of Schedule- A of DSE Listing Regulations, 2015
FORMAT OF DECLARATION
(Under Regulation 11)

Declaration about the Responsibility of the Directors, including the Managing Director/Chief Executive Officer of the Issuer Company in respect of the Information Document

This Information Document has been prepared, seen and approved by us, and we, individually and collectively, accept full responsibility for the authenticity and accuracy of the statements made, information given in the Information Document, other documents, financial statements, exhibits, annexes, papers submitted to the Commission/the Exchange in support thereof. We confirm, after making all reasonable inquiries, that all conditions concerning this public offer and Information Document have been met and that there are no other information or documents the omission of which make any information or statements therein misleading for which the Commission/the Exchange may take any civil, criminal or administrative action against any or all of us as it may deem fit. We also confirm that full and fair disclosure has been made in this Information Document to enable the investors to make a well informed decision for investment.

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Chairman Managing Director Director Director

Document have been met and that there are no other information or documents the omission of which make any information or statements therein misleading for which the BSEC/the Exchange may take any civil, criminal or administrative action against any or all of us as it may deem fit. We also confirm that full and fair disclosure has been made in this Information Document to enable the investors to make a well informed decision for investment".¹⁰⁷ Additionally, the directors and the sponsor directors must give unconditional undertaking in the manner provided under the regulations.¹⁰⁸ Moreover, the auditor and the underwriter also need to provide declaration as to the authenticity and correctness of the information contained in the documents, especially in the financial statement provided by the issuer company.

In addition, these Regulations provide detailed guidelines about the statements and information required to be disclosed regarding the financial condition, debt issue, liability, functions, management and affairs of the issue company. This is praiseworthy but very rigorous and tough to follow. The most important question is whether the DSE is careful enough to check out all these requisites and compliance obligations of the issuer before granting approval to any issuer to issue security in the market. If the DSE were cautious enough in inspecting into the affairs and business of the issuer company and verifying the veracity and authenticity of all the documents and information given by the issuer company, then half of the share market corruption could have been avoided.

The most important provision is that the provisions under the Regulations have been given effect equivalent to the provisions of the Securities and Exchange Ordinance, 1969, the Bangladesh Securities and Exchange Commission Act, 1993 and the Demutualization Act, 2013. It means that violations/contraventions of the provisions of these Regulations will attract penal provisions (both civil and criminal) under the aforesaid statutes.¹⁰⁹ The exchanges can also frame further regulations for the clarification or interpretation of any provision of these regulations in case of arising any confusion thereof with the prior approval of the BSEC.

¹⁰⁷ Ibid.

¹⁰⁸ Annexure-11 of Schedule-A that provides format of unconditional undertaking by individual sponsor/director (On Non-Judicial Stamp Paper), under Regulation 10(2) (p) of the DSE (Listing) Regulations, 2015.

[Ibid].

¹⁰⁹ Ibid c 56.

j. DSE Auto Trading

DSE auto trading is regulated by the Dhaka Stock Exchange Automated Trading Regulations, 1999. Trading day, period and automated trading system are governed by these Regulations. Only the license holders under the BSEC,¹¹⁰ the person who becomes a member of the DSE Clearing House or who is not otherwise barred by DSE or SEC under any law, rule or regulations for the time being in force for trading.¹¹¹

Depending on the availability, the DSE shall make the system available to the members by providing trading workstation connections. There shall be four markets in the system, such as, Public Market,¹¹² Spot Market,¹¹³ Block Market,¹¹⁴ and Odd lot Market¹¹⁵. There shall be five trading sessions e.g. Pre-opening session,¹¹⁶ Opening session,¹¹⁷ Continuous or Regular trading session,¹¹⁸ Closing session¹¹⁹ and Post-closing session¹²⁰.¹²¹ The function of each trading session is separate and important.

Orders may be grouped or categorized based on the following, namely price, volume and validity. Based on price, orders may be of the following categories, namely limit order¹²²

¹¹⁰ The person who has obtained a registration certificate from the BSEC issued under the Securities and Exchange Commission (Stock-Dealer, Stock-Broker and Authorized Representative) Regulations, 2000 and now under Dhaka Stock Exchange (Trading Right Entitlement Certificate) Regulations, 2013 can operate as traders in the stock market.

[The Dhaka Stock Exchange Automated Trading Regulations, 1999 c 5].

¹¹¹ The Dhaka Stock Exchange Automated Trading Regulations, 1999 c 5(1).

¹¹² Matching in this market is automatic based on the touchline prices which follow normal settlement procedure.

[Ibid c 7(a)].

¹¹³ Matching in this market is also automatic, settlement of which follows procedure for spot transactions. The Management Team may put an instrument on compulsory spot to curb volatility in prices of the instrument.

[Ibid c 7(b)].

¹¹⁴ This is the market for bulk selling and buying on automatic matching with equal quantity and best price (all or none condition) basis. Orders entered in this market are immediately flashed on all trading workstations. The minimum amount for a bid of bulk lot for a certain security shall be Tk. 0.5 (point five) million at market price unless otherwise fixed by the Council from time to time with the approval of the SEC.

[Ibid c 7(c)].

¹¹⁵ Odd lot shares are traded in this market on automatic matching with equal quantity and best price (all or none condition) basis.

[Ibid c 7(d)].

¹¹⁶ Ibid c 9(a).

¹¹⁷ Ibid c 9(b).

¹¹⁸ Ibid c 9(c).

¹¹⁹ Ibid c 9(d).

¹²⁰ Ibid c 9(e).

¹²¹ Ibid c 8(1).

¹²² Limit order must have a price limit which ensures that the order shall be traded at the price equal to or better than the limit price.

and Market order¹²³. Based on volume, orders may be of the following categories, e.g. partial fill,¹²⁴ partial fill and kill,¹²⁵ and Full fill or kill¹²⁶.

The most fundamental stage is the execution of orders which can be made at once when order for sell or buy is made or it can be executed in future. When execution is made at once, it is called matching order¹²⁷ and when the execution is kept pending for the future, it is given queue priority.¹²⁸ Trade is mainly executed when orders match. These Regulations provide detailed provisions regarding trading system of the exchanges.

k. DSE TREC

In exercise of the powers conferred by section 34 of the Securities and Exchange Ordinance, 1969 read with section 23 of the Exchanges Demutualization Act, 2013, the Exchange makes these Regulations with the prior approval of the BSEC. These Regulations shall come into effect from the demutualization date. After these Regulations, no person can provide brokerage service under the exchanges without the Trading Right Entitlement Certificate (TREC) in accordance with the provisions of these Regulations. The Exchanges Demutualization Act, 2013 defines TREC as the certificate approved by the Exchanges providing the broker or dealer with the right and entitlement to trade securities listed with the Exchanges following the prescribed Scheme.¹²⁹ A similar definition has been adopted in the Dhaka Stock Exchange (Trading Right Entitlement Certificate) Regulations, 2013.¹³⁰ The compliance of these Regulations extend wider

[Ibid c 10(2)(a)].

¹²³ Market order is the order to be executed at the touchline price. A market order is matched immediately on arrival in to the trading engine at the touchline price. To avoid the possibility of the market order being matched at ridiculous rate, this is protected by a price protection percentage as determined by the Council. If there is no touchline price then the market order shall be rejected.

[Ibid c 10(2)(b)].

¹²⁴ A partial fill (PF) order signifies that as much possible of the order quantity shall be executed as soon as the order is submitted to the trading engine. If the order is not fully executed the remaining order quantity shall be stored which shall be visible to the market.

[Ibid c 10(3)(a)].

¹²⁵ A partial fill and kill (PFAK) order signifies that as much as possible of the order quantity shall be executed as soon as the order is submitted and the remaining order quantity shall be returned to the trader who entered the order.

[Ibid c 10(3)(b)].

¹²⁶ A full-fill or kill (FOK) order signifies that either all of the orders quantity shall be executed as soon as the order is submitted to the trading engine or the entire order shall be rejected and returned to the trader.

[Ibid c 10(3)(c)].

¹²⁷ Ibid c 11.

¹²⁸ Ibid c 12.

¹²⁹ The Demutualization Act, 2013 s 2(8).

¹³⁰ "TREC" means Trading Right Entitlement Certificate as defined in the Demutualization Act.

stating that the provisions of these Regulations shall be binding on all TREC Holders, its directors, shareholders, employees, agents, associate persons and TC holders and shall be deemed to be a direction of the Exchange.¹³¹ Any director, manager, or officer of a TREC holder shall, together with that TREC holder, be liable for the purposes of these Regulations for any breach, non-compliance, violation or contravention that was caused or committed with the connivance or consent or attributable to any neglect on the part of such director, manager, or officer.¹³²

These Regulations are all explanatory and all-embracing in describing the trading system, qualifications of being TREC holder, procedures for obtaining TREC, maintenance of internal documents and functions of the TREC holder, what-to-do list and what-not-to-do list, grounds of suspension or cancellation of the business of the TREC and other related issues.

Importantly, these Regulations under Clause 7 provide some disciplinary powers and activities upon the DSE which were not conferred earlier. These are mainly given for the exercise of supervisory power upon the Exchanges as the watchdog about the activities of the TREC holders. Experiencing the massive involvement of the broker houses, authorized dealers, officers of the DSE, the securities houses and other affiliates of exchanges in 2010-2011 scams, these Regulations confer the DSE with some disciplinary powers and responsibilities. The Exchange may, at any time on its own motion or receiving any complain or found through investigation, on notice or otherwise conduct an inspection to ensure that a TREC holder is in compliance with the Exchange's regulations or require the TREC holder to furnish the Exchange with such information as it may require within a reasonable time and verified in such a manner as the Exchange may specify.¹³³

Conducting the inspection, the Exchanges can exercise wide power in accordance with law. In the report, the DSE can report that there are circumstances suggesting that the TREC holder is not fit and proper to carry on the business of a TREC holder, or there has been a contravention by the TREC holder of the regulations of the Exchange or decisions taken by the Exchange, or to be appropriate or desirable for the protection of investors.¹³⁴

[The Dhaka Stock Exchange (Trading Right Entitlement Certificate) Regulations, 2013 c 2(1)(q)].

¹³¹ Ibid c 3.

¹³² The Dhaka Stock Exchange (Trading Right Entitlement Certificate) Regulations, 2013 c 3.

¹³³ Ibid c 7.

¹³⁴ Ibid c 7(4) and (5).

In such case the Exchange shall formally report the matter to the Chief Regulatory Officer who may call the TREC holder to a hearing and exercise several powers as provided under law.¹³⁵ The Exchanges can also take the following penal provisions as given by the Board upon it¹³⁶-

- (i) declare that there is no case for the TREC holder to answer;
- (ii) decide that no further action should be taken;
- (iii) issue a private warning or reprimand to the TREC holder;
- (iv) issue a notice of public censure against the TREC holder;
- (v) impose on the TREC holder a fine not less than Taka 10,000 (ten thousand);
- (vi) suspend¹³⁷ or cancel¹³⁸ the registration of the TREC holder's directors, partners, Compliance Officers and/or Traders; and shall in each such case make a written record of any action so taken.

However, the management of the Exchange shall have the power to take such other steps for the interest of the Exchange and the capital market on behalf of the Exchange.

A person can hold one TREC at a time and in no way can a person hold more than one.¹³⁹ Every TREC issued under these Regulations shall be valid for a period of one year from

¹³⁵ Ibid c 7(6).

¹³⁶ Ibid c 7(9).

¹³⁷ Suspension of TREC can be done on the following grounds:

(a) A TREC shall be suspended on the instruction of the BSEC; (b) Under the powers delegated to it by the Board the Exchange may suspend all or any of a TREC holder's rights for a fixed or continuing period by making a suspension order where the Exchange is satisfied, in the light of an investigation conducted by the Exchange that the TREC holder: (i) has contravened any provision of any Regulations of the Exchange or decisions taken by the Exchange; (ii) has provided the Exchange with false, inaccurate or misleading information in purported compliance with any requirement under these Regulations; or (iii) in any other case where the Exchange feels such action to be appropriate for the protection of investors.; (c) CRO of the Exchange shall have the power to suspend operation of any TREC as he may deem fit and proper at anytime without any prior notice with intimation to the CEO. However, duration of a suspension order shall not exceed 14 (fourteen) days at a time unless extended till such date as may be decided by RAC.

[Ibid c 8].

¹³⁸ Cancellation of TREC can be done on the following grounds: (a) If a TREC holder is found to be involved in any activity prohibited under the Act, the Ordinance or by BSEC;

(b) If a cancellation order is issued by BSEC or any court of justice; (c) If a TREC holder has been declared a defaulter under Regulation 12 of the DSE (Settlement of Transactions) Regulations, 2013; (d) Under the powers delegated to it by the Board the Exchange may cancel a TREC where the Exchange is satisfied in the light of an investigation conducted by the Exchange that the TREC holder: (i) has ceased to be fit and proper to carry on the business of a TREC holder; (ii) has contravened any provision of any Regulations of the Exchange or decisions taken by the Exchange; (iii) has provided the Exchange with false, inaccurate or misleading information in purported compliance with any requirement under these Regulations; or (iv) in any other case where the Exchange feels such action to be appropriate for the protection of investors; (e) If the TREC Holder fails to commence business within 6 (six) months of receipt of the brokerage registration from BSEC: Provided that in the case of sub-clause (c) above no TREC shall be cancelled without giving the TREC holder an opportunity of hearing.

[Ibid c 8].

the date of issuance with a provision for renewal subject to payment of renewal fees as determined.¹⁴⁰ The TREC is not transferrable except in compliance with the prescribed terms and conditions of these Regulations and the Exchanges Demutualization Act, 2013, but the TREC shall not be pledged or charged with any other encumbrance.¹⁴¹ A TREC holder can resign following the provisions of these Regulations. Any change in the senior management including compliance officer of a TREC holder shall be notified to the Exchange within 3 (three) working days.¹⁴² Any change in the shareholding structure resulting in change of control, directly or indirectly, shall require prior approval from the Exchange and any such transfer of shares of any TREC holder without the approval of the Exchange shall be void.¹⁴³ The management of the Exchange shall notify its decision regarding said transfer of shares within 5 (five) working days of receipt of application from TREC holder, non-response from the management shall deem to be same as approval.¹⁴⁴

A TREC holder shall be responsible for all acts done, or omitted by its directors or employees or agents in the name of the TREC holder. A TREC holder shall ensure that all its employees are suitably and adequately trained, qualified as necessary and properly supervised and, where appropriate, authorized. A TREC holder shall ensure at all times on a continuing basis that it complies with the requirements set out in Regulation 5 which provide the qualification of TREC holder. The qualifications of TREC holder is a continuing conditioning process which is to be complied with throughout the period of holding of TREC.¹⁴⁵

Every TREC holder must maintain information, record and books of account in electronic form in accordance with the Broker Dealer Rules as amended occasionally. Every TREC holder shall submit particulars of substantial shareholders, directors and senior management employees including MD/CEO, CFO/head of accounts, CTO/head of IT, company secretary, compliance officers, TC holder immediately any change occurs.¹⁴⁶

¹³⁹ The Dhaka Stock Exchange (Trading Right Entitlement Certificate) Regulations, 2013 c 12(1).

¹⁴⁰ The Dhaka Stock Exchange (Trading Right Entitlement Certificate) Regulations, 2013 c 9.

¹⁴¹ Ibid c 12(2).

¹⁴² Ibid c 12(3).

¹⁴³ Ibid c 12(5) and (6).

¹⁴⁴ Ibid c 12(5).

¹⁴⁵ Ibid c 12(7), (8), (9) and (10).

¹⁴⁶ Ibid cc 17, 18, 19 and 20.

I. DSE Trading

No person shall be allowed to act as a Trader unless he obtains a Trader Certificate (*shortly referred to as 'TC'*) issued by the Exchange in accordance with these Regulations.¹⁴⁷ All authorized representatives possessing valid registration certificates issued by BSEC shall be issued with a fresh Trader Certificate by the Exchange within 90 (ninety) days of the demutualization date.¹⁴⁸

Moreover, the Exchange may require an applicant for TC as well as existing TC holders to undergo such training program as determined by the BSEC or the Exchange.¹⁴⁹ An application for issuance of Trader Certificate shall be submitted in accordance with law. A TC is primarily given for one year subject to renewal in compliance with the terms and conditions of these Regulations.¹⁵⁰ Any TC issued under these Regulations shall not be transferable.¹⁵¹ A TC holder must be associated with any TREC holder in order to be eligible for performing trading activities, and subsequently a TC holder can seek release from TREC holder complying with procedures of these Regulations.¹⁵² The Exchange shall issue a TC subject to terms and conditions as specified in the certificate with the power to renew suspend and cancel.¹⁵³

The CRO shall have the power to suspend operation of any TC as it may deem fit and proper at anytime without any prior notice. However, duration of a suspension order shall not exceed 14 days at a time, unless extended till such date as may be decided by CRO, with intimation to MD/CEO.¹⁵⁴ A TC may be cancelled by the Exchange on the grounds that if a TC holder is found to be involved in any activity prohibited under the Act, the Ordinance or by BSEC, or fails to observe the code of conduct framed by the Exchange occasionally, or acts in derogation of the interest of an investor or found to be trading in investor's securities without the approval of investors, or TC holder is found to be actively involved in buying and selling of securities in the Exchange in his/her own account or any of his family member's name in the capacity of being Authorized Person of any BO

¹⁴⁷ Ibid c 13(1).

¹⁴⁸ Ibid c 13(2).

¹⁴⁹ Ibid c 13(4).

¹⁵⁰ Ibid c 14(1).

¹⁵¹ Ibid c 15.

¹⁵² Ibid c 16.

¹⁵³ Ibid.

¹⁵⁴ Ibid c 14(2).

account holder or it is found to have acted in violation of these Regulations. But, the accused shall be given an opportunity to be heard as guaranteed under law¹⁵⁵

However, the Exchange shall have the authority to impose fine and penalty in exercise of its power of suspension and cancellation of TREC or TC as the case may be.¹⁵⁶ The Exchange shall maintain separate registers for each class of certificate holders namely TREC and TC.¹⁵⁷

m. DSE Investor's Protection Fund

The DSE investor's protection 'fund'¹⁵⁸ has been established under the Dhaka Stock Exchange Investors' Protection Fund Regulations, 2014 for the protection of the investors¹⁵⁹ of a defaulting TREC holder of the DSE. It also empowers DSE to set-off the security deposit by any TREC holder if there remains any unsettled due owed by a TREC holder to its customers.¹⁶⁰ This Fund shall inherit the Fund established under the DSE Investors' Protection Fund Regulations, 1999 though the Regulations 1999 have been replaced by those of 2014.¹⁶¹ These regulations are for providing protection to the investors¹⁶² with the fund constituted under these regulations.¹⁶³

The Fund shall be vested in and managed by the BSEC approved Board of trustees who shall have all powers, authorities and discretion necessary or expedient for that purpose in

¹⁵⁵ Ibid c 14(3).

¹⁵⁶ Ibid c 19.

¹⁵⁷ Ibid c 20.

¹⁵⁸ "Fund" means the Dhaka Stock Exchange Investors' Protection Fund established by Dhaka Stock Exchange Ltd. under the Dhaka Stock Exchange Investors' Protection Fund Regulations, 1999, as amended by these regulations.

[The Dhaka Stock Exchange Investors' Protection Fund Regulations, 2014 c 2(1)(f)].

¹⁵⁹ "Investor" means a customer of a TREC holder of the DSE placing funds or securities with the TREC holder for carrying out buy or sale transaction in security listed with DSE, and shall also include the money or security due to be paid or delivered to the customer by TREC holder; but shall not include the TREC holders or any of the directors or partners.

[Ibid c 2(1)(k)].

¹⁶⁰ Ibid c 3.

¹⁶¹ Ibid c 4.

¹⁶² "Investor" means a customer of a TREC holder of the DSE placing funds or securities with the TREC holder for carrying out buy or sale transaction in security listed with DSE, and shall also include the money or security due to be paid or delivered to the customer by TREC holder; but shall not include the TREC holders or any of the directors or partners.

[Ibid c 2(k)].

¹⁶³ The purpose of this Fund created under these regulations is to protect the interest of the investors in case of default by the TREC holders. It shall also keep a provision which shall provide DSE the power to set-off the security deposit by any TREC holder if there remains any unsettled due owed by a TREC holder to its customers.

[Ibid c 3].

addition to any express powers conferred by these regulations.¹⁶⁴ Therefore, the Board enjoys absolute power and discretion in respect of management of Fund, and the powers laid down under these Regulations are in addition to the other powers or authorities as deemed fit and necessary by the Board for the proper management of the Fund. However, the Board will maintain the accounts and audits of the fund in the manner as prescribed under these regulations.¹⁶⁵

Every TREC holder shall participate in the Fund at such rate as prescribed in these regulations and any failure to contribute to the Fund shall be considered as violation of these regulations and the Exchange shall have the power to suspend the trading right of the TREC holder until such time the contribution is deposited with the Fund.¹⁶⁶ There can be other contributories in the fund in the manner as provided under these regulations.¹⁶⁷ The TREC holders shall not be entitled to any repayment or refund or withdrawal of their due contribution to the Fund on cessation of TREC for any reason whatsoever.¹⁶⁸ In the event of the default of a TREC holder, the Board shall appoint one or more of their number as Trustee(s) to handle any claims by investors in respect of losses incurred by the investor as a result of the default.¹⁶⁹ The contribution of a TREC holder shall not be a debt due from the Fund and no TREC holder shall be entitled to transfer or assign in any manner his contribution to the Fund.¹⁷⁰

The Fund cannot be invested in the capital market.¹⁷¹ The Board can invest it otherwise in such a manner as may be authorized by law for the time being in force. All investments and bank accounts of the Fund shall be maintained by the Board with a scheduled bank in the name of the Fund which shall be controlled at least by two Trustees.¹⁷² The Trustees shall invest the Fund with due diligence, utmost care and sincerity. Any loss in or diminution in value of the investments of the Fund from whatever cause arising, not being due to the gross neglect or willful default or fraud of a Trustee, shall be borne by the Fund

¹⁶⁴ Ibid c 5.

¹⁶⁵ Ibid cc 6, 7 and 8.

¹⁶⁶ Ibid c 9.

¹⁶⁷ Ibid c 10.

¹⁶⁸ Ibid c 14.

¹⁶⁹ Ibid c 15.

¹⁷⁰ Ibid c 18.

¹⁷¹ Ibid c 12.

¹⁷² Ibid.

and the Trustee shall incur no responsibility or liability by reason or on account thereof.¹⁷³ However, there is no provision stating that if the loss in or diminution in value would cause to the Fund due to gross negligence or willful default or fraud of a Trustee, then what penal consequences the Trustee will have to face and how the amount of loss will be recovered from the Trustee. There are no standards or criteria to determine gross negligence or willful default or fraud under these Regulations.

The Trustee(s) shall only consider the claims of investors of a TREC holder who has been declared a defaulter by the Exchange in pursuant to the provisions provided under the Dhaka Stock Exchange (Settlement of Transactions) Regulations, 2013.¹⁷⁴ Claims should be submitted by the complainant in the prescribed manner under the Regulations. It should first be submitted to the relevant TREC holder who can forward the same to the Trustee(s).¹⁷⁵ The Fund shall not be available for claims in respect of repayment of deposits or loans placed with or given to a defaulting TREC holder by any person or for any other transaction not connected with the purchase and/or sale of listed securities.¹⁷⁶ It can also be directly raised to the Trustee(s) within a period of six months from the date of declaration of such TREC holder as a defaulter.¹⁷⁷ The Trustee(s) may not entertain any claim lodged after the expiry of the aforesaid time limit. In considering the claim, the Trustee(s) shall consider certain issues as prescribed under the regulations.¹⁷⁸ However, certain claims can also be disallowed with respect to repayment of deposits or loans placed with or given to a defaulting TREC holder by any person or for any other transaction not connected with the purchase and/or sale of listed securities. One claim shall be settled one even though it was raised before two Trustee(s).¹⁷⁹

¹⁷³ Ibid c 13.

¹⁷⁴ Ibid c 16(1).

¹⁷⁵ Ibid c 16(2).

¹⁷⁶ Ibid c 16(3).

¹⁷⁷ Ibid c 16(4).

¹⁷⁸ (a) Claims arising out of payments made to a TREC holder by an investor for securities which have been received from DSE but not delivered by the TREC holder;

(b) Claims arising out of securities delivered to the TREC holder by an investor but in respect of which the sale proceeds have not been received;

(c) Claims by an investor arising out of money in the hand of the TREC holder pending utilization for buying securities or money in the hand of the TREC holder which has been improperly dealt with;

(d) Claims by an investor arising out of securities in the hand of the TREC holder which have been improperly dealt with.

[Ibid c 16(2)].

¹⁷⁹ Ibid c 16.

The Trustee(s) shall have absolute discretion as regards to the mode and method of assessing the nature of the claims including their authenticity. They can at their discretion accept, reject or partially grant or allow claims and make payments in respect thereof subject to the limits and in according to the provisions as provided under the Regulations.¹⁸⁰ The Trustee(s) can award compensation for an amount not more than Tk. 500,000/- (five hundred thousand) only to a single investor. This amount can be enhanced at any time in consultation with the Board, and with the approval of the BSEC or as per the directive of the BSEC.¹⁸¹ Such compensation shall be settled within 90 (ninety) days from the date of receipt of the complaint. An investor shall be entitled to apply to the Board for reconsideration of the decision of the Trustee(s) to reject or partially grant or allow any claim and the decision of the Board shall be final and binding and the Trustee(s) shall act accordingly¹⁸². However, the rejection, partial grant or awarding compensation does not preclude or debar any claimant from bringing any legal proceeding in any court.¹⁸³

The Board with the permission from the BSEC can also amend these Regulations, give retrospective effect, removal inconsistency of any provision with other security laws and take other steps subject to the compliance of the relevant provisions of the Securities and Exchange Ordinance, 1969.¹⁸⁴ The Board will also administer the internal function, financial affairs and expenses related to the Fund.¹⁸⁵ The Board shall be indemnified by the Fund from and against all actions, proceedings, losses, damages, claims, liabilities, costs, charges and expenses in connection with the Fund or the management and administration thereof or any dealings therewith provided that the same shall not arise by reason of their gross neglect or willful default or fraud or of personal reason. This indemnity extends the hands of the Board in respect of handling the Fund. It saves the Board from taking any legal action against it.¹⁸⁶ However, there is no provision stating the penal consequences the Board will have to face and how the amount of loss will be recovered from the Board if the loss is suffered due to gross negligence or willful default

¹⁸⁰ Ibid c 16(6).

¹⁸¹ Ibid c 16(7).

¹⁸² Ibid c 16(8).

¹⁸³ Ibid c 16 (9).

¹⁸⁴ Ibid c 18.

¹⁸⁵ Ibid c 20.

¹⁸⁶ Ibid c 21.

or fraud of Board. There are no standards or criteria of determining gross negligence or willful default of fraud of the Board under these Regulations.

Two most important obligations are that the every TREC holder shall sign a Declaration in the form prescribed by the Board signifying his assent to the Fund and to abide by the regulations for the time being in force including any decision of the Board in relation to the Fund¹⁸⁷ and the Board has reporting obligation both to the BSEC and the DSE. The Board shall furnish a quarterly report on the Fund and affairs of the Trustees to BSEC and DSE within one month of the end of each quarter.¹⁸⁸ Both these obligations are mandatory and is to be carried out voluntarily by the TREC Holder and the Board.

The Trust shall be wound up, dissolved or liquidated only in the event of the dissolution of Dhaka Stock Exchange Ltd. For the purpose of winding up, the Board shall first realize the assets of the Fund and after meeting all debts/liabilities and claims, the amounts/assets so realized shall be and form a part of the property of DSE and shall be appropriated or utilized accordingly.¹⁸⁹

The name of these Regulations is basically misnomer. Primary reading of the title of these Regulations gives a general idea that these Regulations provide protection to the all investors of defaulting members; but they are not so. The scope and area of the Regulations are not very wide while the limitations of are very widespread in some areas. Amongst others, these Regulations only empower the Board of Trustees as constituted under these Regulations to entitle claim of the investors, and they do not empower the court or any other adjudicating authority to entertain claim of investors' and take civil or criminal action either against the TREC holder or against the Board for any sort of fraud or willful default or gross negligence.

Moreover, they allow investors to lodge claims in on limited grounds. The Board considers the principal amount of the claims of investors only. The limited protections as provided under these Regulations do not cover the existing reasons or any reasons of share market scams/crashes which Bangladesh has suffered already in 1996, and 2011. The practical applications of these Regulations are minimal. The instances of entertaining any

¹⁸⁷ Ibid c 22.

¹⁸⁸ Ibid c 23.

¹⁸⁹ Ibid c 24.

claims under these Regulations are rare. These impose no responsibility upon the trustees for the loss or misuse or misappropriation of Fund which is quite arbitrary and over privileged. These fail to ensure accountability, transparency and fairness in the use and maintenance of Fund by the trustees. The indemnities and exemptions provided to the trustees with regard to regulation, management and disbursement of the fund are very open and wide. It is highly doubtful whether these Regulations can provide sufficient protection to the investors.

These Regulations impose no responsibility upon the trustees to collect Fund and satisfy the claim of the investors. Under these Regulations, it is stated that “the Fund shall be discretionary Fund and the Trustees shall be under no legal obligation to collect the debts of a defaulter member and/or to make payments from the Fund as mentioned hereinabove.”¹⁹⁰ Moreover, the indemnity clause also saves the trustees from carrying out any negative liability with regard to fair use of Fund.

Despite multiple drawbacks and striking shortcomings, these Regulations have enough importance, because they are a symbol of the protection of the investor’s interest. Unfortunately, the Fund constituted under these Regulations cannot provide equivalent protection to the investors like the ‘Reserve Fund’ mechanism. Reserve Fund scheme is quite different from the ‘Fund’ system as provided under these Regulations. In ‘Reserve Fund’¹⁹¹ scheme the fund may be constituted not only at the cost of the issuer companies, big size investors and the market intermediaries along with regulators but may also be brought under compulsory obligation (under an undertaking given to the managerial authority before entering into the market) to pay a definite amount to the reserve fund lying with the superior authority and also need to enhance that fund by paying monthly or quarterly or yearly fee. Additionally, the issuer companies, big size investors and the market regulators also need to undertake on the ground to compensate the unprotected/unfair loss sufferer above a certain level due to share market scam. This is necessary for encouraging the small investors in stock market. It is a kind of guarantee to the small investors that their rights will be protected if they suffer unjust loss due to unsystematic crash and market scam. Comparing to that, the Fund system as meant under

¹⁹⁰ Ibid c 17.

¹⁹¹ A fund can be constituted with the contribution of the issuer, market regulators, traders and big amounted investors for reserving money for redressing the unjust loss sufferers due to market scam and manipulation.

these Regulations does not provide the same guarantee. However, this is a good start and gives a sign of further improvement.

n. DSE Settlement of Transactions

Transactions of DSE trades are settled in accordance with the provisions provided under the Dhaka Stock Exchange (Settlement of Transactions) Regulations, 2013. These Regulations are of utmost importance because they lay down the detailed provisions related to the category of companies those are entitled to trade through Exchange and their trading system, automated trading process, trading hours, settlement procedure, role of clearing house, clearing system, market system, transaction system, delivery and payment system, handling the foreign investors, trading system, fees for clearing, time for clearing the transaction, fines for default, etc.

In order to trade with the exchanges, be it DSE or CSE, every trader must have TREC¹⁹² and license in accordance with law. Every TREC holder¹⁹³ shall keep such amount of money as security deposit with DSE as determined by DSE at its discretion.¹⁹⁴ Every TREC holder or Clearing Member shall deliver securities to the designated Clearing BO Account and make the fund available in the designated Clearing Bank Account to facilitate DSE/Clearing House to secure payment through electronic transfer on the Settlement Day. In case of a 'force majeure event'¹⁹⁵, a TREC holder may settle the payment of fund through cheque/pay order/demand draft during such period, which shall not exceed one month from the date thereof.¹⁹⁶ To give effect to any trading, the liabilities of defaulting TREC holder and Clearing Member under these Regulations shall be joint and several.¹⁹⁷

Most of the provisions of these Regulations are procedural. There are some substantive provisions which are particularly relevant. For instance, a TREC holder can be declared to be in default if it fails to give effect to any transaction in the manner as stated in the Regulations. It can also be considered as defaulter if the Exchange finds that it has reasonable grounds to believe that the holder is likely to fail to meet its actual or

¹⁹² TREC" means Trading Right Entitlement Certificate as defined in the Demutualization Act. [The Dhaka Stock Exchange (Settlement of Transactions) Regulations, 2013 c 2(1)(x)].

¹⁹³ "TREC holder" means a person who holds a TREC issued by the Exchange.

[Ibid c 2(1)(y)].

¹⁹⁴ Ibid c 8.

¹⁹⁵ An event that is caused by something beyond the control of the Exchange or the TREC Holder.

¹⁹⁶ Ibid c 15.

¹⁹⁷ Ibid c 10(5).

prospective (including contingent) liabilities or it becomes insolvent or has called a meeting with the creditors with such arrangement.¹⁹⁸ The Exchange may declare it as defaulter if the Exchange finds that there are other circumstances existed which justify such TREC holder being considered a defaulter in order to protect the financial interests of all other TREC holders or of the investing public or for such other reasons as may be considered to be relevant in the interests of the well-being and proper conduct of the Exchange. Therefore, the scope for considering a TREC defaulter is very wide and the Exchange can use its discretion. Fine will be imposed upon the defaulter TREC holder.¹⁹⁹

No TREC holder shall be allowed to short-sell any securities or carry forward any transaction.²⁰⁰ The defaulting TREC holder shall be barred from trading in the DSE immediately upon detecting the default by DSE through spot verification of the TREC holder's books and records. The DSE shall simultaneously furnish details of such default to the BSEC. The defaulting TREC holder shall not be allowed to carry out trade until a fine equivalent to the short sell amount is paid to the DSE.²⁰¹

Every TREC holder who fails to give effect to the transaction in compliance with the provisions of Regulations 9²⁰² and 10²⁰³ hereof shall be liable to make good of the loss suffered by the investor for the failure to deliver securities along with attributable benefits.²⁰⁴ In addition, the requirement of making good the loss of an investor along with the attributable benefits, if any, the defaulting TREC holder/Clearing Member shall be liable to pay a fine to DSE for each default in the manner as prescribed under the Regulations.²⁰⁵

Violation of these Regulations shall attract penal provisions of the Securities and Exchange Commission (Stock-Dealer, Stock-Broker and Authorized Representative)

¹⁹⁸ Ibid c 12.

¹⁹⁹ Ibid.

²⁰⁰ Ibid c 14.

²⁰¹ Ibid.

²⁰² Every TREC holder or Clearing Member shall deliver securities to the designated Clearing BO Account and make the fund available in the designated Clearing Bank Account to facilitate DSE/Clearing House to secure payment through electronic transfer on the Settlement Day. In case of a force majeure event (an event that is caused by something beyond the control of the Exchange or the TREC Holder), a TREC holder may settle the payment of fund through cheque/pay order/demand draft during such period, which shall not exceed one month from the date thereof.

[Ibid c 9].

²⁰³ It provides an elaborate procedure that how to give effect of automatic buying-in and selling-out.

²⁰⁴ Ibid c 17.

²⁰⁵ Ibid c 18.

Rules, 2000, the Bangladesh Securities and Exchange Commission Act, 1993 and the Securities and Exchange Ordinance, 1969.²⁰⁶

o. DSE Settlement Fund

There shall be a Fund established under the DSE (Settlement Guarantee Fund) Regulations, 2013 with the contributions made by the TREC holders in the manner as provided under these Regulations. The main objective behind the creation of this Fund is to reduce the risk in trading by the TREC holders and settlement of transaction as provided under the DSE (Settlement of Transactions) Regulations, 2013. In the event of default in depositing money in the fund by the members or TREC holder penalty can be imposed in accordance with law or the license can be suspended. For the management of the Fund there is a Management Committee in accordance with law. Detailed provisions regarding the management, administration, imposing penalty, controlling fund, disbursement and all other related issues are laid down in these Regulations. The Fund will be used according to the discretion of the Fund Management Committee in case of default by the TREC holders. However, the Committee will administer, monitor and control the Fund according to the provisions of these Regulations. Fund can be liquidated in the manner as provided under these Regulations.

p. DSE Members' Margin

Margin for DSE members is mainly governed by the directives or notifications time to time provided by the BSEC along with the Dhaka Stock Exchange TREC Holder's Margin Regulations, 2013 and DSE Member's Margin Regulations, 2000. The free limit²⁰⁷ shall be taka 10 (ten) crore only in respect of the stock exchange members margin deposit with the stock exchange on each trading day based on the total buy exposure, without any link to the capital requirements.²⁰⁸ In addition to the free limit of member's margin and

²⁰⁶ Ibid c 20.

²⁰⁷ Free limit means the amount of the aggregate (gross) trade exposure for each member on which no member's margin shall be applicable. "Aggregate (gross) trade exposure" means total buys and total sales position of a member at any point of time during a trading day.
[The Dhaka Stock Exchange TREC Holder's Margin Regulations, 2013 cc 2(1)(g), 2(1)(a) and 3].

²⁰⁸ It is provided that margin requirement will be based on buy exposure only and that there shall remain no unsettled sale exposure at the end of the respective trading day (i.e. pay in will be done on T+ 0); and Provided further that in case of foreign investors, the margin will be based on gross exposure (i.e. total buy and unsettled sale) and pay in on foreign sale of securities shall be done on T+1 day.
[Ibid c 4].

security deposit²⁰⁹, every TREC holder and member shall have to follow additional deposit with the Exchange on the basis of “additional trade exposure”²¹⁰, failing of which its trade will be suspended. The instruments of deposit is defined and specifically identified in these Regulations.²¹¹ The members have to deposit in those instruments²¹².

The BSEC, at its discretion, can exempt any members and TREC holder from compliance with any obligation under these Regulations.²¹³ The BSEC can also add, modify, and delete any provision of these Regulations.²¹⁴ Margin Regulations are of great importance for assuring the solvency of the members trading in the market, but again it does not provide anything regarding protecting of the interest of investors with these deposits.

q. Demutualization of Shares

Demutualization scheme is an important addition to the securities market business in Bangladesh enunciated by the Demutualization Act, 2013. The purpose of this Act is to demutualise the trading right of securities from the management and ownership of the exchanges and the members in the manner and scheme as laid down in this Act.²¹⁵ The Act came into effect immediately after its publication in the official gazette and applies to all including the existing traders.²¹⁶ The scheme of demutualization is approved by the BSEC and all members have to take permission and confirmation from the BSEC for trading in compliance with demutualization scheme.²¹⁷ Approved scheme will be published in the

²⁰⁹ Security deposit means the amount compulsorily deposited by each member with the clearing house as prescribed by the Exchange.

[Ibid c 2(1)(l)].

²¹⁰ “Additional trade exposure” means the amount of the aggregate (gross) trade exposure exceeding the free limit for each member.

[Ibid c 2(1)(a)].

²¹¹ The following instruments can be the member’s instruments under these Regulations- (a) Irrevocable and without recourse to the Drawer Bank or Insurance Guarantee or Guarantee issued by the non-banking financial institution (NBFI) registered with the Bangladesh Bank provided such NBFI is lawfully authorized in this behalf, provided further that the issuing party has not exceeded its regulatory exposure limits; (b) Government securities; (c) Fixed Deposit Receipt issued by any scheduled bank; (d) Sanchaypatra (সঞ্চয়পত্র) and Defense Saving Certificate issued by the Government of Bangladesh; (e) Life Insurance Policy at surrender value; (f) Demand Draft or Payment Order issued by any scheduled bank; (g) Securities listed with the Exchange (valued at seventy percent of the lowest market price prevailed in the Exchange in the previous week); and (h) Cash.

[Ibid c 5].

²¹² Instruments mean the papers and documents including each cashes for the purpose of member’s margin.

[Ibid c 2(1)(h)].

²¹³ Ibid c 8.

²¹⁴ Ibid c 9.

²¹⁵ The Exchanges Demutualization Act, 2013 s 4.

²¹⁶ Ibid s 7.

²¹⁷ Ibid ss 4-7.

manner as provided under the Act.²¹⁸ There are several restrictions provided upon the primary shareholders in respect of holding shares, which are necessary for ensuring that the primary shareholders hold their shares for a certain period of time and cannot leave the market right after selling their shares first hand. Conditions are imposed for handling the blocked shares.²¹⁹ Permission of BSEC is necessary for selling out shares of certain types by certain shareholders.²²⁰

The objectives of demutualization of exchanges are wide ranging. They ensure transparency and fairness in trading system. All securities are to be approved by the BSEC, who shall maintain a list of the securities and the Exchanges will only allow trading following the demutualization scheme. The Exchanges will trade for the benefit of the public at large and the Exchanges have to comply with the provisions of this Act.²²¹ Violation or failure to comply with the provisions of this Act attracts penal provisions. If the BSEC becomes *prima facie* satisfied about the violation or failure to comply the provisions of this Act by the stock exchanges after giving reasonable opportunity of being heard, the BSEC can impose penalty of at least Taka Ten Lac and can also suspend the license.²²²

The officer, employees, directors, shareholders and others, who is responsible for violation can also be penalized with fine at least of Taka One Lac, which is to be recovered from the personal account of such wrong doer. BSEC can also suspend, cancel, dismiss or terminate from service.²²³ The Exchanges will maintain utmost secrecy and market surveillance over the market.²²⁴ The BSEC can for the regulation of the Exchanges and the demutualization activities can pass any order or directive anytime to the Exchanges and the members.²²⁵

Exchanges demutualization was a positive attempt in order to ensure more transparency in the market, but it was not enough to prevent fake trading and the market manipulators from carrying our several BO accounts. It is also not enough for preventing unsystematic price steeping by the market ghosts in syndication. Now, the crime has become electronic.

²¹⁸ Ibid s 5.

²¹⁹ Ibid ss 13-14.

²²⁰ Ibid s 15.

²²¹ Ibid s 11 and 19.

²²² Ibid s 20.

²²³ Ibid.

²²⁴ Ibid s 25.

²²⁵ Ibid s 24.

Any electronic information spreads out faster, severely influencing the market and share price.

r. DSE Short-sale Regulations

As discussed in the previous chapter, no short-sale²²⁶ is permitted unless it is allowed by the BSEC through stock exchanges. Short-sale is prohibited under the law DSE (Short-Sale Regulations), 2006. These Regulations provide that no stock dealer/stock broker can be engaged in short selling unless authorized by the exchanges. No stock dealer or stock broker shall be allowed to engage in short-selling a security of a company that is not an eligible security for short sale as per the Guidelines for Securities Borrowing and Lending for Short-Selling of Securities Listed on the exchanges.²²⁷ Further, the Chief Executive Officer of the stock exchange or any officer of the stock exchange authorized by him for the purpose may, by notice in writing, restrict or prohibit a stock dealer or stock broker from short-selling any security, if the circumstances so warrant.²²⁸ Moreover, the BSEC may, occasionally restrict or exempt any order or trade of any stock dealer or stock broker in respect of all or any of the provisions of these regulations.²²⁹

However, subject to the restrictions imposed by these Regulations, a stock dealer or stock broker is allowed to short-sell a security for its own account, or for the account of its clients with clear instruction in writing and informing the exchanges.²³⁰ Contravention of any of the provisions of these regulations shall be punishable under the provision of the Securities and Exchange Ordinance, 1969, the Securities and Exchange Commission Act, 1993, the Rules and Regulations made thereunder, and the bye-laws of the stock exchange as well.²³¹

²²⁶ “Short-selling” is defined under clause 2(c) of the Dhaka Stock Exchange (Short-Sale) Regulations, 2006 as the sale of a security which (i) the seller does not own, or (ii) is consummated by the delivery of a security borrowed by or for the account of the seller. Interestingly, these Regulations defines “owning security” as- “a person shall be deemed to own a security only if he has title to the security; or he has purchased the security which is available in his own account (including his BO account); or he has entered into an unconditional contract, as prescribed by the SEC legally binding on him to buy the security, even if the buyer does not yet have title to them; or he has unconditional right or interest to or in the security; or he owns a security convertible into or exchangeable for the relevant security and has tendered such security for conversion or exchange or has issued irrevocable instructions to convert or exchange such security; or he has an option to acquire the security and has exercised such option; or he has rights or warrants to subscribe to the security and has exercised such rights or warrants”.

²²⁷ The Dhaka Stock Exchange (Short-Sale) Regulations, 2006 s 4(1).

²²⁸ Ibid s 4(2).

²²⁹ Ibid s 8.

²³⁰ Ibid s 6(2).

²³¹ Ibid s 7.

s. Corporate Governance

The corporate governance is very important for both the stock exchanges and the issuers. It is guided under the Corporate Governance Guidelines formulated by the BSEC in 2012. Details analysis of the guideline has been examined in Chapter 7.

t. Registration of other Intermediaries with the DSE

The exchanges play very important role in respect of dealing with the market intermediaries. Their control, management, surveillance, registration and other related issues lies upon the stock exchanges. Details about the other market intermediaries are discussed in the next Chapter.

5.2.2. About the CSE

In order to ensure coherent regulations of the stock exchanges, almost all the legal provisions of DSE and CSE are the same. The provisions regarding board and administration of CSE, responsibilities, powers and obligations of the CSE, automated trading, internet based trading, settlement of trading, trading settlement fund, TREC holder, margin, listing procedure, investors' protection fund, trading of securities, short-sale of securities, election process and some other related issues are the same as the of DSE.²³²

The CSE was incorporated as a limited company on 1st April 1995. It became a corresponding member of World Federation of Exchanges on 1st January 1996 and of OIC Member States' Stock Exchange Forum on 18th October 2008. It introduced Automated Trading on WAN on 2nd June 1998, Internet Trading Service launched (ITS) on May 30, 2004 and Over-the-Counter (OTC) market on 4th July 2004. The CSE is a non-profitable public limited company. All its members are corporate bodies. It has a separate secretariat independent of the policymaking Board. The Board delegates Committees to such functions and authority as it may deem fit. There is an independent secretariat headed by a full time the Chief Executive Officer. The CSE activities are regulated by its own regulations and bye laws along with the rules, orders and notification of the BSEC.²³³

²³² In fact, all the common laws, regulations and guidelines as provided for stock exchanges are equally applicable for DSE and CSE.

²³³ <<http://www.cse.com.bd/mission.php#bg>> (21.04.2017).

The Managing Director is responsible for implementing the decisions of the Board, the day to day running of the exchange and formulating strategic plans for agreement with the board. He is entrusted with several responsibilities and powers. Along with him, there are other departments including Cleaning, Settlement and Depository Department, Marketing Operation Department, Finance Department, Admin Department, Research Department and others entrusted with their respective tasks and responsibilities. In April 2002, the CSE had developed a Cell named Investors' Information Cell (IIC) dedicated exclusively to resolving any kind of query or producing any kind of information that an investor may require, related to the capital market.²³⁴

Furthermore, there is a Defaulter's Committee of the CSE, which provides facility to the investors for lodging complains if the broker fails to meet the obligations arising out of stock exchange transaction, or if it is unable to fulfill its engagements to the investors. The time limit for lodging complaint is within a period of 60 (sixty) days from the date when such default arose. The Defaulter's Committee of CSE shall hear both the parties and recommend the Board for necessary action. The Board may declare a broker as Defaulter for its failure to meet the obligation towards the client within the time limit decided by the Board. A defaulter shall at once cease to be a TREC Holder of the Exchange.²³⁵ Additionally, the CSE conducts investment awareness program in full swing throughout each year and organize a number of seminars and workshops on issues related to capital market and other market matters. It produces a TV program on share market to revive awareness among the investors. It also provides other information facility to the clients.

Further, the CSE maintains an effective market surveillance to detect and prevent unethical, unusual and illegal practices in the market. The Exchange Compliance and Surveillance Department is primarily responsible for the day to day market surveillance, supervision and compliance monitoring of trading activities, including review of pricing of orders. When any unusual market actions occur, it is reported to the Manager, Compliance and Surveillance. In many cases, by checking with Surveillance, the Manager will try to trace the reason for the action to a specific cause such as recently disclosed information, or

²³⁴ It receives queries and complaints over telephone, fax messages, e-mails, correspondences and physical visits. Since its inception the IIC has developed a good relation with the investors by responding to a number of queries and complaints from home and abroad. The Cell also resolved investor's complaints against TREC Holder firm and listed companies. It has earned the trust of investors as a Help Centre.

²³⁵ <<http://www.cse.com.bd/trec-terms-condition.php>> (21.04.2017).

rumors. Market surveillance may also check broker firms as the potential source and reason for activity stemming from their particular firms. If no explanation of the unusual activity is revealed, the Exchange may make a query to the Company to determine whether they know of the cause of the action. If the action appears to be attributable to a rumor or report or to material information that has not been publicly disseminated, the Company is requested to take appropriate corrective action and may be advised to halt trading until such action has been taken.²³⁶

All the legal provisions as discussed above for the DSE are equally applicable for the CSE because of their common regulatory framework.

5.2.3. OTC²³⁷ Market

Securities can also be traded in OTC market regulated under the Securities and Exchange Commission (Over-the-Counter) Rules, 2001. OTC means the facilities provided by an exchange for the purpose of buying or selling of unlisted or delisted securities under these rules.²³⁸ The OTC facility can be availed by the following three²³⁹-

- (i) The issuer of an unlisted or delisted security can apply to the exchange for availing the OTC facility for buying or selling of such security in the manner as prescribed under these Rules.
- (ii) The companies who have not offered securities for public subscription but have issued securities with the consent of, or deemed to have obtained consent from, the BSEC shall be eligible for availing OTC facilities subject to the conditions that the paid up capital of the companies shall be at least taka 5 (five) crore, they are regular in holding annual general meetings and there are no accumulated losses.
- (iii) The Exchange shall also provide OTC facilities to any issuer of security as directed by the BSEC.

Buy or sale of securities at OTC shall be conducted by or through the stock-dealer/stock-broker of an exchange who will maintain a complete list of the securities and traders at

²³⁶ <<http://www.cse.com.bd/market-serveillance.php>> (21.04.2017).

²³⁷ Over-the Counter.

²³⁸ The Securities and Exchange Commission (Over-the-Counter) Rules, 2001 r 2(1)(e).

²³⁹ The Securities and Exchange Commission (Over-the-Counter) Rules, 2001 s 3.

OTC.²⁴⁰ The trading at OTC will take place in the manner as specified under the Rules. The exchanges shall submit full report at OTC trading to the BSEC.²⁴¹ Any contravention or violation of the provisions of these Rules shall attract the penal provisions under the Securities and Exchange Commission Ordinance, 1969.²⁴²

However, the exchange shall discontinue the OTC facilities for any security at OTC with effect from the date of listing or relisting of the concerned security with any exchange; or at the request of the issuer company concerned if there remains no public shareholder other than the sponsor shareholders in the company. The exchange, or the Commission, as the case may be, may discontinue, halt or suspend any time, the buy or sale of any security at OTC, if it is deemed to be proper in the interest of the investors and the capital market, after giving an opportunity of being heard to the issuer company concerned.²⁴³

5.3. Some Critical Observations about the Exchanges

The limitations or shortcomings observed in the laws and regulations related to stock exchanges (DSE and CSE) have been discussed earlier. Amongst all, one major and frightening legal vacuum as observed with regard to the DSE and the CSE legal regime is that the existing legal provisions fail to prevent fake, financially weak, frivolous and fraudulent companies from trading in the market. The stock exchanges vehemently fail to take any effective preventive measures or ensure efficient surveillance system against those companies on a regular basis. Whether the issuer companies are financially viable or long term promising is not the issue of being an A category company under the stock exchanges. Rather, whether the issuer company is regularly holding Annual General Meeting (AGM), declaring dividend (how little and tricky may be) and submitting Audit Report to the exchanges and the BSEC are more important than the financial stability and long run prospect. This is terrible and highly defective. Moreover, to show an issuer as an A category, several frivolous approaches can be taken, and all of a sudden an A category company can become a Z category company.²⁴⁴ There may be countless malpractices, but

²⁴⁰ Ibid 5.

²⁴¹ Ibid s 7.

²⁴² Ibid s 9.

²⁴³ Ibid s 4.

²⁴⁴ An issuer company is categorized as A-category or Z-category only on the basis of their compliance with the procedural formalities under law. It does not substantially dependant on the financial condition of the issuer company. Even an A-category company can be financially weak from inside, and on the other hand, a Z-category company may be financially viable from inside but it may intentionally fall as Z-category only to deprive the shareholders from dividend and other benefits.

the stock exchanges are hardly concerned about them. They are more concerned with making their daily trading look satisfactory. The screening process of the stock exchanges is disappointingly poor.

On the other hand, a comparatively long term 'A' category company can be a sudden threat for the general investors. It can suddenly be exposed as a Z category, or still an A category company can be financially weak and not viable in the long run. Once a company becomes listed with the Exchange, holds AGM regularly, declares dividend and complies with other conditions, the Company becomes an 'A'-category Company. So far as the Company continues to maintain these formalities, no problem arises. But, the problem is, a Company continues trading as A Category for a couple of years and when trading of its securities reaches its peak and in the meantime, ghosts behind the veil of Company recover huge amount of money from the investment of the general investors, the Company starts doing irregularities in holding AGM, declaring dividend and with regard to performing other formal obligations, then the exchanges may categorize the Company under Z-Category or subsequently the company may be de-listed by the exchanges.²⁴⁵ Ultimately, the investors are left with nothing because mere categorization as Z-category or delisting the company does not bring any solution or positive result or remedy for the investors. It is true that fluctuations are the general result of business. Perpetual solvency may not be possible for a Company, but this not what business or investors actually want from a Company. The investors only expect they should not be betrayed or unjustly victimized. They want minimum security, as Companies are not like human being for whom death is certain. A Company has perpetuity. However, a Company may go down someday, and the investors know it. This 'someday' should not be pre-planned, deceitful and malicious. There are many Companies who are listed with the Exchanges as A-Category companies, that maintain the same for some years, collect huge amount of money from share business and suddenly go off in the air with number of secondary shareholders who merely left with number of share in dematerialized form or pieces of paper share in traditional form. The penal action taken against those Companies by the Exchanges is for mere delisting or bad categorization.

More than thirty companies were de-listed in the year 2012-2013. Most of these Companies were highly traded before 2012 and now they are delisted from the CSE. The

²⁴⁵ A de-listed issuer cannot trade the shares in market.

shareholders in the secondary market invested in those companies because of their high profile track record and market performance during 2010-2011 and thereafter suffered loss. This is a real example of stock market crash and scam, and also how the ghosts steal money from the market behind the orthodox veils of Corporations. This is where the Exchanges and the BSEC fail to provide protection to the investors and prevent frivolous Companies from free-floating in the market. On this occasion, the Exchanges and the BSEC escaped their liability holding that investors are responsible for making their own choice and investment in a particular security. They also advanced defense in their favor holding that precautionary note or warning has already been widely published by them. Let's observe the precautionary note of them which is quoted below-

“(1) It is not wise to invest in the capital market without having proper information, detail knowledge and experience regarding different aspects and nitty-gritty of the capital market.

(2) It is to be kept in mind that the profit or loss whatever you make from investment is belong to you only. Therefore prudent investment decision based on knowledge and fundamentals can be your real assistance.

(3) Don't pay heed to rumors at the time of buying and selling of shares. Buying and selling of shares based on rumor can be harmful. Even spreading of rumor is legally prohibited.”²⁴⁶

Does the aforesaid note bring any kind of safety bar for the general investors? The question is self-answered. If there were some guarantee provisions, for example, if the Company were under an obligation to provide necessary bank guarantee or property guarantee equivalent to free-floating shares before issuing shares in market or free-floating, and if there were provisions for repatriating/compensating the unjust loss suffer from that guarantee amount, or there were provisions for holding parent or other sister concerns or same group of Companies responsible, or there were provisions for personal guarantee of the existing directors and shareholders liability at the time of issuing of shares for free-floating, or there were some other better alternative protective provisions; then the aforesaid intentional crash or frivolous Companies could have been prevented. Though the Exchanges should be the safeguard and saver for protecting the interests of the investors and ensure fair trading in the market, but they have miserably failed to carry out

²⁴⁶ The BSEC vide its letter no. SEC/SRMIC/2010/726 dated 23 November 2010.

their functions and become the abettor as well as grabber of the market manipulators.²⁴⁷ Now, it can easily be concluded that the BSEC and Exchanges fail to provide effective and comprehensive protection to the general investors at large.

For the promotion and sustainable development of the capital market, the stock exchanges should be able to develop alternative benchmarks which must reflect the continuous financial status of the companies. Alternative benchmarks should be construed with some important elements which can correctly reflect the financial and managerial status of the companies with regard to some important issues, such as, present financial status, past financial status, growth of improvement, rate of loss, consistency in loss or growth, fluctuation in the management, market prospect, corporate social responsibility, commitment towards the clients, society, buyers, rate of dividend or other bonus declared by the companies in recent years, last few years, rate of dividend, etc. Corporations and the investors should not get tempted to only raise money and share price in the market because if the companies do well business, stock price will automatically follow the positive growth, in fact, growth of consistency. Therefore, stock exchanges should only entertain financially viable companies. The famous stock market analyst Warren Buffet is very right prioritizing this issuer. 'While stock prices may be the ultimate barometer of the success or failure of a given investment choice, Buffett does not focus on this metric. Instead, he analyzes and pores over the underlying economics of a given business or group of businesses. If a company is doing what it takes to grow itself on a profitable basis, then the share price will ultimately take care of itself.'²⁴⁸ So, the exchanges should not focus on the metric or market index only rather the exchanges should play neutral roles so far ensuring good market for the good investors for securing good stock business.

²⁴⁷ "The Probe Committee Report mentioned a number of weaknesses with regard to operation of the Stock Exchange of the country. In case of listing of IPOs, DSE/CSE had direct influence on raising the initial price of some of the shares. Besides, there was conflict of interest with regard to DSE/CSE's involvement both as price fixer as well as being associated with enlistment of the companies, and also it was accused of engaging investigators from officials of alleged companies themselves. The SEC directives that were intended to improve trading operation were not easy to implement as DSE lacked the necessary updated softwares. This raised concerns about transparency and accountability of the DSE/CSE. There is a clear conflict of interest between the management board of DSE/CSE (e.g. directors) and brokerage houses which are owned by the directors."

[Khondaker Golam Moazzem and Md. Tariqur Rahman, "Stabilizing the Capital Market of Bangladesh: Addressing the Structural, Institutional and Operational Issues" (2012), *CPD Working Paper: 95Centre for Policy Dialogue (CPD)* 7].

<http://www.cpd.org.bd/pub_attach/WP95.pdf> (24.02.2016).

²⁴⁸ Glenn Curtis, *Think Like Warren Buffet* (9 February 2017).

<http://www.investopedia.com/articles/stocks/08/buffett-style.asp> (9.02.2017).

5.4: Concluding Remarks

Stock exchanges play one of the most vital roles in the regulation and dealing with the business of the stock market. Exchanges are directly under the control of the BSEC while most of the other intermediaries are under the stock exchanges. The investors/traders and the market intermediaries get the platform to trade in securities through the stock exchanges. Thus, the stock exchanges play the vital role of bridge between the BSEC and the other market intermediaries and the investors. The stock exchanges in Bangladesh, the DSE and the CSE play significant roles in our capital market. In order to ensure harmonious governance, the rules, regulations and governing provisions in the DSE and the CSE have been framed almost identically. This objective of harmonious governance in exchanges was maintained from the beginning of the establishment of exchanges. However, notable differences were observed before 2010-2011 stock market crash which caused multiple anomalies in the regulations in stock exchanges. After that, a large number of new regulations and legal provisions have come into effect outlining same legal framework for both the exchanges which contributes to harmonious regulation in the stock exchanges as discussed earlier.

Though drastic reformations have been brought after 2010-2011 stock market crash in the stock exchanges regulations, the legal framework still suffers darts, complexities and remoteness from being to the point, such as, enhancing surveillance capability, ensuring fairness, accountability, transparency, market screening and proper attribution or apportionment of liability and responsibility of the stock exchanges in ensuring healthy business practice in the capital market. They also fail to ensure more active role of the Exchanges in order to prevent the market manipulators, leaking of traders' information, fictitious trading, market syndication, corruption, artificial trading and price steeping up, etc. They fail to ensure strong institutional accountabilities of the Exchanges and its managerial authorities, employees, officers jointly or severally. They also fail to provide effective measures to redress the loss sufferers.

However, the performances of the stock exchanges also depend on other market intermediaries as discussed earlier. Likewise, the performances of other intermediaries also depend on the stock exchanges. There are a number of market intermediaries and each play an important role. In this Chapter, only the legal framework and activities of stock exchanges have been discussed while the rests' are discussed in the following Chapter.

Chapter 6

Analysis of the Roles and Activities of the Other Market Intermediaries and the Related Laws: Determining their Efficacy and Fallout

6.1. Introduction

In the earlier Chapter, the roles, activities and relevant laws of the stock exchanges have been examined in details. The roles of other intermediaries and the relevant legal provisions are to be discussed in this Chapter. The intermediaries play the vital role in selling and purchasing securities in the securities markets. Altogether, they play very complex role and their performances often encroach each other. To understand the securities market as a whole, it is essential to examine the roles and activities of each intermediary and the related laws. The roles and related laws of stock brokers, sub-brokers, stock dealers, jobber, authorized representative, securities houses, depository houses, merchant banks, portfolio managers, share transfer agents, bankers to an issue, financial institutions, insurance companies, trustees of trust deeds, registrars to an issues, underwriters, credit rating companies, investment advisors, market analyst, depository participants, asset management companies, clearing members, trading members, valuers, auditors and any other intermediary who may be associated in any manner in any legal transaction in the securities market are examined in this Chapter. The roles and activities of the market intermediaries are supervised and regulated by the BSEC.¹

6.2. Stock Brokers, Sub-Brokers, Stock Dealers and Authorized Representative

The stock broker,² the sub-broker under the stock broker, the stock dealer,³ and the authorized representative⁴ provide similar services in the securities markets. Their roles and responsibilities are provided under several securities laws. However, some fundamental provisions, such as, eligibility, registration, core responsibilities, duties, etc, are specifically laid down under the Securities and Exchange (Stock Broker, Stock Dealer

¹ The Securities and Exchange Commission Act, 1993 s 8(2)(kha).

² “Stock broker” means such a person who trade (buy and sell) securities for and on behalf of others. [In Bangla].

[The Securities and Exchange (Stock Broker, Stock Dealer and Authorized Representatives) Rules, 2000 r 2(1)(10)].

³ “Stock dealer” means such a person who trade (buy and sell) securities for his/its own. [In Bangla].

[Ibid r 2(1)(9)].

⁴ “Authorized representative” is such a person holding registration from the BSEC for the purpose of working as the authorized representative under any stock dealer or stock broker for trading (buy and sell) in securities and also carrying out other purposes under these Rules. [In Bangla].

[Ibid r 2(1)(1)].

and Authorized Representatives) Rules, 2000 (*shortly as the 'said Rules, 2000'*).⁵ These intermediaries deal with the securities and play an important role in trading. Only the authorized persons from the BSEC or the stock exchanges can carry out business as brokers, sub-brokers, dealers and representative. Stock broker and stock dealers are the persons who can buy and sell securities.⁶ Sub-brokers and authorized representative can buy and sell securities under the stock broker or dealer.⁷

Stock dealer, Stock broker and authorized representative shall need to obtain registration certificate from the BSEC and have to be member of any stock exchange for trading shares and conducting any other activity related to the stock market. They cannot operate in the market without obtaining registration under the said Rules, 2000.⁸ Without such certificate and membership they cannot get involved with any activity in capital market. This certificate is not transferrable without prior permission of the BSEC.⁹ Primarily, it is given for 1 (one) year for Stock dealer and Stock broker and 5 (five) years for authorized representative, and it is renewable.¹⁰ They have to carry out all responsibilities as prescribed under the laws.

No person, unless the same is a member of any stock exchange, a juristic person with certain paid up capital as provided under law and performing as merchant banker, portfolio manager, mutual fund trustee, custodian or asset manager will be eligible to apply under these Rules for registration and membership as a stock broker or dealer.¹¹ If any of its director or the person itself is convicted for forgery, fraud or any kind of criminal offence or declared insolvent by the court or their/its names/name appeared as defaulter in the CIB (Credit Information Bureau) Report¹² of Bangladesh Bank cannot apply for registration. The applicant also has to satisfy that none of its directors were members of a cancelled stock dealer, broker or approved representation in last 3 (three)

⁵ The BSEC framed these Rules in exercise of power given under section 24(1) of the Securities and Exchange Commission Act, 1993 by publishing in the official gazette on 29.11.2000.

⁶ Ibid rr 3, 21 and 22.

⁷ Ibid r 4(4).

⁸ Ibid r 3.

⁹ Ibid r 6.

¹⁰ Ibid r 7.

¹¹ Ibid r 4(1).

¹² CIB Report is a list of defaulters who borrowed loan from any bank or financial institution and become defaulter in repayment of loan. This Report is prepared by the Bangladesh Bank under sections 42-47 of the Bangladesh Bank Order, 1972 basing on the schedule banks and financial institutions sending to it time to time.

years or not appointed as compliance authority. It means only the juristic person can apply to be a stock broker or dealer.¹³ However, a natural person not less than 21 years with education qualification at least passing Higher Secondary Certificate (HSC) or equivalent examination and training from the exchanges can apply to be registered as authorized representative.¹⁴ None can apply for it if he is convicted for forgery, fraud or any kind of criminal offence or is punished by the BSEC for any reason.¹⁵

Stock dealer, Stock broker and authorized representative are to maintain register books, balance sheet and other papers which are perusable by the BSEC through stock exchange.¹⁶ They are to submit report every year in prescribed manner containing prescribed information to the BSEC through stock exchange. The BSEC, *suo moto*, or upon objection of any person, can inspect and examine all matters, papers, documents and affairs of stock dealer, broker and representative in prescribed manner as stated in the Act and Rule.¹⁷ The BSEC can cancel or suspend the said registration.¹⁸ After suspension and cancellation, no broker, dealer or representative can take part in trading of securities or any other activities in capital market.¹⁹ Stock dealer, Stock broker and authorized representative can file appeal to the BSEC if being aggrieved by any decision under the said Rules.²⁰

The Schedule Second of these Rules has laid down the conduct, discipline and mode of trading of dealer, broker and representative, which are really important.²¹ The Second Schedule has laid down very crucial provisions stating the responsibilities by imposing some restrictions upon the broker, dealer or representative through prescribing code of conduct. The stock broker and stock dealer have to maintain honesty, sincerity and loyalty.²² They owe duties of fairness, neutrality, transparency and honest dealings in

¹³ Ibid r 4(1).

¹⁴ Ibid r 4(2).

¹⁵ Ibid.

¹⁶ Ibid r 13.

¹⁷ Ibid r 15.

¹⁸ Ibid r 12.

¹⁹ Ibid.

²⁰ Ibid r 17.

²¹ Schedule II of the Securities and Exchange (Stock Broker, Stock Dealer and Authorized Representatives) Rules, 2000 is provided for laying down the code of conduct for the stock broker, dealer and authorized representative under the Rules [In Bangla].

²² Schedule II (in reference to Rule 11 of the Securities and Exchange (Stock Broker, Stock Dealer and Authorized Representatives) Rules, 2000) provides the code of conduct for the Stock Brokers, Stock Dealers and Authorized Representatives as:

selling and purchasing shares for the investors.²³ They are to take and provide correct and authentic information to their clients, and not to disclose anything of one client to other.²⁴ They are under obligation to maintain privacy, secrecy and confidentiality about the accounts of their clients. In making investment to any security, they will guide the clients correctly and neutrally.²⁵

They owe duty towards the BSEC as well.²⁶ They should not perform any malpractice to secure their own interest before their clients and they should not create any artificial market.²⁷ In case of anything doubtful, they must inform the stock exchanges or the

i. Honesty, Integrity, others: The Stock Brokers, Stock Dealers and Authorized Representatives shall maintain dignity, integrity, loyalty and honesty. [In Bangla].

²³ Duties towards the clients:

i. The Stock Brokers, Stock Dealers and Authorized Representatives shall do their best with utmost honesty and sincerity to sell and buy the securities on behalf of their clients.

ii. They will inform the clients in writing about the trading of securities with specific description of sale and purchase in securities and the amount credited thereof in the account of the clients.

iii. The Stock Brokers, Stock Dealers and Authorized Representatives shall be always endeavor to help their clients, and shall not deliver any information of documents which is a bad delivery. In case of any such bad delivery, they will take appropriate preventive action immediately.

iv. The Stock Brokers, Stock Dealers and Authorized Representatives shall provide details statement in writing to the clients about their transaction, sale, purchase and amount debited and credited on their account against shares.

v. The Stock Brokers, Stock Dealers and Authorized Representatives shall not disclose any information about their clients to any third party or shall not abuse any information of their clients. They shall supply necessary information to the concerned authorities.

vi. The Stock Brokers, Stock Dealers and Authorized Representatives shall examine the authenticity of the information or document supplied by the clients, and shall not do any transaction with any doubtful, suspicious, forged or false information or document supplied by the clients, and also shall not encourage or persuade anyone to do any transaction with such frivolous, doubtful, forged or false document of information. [In Bangla].

[Ibid].

²⁴ Providing correct information: The Stock Brokers, Stock Dealers and Authorized Representatives in order to gain profit shall not persuade any client to sell or buy any security or invite false or deceptive quotation or shall not supply any false or incorrect information for provoking any client to sell or buy any share. [In Bangla].

[Ibid].

²⁵ Advisory service for investment: The Stock Brokers, Stock Dealers and Authorized Representatives shall not give any advice to its clients for selling or purchasing of any security unless the same is asked by the client and the advice is for the benefit and appropriate for the client. [In Bangla].

[Ibid].

²⁶ Duty towards the Commission: Every stock broker, stock dealer and authorized representative shall provide any information or document on demand by the Commission and shall also co-operate with the inspection by the Commission and shall not provide any false or deceptive information to the Commission. [In Bangla].

[Ibid].

²⁷ Prohibition on using unfair means for gaining unfair benefit: No stock broker, stock dealer and authorized representative shall adopt any unfair means or trade into securities or take any illegal way for recovering unfair gain, profit or commit fraud with any clients or spread rumor for destroying balance in stock market.

Prohibition on creation of artificial market: No stock broker, stock dealer and authorized representative shall act in syndication with others for creating an artificial market that will be heterogeneous for the investors and destructive for the fair and transparent trading in the market. [In Bangla].

[Ibid].

BSEC.²⁸ The authorized representatives also owe these duties and responsibilities towards the clients to maintain the code of conduct.²⁹

Though the aforesaid codes of conduct are apparently convincing, they have no binding effect i.e. those do not attract any strict penal provision under any criminal or civil law for the stock broker, stock dealer or authorized representative. These codes of conduct are, in no way, comprehensive and all-embracing. Moreover, violation or failure to comply with this does not bring any punishment enforceable by any court of law. Investors lack in filing cases or upholding accountability by the brokers, dealers or authorized representatives and their officials, employers, staffs etc. These codes of conduct vehemently fail to ensure transparency and fairness in the transaction of the stock broker, dealer or authorized representative and prevent them from act in syndication for abusing the market, gaining through unfair means, spreading rumor, causing imbalance and creating artificial market. The involvement of several stock broker, stock dealer or authorized representative with the stock market scam of 2010-2011 was highly evident in the Probe Committee, and later few broker houses was punished for illegal trading and being involved with market gambling.³⁰

They also failed to ensure institutional or personal liability of the stock broker, stock dealer and authorized representative and their employees, employers and officials jointly or severally for being involved with market manipulation. In fact, the scope of these codes of conduct for the ensuring of fair, transparent, sincere, honest, accountable performance and good governance of the stock broker, stock dealer and authorized representative is very narrow. Immediate steps should be taken to amend these Rules comprehensively so that the stock broker, stock dealer or authorized representative can be held jointly or

²⁸ Informing the stock exchange or the Commission about any doubtful transaction: Every stock broker, stock dealer and authorized representative shall be under the duty to inform the stock exchange or the Commission about any doubtful transaction / activity in the stock market immediately after coming into knowledge of it. [In Bangla].

[Ibid].

²⁹ Special code of conduct for the authorized representative:

-Every authorized representative shall apportion the denomination or scrip of securities in the manner as scrip-wise and clients-wise given by the stock-broker or stock-dealer.

-Every authorized representative while acting on behalf of any client inform the client each time that it is acting on behalf of the client with the due permission and being sub-ordinate to any stock-broker or stock-dealer. [In Bangla].

[Ibid].

³⁰ Few discussions on this issue has been made in Chapter 7 and 9 of this thesis.

severally liable and accountable for ensuring fair, neural and lawful dealing with the clients in the securities market along with its employers, employees and officers.

Nevertheless, the other important provisions are regarding the imposition of punishment upon the stock broker, stock dealer or authorized representative in violation of the provisions of these Rules and the aforesaid obligation. In violation of any provisions of these Rules including the Schedule stated obligations, the BSEC can cancel registration and impose fine.³¹ However, before imposing any punishment the BSEC is required to give reasonable opportunity to the dealer, broker or representative in the manner of being heard as prescribed under these Rules.³² In order to take action in this regard, the BSEC can appoint inquiry officer who can provide report to the BSEC.³³ No dealer, broker or representative can deal in the security market except without prior permission and attainment of certificate in writing from the BSEC, and no broker, dealer or authorized representative whose certificate is cancelled by the BSEC can do business in the security market.³⁴

However, some other vital shortcomings have also been observed in these Rules. There is no provision allowing any person aggrieved with the wrong decision taken by the BSEC granting registration certificate to the stock dealer, stock broker and authorized representative to file suit or hold the BSEC accountable. There is no provision imposing obligation upon the broker, dealer and representative for disclosure of correct information to the investors. There is no provision preventing them from unfair, fraudulent, concerted and malpractice in market. There is no provision creating direct link of obligation of said intermediaries to the general investors. No safeguard is provided for the investors who suffer loss due to unfair, fraudulent, concerted and malpractice of said broker, dealer and representative in market. Failure to impose obligations upon them makes these Rules weak and inadequate in order to providing satisfactory safeguard to the investors. Though they are under certain reporting obligations to the BSEC through stock exchange and the BSEC can examine and inspect all their activities, those do not create any direct obligation to the investors who they basically deal with and work for.

³¹ Ibid r 12.

³² Ibid r 12.

³³ Ibid rr 15 and 16.

³⁴ Ibid r 6.

6.3. Securities Houses, Depository Houses and Depository Participants

The depository is a legal entity who keeps deposits of others. The common examples are banks, where we deposit money, and the bank pay a receipt against savings of the amount, maintain record and keep trust and professional accountability with the clients. For the management, controlling, registration and institutional record keeping of trading of securities, the depositories play one of the most vital roles in stock market. In stock market, the investors purchase shares not directly from the issuer companies, but from the approved securities houses who are the members of the stock exchanges. The records of transactions between the investors and the stock exchanges are maintained by both the securities houses and the depositories. Basically, the depositories play the vital role in keeping the record of transaction.³⁵ Depositories maintain an account for investors' securities (share, debentures, mutual fund etc) held by them in a dematerialized or electronic form.

One of the main functions of the depository is to transfer the ownership of shares from one investor's account to another whenever trade takes place. It helps in reducing the paper work involved in trade, expedites the transfer and reduces the risk associated with physical shares such as damaged, theft, interceptions and subsequent misuse of the certificates or fake securities.³⁶ Another important function of the depository is that it eliminates the risk associated with holding the securities in a physical form like loss, damage, theft or delay in deliveries etc.³⁷

Like depositories, security custodians also play a vital role in stock market. A custodian holds securities, generally facilitating purchases and sales, keeping the account information, reporting the status of assets, tax compliance and reporting, and management of the client's accounts and transactions. For example, a bank may act as a custodian of securities by dealing with the customer's investment activities, suggesting to sell and purchase securities in appropriate time, moving funds into brokerage accounts, researching investment alternatives such as companies and funds which might be appropriate

³⁵ Depository, *Financial Gyaan* (online) 21 April 2013.

<<http://www.financialgyaan.com/dictionary/depository/>> (5.1.2016).

³⁶ Investopedia explains "a financial institution that holds customers' securities for safekeeping so as to minimize the risk of their theft or loss. A custodian holds securities and other assets in electronic or physical form. Since they are responsible for the safety of assets and securities that may be worth hundreds of millions or even billions of dollars, custodians generally tend to be large and reputable firms. <<http://www.investopedia.com/terms/c/custodian.asp>> (25.03.2016).

³⁷ Ibid.

investment targets, instructing brokers to buy or sell securities, monitoring the investment activities within the account, maintaining tax filing of the holder and reporting account activity to the owner. Custodian services are mostly useful for ‘absentee owners’³⁸, as well as complex transactions, management of substantial assets, timely reporting and compliance, and tax management strategies. At present, there are ten securities custodians recognized by the BSEC in Bangladesh.³⁹ Depositories are guided in Bangladesh by several laws, regulations and directives, which are discussed below-

6.3.1. The Depositories Act, 1999 (Act No. VI of 1999)

This Act is for the regulation of the depositories established for the purpose of maintenance of securities and effecting and recording thereof. It provides the meaning of “depository” as a “company constituted with the institutions specified by regulations for the purpose of maintenance and transfer of securities through book entry”⁴⁰ and registered under the Companies Act.⁴¹ The depository participant is a person who has the right to participate in the functions of the depository.⁴² The depository consists of both the direct account holder⁴³ and the participants⁴⁴. This Act has been given overriding effect⁴⁵ and no depository can be wound up except with the prior approval of the BSEC.⁴⁶ The depository can make bye-laws not inconsistent with the regulations for carrying out the purposes of this Act.

A depository shall not be entitled to carry on any activities under this Act unless it is registered by the BSEC.⁴⁷ Every depository shall introduce and administer its own depository system in which or as the case may be.⁴⁸ All securities deposited in the

³⁸ Owners who are not interested or able to be involved in the day-to-day management activities of their accounts.

³⁹ Standard Chartered Bank, Hongkong and Shanghai Banking Corporation Ltd. (HSBC), Dhaka Bank Ltd., Southeast Bank Ltd., Arab Bangladesh Bank Limited., Standard Chartered Bank Ltd, BRAC Bank Ltd, Citi Bank N.A. Bangladesh, Agrani Bank Limited and Commercial Bank of Ceylon PLC00.

⁴⁰ Book entry means recording of securities in the depository register in accordance with the regulations.

⁴¹ The Depositories Act, 1999 s 4(1).

⁴² Ibid s 2(1)(1).

⁴³ “Direct account holder” means a person who opens and maintains an account with the depository but not a participant. Depository participant is different from direct account holder. [In Bangla]. [Ibid s 2(i)].

⁴⁴ Depository participants are those who obtain registration under this Act and relevant regulations as depository participants. [In Bangla]. [Ibid s 2(a)].

⁴⁵ The Depositories Act, 1999 s 3.

⁴⁶ Ibid s 17.

⁴⁷ The Depositories Act, 1999 s 4(1).

⁴⁸ Ibid s 5.

depository part of the company register shall be kept in dematerialized condition and fungible form.⁴⁹ When any security is transferred through the book entry system, the said transfer shall be effective subject to its entry in the depository register in accordance with the regulation.⁵⁰ Not all securities are eligible to be maintained with depositories subject to the fulfillment of the conditions prescribed by bye-laws, only the eligible securities⁵¹ allotted to the clients and all additional securities allotted to account holders shall be recorded in the depository register.⁵² The transfer of registered securities i.e. eligible securities will be held in the account of the depository.⁵³ The depository shall not be a member for any issuer.⁵⁴ Fees of depository will be prescribed by regulations.

The most important provision is provided under Section 11 laying down the duties etc. of depositories, participants, issuer and account holder. They will give effect to the transfer of an ownership by updating the depository register in accordance with the regulations after receiving an instruction from a participant or direct account holder and thereafter inform the issuer about the change in ownership of shares. The issuer shall rely on that information supplied by the depository.⁵⁵ However, the issuer is always free to maintain its separate register book, etc.⁵⁶ A participant may, on the authority given in writing by his client, record securities in an omnibus account without opening a separate account in the name of the said client in the depository.⁵⁷ The depository can allow proxy account holder.⁵⁸ However, a participant shall not transact any security without any authority or instruction given in writing by the client.⁵⁹

The vital provision is related to the maintenance of secrecy and non-disclosure of any information outside by the internal officers of the depository. If a depository or any of its directors, officers or employees or any other person has come to know by any means about any document or fact relating to any account holder, he shall not communicate, divulge or

⁴⁹ Ibid s 6.

⁵⁰ Ibid s 8.

⁵¹ Eligible securities means securities eligible for recording in the depository register under the bye laws. [In Bangla].

[Ibid s 2(m)].

⁵² The Depositories Act, 1999 s 9.

⁵³ Ibid s 10.

⁵⁴ Ibid s 11(1)(2).

⁵⁵ Ibid s 11.

⁵⁶ Ibid s 11(5).

⁵⁷ Ibid s 11(6).

⁵⁸ Ibid s 11(7).

⁵⁹ Ibid s 11(9).

otherwise disclose to any other person the said document or fact. The depository shall, in the manner and within the time prescribed by regulations, furnish to the participant information relating to the transaction of securities recorded in the depository register.⁶⁰

Likewise all other statutes, this Act also provides indemnity and exclusion of liabilities of the depository or by any of its employees or representatives.⁶¹ They shall not be held liable for any of their act causing damage to the account holders if the act were done in good faith and without any negligence.⁶² However, any account holder suffers any loss due to the negligence, wrongful act or defect of a depository, or any of its employees or representative, the said depository and its concerned employee and representative shall be bound jointly and severally to pay compensation for the loss of the account holder.⁶³ Therefore, the provision implies the general presumption is that depositories and their employees will act in good faith and without any negligence. It is also provided that they are given space to work with liberty. However, in case of negligence, wrongful act or defective service they are not exempted from liability.

This Act enables the BSEC to frame regulations⁶⁴ and to enquire into any matter related to a depository to an issuer, account holder, beneficiary owner or any person concerned, to the business or transaction by a written order.⁶⁵ It empowers the BSEC to remove difficulties to give effect this Act and make regulations for carrying out the purpose of this Act. It also enables the BSEC to issue certain orders or directions in the interest of investors or smooth development of security market or for the purpose of preventing the activities of any depository detrimental to the interest of investors or security market to the depository, issuer or any other person connected with them.⁶⁶ If a person refuses or fails to comply with the order or direction given by the BSEC may, after giving the said person an opportunity of being heard, direct him to pay a fine not exceeding ten lakh taka, and in the case where the concerned offence is continuing, a further fine not exceeding ten thousand taka for each day of such refusal or failure after the said order is given.⁶⁷

⁶⁰ Ibid s 11(6).

⁶¹ Ibid s 12.

⁶² Ibid s 22.

⁶³ Ibid s 15(2).

⁶⁴ Ibid s 17.

⁶⁵ Ibid s 13.

⁶⁶ Ibid s 14.

⁶⁷ Ibid s 14.

This Act empowers the BSEC to take-over the management of any depository if it has failed or is neglecting to protect the interest of investors; or is engaged in the control of capital market for dishonest purpose or is doing something prejudicial to economic interest of the state.⁶⁸ In doing so, an opportunity to be heard will be given to it.⁶⁹ The information of taking over the management by the BSEC must be published in the official gazette of the BSEC.⁷⁰

Violation of the provisions of this Act is an offence and if a person contravenes or attempts to contravene, or abets the contravention of any provision of this Act, he shall be punishable with imprisonment for a term not exceeding five years, or with fine, or with both.⁷¹ If the person is a company or any other body corporate, each of its directors, managers or any other officer responsible for administration of its business shall be deemed to be guilty of the said offence, unless he proves that the offence was committed without his knowledge, or that he exercised due diligence to prevent the BSEC of the offence.⁷² No court shall take cognizance of any offence punishable under this Act except on a complaint in writing made by the BSEC, and no court other than a court of session shall try the said offence.⁷³

6.3.2. The Depository (Users) Regulations, 2003

In exercise of the power conferred by Section 17 of the Depositories Act, 1999 read with section 24(1) of the Securities and Exchange Commission Act, 1993, the BSEC framed these Regulations. The effects of these Regulations are similar to the provisions of the Depositories Act, 1999.⁷⁴ They allow provisions for the use of the depositories and to decide when the depositories can declare state of emergency. They outline the conditions and duties of depositories during emergency as well. Depositories are under an obligation to preserve and maintain secrecy of all information kept in the Depository.⁷⁵ They are also

⁶⁸ Ibid s 22.

⁶⁹ The Commission may, after giving the concerned depository a reasonable opportunity of being heard, by order published in the official Gazette, take over the said depository for the period mentioned in the order, and carry on its administration and management.

⁷⁰ The Depositories Act, 1999 s 22.

⁷¹ Ibid s 15(1).

⁷² Ibid s 15(2).

⁷³ Ibid s 16.

⁷⁴ The Depository (Users) Regulations, 2003 c 48.

⁷⁵ Ibid c 5.

responsible for securing the transaction information and deploy their security force.⁷⁶ They are under obligation to preserve the following information - information, records etc for a minimum period of seven (7) years and to inform the BSEC about relevant information⁷⁷ -

- (a) Records of securities dematerialized or rematerialized;
- (b) Names and addresses of transferors and transferees and date of transfer;
- (c) List or index of all Account Holders of securities;
- (d) Records of all instructions sent to and received from the Depository Participants, Issuers, Issuers' representatives and Account Holders;
- (e) Records regarding pledge;
- (f) Details of all participants;
- (g) Details of securities that are declared eligible for dematerialization;
- (f) Details of securities Lending and Borrowing, where applicable;
- (g) Such other information or records as the Commission may determine to be preserved from time to time.

Depositories are to maintain effective electronic communication link and evaluate its monitoring and control system.⁷⁸ They are also under an obligation to inspect and examine its system, affairs, functions, control and security force regularly, prepare a report thereon and submit the same to the BSEC.⁷⁹ They are to aid prompt, trustworthy and secured service and maintain electronic connection with any person, institution or authority as prescribed by the BSEC along with security issuer, depository participants, stock exchange, clearing corporation or house, clearing bank and any other depository, if any.⁸⁰ They shall maintain consolidated clearing and settlement system and any change by BSEC will be informed to the Depository.⁸¹ They cannot delegate their powers without prior permission of the BSEC and cannot wind up without prior permission of the BSEC.⁸²

These Regulations also provide that the Depository shall have adequate arrangements, which may include insurance to lawfully compensate any person suffering a loss on

⁷⁶ Ibid c 6.

⁷⁷ The Depository (Users) Regulations, 2003 c 7.

⁷⁸ Ibid cc 8-9.

⁷⁹ Ibid.

⁸⁰ Ibid cc 10-11.

⁸¹ Ibid.

⁸² Ibid c 13.

account of the Depository.⁸³In such case, the insurer or any of its subsidiary companies or any of their officials, shareholders or representatives, during the period of insurance, shall not be included or be in the Board of the Depository.⁸⁴

Securities in Depositories will be preserved and transacted in dematerialized form.⁸⁵ The BSEC will determine the eligible securities of trade.⁸⁶ The securities are categorized into 3 (three) categories- (i) listed securities with stock exchange, (ii) bond market security issued by government or any other securities which are regarded as securities of bond market, and (iii) any other security including equity and bond security, mutual fund unit, commercial paper, etc.⁸⁷

There shall be a contract between depository and issuer of security; cases where the depository is the issuer, the terms of others contracts will be applicable.⁸⁸ Depository can provide facility of account maintenance for the clearing account,⁸⁹ principal account,⁹⁰ customer account,⁹¹ omnibus account⁹² and direct account⁹³.⁹⁴ A depository can maintain one direct account of its own and all records regarding transactions are to be saved there.⁹⁵ Issuers and participants can cross-check the account and the depository shall maintain such system with a view to maintaining transparency.⁹⁶ The Depository will open and maintain separate accounts for each holder in order to maintain record of each transaction and will provide statement of account after prescribed period in accordance with the

⁸³ Ibid c 12.

⁸⁴ Ibid.

⁸⁵ Ibid c 15.

⁸⁶ Ibid c 17.

⁸⁷ Ibid.

⁸⁸ Ibid c 18.

⁸⁹ This type of account can be used by the trading participant, custody participant, settlement agent participant and full service participants for the purpose of trading with the stock exchanges. [Ibid c 20(1)(a)].

⁹⁰ This type of account can be used by the trading participant, custody participant and full service participants for the purpose of saving/securing their own accounts/securities. [Ibid c 20(1)(b)].

⁹¹ This type of account can be used by the full service participants and custody participants for the purpose of securing/saving the accounts/securities in the name of each customer. [Ibid c 20(1)(c)].

⁹² This type of account can be used by the full service participants and custody participants for the purpose of securing/saving the accounts/securities of the customers jointly at a time. [Ibid c 20(1)(d)].

⁹³ Depository can use this account for directly saving the securities of the investors. [Ibid c 20(1)(e)].

⁹⁴ Ibid c 20.

⁹⁵ Ibid c 21.

⁹⁶ Ibid c 22.

contract.⁹⁷ Person interested in receiving the service of the depository may open an account with any depository participant.⁹⁸

In order to be a depository participant, one must be registered under these Regulations, the BSEC can provide registration certificate of participants.⁹⁹ Depository Participants are classified as - a) trading participants, b) full service participants, c) custody participants and, d) settlement agent participants.¹⁰⁰ They save the record of depository participants and maintain separate record and account for each participant.¹⁰¹ No participant can delegate its functions/activities to a third party without prior permission of depository.¹⁰² Depositories cannot transfer any title/ownership of security without transaction in stock exchange/title of security to the issuers.¹⁰³ But they can provide pledge benefit to the holders of securities with prior permission of the BSEC.¹⁰⁴ Depositories also maintain share, bonus share, dividend, etc declared upon shares.¹⁰⁵ A depository shall keep 'certain information'¹⁰⁶ open during office hour for all.¹⁰⁷

A depository can entertain objections raised to it and can resolve it.¹⁰⁸ It is under mandatory obligation of submitting certain reports to the BSEC.¹⁰⁹ The most important provision of the Regulations is the penal provision under which the BSEC, by giving reasonable opportunity of being heard to the depository, may suspend or cancel the Registration Certificate of a person contravening any provision of these Regulations or any directive issued thereunder, or may take further punitive measures against any person accused in an investigation by the BSEC.¹¹⁰ Person aggrieved by the decision of the BSEC may file for appeal in the manner as provided under the Securities and Exchange

⁹⁷ Ibid c 23.

⁹⁸ Ibid c 24.

⁹⁹ Ibid c 27.

¹⁰⁰ Ibid cc 29-30.

¹⁰¹ Ibid cc 32-33.

¹⁰² Ibid c 39.

¹⁰³ Ibid c 42.

¹⁰⁴ Ibid c 44.

¹⁰⁵ Ibid c 46.

¹⁰⁶ Those information includes the list of eligible securities, name, address and telephone number of depository participants, depository Act, Regulations, Bye-laws, manual, etc, depository Registrar and any information and documents, etc as directed by the BSEC.

¹⁰⁷ The Depository (Users) Regulations, 2003 c 49.

¹⁰⁸ Ibid c 50.

¹⁰⁹ Ibid c 51.

¹¹⁰ Ibid c 53.

Commission (Appeal) Regulations, 1995 which shall be settled as per the said Appeal Regulations.

Another important and noteworthy provision is provided under Schedule 5 that contains rules of conduct of depository participants.¹¹¹ Again, these codes of conduct have no binding effect and are not judicially enforceable. The investors i.e. clients of the depositories can neither call for institutional or individual accountability and transparency from the depository and its officials as of right nor can they file a suit. Anyway, being the depository and maintaining a contractual relationship with the clients, it is under an obligation to perform diligently, sincerely and in accordance with law.

6.4. Credit Rating Companies

The Credit Rating Companies/Agencies (CRC/A) play a very important role in the securities market. Their services are directly related to the credit-worthiness of the securities issued the issuer and their ratings have a direct impact over the value and demand of securities. Credit ratings also play a crucial role as a pre-requisite of granting permission to the issuer and security by the regulatory authority including the BSEC. Therefore, credit rating serves not only the issuer but also the investor and the regulatory authority. For this reason, global ratings services are extensively utilized by the members of the investment community, such as, general investors, merchant banks, portfolio managers, asset management companies, investment bankers, stock exchanges and also by the regulators. Credit reports are particularly important in securities market for all kinds of investors.¹¹² The IPO managers use the rating reports as a bench mark for their due

¹¹¹ (i) Honesty and Integrity: Every depository participant shall maintain honesty, integrity, reputation and loyalty in its business.

(ii) Duty towards clients: (a) Every depository participant shall act only as per written instruction from the clients under these regulations.

(b) Every depository participant will produce details report in writing to its clients.

(c) Every depository participant shall be bound to save the securities of its clients safely; in default the depository shall be bound to give compensation.

(iii) Duty towards the BSEC: Every depository/depository participant shall act in cooperation with the BSEC and its officers and shall produce all the documents or records as demanded by the BSEC or its officer during the course of inspection and shall not produce any false or deceptive information.

(iv) Information about doubtful transaction: Every depository participant shall immediately inform the BSEC or the depository coming into knowledge about any suspicious/doubtful transaction in stock market.

(v) Disposal of complaint: Every depository participant shall immediately dispose of any complaint filed to it by any customer.

¹¹² For general investors rating reports assist them to decide on investment on the basis of rating which is arrived at after due consideration to the company fundamentals. Although ratings are not to be construed as recommendation to buy or sell any securities and also not for speculative transactions, the ratings are mostly

diligence before IPO proposal is forwarded. The bankers frequently use the rating reports before significant lending. The regulators and stock exchanges require mandatory ratings before any direct listing with the bourses, issue of IPO at premium and issuing of any bond. These ratings work as a guide to the investment bankers in deciding on portfolio size and mix. The above assists the bankers in determining the risk exposure in deciding on client's portfolio size and risk.¹¹³

Currently, there are eight credit rating companies in Bangladesh.¹¹⁴ Generally, the banks, financial institution, regulatory authorities, loan syndicators, financial intermediaries, merchant bank, issue managers, portfolio managers, corporate entities, business houses and investors are the primary users of ratings. There are Credit Rating Companies Rules, 1996 and Notification dated 17.11.2009 being No. SEC/CMRRCD/2001-27/01/Admin/01/40 particularly dealing with regulations of credit rating of companies.

Critical analysis of Credit Rating Companies Rules, 1996

The credit rating companies in Bangladesh are governed by and under the Credit Rating Companies Rules, 1996 (*henceforth referred to as 'the Rules' in relevant paragraphs*).¹¹⁵ Under these Rules "Credit Rating" means formal evaluation of credit and/or investment and capability of servicing obligations,¹¹⁶ and "Credit Rating Company (CRC)" means an investment adviser company which intends to engage in or is so engaged primarily in the business of evaluation of credit or investment risk through a recognized and formal process of assigning rating to present or proposed loan obligations or equity of any business enterprise.¹¹⁷

Securities intended to be issued in the market must be rated by any credit rating company; though in the interest of capital market the BSEC can provide exemption to any security

utilized in view of the fact that these are impartial and professional opinions on the rating entities. Its publications provide wide range of information on the rating entities as well as on the economic sectors where these entities are operating.

¹¹³ <<http://www.crislbd.com/why-credit-rating-bangladesh>> (20.05.2016).

¹¹⁴ They are, Credit Rating Information and Services Ltd (CRISL), Credit Rating Agency of Bangladesh Ltd (CRAB), National Credit Ratings Ltd, Emerging Credit Rating Ltd, ARGUS Credit Rating Services Ltd., WASO Credit Rating Company (BD) Limited, Alpha Credit Rating Limited and The Bangladesh Rating Agency Limited.

¹¹⁵ In exercise of power conferred by section 32 of the Securities and Exchange Ordinance, 1969, the BSEC made these Rules for regulating the business of credit rating companies.

¹¹⁶ The Credit Rating Companies Rules, 1996 r 2(c).

¹¹⁷ Ibid r 2(d).

by an order published in official Gazette.¹¹⁸ Now, the issue is the requirement of credit rating for issuing shares in market is pre-conditional. Before issuing a security in market credit rating by a CRC is mandatory except the BSEC provides special exemption official Gazette.¹¹⁹ This condition is not on-going. Credit rating companies/agencies (CRC/CRA) rate credit of securities/share at the cost of concerned company basing on the information and documents supplied by that company. So, it can be reasonably assessed that no company going to issue and trade shares in market would buy/purchase bad or negative report about its shares at its own cost and effort. Therefore, credit rating report by CRC/A cannot be said to be impartial and fair. All the credit rating companies are private and they owe no statutory obligation of fair and value-free rating. If there were a statutory body that need not take/collect government fund from companies/clients and if that independent-statutory body would have owed legal obligation to government or to judiciary, only then could fair trading be expected.

Under the existing scenario, all credit rating companies are public limited companies under the Companies Act, 1994 registered with BSEC as Credit Rating Company and must fulfill the eligibility requirements under these Rules.¹²⁰ The CRCs are under obligation to submit quarterly report to the BSEC. The BSEC exercises the apex power supervising and regulating activities of CRCs. Moreover, the BSEC can issue new rule, direction, etc upon them and can also suspense or cancel registration for violation or contravening the provisions and directions under these Rules.¹²¹

Though a CRC owes certain obligations to the BSEC, but it has no direct obligation or accountability towards the government, the judiciary and the general investors at large; for example: if any credit rating company/agency rates a security of a company as 'A' category i.e. investment-worthy; and basing on their opinion/rating if any investor invests

¹¹⁸ Ibid r 3.

¹¹⁹ Rule 3 of the Credit Rating Rules, 1996 provides that no issue of debt security, or public issue of share (including rights share) at a premium, shall be made by an issuer unless the issue is rated by a credit rating company and declaration about such rating is given in the offer document, prospectus or rights share offer document, as the case may be. Provided that the Commission may, by general order which shall be notified in the official Gazette grant exemption, in the interest of the capital market, from any requirement of this rule.

¹²⁰ The Credit Rating Companies Rules, 1996 r 4.

¹²¹ Ibid rr 5-8.

in the security and suffered huge loss, then a CRC owes no obligation to that investor/investors. The reason is, the share market is defined as ‘a market by choice’.¹²²

However, on 17.11.2009, the BSEC brought about a huge amendment in the aforesaid Rules and added three more Chapters vide Notification no. SEC/CMRRCD/2001-27/01/Admin/01/40. Under the new amendment, all CRC(s) are directed to adopt, publish and be in adhere to the Code of Conduct. The Code of Conduct should contain certain things excluding the quality of the rating process,¹²³ monitoring and updating,¹²⁴ integrity of the rating process,¹²⁵ CRC independence and avoidance of conflicts of interest,¹²⁶ CRC procedures and policies,¹²⁷ CRC analyst and employee independence,¹²⁸ CRC responsibilities to the investing public and issuers,¹²⁹ and Disclosure of these Rules.¹³⁰

Details under the aforesaid captions are described in the Rules. Those provisions are much elaborated and self-describing. Amongst all the provisions relating to CRC, the provisions relating to responsibilities towards the investors and the issuers are particularly important and it needs critical examination. The provisions are divided under two divisions i.e. one dealing with “transparency and timeliness of ratings disclosure” and the other dealing with “treatment of confidential information”. Both are analyzed hereunder-

a. Transparency and Timelines of Ratings Disclosure¹³¹

It is provided that CRC shall publish ratings in its official website when it issues a final rating or disclosure with a rating except for private rating where there is contractual agreement with the issuer not to do so. Now the question is regarding the contractual obligation as to not publishing information on private ratings; though it relates to private ratings which is not done for public; however it gives a chance to the issuer and a CRC to prepare two kinds of rating report; one for the general investors which can be published

¹²² Investors invest at their own will to their chosen security. No one can force them to invest in the securities or stock market. No mandatory requirement under the Bangladeshi law for investing in securities market. No special incentive is given to the investors. The investors invest in the securities by their own will. No one including regulatory authority basically owes any duty to them. For this reason it is said that your money you invest according to your choice and subsequently you win or suffer, that is up to you ultimately.

¹²³ Ibid r 9(1).

¹²⁴ Ibid r 9(2).

¹²⁵ Ibid r 9(3).

¹²⁶ Ibid r 9(4).

¹²⁷ Ibid r 9(5).

¹²⁸ Ibid r 9(6).

¹²⁹ Ibid r 9(7).

¹³⁰ Ibid r 9(8).

¹³¹ Ibid r 9(7)(A).

and other for the issuer itself which is private and cannot be published by a CRC as it is under contractual obligation to not do so.

In addition, CRCs shall disseminate its rating information and its discontinuation to rate a security of any issuer immediately to the Commission and Stock Exchanges. They shall explain by the elements underlying the rating opinion and assist the investors to understand what a credit rating is. CRCs will also publish whether credit rating of a security is done at the request of issuer or not. They can also respond to critical information or query of any investor and shall fully publish its credit rating methodologies, significant practices process and procedures.

More importantly, in order to promote transparency and to enable the market to justify the performance of the ratings, the CRC, where possible should publish sufficient information about the historical default rates of CRC ratings categories and whether the default rates of CRC ratings categories and whether the default rates or these categories have changed over time along with the methodology used for calculating default rates, so that interested parties can understand the historical performance of each category and if and how rating categories have changed, and be able to draw quality comparison among ratings given by different CRCs.

b. Treatment of Confidential Information¹³²

CRCs are also under an obligation not to disclose the confidential information shared with them under the terms of confidentiality agreement or otherwise under a mutual understanding that the information is shared confidentially. CRC employees are also under an obligation not to misuse and share the confidential information and to protect data from fraud, theft or misuse i.e. any information or data going against the issuer in the market. It mostly includes negative/adverse information against the company. Because, the issuer always wants positive information about it to be published widely and quickly while they want the opposite for adverse information.

As the BSEC exercises supreme power on regulation over CRCs there are certain provisions entitling the BSEC to inspect and investigate into the matters and business of

¹³² Ibid r 9(7)(B).

CRCs.¹³³ Notice needs to be served before inspection in accordance with law.¹³⁴ The BSEC may appoint one or more persons as inspecting or investigating officers to undertake inspection or investigation of the books of account, records and documents of the credit rating companies, for any of the purposes as specified hereunder-

- (a) to ascertain whether the books of accounts, records and documents are being maintained property;
- (b) to ascertain whether the provisions of the Ordinance and these Rules are being complied with;
- (c) to investigate into complaint received from investors, clients or any other person on any matter having a bearing on activities of the credit rating company;
- (d) in the interest of the securities market or in the interest of the investors.¹³⁵

It shall be the duty of every CRC whose affairs are being inspected or investigated, and it's every director, officer or employee to produce the custody or control and furnish the inspecting officer with such statements and information relating to its rating activities, as the inspecting or investigating officer may require for conducting its duty.¹³⁶ It is the duty of the CRC to cooperate and act in accordance with law during the course of inspection or investigation by the BSEC.¹³⁷ The inspection officer enjoys ample power to call for any documents or records.¹³⁸ Every director, officer or employee of the credit rating company shall be bound to render to the inspecting officer all assistance in connection with the inspection or investigation, which the inspecting officer may reasonably require.¹³⁹ The inspecting or investigating officer shall, as soon as possible, on completion of the inspection or investigation, submit a interim or final report to the BSEC¹⁴⁰ who after consideration of inspection or investigation report, may take such action as may deem fit and appropriate including action under the Securities and Exchange Ordinance, 1969.¹⁴¹

All the aforesaid purposes are clear, but none of these include and provide assurance that the BSEC may inspect whether transparency honesty, neutrality, fairness and truthfulness

¹³³ Ibid r 10(1).

¹³⁴ Ibid r 11.

¹³⁵ Ibid r 10(2).

¹³⁶ Ibid r 12(1).

¹³⁷ Ibid r 12(2).

¹³⁸ Ibid r 13.

¹³⁹ Ibid r 14.

¹⁴⁰ Ibid r 15.

¹⁴¹ Ibid r 16.

are maintained by CRC in publishing credit rating report. Another major limitation of the Rules is that it does not entitle other branches of government like the Ministry, Judiciary, Anti-Corruption Commission to inspect or interfere into the matters and business of CRC. Moreover, till date, not a single instance of taking action against a CRC for its wrong assessment or its over rating has been found. Though these Rules entitle an investor to lodge complains against a CRC to the BSEC; answerability and transparency on the part CRC is far from ensured.

However, ratings are the opinion of rating agencies on the creditworthiness of issuers or issues in terms of their/ its ability and willingness of discharging its obligations in timely manner.¹⁴² CRC is not obligated to perform any due diligence on independent verification of any information submitted to it or obtained in the process of rating or surveillance. CRC does not perform an audit and also does not undertake any responsibility of the verification of the audited statements. The assignment of rating to an issuer or an issue by CRC should not be viewed as guarantee of the accuracy, completeness and timeliness.

Generally, CRC expresses its opinions in terms of some alphabets such as AAA, AA, B, C etc which in short indicates the investment grade, speculative grade, risk grade or default grade etc. CRC investment grades ratings cover AAA down to BBB, while Speculative grades covers BB down to B. Risky Grades fall under the range from CCC to C while D is considered as the Default Grade. CRC offers Long Term and Short Term ratings to indicate the time horizon of ratings. The long term rating covers a period of one year while its short term rating covers a period up to six months.

CRC ratings are in local currency and therefore, it does not take into consideration the sovereign risks and foreign currency risk of the Government. CRC, being a domestic rating agency of Bangladesh considers the government of Bangladesh as the highest pay master and all government guaranteed securities/ guarantees are considered as AAA.¹⁴³

¹⁴² In fact, ratings are issued on the basis of information supplied to CRC by the issuer or its officials and also on the basis of information CRC believes to be reliable. Rating does not constitute any advice for investment nor is it a recommendation to purchase, hold or sell a particular security. CRC ratings opinions are not construed as comment on the suitability of investment for a particular investor. CRC ratings are not investment recommendations and CRC does not provide any investment advisory services.

¹⁴³ Such as, the Rating of bonds for the year 2016 by the Credit Rating Information and Services Limited is-

Date	Organisation	LT	ST	Outlook
	Bond			
02-24-16	Unsecured Subordinate Bond of Trust Bank Limited	AA-	-	-

Generally, it is expected that the CRC should be impartial, but they are not always so. Due to its professional responsibility, the CRC should be impartial, honest and diligent. However, since as it bears no obligation under law to do fair rating and they do not have independent investigation option, sometimes the ratings may be purposeful, unfair and partial. It cannot be denied that ratings have either direct or persuasive effect on the investor's choice. Issued companies often take this advantage and convince the CRC to rate their securities creditworthy under A. Another shortcoming of the CRC(s) is that they initially rate credit of the securities based on the information supplied by the issuers and thereafter by the performance of securities in stock market. Therefore, initial rating is not independent and neutral though the subsequent rating may be fair and independent.

To conclude, it is necessary to say that the CRCs are playing a vital role in the investment phase of a country. The report and analysis of the rating agencies are believed to be reliable and therefore trusted by all. In spite of some built-in shortcomings in the method of rating, lack of legal obligation and other problems, the credit rating/valuation of securities by the CRC are still the primary base of assessment for the investors. In this regard, the default¹⁴⁴ and transition¹⁴⁵ statistics play significant role in these days.

03-15-16	Southeast Bank Limited- Subordinated Bond	AA-	-	-
04-21-16	Mutual Trust Bank Subordinated Bonds-2	AA-	-	-
04-25-16	Tk 3000 Million 7 Years Non Convertible Subordinated Bond of Bank Asia	A+	-	Stable
04-27-16	Proposed Zero Coupon Bond of Nasir Glass Industries Limited	AA-	Indicative	-
05-24-16	Exim Bank Mudaraba Subordinate Bond (2nd)	A+	Indicative	-
05-30-16	AIBL Mudaraba Subordinated Bond	AA-	-	Stable
06-28-16	Golden Harvest Agro Industries Limited-Bond	A	Indicative	-
08-18-16	Subordinate Bond of Mercantile Bank Limited	AA-	-	Stable
08-24-16	Coupon-Bearing Subordinate Bond of Standard Bank Ltd.	AA-	Indicative	-
09-04-16	20% Unsecured Subordinated Bonds of Mutual Trust Bank Limited	AA	-	Stable
09-04-16	Mutual Trust Bank 3rd Subordinated Bond	AA-	Indicative	-
10-16-16	Dutch Bangla Bank Limited Subordinated Bond	AA	Indicative	-
10-25-16	Unsecured Non-Convertible Zero Coupon Bond of H. Akberali & Co. Limited	A	Indicative	-
10-27-16	Murabaha Sukuk Bond of Rahimafrooz Energy Services Ltd.	A	Indicative	-

<<http://www.crislbd.com/crisl-credit-rating-scales/>> (22.03.2017).

¹⁴⁴ Default statistics means how many ratings in each rating categories has defaulted over a period of time. For example how many AAA ratings have defaulted over the last ten years and at what point of time compared to the number of AAA ratings. The above default reflects the quality of rating. For example, a rating agency assigned AA rating (high investment grade) to an issue. Over a period of only, say, two years it has defaulted, indicating poor quality of rating.

¹⁴⁵ Transition statistics means how many ratings of a rating category moved upward or downward over a period of time. For example, how many "A" ratings have moved upward to AA or moved down to BBB or BB and at what point of time. Moving down a "AA" rated issue to BBB over, say, two years of time indicate poor quality of rating and so forth. Understanding the accuracy of above tests, the BIS has asked the regulators to check the Default and Transition statistics of a rating agency before it is recognized as External Credit Assessment Institute (ECAI) to rate the banking counter parties for capital adequacy of banks.

6.5. Auditors

Auditors play a significant role in securities market, be it by examining the financial statements of the issuer companies or by examining the account statement of the stock exchanges and all other intermediaries. Any account statement audited and signed by the designated auditor is deemed to be authentic and accurate. Therefore, the auditor holds an important part of trustworthiness, reliance and authenticity. Theoretically, there should be no reason to doubt any audited account, but in reality, the auditors are not always impartial and their reports are not perfect so far as disclosing the true, correct and accurate financial condition of the institution audited are concerned. The roles of auditors are often dubious. They are condemned as unfair, biased, fraudulent, and syndicated with the ghosts who want to earn benefit by producing false, incorrect, misleading and *malafide* information in the audit report.

In Bangladesh, for the listed companies, there are two kinds of auditors, one is appointed under the Companies Act, 1994¹⁴⁶ and the other (special auditor)¹⁴⁷ appointed by the BSEC under the Securities and Exchange Rules, 1987. Provisions for preparing the audit report are provided under the foresaid Rules in details.

After 2010-2011 stock market crash, the CPD reported that “a major concern was raised in the Probe Committee Report and also in CPD (2011b) on the reliability and authenticity of audit reports. The submitted audit reports often did not reflect the actual financial situation of the company, and appeared to be prepared with an intention to manipulate the market behavior (e.g. issuance of large number of right shares by several companies in 2010 through revaluation of assets which allowed these companies to mop up significant amount of cash. Appendix Table 3 shows, only 19 per cent of total listed companies were audited by firms that had official affiliation with international audit firms. About 60 per cent of listed companies were audited by firms which were enlisted with the NGO Affairs

¹⁴⁶ This is a mandatory provision provided under the Companies Act, 1994 for appointing the auditor for every company (private or public, listed or non-listed) for preparing and making the financial audit report of a company in every year.

¹⁴⁷ This is discretionary and only applies for the listed company. The BSEC if thinks require can appoint special auditor for auditing the listed company under the Securities and Exchange Rules, 1987. The provision for appointing the special auditor has been inserted after the great share market turmoil in 2010-2011 experiencing the acute anomalies and falsehood in the audit report submitted before the BSEC and the real condition of the company. It is a good attempt. Now, the BSEC whenever thinks or finds any financial statement/report of any issuer company doubtful, then the BSEC applying its own discretion can appoint special auditor for verifying or preparing audit report. It ensures getting more reliable and correct audit report regarding the real financial condition and business affairs of the issuer.

Bureau or Bangladesh Bank. Interestingly, more than one-fifth of the listed companies were audited by firms which had no affiliation other than the Institute of Chartered Accountants of Bangladesh (ICAB). Absence of accredited institutions to monitor reporting standards of the audited firms leaves ample opportunities and scopes to misuse the audit system, to the detriment of the common shareholders. In view of this, the Stock Exchange bodies (namely SEC, DSE and CSE) cannot avoid their responsibilities in failing to properly oversee the auditing practices. Lack of in-house capacity at the SEC as well as lack of proper rules to monitor audit firms (e.g. Reporting Act) creates an opportunity for misuse of the audit reports for purposes of market manipulation.”¹⁴⁸

Only the audited financial statements of the issuers, the stock exchanges and the intermediaries are disclosed for the public. There should not be any doubt regarding anything recorded in the audit report, but this is not the fact. The BSEC provided a list of thirty six auditors on 16.07.2015 which can be revised time to time. The listed companies and all others are instructed to get their financial statements audited by any of the listed auditor.

The Securities Exchange Rules, 1987 provides a mandate upon the issuers to submit audited financial statement to the Exchanges and the BSEC. After 2010-2011 stock market crash, several important amendments have been brought to the aforesaid Rules, especially with regard to the requirement for disclosure of certain information in the audited financial statement,¹⁴⁹ the standard to be maintained in preparing the financial statement,¹⁵⁰ the qualifications of the auditor,¹⁵¹ the requirement of auditing the financial condition of an

¹⁴⁸ Khondaker Golam Moazzem and Md. Tariqur Rahman, “Stabilizing the Capital Market of Bangladesh: Addressing the Structural, Institutional and Operational Issues” (2012), *CPD Working Paper: 95Centre for Policy Dialogue (CPD)* 4-5.

<http://www.cpd.org.bd/pub_attach/WP95.pdf> (24.02.2016).

¹⁴⁹ Details requirements are provided in Schedule I of the Securities and Exchange Rules, 1987.

¹⁵⁰ The financial statements of an issuer of a listed security shall be prepared in accordance with the requirements laid down in the Schedule-1 and the International Accounting Standards as adopted by the Institute of Chartered Accountants of Bangladesh.

Explanation-In this sub-rule, International Accounting Standard refers to the accounting standards issued by the International Accounting Standards Committee.

[The Securities and Exchange Rules, 1987 r 12(2)].

¹⁵¹ The financial statements of an issuer of a listed security shall be audited by a partnership firm of chartered accountants within the meaning of Bangladesh Chartered Accountants Order,1973 (P. O. 2 of 1973) consisting of not less than two partners in practice for a minimum of seven years none of whom were associated in any way with the issuer during the auditing period (which includes holding of securities by themselves or through spouse or any other relatives and their employees), in accordance with the

issuer by a special auditor at the discretion of the BSEC,¹⁵² the standard to be maintained by the special auditor,¹⁵³ and other related issues. The BSEC may appoint special auditor for the issuer as well as for the banks, financial institutions or insurance companies.¹⁵⁴ One of the most important provisions is that the BSEC can punish an auditor for not doing its duty properly either by declaring it ineligible or by referring to the Institute of Chartered Accountants of Bangladesh constituted under the Bangladesh Chartered Accountants Order, 1973 by giving reasonable opportunity of being heard.¹⁵⁵

Though the auditors play very important roles in securities market and also have direct influence on the investors' choice, they are apparently under no legal obligation to carry out their functions and responsibilities with utmost care, diligence, accountability and sincerity. None of the securities laws, regulations or company laws impose any professional liability upon the auditors so as to warrant penal consequence upon violation. However, in every audit report, the audit firm has to provide a declaration about the

International Standards on Auditing applicable in Bangladesh and the report of the Auditors shall be in Form B annexed to the Schedule-1.

[The Securities and Exchange Rules, 1987 r 12(3)].

¹⁵² Proviso of Rule 12(3) of the Securities and Exchange Rules, 1987 states that "provided that, notwithstanding anything contained in this sub-rule, such financial statements may also be audited in accordance with Schedule-2 by an auditor appointed by the Commission, whenever such audit is deemed by the Commission necessary in the public interest and the auditor so appointed shall furnish his report to the Commission in such form and within such time as the Commission may specify: Provided further that the fee for such audit and all other expenses in relation thereto shall be borne by the Commission.

¹⁵³ Schedule II of the Securities and Exchange Rules, 1987 described the role and responsibility of the special auditor.

¹⁵⁴ The Commission may take appropriate measures for conducting the special audit for banks, non-bank financial institutions and insurance companies in consultation with their respective primary regulators, as the case may be, if felt necessary.

[The Securities and Exchange Rules, 1987 r 12(3C)].

¹⁵⁵ Where the Commission on examination of the audited financial statements of an issuer of a listed security, finds that the audit has not been conducted, or the audit report has not been prepared, in accordance with the provisions of these rules, or where, in the opinion of the Commission, the audited financial statements do not reflect the true state of affairs of the issuer and the financial statements are deficient in form or contents for which the concerned partnership firm of chartered accountants or its partners are jointly and severally liable, it may, by order in writing giving reasons therefor, declare the firm of chartered accountants which, or the auditor who, conducted the audit, ineligible for acting as an auditor of any issuer of a listed security for a period not exceeding five years:

Provided that before making any such order, the Commission shall refer the matter to the Institute of Chartered Accountants of Bangladesh constituted under the Bangladesh Chartered Accountants Order, 1973 (P.O. No. 2 of 1973), with a request to take appropriate disciplinary action against the firm of chartered accountants and the partners concerned within a period of sixty days from the date of such reference and the Commission may make the said order after the expiry of the said period, if no action is taken by the Institute or if, in its opinion, action taken by the Institute is not satisfactory:

Provided further that no such order shall be made without giving the firm of chartered accountants or auditor concerned a reasonable opportunity of being heard.

[Ibid r 12(3B)].

[Sub-rule (3B) inserted by Notification No. SEC/CFD-71/2001/Admin/09 dated March 28, 2001, published in the official gazette on April 29, 2001].

authenticity, truthfulness and fairness of the information disclosed in the financial statement. The Securities and Exchange Rules, 1987 provides a sample of such form of declaration.

The form of auditor's report is really important as it takes a declaration from the auditor regarding the authenticity of the information as disclosed in the audit report in the tune "these financial statements which are in agreement with the Books of Account of the Company give a true and fair view of the state of affairs as at and of the result of its operations and cash flows for the period/year then ended".¹⁵⁶ This kind of statement amounts to undertaking on the part of the auditor regarding the truthfulness and fairness of the information regarding books of accounts in the audit report. However, if subsequently any falsehood is found, it does not attract any penal provision under the Rules since the Rules do not prescribe any penal provision, which is one of their major shortcomings. However, by dint of section 23 of the Securities and Exchange Ordinance, 1969, violation of any provision of the Ordinance or any Rules made thereunder shall attract civil liability as provided thereon. By dint of that provision, the auditors are also under a civil liability which warrants damages and other forms of civil remedies though the nature and consequences of civil liability under the aforesaid Ordinance or anywhere in the securities laws has been clarified.

Nevertheless, to what extent the aforesaid civil liability would apply to auditors requires judicial interpretation. The dearth in cases against auditors leave this question mostly unanswered. The situation concerning the applicability of Section 145¹⁵⁷ and other provisions of the Companies Act, 1994 to the auditors is not settled yet due to the same problem. Yet, the auditors' liability regarding non-disclosure of true and authentic information in the audit report and financial statement is remote, and does not attract any direct liability or penal provision under the relevant laws. On the other hand, the auditors/audit firms are to be paid by the institution/corporation whose accounts are going to be audited; it reasonably lacks fair, neutral, value-free and impartial report by the so

¹⁵⁶ Clause (b) of Form C (Form of Auditor's Report) under Rule 13 of the Securities and Exchange Rules, 1987.

¹⁵⁷ It imposes civil liability for providing misstatements in the prospectus. An elaborate analysis of this section has been made in Chapter 8 of this thesis.

called “paid auditors”. Even the independent auditor under the Government authority¹⁵⁸ is reportedly found to be corrupted and impartial.

In order to bring the auditors under professional accountability and ensure transparency, fairness and honesty on their part, there is no option but to bring them under legal liability. Imposition of legal liability will not only ensure fair practice within the auditors but also prevent their syndication, corruption and malpractice. It will ensure more accuracy and fairness in preparing the audit report. It will also help to build public confidence and upholding the solemnity of audit report.

To ensure standard service by the auditors and their conformity in the auditor regulation, the Institute of Chartered Accountants of Bangladesh (ICAB)¹⁵⁹, the Institute of Chartered Management and Accounting of Bangladesh (ICAMB)¹⁶⁰ and the Institute of Chartered Secretaries of Bangladesh (ICSB)¹⁶¹ play very important roles.

However, the provision for appointing special auditor by the BSEC as stated earlier is definitely a good attempt in order to ensure more transparency, accuracy and reliability of the audit report. The fact is, in terms of power vested under sub-rule (3) and (3A) of rule

¹⁵⁸ The Office of the Comptroller and Auditor General (OCAG).

¹⁵⁹ Under the Bangladesh Chartered Accountants Order of 1973, the Institute of Chartered Accountants of Bangladesh (ICAB) was the sole regulator of accountants and auditors. Its mandate included: (i) determination of qualifications for membership in the institute; (ii) oversight of the initial professional development and continuing professional development of its members; (iii) conducting professional examinations; (iv) establishment and maintenance of a quality assurance review system; (v) licensing auditors; (vi) maintenance and publication of a register of persons qualified to practice as accountants and auditors; (vii) the investigation and disciplining of its members for professional misconduct; and (viii) setting accounting and auditing standards. Members of ICAB are designated as Fellow Chartered Accountants or Associate Chartered Accountants. Membership is mandatory for all Chartered Accountants (financial accountants and auditors) in the jurisdiction.

<<https://www.ifac.org/about-ifac/membership/members/institute-chartered-accountants-bangladesh>> (25.10.2016).

¹⁶⁰ Institute of Cost and Management Accountants of Bangladesh (ICMAB) is the national body of the professional Cost and Management Accountants of Bangladesh. Established with the prime objective of promoting and regulating the Cost and Management Accounting profession in the country, the Institute offers education and training to the students interested to pursue career in this field and provides highly recognized CMA degree on fulfillment of requisite qualification. The Institute undertakes research in relevant fields and is the sole authority to issue practicing license to its members. ICMAB is a statutory organization constituted by the Government under the Cost and Management Accountants Ordinance 1977 (Ordinance No LIII of 1977) and regulated under the Cost and Management Accountants Regulations 1980 (as amended up-to date). It is the member of a number of regional and global accounting bodies.

<<http://www.icmab.org.bd/index.php/about-us/the-institute>> (25.10.2016).

¹⁶¹ Institute of Chartered Secretaries of Bangladesh (ICSB), established in 2010 under the Chartered Secretaries Act 2010, is a public institute for training of company secretaries of Bangladesh. The institute is a statutory body which falls under the Ministry of Commerce.

<<http://www.icsb.edu.bd/>> (25.10.2016).

12 of the Securities and Exchange Rules, 1987, the BSEC may appoint an auditor in public interest in order to undertake special audit of the financial statements of a listed company. This is not an obligation of the BSEC and no one can demand the BSEC to appoint such an auditor.¹⁶²

It is purely the discretionary power of the BSEC who may appoint such to secure the interest of the public. To conduct the aforesaid audit of listed companies meaningfully and objectively, the auditor shall perform the audit with special emphasis on the matters as described in the Schedule II of the Rules. This is a good attempt of the BSEC. The requirements and sets of standards provided under these Rules comparatively give a satisfaction by giving a chance to get a more accurate, authentic and reality based audit report by the special auditor/audit firm appointed by the BSEC.

6.6. Merchant bank/Investment Bank and Portfolio Manager

Merchant Bank

The term “merchant banking” itself implies a kind of banking though it exercises a wide range of business including banking. It is indeed a little different from the usual banking which mainly provides a safe custody to the people for saving their money and provides loan. A merchant bank is a financial institution which provides financial services and advices to the corporations and wealthy entities. A merchant bank is a bank that deals mainly with firms, investment, and foreign trade, rather than with the public.¹⁶³ It provides financial support to the investors in different kind of money making projects including stock market. The term can also be used to describe the private equity activities banking through banking. For this reason, it is well known as Investment Bank. It can also provide advice on mergers and acquisitions and are involved in financing industrial corporations through buying shares and selling them in relatively small lots to the investors.

In Bangladesh, merchant banking includes all financial institutions that combine the functions of both development banking and investment banking. The Notification of the

¹⁶² Schedule II of the Securities and Exchange Rules, 1987 was inserted by Notification No. SEC/CMRRCD/2001-80/158/Admin/54 dated April 10, 2014, published in the official gazette on 22 May 2014.

¹⁶³ <<https://www.collinsdictionary.com/dictionary/english/merchant-bank>> (25.01.2017).

Ministry of Finance defines merchant banker as “any person who is engaged in the business of issue management either by making arrangements regarding selling, buying or subscribing to securities as manager-consultant, advisor or rendering corporate advisory services in relation to such issue management”.¹⁶⁴ This kind of bank must be registered under the law as Merchant/Investment Bank with proper authority in Bangladesh with Government through BSEC and others. These institutions are licensed to operate under the BSEC (Merchant Banker and Portfolio Manager Rules), 1996. Their association is known as the Bangladesh Merchant Bankers Association (BMBA).¹⁶⁵ Portfolio manager acts under the merchant bank.

Merchant/Investment banking companies in Bangladesh are of two types: open-ended and closed-ended. The open-ended ones, generally referred to as mutual funds, repurchase shares in any quantity as and when holders offer them for sales. Thus, the amount of shares of the open-ended investment companies in market changes continually in response to public demand. Closed-ended investment companies sell only a specific number of ownership shares. An investor wanting to acquire shares of a closed-ended investment company must find another investor who wishes to sell. Investment companies do not take part in the transaction themselves. In addition to selling equity shares, closed-ended companies issue a variety of debt and equity securities including preferred stock, regular and convertible bonds, and stock warrants for raising funds.¹⁶⁶

¹⁶⁴ Information World, *Assignment on Merchant Bank* (April 2011).

<<http://publishedinfo.blogspot.com/2011/04/assignment-on-merchant-bank.html>> (25.10.2016).

¹⁶⁵ The BMBA is an association of the Merchant Bankers operating in Bangladesh. It started its journey sometime in 1997 with the formation an executive committee. At that time only about 15 institutions were operating as merchant banks without even license from any authority to operate as such. The merchant banking industry was at that time in its infancy. The industry participants were searching for proper direction. The first thing they needed was obtain license from the Bangladesh Securities and Exchange Commission to legally operate as merchant banks. The BSEC was in the stage of formulating guidelines under which the licenses would be issued to companies allowing them to operate as merchant banks. The BSEC had also been working hard to reformulate issue management rules, underwriting rules and the right share issue rules. Merchant bankers felt that they must act as catalyst in shaping these rules working with the BSEC. Hence there arose the need for a collective representation. Out of this need, BMBA was created by an agreement amongst the merchant bankers. It was formed under the companies’ Act 1994 and registered with the Registrar of Joint Stock Companies on 9th November’ 2004. It has been ceaselessly working for the development of Capital Market and playing a very constructive role for its members since its inception. Now, BMBA is a member of the Federation of the Bangladesh Chamber of Commerce & Industry (FBCCI) and has gained considerable clout for its contribution in the Capital Market.

<<http://www.bmba.com.bd/about-bmba/>> (25.10.2016).

¹⁶⁶ Shahidur Rahman, ‘Role of Investment Bank in Bangladesh’ (April 2014).

<<http://www.scribd.com/doc/61420097/Role-of-Investmnet-Banks-in-Bangladesh>> (29.04.2014).

Provisions Governing Merchant Bank and Portfolio Manager

The provisions relating to the governance of merchant banker are provided under the Securities and Exchange Commission (Merchant Banker and Portfolio Manager) Rules, 1996. The Rules provide the definition of merchant banker which means a person who is registered by obtaining certificate as corporate advisor¹⁶⁷, portfolio manager,¹⁶⁸ underwriter and/or issuer manager.

No person can do business or operate as a merchant banker without obtaining certificate/license as merchant banker from the BSEC.¹⁶⁹ It means, the power of granting license or certificate for carrying out the business as merchant banker lies with the BSEC only. The Rules have laid down detailed provisions regarding qualifications, disqualifications, capital requirement, procedures, fees, and other factors that need to be considered for granting license of merchant banker.

The BSEC is obligated to consider and examine the eligibility requirements of any person applying to be a merchant banker or portfolio manager. Before granting license or registration, the BSEC has to ensure that the proposed person satisfies all the qualifications and requirements as provided under the Rules. The BSEC cannot grant permission to anyone who does not satisfy the requirements as provided under the Rules.¹⁷⁰ The BSEC can refuse to grant permission by assigning reasons in the letter of refusal/rejection in the manner and within such time as prescribed under the Rules, 1996. The BSEC can review its decision of refusal/rejection and can also give change the person to provide additional written statement.¹⁷¹

The merchant banker carries out important responsibilities as provided under the Rules. It keeps record of balance sheet, profit and loss account, current account statement, audit report and other books of accounts as provided by the BSEC. It submits the records to the BSEC along with other documents as demanded by the BSEC and prescribed under the

¹⁶⁷ Corporate Advisor means a person who provides advisory service to the issuer company about numbers, natures, kind and necessity of issuance of shares and other counseling.

[The Securities and Exchange Commission (Merchant Banker and portfolio Manager) Rules, 1996 r 2 (gha)].

¹⁶⁸ Portfolio Manager means a person who along with managing its own portfolio provides advisory service to the clients about maintenance, management and use of their securities and portfolios and also act on behalf of their clients for management and maintenance of fund.

[Ibid r 2 (cha)].

¹⁶⁹ The Securities and Exchange Commission (Merchant Banker and Portfolio Manager) Rules, 1996 r 10.

¹⁷⁰ Ibid r 8.

¹⁷¹ Ibid rr 3-10.

Rules. It is also under an obligation to inform the BSEC about any doubtful transaction or discrepancies in any trading or capital. It also bears the responsibility with regard to issue manager and portfolio manager.¹⁷²

The two important provisions are provided under Rules 15 and 15 Ka of these Rules, 1996. Rule 15 provides prohibition upon the authority of the merchant banker in disclosing price sensitive information for obtaining shares for his relatives, associates and others.¹⁷³ Rule 15 Ka provides prohibition upon the employers of merchant bank on being an employee of mutual fund, stock dealer or stock broker.¹⁷⁴ Merchant bank can work as a portfolio manager, issue manager, underwriter, asset manager, investment banker, trading like broker, security custodian, etc.

Portfolio Manager¹⁷⁵

These Rules provides a definition of portfolio manager in the manner as stated above. No one can operate as portfolio manager unless the person has obtained a license/registration certificate from the BSEC to operate as a 'portfolio manager'.¹⁷⁶

The Rules have provided details regarding qualifications, disqualifications, fees, form, necessary procedures, eligibility criteria, equity capital and things need to be considered for being operating as portfolio manager. The BSEC is not bound to entertain all applications and grant licenses to all applicants satisfying all the criteria under the Rules. The BSEC possesses the discretionary power to give license. The BSEC should explain the reasons in writing while rejecting/refusing to grant license to any applicant. The BSEC can ask for additional written statement from any applicant and can also review its own decision.¹⁷⁷

¹⁷² Ibid rr 11-14.

¹⁷³ No merchant banker or its director, partner, manager or chief operating officer, whatever be the name, shall not use or disclose any price sensitive information in which he/she has come into know by dint of his service and shall not assist his/her family members to buy shares using that information. Here, family members shall include parents, parents-in-law, siblings, siblings-in-law, wife/husband and others. [Ibid r 15].

¹⁷⁴ No officer/employee merchant banker or portfolio manager shall be an officer/employee of any mutual fund, stock dealer or stock broker.

[Ibid r 15Ka].

¹⁷⁵ Supra 168.

¹⁷⁶ Ibid r 16.

¹⁷⁷ Ibid rr 16-22.

The Portfolio Manager keeps and maintains documents and records and submits the same to the BSEC as provided under the Rules.¹⁷⁸ The portfolio manager has several responsibilities as prescribed by the Rules. Amongst others, the portfolio manager carries out very important duties to the clients.

Before taking responsibility of a client, the portfolio manager has to enter into an agreement with the client.¹⁷⁹ In the agreement, there should be specific elaboration of the rights, liabilities and roles of both the parties, which shall include the objectives of investment, services to be provided, areas/sectors of investment, objection (if any) of any client to invest in any particular company/industry, risk in portfolio management, tenure of agreement, grounds of termination of agreement amount of investment, investment size, process of settling the account of client, fees, custody of securities, etc.¹⁸⁰ The portfolio manager deals with the investment of any client by saving the same in any schedule bank. It takes necessary fees and service charges in all cases not governing on the basis of sharing in equity. On the basis of ownership in equity the portfolio manager can construe and maintain fund by applying its own discretion, or by at least having 30% share in equity or by taking fee on proportionate basis against income against equity investment.¹⁸¹

The client/customer can take back their investment in case of suspension or cancel of license or if the portfolio manager resigns or becomes bankrupt or wind up or in case of permanent failure to operate as portfolio manager.¹⁸²

The portfolio managers enjoy ample power in respect to handling the fund of investors. However, they are bound by the provisions of agreement and the existing laws. They cannot use the fund of investors in any manner which is not permitted by law or agreement executed with the clients. They can invest into securities market.¹⁸³ They may not do any

¹⁷⁸ Ibid rr 25-28.

¹⁷⁹ Ibid r 29.

¹⁸⁰ In the Agreement there will be elaborated descriptions regarding all transactions between the clients and the portfolio manager including objectives and service to be given against investment, sectors of investment, statement regarding if the investor has any objection to invest into any particular company, tenure of the agreement and grounds of termination, amount of investment, rules of disposing of the fund of the investors, fee to be paid to portfolio manager, custody of the securities, and others.
[Ibid r 29(4)].

¹⁸¹ Ibid r 29(4).

¹⁸² Ibid r 30(1).

¹⁸³ Ibid r 30(2).

speculative (ফটকাবাজারী)¹⁸⁴ trading.¹⁸⁵ They deal with every customer separately but can invest their fund collectively.¹⁸⁶ They can maintain individual or omnibus type BO Account.¹⁸⁷ They may trade in the current market rate.¹⁸⁸ They are the safe-keeper of the fund of investor and will maintain separate books of account. They save record of all transactions in time and inform the clients regularly with all necessary information about the client's portfolio, shares, interest declared on shares, fees, income, loss, risk, assumptive loss and risk, details of transactions, price rate and other things, clients possess the right to seek information from the portfolio manager.¹⁸⁹

Power of Appointing Inspector by the BSEC

In order to investigate or inspect into the matters of merchant bank and portfolio manager, the BSEC can appoint inspector on its own motion or on the application of any investor. The inspector will carry out all such duties as provided by the BSEC including looking into the matter of claim/objection raised by any investor against any merchant banker or portfolio manager or any person having interest thereon or if they fail to carry out their duties and responsibilities. The merchant bankers and portfolio managers are under legal obligations to help the inspector in all manners. The inspector can ask for necessary information and documents; it can suspend or cancel the license by giving reasonable opportunity of heard and also in the manner as prescribed by law.¹⁹⁰

Grounds of Cancellation, Suspension of License

By providing a reasonable opportunity to be heard and observing other legal formalities, the license or registration of any merchant bank or portfolio manager can be cancelled on the following grounds¹⁹¹-

- (a) violation of any provisions of relevant laws or terms of license,
- (b) failure or cause unreasonable delay without any proper cause in supplying documents or information on demand by the BSEC,

¹⁸⁴ [In Bangla]. It is speculative i.e. too far from reality.

¹⁸⁵ Ibid r 30(3).

¹⁸⁶ Ibid r 30(4).

¹⁸⁷ Ibid.

¹⁸⁸ Ibid r 30(6) and (7).

¹⁸⁹ Ibid.

¹⁹⁰ Ibid r 32.

¹⁹¹ Ibid r 33.

- (c) providing false or fake information to the BSEC,
- (d) non-cooperating the Inspector as appointed under these Rules,
- (e) failure to deposit fees to the BSEC in time under these Rules,
- (f) failure to maintain code of conduct under these Rules,
- (g) failure to perform duties or responsibilities as merchant banker or portfolio manager as prescribed under these Rules,
- (h) if the BSEC becomes satisfied that the merchant banker or portfolio manager is acting contrary to the interest of investors,
- (i) if punished law for by the court of committing any offence of misconduct or any offence,
- (j) for any other reason stated otherwise in these Rules.

The Code of Conduct¹⁹²

The Code of Conduct is one of the most important parts provided under the Rules. A merchant banker can also provide service of portfolio manager. However, separate sets of the Code of Conduct are provided under the Rules for the merchant banker and the portfolio manager.

Each merchant banker has to maintain the following Code of Conduct¹⁹³-

- (a) will act honestly and sincerely in the discharge of official obligations/duties,
- (b) will provide services and consideration to the investors with care, and out of professional and independent knowledge,
- (c) will not disclose anything or get involved in any competition in any manner which goes against the interest of any other merchant banker or causes hindrance in carrying out functions of other merchant bankers,
- (d) will not exaggerate its own diligence, success and capability to the clients,
- (e) will not disclose any information of client to anyone,
- (f) will maintain secrecy and confidentiality about information of clients,
- (g) will provide correct, authentic and adequate information to clients and let them know about the risk of information,

¹⁹² Ibid r 35.

¹⁹³ Ibid r 35(1).

- (h) will ensure supply of prospectus, memorandum and other relevant papers to the clients,
- (i) will return remaining amount of money to the client after investment and let the investors know about real investment,
- (j) will conduct proper investigation into any complaint raised by any investor.

Along with the above, the portfolio managers will also abide by the following Code of conduct¹⁹⁴-

- (i) will handle the investors' fund with utmost trustworthiness,
- (ii) will trade securities within the limit of the investors,
- (iii) will not take any undue benefit from the fund of the investors,
- (iv) will invest/use the fund of the investors as early as possible and will repay the investment as early as possible,
- (v) will take written statement from the clients while entering into agreement with clients about the prospective investment,
- (vi) will trade for the benefit of the customers and receive interest and other income arising out of the trading,
- (vii) will change securities as per client's direction,
- (viii) will not practice *malafide* in creating fake demands of securities in market,
- (ix) will not create false or fake share price,
- (x) will not disclose price sensitive information to anyone,
- (xi) will return the proper entitlement of clients,
- (xii) will resolve any dispute of any client within thirty days of complain.

Provisions regarding Chief Executive Officer (CEO) or Managing Director (MD) of Merchant Banker or Portfolio Manager

The CEO/MD enjoys plentiful powers and responsibilities in carrying out the business of the merchant banker and portfolio manager. They are under an obligation to carry out all the duties prescribed under the laws and license. They are to implement all such directives, rules, guidelines, orders, instructions, etc as prescribed by the BSEC time to time. They are responsible for the proper governance of merchant banker and portfolio manager whether they are operating in compliance with law, directives of the BSEC and conditions

¹⁹⁴ Ibid r 35(2).

of license. A CEO/MD can be appointed with the prior permission of the BSEC. The qualifications and disqualifications of CEO/MD are provided under the Rules. No one falling short of qualifications or attracting disqualifications under the Rules can be the CEO/MD of any merchant bank or portfolio manager office.¹⁹⁵

Provisions for Margin Loan¹⁹⁶

Every merchant banker and portfolio manager has a certain margin limit as prescribed by the BSEC time to time. They exercise margin limit in compliance with the provisions provided under the Schedule of these Rules and by other directives occasionally provided by the BSEC. They open margin account for the clients. Margin loan account can be discretionary or non-discretionary.¹⁹⁷ In both cases, the risk is to be carried out by the investors/clients. Margin loan account shall be managed and operated in accordance with law. However, the employer or officer of any merchant banker/portfolio manager cannot extend margin loan facility to the family members and other relatives as prescribed by the BSEC. The margin account is to be governed in the manner provided under the Rules in details. In dealing with margin account, they should act as the security custodian and maintain separate account with full and fair disclosure of transaction and books of accounts. They can close any account by taking at least seven days instructions from any client.

Major Shortfalls

To conclude about the Rules, 1996 it can be said that these Rules are quite conclusive and provide detailed provisions for the proper governance of the merchant bank and portfolio manager and their related issues. The roles, responsibilities, duties, codes of conducts, functions, procedures, fees, powers, qualifications, disqualifications and others issues have been adequately elucidated in the Rules.¹⁹⁸ However, the Rules have some major shortcomings, especially in preventing wrongful and syndicated fraudulent, doubtful and illegal transaction from the market. After the 2010 – 2011 stock market crash, the suspicious involvement of the merchant bankers and portfolio managers were found as a

¹⁹⁵ Ibid rr 37-38.

¹⁹⁶ Ibid r 36.

¹⁹⁷ When the agreement executed between the merchant banker / portfolio manager providing wide discretion to the banker/manger to use the loan account in according to their discretion, the account is called discretionary. If no discretion is given in the agreement and the loan account to be governed by the discretion of the clients/account holders, it is called non-discretionary.

¹⁹⁸ As examined above in short.

contributory factor behind scam. Portfolio managers and merchant bankers carry out an important role in stock market by handling large ratio investment in the market. In the discretionary accounts, they enjoy ample liberty in making the investment decisions. In case of non-discretionary account, they provide suggestions and assist the investors in making decisions. In order to make the right investment decision, they require profuse knowledge about the market based on reality, experience, research and minute study. Therefore, the officials of merchant banker/portfolio manager should be qualified, experienced, well-trained and neutral.

Under these Rules, no requirements as a part of the eligibility criteria are provided for the merchant banker or portfolio manager. On the other hand, the risk in investment is only to be borne by the investors. Therefore, the merchant bank/portfolio manager in fact bears no responsibility if the investors suffer a huge loss due to their wrong decisions. This shortcoming renders all other provisions nugatory as far as they are providing for determining duties and responsibilities of merchant banker/portfolio manager to the investors/clients. Moreover, no provision giving legal enforcement of the provisions of these Rules which shall warrant penal provision adds a further vital shortcoming to these Rules.

6.7. Jobber/dealer and Underwriter

“**Jobber**” (also known as 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 regular business.¹⁹⁹ A jobber in the stock market is a person who does or handles "operating/trading" (i.e. buying or selling) the stocks. In a way they are very similar to brokers.

However, there are specific differences between the function of jobber and the function of broker. Jobbers, nevertheless, only re-sell the stock they have to brokers, but not to the general public, which a broker can. Another difference is that a broker does not use his own money, but rather the money of the people (or institutions) on whose behalf they act. Jobbers and brokers both play a role in stock sales and purchases, but they are involved in

¹⁹⁹ The Securities and Exchange Ordinance, 1969 s 2(h).

different stages of the process. Brokers carry out transactions for the investors who hire them. Jobbers, on the other hand, exist to make sure that when brokers need to buy or sell shares for a client they have someone to buy from or sell to.²⁰⁰

“**Underwriting**” means contracting, with or without conditions, a purchase or subscription for stocks, shares, bonds, debentures or other securities issued by any company or institution with a view to holding, selling or distributing the whole or part thereof. Underwriting new issues of shares means accepting the responsibility of selling them with a guarantee in advance that in case the public does not buy the whole issue, the underwriter will take up the remainder.²⁰¹ He who is engaged with this task is an underwriter appointed under the Securities and Exchange Commission (Merchant banker and Portfolio Manager) Rules, 1996. Basically, an underwriter works closely with the issuing body to determine the offering price of the securities, buy them from the issuer and sell them to investors via the underwriter's distribution network.²⁰²

Under the best effort arrangement, the underwriter does not guarantee the sale of the entire issue but promises to sell as much of the issue as possible at a mutually agreed price. If the issuing firm is not a reputed one, the two parties may sign and execute a best effort agreement that allows sharing of the risk. The underwriter sells the securities at the best market price it can obtain. Under the “all or none arrangement”, if the entire issue cannot be sold at the offering price, the deal is called off and the issuing company receives nothing. In case of a very large issue, there is a tradition of distributing the securities through collective efforts of the underwriters organized in a syndicate.²⁰³

Generally, an initial public offering is so complex, procedurally burdensome and expensive that it is very important to select a good underwriter and also to have a good understanding of what to expect from an underwriter. Without knowing what to expect and what to get done by an underwriter, it may not be possible to have a right selection for

²⁰⁰ <http://www.ehow.com/info_8310356_difference-jobber-broker-stock-market.html> (5.06.2014).

²⁰¹ ‘Underwriting’ Banglapedia – National Encyclopedia of Bangladesh (online) (3.06.2014).

<<http://en.banglapedia.org/index.php?title=Underwriting>> (28.10.2016).

²⁰² Underwriters generally receive underwriting fees from their issuing clients, but they also usually earn profits when selling the underwritten shares to investors. However, underwriters assume the responsibility of distributing a securities issue to the public. If they can't sell all of the securities at the specified offering price, they may be forced to sell the securities for less than they paid for them, or retain the securities themselves.

²⁰³ ‘Underwriting’ Banglapedia – National Encyclopedia of Bangladesh (online) (3.06.2014).

<<http://en.banglapedia.org/index.php?title=Underwriting>> (28.10.2016).

a company and a wrong selection may frustrate the purpose of the public offer, because an underwriter carries out different functions and facilitates numerous services to the issuer company including assisting in the preparation and submission of all appropriate the BSEC filings, helping potential investors make informed decisions about their offerings. All underwriters are required to exercise due diligence in verifying the information they submit, so a certain amount of investigation should be expected from any responsible underwriter.²⁰⁴

Additionally, to pursue the permission from the issuer company, the underwriter creates a preliminary prospectus. Along with making prospectus for the company, the underwriter facilitates the campaign of the issuer. The preliminary document which amounts to prospectus is also referred to as the red herring, after a small red passage in the document that states that the company is not attempting to sell shares prior to the BSEC approval.

Once BSEC approval is obtained, the underwriter and the corporation embarks on a road show²⁰⁵ to catch and attract interest from investors, which is a part of advertisement about the commercial viability and prospect of the issuer company. The purpose of which is to persuade the investors invest in the company. While the road show does not involve getting binding commitments from the investors, it helps the underwriter determine the best strategies for pricing and issuance and also to observe the response of the investors.

After the initial public offering, the underwriter continues to provide services for the newly public corporation. For months or even years after the offering, the underwriter may continue to make a market for the stock, ensure liquidity for investors and make the shares more desirable. Twenty-five days after the issue, the underwriter is also permitted to make statements or projections regarding the company and its prospects. Prior to that time, there is a BSEC-mandated quiet period, since the investors are forced to rely only on the

²⁰⁴ Underwriter plays a very vital role in issuing shares in market because the most visible, simple, easy and familiar element of the initial public offering process is the underwriter. The underwriter is the organization that is actually responsible for pricing, selling, and organizing the issue, and it may or may not provide additional services, though for direct public offerings, there is no need for an underwriter. However, selection of a good, experienced and skilled underwriter is very important for initial public offer if the issuer company wants to offer publicly through appointment of an underwriter or an issue manager.

²⁰⁵ Road show” means presentation by an issuer and issue manager to eligible investors (EI) about the issuance of securities disclosing all the features.

[The Bangladesh Securities and Exchange Commission (Public Issue) Rules, 2015 r 2(1)(q)].

documents filed by the underwriter. Most underwriters opt to provide favorable coverage at the end of the quiet period.

In our country, the merchant banker or portfolio manager can also carry out the roles of underwriters. The ICB and its subsidiaries also act as underwriters.

6.8. Trustee and Asset Manager

They play very important role in securities market by dealing with investor and their fund in securities and mutual fund.

Asset Manager

Any bank, financial institution, insurance company, statutory organization or company incorporated under the Companies Act, 1994 obtained registration from the BSEC under the Securities and Exchange Commission (Mutual Fund) Rules, 2001 (*shortly referred to these Rules*) for the purpose of management and maintenance of mutual fund and administration and management of investors/clients fund are asset managers.²⁰⁶ Asset managers manage the mutual fund in the manner and form as prescribed by the Rules. It deals with individual portfolios by operating the accounts of the clients.

Trustee

Trustees are any bank, financial institution or incorporated organization or company incorporated under the Companies Act, 1994 which is registered as trustee under these Regulations by the BSEC.²⁰⁷

Mutual Fund

Mutual Fund is also a security instrument for raising fund from the investors. It is a fund constituted as a trust with the money collected from the investors by selling securities/shares through one or more scheme under these Rules.²⁰⁸ The mutual fund has several schemes under the Rules. No mutual fund scheme can come into the market without the permission of the BSEC in the manner as provided under these Rules. Mutual

²⁰⁶ The Securities and Exchange Commission (Mutual Fund) Regulations, 1996 r 2(dha).

²⁰⁷ Ibid r 2(Jha).

²⁰⁸ 'Mutual Fund' means a fund construed as a trust for the purpose of investing into the securities for investing into one or more scheme under the Rules. [Ibid r 2(ta)].

Fund is to be constituted, managed, distributed and registered in accordance with law as provided under the Rules.

Duties of Mutual Fund Promoter, Trustee, Asset Manager and Security Custodian

The Rules prescribe several duties for the mutual fund management. The fund organizer, trustee, asset manager and security custodian shall have to comply with all the relevant provisions of laws, rules and regulations. They have to be registered under the BSEC.²⁰⁹ They have to follow the directives and instructions of BSEC. They have to ensure proper internal management, audit and books of accounts. They also need to report their transactions, any substantial changes, any doubtful trading, fraudulent information, declaration of profit and other matters to the BSEC as prescribed by law.

They also have to submit periodical report and other documents as required by the BSEC occasionally. Dividend/profit against the mutual fund securities can be declared in the specified manner with the prior permission of the BSEC in the manner as provided under the Rules.²¹⁰ No employees or officers involved in the mutual fund management can be the officers or employees of the merchant banker, portfolio manager, stock broker or stock dealer at the same time.²¹¹

The Rules are particularly important because the duties and responsibilities of the trustee, asset manager, custodian and organizer of mutual fund are different even though these authorities are all involved in the regulation of mutual fund.

Responsibilities of Trustee, Asset Manager and Custodian under the Rules

The trustee can take necessary steps to amend/correct any activity of the mutual fund employer or officer under the relevant laws in case of their failure to perform. The trustee can inform the BSEC of this. The trustee is to ensure smooth acquisition, transfer or transaction of any fund of trust. In this regard, it must also ensure that the provisions of these Rules and other relevant laws have been complied with properly. It should also

²⁰⁹ Ibid rr 17, 25 and 34.

²¹⁰ Ibid r 66.

²¹¹ Ibid r 4(1).

check whether the custodian is performing all the duties in accordance with the laws, especially under the Rules.²¹²

The assurance of proper compliance of the provisions under the Rules by the custodian, asset manager, and other employers and officers of mutual fund primarily lies upon the trustee. It represents the fund and can enter into any agreement with asset manager for the investment purpose in the manner as prescribed under the Rules. It also manages the mutual fund scheme and ensures that the investors get proper title against their securities. It maintains the list and complete details of the investors' clients. It keeps all the financial records and delegates the information to the BSEC.²¹³

The trustee will be responsible for securing any fund for the mutual fund and spending anything from the fund. It does not only owe any responsibility to the 'Fund' and investors but also to the BSEC. It will submit periodical report and other documents to the BSEC as provided under the BSEC or as per the demand of the BSEC. It will also call for meeting of the security unit owners. It can introduce new schemes and correct/amend any scheme through meeting and in the manner as prescribed under law.²¹⁴

Asset managers play a very important role in managing the mutual fund and its different schemes. They manage and maintain the accounts of individual investor by operating the account and saving all records; submit necessary reports, statements and financial statements to the BSEC, trustee and custodian; operate the account of the investor as per the instruction of the client in accordance with law and scheme. They are expected to remain sincere and loyal to their duties. On appropriate ground, by giving show cause notice, any asset manager can be released from his duty by the trustee with the prior approval of the BSEC. An asset manager shall inform BSEC about any doubtful transaction in any account. He shall not bring any change in managing asset without prior approval of the BSEC and shall observe the code of conduct as provided under these Rules or the Securities and Exchange Commission (Merchant Banker and Portfolio Manager) Rules, 1996.²¹⁵

²¹² Ibid r 24.

²¹³ Ibid.

²¹⁴ Ibid.

²¹⁵ Ibid r 33.

A custodian also carries out important roles in managing securities under safe custody. It deals with securities rather than fund. It provides safe custody to the securities and also keeps details statements of the fund of any investor invested in the securities. It will maintain books of accounts, keep the investors updated, suggest the clients with sincerity and honesty and also maintain all documents and financial statements as prescribed under the Rules.²¹⁶

Provisions relating to Auditor under the Rules

For the management of each mutual fund, trustee and custodian, there shall be an Auditor. Auditors play a very important role in the management of mutual fund. They may be appointed to look into the matters of custodian and asset manager by the trustee. They are to manage funds, prepare reports, and maintain balance sheets and books of counts and other information in a definite manner. In its report, the auditor will maintain maximum prudence and trust. It will also report about any excess or shortage in any account belonging to the clients. The auditor is under an obligation to carry out its role in the prescribed manner under these Rules and the Securities and Exchange Rules, 1987. The BSEC can also appoint special Auditors to inspect any mutual fund.²¹⁷

Reporting obligation to the BSEC

The trustee, custodian, asset manager, auditor, mutual fund organizer, etc. are under obligations to report to the BSEC under the Rules about the activities and financial condition and transaction relating to mutual fund. They are also under obligations to supply any information to the BSEC as per the demand of the BSEC.²¹⁸

Power of Inspector

The BSEC can appoint an Inspector for the purpose of investigating into the affairs, activities, records and documents of trustee, asset manager or custodian. The inspector will ensure the proper maintenance of all the records and books of accounts of trustee and asset manager and also examine their roles and performances. The inspector will investigate any case or complaint filed by anyone. The inspector can also exercise other powers as

²¹⁶ Ibid r 36.

²¹⁷ Ibid r 68.

²¹⁸ Ibid r 68.

directed or invested by the BSEC for public interest. Before hearing of any complaints, the trustee, asset manager or custodian shall be given a prior notice about the matter for which they have been called. The inspector shall carry out his responsibilities in the manner prescribed under the Rules and by the BSEC.²¹⁹

Imposition of Penalty

One of most important provisions of these Rules is the binding effect of the provisions upon the trustee, custodian, asset manager and others who are addressed under the Rules. Failure to comply with the provisions of these Regulations will attract penal provision. The Rules will take effect like the directives or orders passed by the BSEC. The BSEC can also issue other directives or orders for the effective implementation of, or compliance with the Rules.²²⁰

In anyone fails to comply with the provisions of the Rules or contravenes any provision under the Rules, he will be punished with fine or any other penalty as imposed under law, suspension of license/registration for not more than one year, cancellation of license/registration, prohibition on doing business as trustee, asset manager or custodian, or prohibition on composition of mutual fund.²²¹

The penalty of suspension of mutual fund can be imposed on the following grounds²²²-

- (i) Violation of any terms and conditions of the Rules,
- (ii) Failure to provide any information/document on demand of the BSEC or provide false information or do not publish report under the Rules or do not cooperate the investigation conducted by the BSEC.
- (iii) Failure to explain property to any complain or objection raised against them from any corner,
- (iv) Misappropriation of the mutual fund,
- (v) Insincere, dishonest or unprofessional behavior in handling asset of the investors,
- (vi) Failure to deposit prescribed fee as per these Rules,
- (vii) Violation of any condition of license or approval of composing mutual fund,

²¹⁹ Ibid rr 75-79.

²²⁰ Ibid rr 81-95.

²²¹ Ibid r 82.

²²² Ibid r 83.

(viii) Failure to carry out their duties and responsibilities as provided under the Rules.

The penalty of cancellation of mutual fund can be imposed on the grounds of fake trading or misappropriation of the fund or anything prejudicial to the interest of fund and investors, a loss so massive that the BSEC no longer finds it beneficiary to the investors, or if they convicted for any criminal offence or cheating.²²³ However, no such penalty of cancellation or suspension of license can be imposed unless proper inquiry is made in compliance with the provisions of these Regulations²²⁴. The inquiry should be conducted in accordance with and in the manner as prescribed under the Regulations. Reasonable opportunity of being heard should be given before imposing any penalty. They should be also given chance to place their documents, information and submission.²²⁵

The result of cancellation or suspension of any mutual fund shall come immediately into effect as prescribed by the BSEC. The cancelled party shall stop doing business as soon as their license/approval/registrations cancelled or suspended. During the period of cancellation or suspension, they shall not carry out any professional transaction, business or trading.²²⁶ The news of cancellation or suspension should be published in 2 (two) national daily news papers.²²⁷ Anyone aggrieved by the order of the BSEC, can file for appeal under the Securities Exchange and Commission (Appeal), Regulations, 1995.²²⁸

Some analysis of Mutual Fund Rules, 2001

The scope of these Rules is very wide. The Rules provide all details about the duties, roles, activities and responsibilities of the mutual fund organizer, trustee, security custodian and asset manager.

They also provide all procedures for obtaining license, powers of the BSEC in respect of governance of mutual fund and other conditions of management for mutual fund. The Rules prescribe the contents which should be written in the prescribed form, application and advertisement for mutual fund. The directives for publishing some contents regarding

²²³ Ibid r 84.

²²⁴ Ibid rr 85-86

²²⁵ Ibid r 87.

²²⁶ Ibid r 88.

²²⁷ Ibid r 89.

²²⁸ Ibid r 90.

fair disclosure of information in advertisement are mandatory. In the advertisement, they need to publish true, fair and details information in the advertisement. The Rules provide elaborate statements which are to be mentioned in the prospectus of mutual fund. They impose restrictions and prohibitions on investing with mutual fund asset in certain cases. The contents which are to be mentioned in the balance sheet, financial report, audit report or periodical report are also explained in the Rules. The revenue account and disclosure of information about loss and profit of mutual fund account are also to be maintained in the manner as prescribed under the Rules.

The Rules are elaborative and self-explanatory. The provisions of the Rules are easy to understand and provide detailed guidelines to be followed by the mutual fund, trustee, asset manager and custodian. The effects of the provisions of these Rules are also given through legal effect like directives or orders of the BSEC, violation of which attract penal provision. However, the Rules do not provide any provision addressing the redressed of the investors who suffer loss due to corrupt and unfair practice of the mutual fund, manager, trustee or custodian. They owe very narrow personal or professional responsibility to the clients who are investing though relying on them.

Custodian Service

Custodians are guided in Bangladesh by several laws, regulations and directives, which are discussed below-

The Securities and Exchange Commission (Security Custodian Service) Rules, 2003²²⁹

Under the aforesaid Rules, a security custodian is defined as any person having registration for providing security custodian service under law and no person²³⁰ (public limited company, schedule bank, financial institution or any other incorporated

²²⁹ Exercising the power conferred under section 24(1) of the Securities and Exchange Commission Act, 1993 the BSEC framed this Regulations.

²³⁰ The security custodian provides several kinds of services including keeping the securities of the clients under safe custody, keeping accounts of income, loss profit, earning, claim, interest or anything against security of clients and keep the clients informing about their accounts and supplying them with account statements and update information and also maintaining, controlling and dealing business with the fund of the customers. For being security custodian the conditions laid down under the aforesaid Rules, 2003 should be satisfied. Only the legal persons i.e. any public limited company, schedule bank, financial institutions or incorporated organization can apply for being security custodian in the manner and form as prescribed under the Rules.

institution)²³¹ without obtaining registration certificate from the BSEC under this Act can provide service as security custodian. Security custodian can provide many services including keeping security of customers into safe custody, maintenance of record and update the record regarding income, profit, declared interest or claim as received by the holders of security, collection of declaration, published reports, statements and information relating to security, control of customers security and account/fund, etc.²³²

The BSEC provides custodian security registration certificate on the terms and conditions as set out under these Rules. The BSEC is the only authority to approve any aforesaid person as a security custodian service provider, and no such person can provide any service without obtaining approval from the BSEC.²³³ Service provider should have an office, a developed computer system, a safety vault, expert employees and other auxiliary forces and supports, and furthermore, its employers, employees, directors and shareholders may not be charged with criminal liability.²³⁴ In addition, security custodian shall have internal audits and evaluation systems each year of all affairs, activities and transactions including²³⁵-

- a) Assurance of best security and adequate service as security custodian,
- b) Keeping the securities, all information and papers into safe custody,
- c) Securing that the customers get shares, dividend, bonus share/stock dividend and all other benefits declared on securities in time,
- d) All information, document and record of customers should be secured from any disaster or unexpected loss or injury.

No custodian can delegate any its activities without direction of the BSEC.²³⁶ The custodians shall maintain separate beneficial owner accounts for each customer/holder and shall not mix up one's account with another and shall be very careful to maintain separate records so that nothing can be exchange or transferred from one to another.²³⁷ The custodians shall execute a contract with each customer.²³⁸ Each contract should contain

²³¹ The Securities and Exchange Commission (Security Custodian Service) Rules, 2003 r 5(1).

²³² Ibid r 4.

²³³ Ibid r 7.

²³⁴ Ibid r 5.

²³⁵ Ibid r 10.

²³⁶ Ibid r 11.

²³⁷ Ibid r 12.

²³⁸ Ibid r 13.

many things including a condition that the custodian should record all information regarding transaction of beneficial owners, when and how custodian can trade, receive, transfer and sell security, the condition when and how custodian can take receivable interest, the condition when and how ownership of security can be change, full description of insurance of security (if any).²³⁹

The custodians will maintain separate beneficial owner account for each client and keep separate custody. They will conduct client's account by executing separate contracts in writing with the clients. They will conduct regular internal audits and evaluation of their business and affairs. They will also ensure safe, secured and fair trading of securities. They will maintain regular records, books of account and statements of ownership and transfer of ownership of securities. They will also ensure that the ownership of securities is not transferring illegally or without consent of owners of the securities. They will ensure the ownership of all benefits including dividend, profit, right shares, interest principal amount declared against the securities, and the safe custody of securities always and perfect the securities from being stolen, lost or destroyed, insuring proper fairness, the business and affairs of the custodian shall be audited by an independent auditor.²⁴⁰

With regard to preservation of records, the custodians have a very strict responsibility to preserve the records about its transaction with the clients. They shall preserve the complete and authentic description of the clients. They shall also keep all information in records about the transaction, receiving and returning of the securities of the clients. They will open separate ledger account, book and beneficial owner account of each of its clients. They shall keep the BSEC updated about the clients' record and transaction and therefore, also preserve its own all reports submitted to the BSEC. Like depositories, the custodians are also bear the primary obligation to keep and preserve all these records at least for 7 (seven) years.²⁴¹ The security custodians shall provide all information to the BSEC regarding transaction and trade. They will provide any information as demanded by

²³⁹ Ibid.

²⁴⁰ Ibid r 10.

²⁴¹ Ibid r 14.

the BSEC time to time.²⁴² They also have reporting obligations to the BSEC with the information as prescribed under the Regulations.²⁴³

The BSEC can inspect into the matters, affairs and records of Security Custodian *suo-moto* or on the basis of objection.²⁴⁴ The BSEC enjoys wide power and discretion in respect of controlling maintaining inspecting and investigations into the affairs of the security custodians. The BSEC on its own motion or with the objection/complain of any person/persons appoint Inspector for the purpose of investigation into the affairs of the custodian. In doing so, they can be served with notice.²⁴⁵ However, in emergency cases, they may not be served with notices.²⁴⁶ The Inspector can examine all records, activities and transactions of custodians who will assist and co-operate the Inspector in every manner for proper inquiry.²⁴⁷ The Inspector can also record the oral statements and other information as found during investigation.²⁴⁸ After inquiry, the Inspector will submit report to the BSEC who can take action on the basis of report. The BSEC, if thinks necessary can send the report with suggestions or directives to the custodian for taking appropriate steps.²⁴⁹

The BSEC has the power to suspend or cancel the license/registration of a security custodian. It can suspend license on the grounds of violation of the provision of these Regulations, failure to provide information as per the demand of the BSEC, deliberately providing false or incorrect information or documents to the BSEC, failure to submit report or information as prescribed under these Rules, failure to assist or co-operate the Inspector during inquiry, failure to develop own scheme operating procedure or method of conduct as per the directives of the BSEC, failure to solve the reasonable complain of clients or failure to deposit fees and charges as per these Regulations or laws.²⁵⁰

²⁴² Ibid r 15.

²⁴³ In this regard, the depositories are under obligation to provide true and correct information to the BSEC. They will also disclose complete and authentic information about the dealings of securities to the BSEC and the clients. Moreover, they are also under obligation to submit report within ten days of each month about the details of securities, their trading, transfer of ownership, debit/credit of account, foreign money depositing or going abroad against any security, contract note and latest. [In Bangla].

[Ibid r 15].

²⁴⁴ Ibid r 16(1).

²⁴⁵ Ibid r 16(2).

²⁴⁶ Ibid.

²⁴⁷ Ibid r 16(3).

²⁴⁸ Ibid r 16(4).

²⁴⁹ Ibid r 17.

²⁵⁰ Ibid r 18(1).

However, in all the aforesaid cases, the BSEC can impose fine in lieu of suspending the license. No such penalty of fine or suspension will be given without giving reasonable opportunity of being heard to the security custodian or without giving it a chance to explain its conduct.²⁵¹

License can be cancelled by the BSEC on the following grounds by giving show-cause notice if the custodians loses the qualification of being operating as a security custodian, or if any custodian commits the aforesaid grounds of suspension more than once, or if any custodian is punished for the offence of fraud or misconduct, or if the BSEC finds any custodian guilty for supplying false, fake and fraudulent information and document.²⁵² The offence of fraud or misconduct or supplying false/fake/fraudulent are not defined under these Rules; therefore the BSEC enjoys wide power and jurisdiction to determine any wrongful or harmful activity of the security custodian under the offence of fraud or misconduct or supplying false/fake/fraudulent and can take action against it.

The BSEC can also impose fine instead of or along with imposing the aforesaid punishment. Any person aggrieved by the decision of the BSEC under these Regulations can appeal under the Securities and Exchange Commission (Appeal) Regulations, 1995. The most important and noteworthy provision of this Rules is provides under Schedule 2 that has prescribed the mode of conduct and professional duty of the Security Custodian.²⁵³ The Codes of Conduct for the custodians are particularly important in ensuring fair trading and dealing with the security. Security custodians are to maintain honestly, intelligence, sincerity, loyalty, fame and cautions in dealing with the securities for benefit and interest of the clients. They are required to maintain fair record and refrain from misusing or misguiding the owners of securities. They will keep the records updated and will not do anything prejudicial to the interest of securities and their owners.

²⁵¹ Ibid r 18(3).

²⁵² Ibid r 19(2).

²⁵³ (i) shall maintain utmost sincerity, carefulness, integrity, intelligence, reputation, honesty, competence and loyalty, (i) shall update the accounts of the clients with all current information by distributing profits, bonus, etc., iii) shall supply all information to the clients of their accounts (sell, purchase, transfer, money receipts, profit receipts, etc), (iv) shall maintain secrecy about the accounts of the clients, (v) shall maintain and save record in computer system and otherwise in the manner even though the computer data gets lost, those data can be recovered easily, (iv) shall help the stock exchanges, depositories, other custodians, clearing houses, etc for the interest of the capital market, (vii) shall not do anything contrary to the Securities and Exchange Ordinance, 1969, the Bangladesh Securities and Exchange Commission Act, 1993, the Depositories Act, 1999 and other securities laws, regulations and directions.

Shortcomings in these Regulations

The Regulations lack in providing adequate protection to the investors. They also severely lack in ensuring institutional liability to the investors if they suffer loss due to corrupt practice, fraudulent business deal or misappropriation of securities. They also lack provisions for compensation of the loss suffered due to fault or unfair practice of the security custodian. The Regulations also fail to delegate adequate protecting measures to the custodian for the prevention of artificial trading in securities which create artificial demand and price hike of securities in market. The depositories and the custodians of securities play very important roles in the stock market. Share transaction takes place through depositories and custodians as share keep them. To assure fair trading and just business in stock market it is really very important to ensure fair practice in dealings and transaction of the depositories and the custodians with their clients i.e. owners of shares.

Duties of Trustees under the Securities and Exchange Commission (Asset Backed Security Issue) Rules, 2004

Asset backed securities are the securities issued with the approval of the BSEC under the Securities and Exchange Commission (Asset Backed Security Issue) Rules, 2004 by any issuer company or legally approved organization against the asset of the issuer institute.²⁵⁴ No one can issue asset backed security or act as a trustee for those securities without prior approval of the BSEC. This kind of securities can be traded in public and can be offered through IPO in the manner provided under these Rules.²⁵⁵ The details procedures of registration, fees, formalities and operating procedures are provided under the Rules.

The issuer of the asset backed securities is to be listed with the stock exchanges or OTC market within such time or complying with such procedures as prescribed under Rules.²⁵⁶ The BSEC enjoys ample power to give permission and control the securities. The BSEC has the power to cancel or suspend the license of the issuer in case of its failure to comply with the terms and conditions of the Rules, violation the provisions of Rules or unfair and dishonest business in stock market.²⁵⁷ For issuing the securities, a trustee is to be appointed under the Rules by executing a Deed for Engagement of Trustee and should be

²⁵⁴ The Securities and Exchange Commission (Asset Backed Security Issue) Regulations, 2004 r 2(kha).

²⁵⁵ Ibid r 3.

²⁵⁶ Ibid r 4.

²⁵⁷ Ibid r 5.

attested by him and approved by the BSEC.²⁵⁸ The qualifications and disqualifications are provided under the Rules. Before appointment of any trustee, prior permission of the BSEC should be taken.²⁵⁹ The BSEC can terminate the appointment of trustee on application of security holder or on the ground of public confidence by giving reasonable opportunity of being heard.²⁶⁰ No trustee may retire until a new trustee is appointed in accordance with law.²⁶¹ There shall be also a compliance officer who is to be appointed with permission the BSEC. Failure to appoint a compliance officer is to be treated as a disqualification to be registered under these Rules.²⁶²

However, the trustee bears the primary responsibility of managing and dealing with asset backed security. The trustee will have the following rights and liabilities under these Regulations²⁶³-

- (i) trustee will have the power to ask for any information, report or document related to securities from the issuer,
- (ii) trustee will have the power to look after the activities of issuer regarding trust fund, and if trustee finds anything objectionable or unlawful, the trustee can recommend appropriate correction or can directly inform the BSEC about such matter,
- (iii) trustee will ensure any acquisition or transfer on behalf of trust, take appropriate measures thereof, execute deed and ensure the conduct, transfer or maintenance of trust fund in accordance with law,
- (iv) trustee will supervise the trust fund and will hold the fund/of securities holders on trust for the owner. Trustee will act on behalf of and for the interest of the securities holders,
- (v) trustee will make sure that every transaction from the trust fund is being done in compliance with the provisions of the trust deed and the law,
- (vi) the trustee will be responsible for calculating or keeping account record of the fund of the securities holders,

²⁵⁸ Ibid r 6.

²⁵⁹ Ibid r 6(3).

²⁶⁰ Ibid r 6(4).

²⁶¹ Ibid r 6(5).

²⁶² Ibid r 6(4)(Ja).

²⁶³ Ibid r 8.

(vii) trustee will receive monthly report from the trustee issuer or security issuer, will analyze the report and submit the same to the BSEC and shall report whether the issuer is complying with the provisions of law,

(viii) trustee can also call for meeting if prescribed by the BSEC for the benefit of securities owners or owners numbering 3/4th of any security decides to do so or before closing any scheme and for satisfying the claims against such scheme.

The most vital provision of the Rules is that the provisions of these Rules are given equal status as the BSEC laws. For violation of any provision under these Rules, the punishment as provided under the Securities and Exchange Ordinance, 1969, the Securities and Exchange Commission Act, 1993 and the Depository Act, 1999 will be applicable.²⁶⁴

Major Shortcomings of the Rules

Under the Rules, no personal or institutional responsibility or accountability is imposed upon the trustee or the issuer or the organizer. There are no provisions imposing personal or institutional liability upon them to be accountable or directly answerable to the securities holders. No penal provision is provided for the misuse or misappropriation of the fund by the organizer. No provision for redressing the loss sufferer of any security due to corruption, wrong investment or fraudulent business is provided under the Rules. There is no provision entitling the investors to file a suit against the issuer or trustee. No adequate guarantee against asset backed securities is provided. No consequence is provided in case the issuers go off suddenly or fail to ensure adequate asset for backing up the securities issued by the issuer. In short, the Regulations are not exhaustive at all.

6.9. Share Transfer Agents and Registrars to an Issue²⁶⁵

A share transfer agent may be a bank or financial institution or broker house or company who maintain records of investments, account balances and stocks. It generally keeps

²⁶⁴ Ibid r 9.

²⁶⁵ The Economic Times defines that registrar or transfer agents are the trusts or institutions that register and maintain detailed records of the transactions of investors for the convenience of mutual fund houses. Investors' transactions like buying, exchanges, processing of mails and related information, changes in personal data, etc occur frequently and have to be recorded. Registrar & transfer agents have skilled expertise for maintenance of such data on a professional basis, thereby contributing to saving costs and time involved in keeping detailed accurate records of the investor transactions. Their role also extends to providing information to the investors about new offers, maturity dates and all other investor-friendly information at one place for their reference.

<<http://economictimes.indiatimes.com/definition/registrar-and-transfer-agents>> (17.06.2015).

records of stock transactions, issue or cancel certificates, processes investor mailings and deals with other investor problems as authorized under law. A transfer agent carries out activities close to share registrar. It can be a third party unrelated to stock transactions, which cancels the name and certificate of the shareholder who sold the shares of stock, and substitutes the new owner's name on the official master shareholder listing. After the dematerialization of the stocks, the task is now done by the clearing houses. However, share transfer agents are still important for the maintenance of records of transferring ownership of share and issue share certificate to the shareholders.

Registrars to the issuer plays very a important role in maintaining proper records of transferring ownership of shares/stocks of the issuer company. It is very important to maintain records for declaring dividend, other benefits against stocks, securing ownership of securities, holding annual general meeting and other formalities under law.

6.10. Schedule or Private Banks and Financial Institutions

To trade in stock market, every trader has to open a BO account²⁶⁶ with any broker house. The BO account is opened as a normal account with general bank i.e. schedule banks or private bank. These banks also play an important role in stock market by helping the general investors through opening the link account and investing in the stock market. In our country, bank and financial institutions are the topmost investors in stock market. It was claimed that one wrong decision of Bangladesh Bank regarding limiting down the investment scale of bank and financial institution in stock market is one of the main reasons for share market crash in 2010-2011.

It was also reported by the CPD that “commercial banks failed to comply with rules and regulations related to their investment/involvement in the capital market. These include among others, failure to invest within the exposure limit (i.e. not more than 10 per cent of total liabilities), and failure to advance credit within the stipulated limit to a single party (i.e. not more than 75 per cent of bank’s total advance to the market). Although most banks have reduced their investment within the stipulated level (banks’ average exposure in the capital market was about 3 per cent in October 2011), a number of banks are yet to comply. There was an oversight on the part of the banks to monitor the actual use of fund which was borrowed in the name of investing in the real sector. It is alleged that a huge

²⁶⁶ Beneficiary owner account.

amount of fund were diverted from the banks to the capital market with a view to making short-term capital gains. Many banks are yet to enforce the required discipline to correct such anomalies.”²⁶⁷

6.11: Investment advisors²⁶⁸ and Investment Company²⁶⁹

Investment advisors are the advice providing personnel in the stock market. Mutual fund, ICB, portfolio manager, research analyst, security custodian and sometime broker house can act as investment advisors. They do their own research based on market performance and other factors, and people receive advice from them. It depends upon the choice and will of the people to act upon the advice. However, they are often persuasive and influential in the market. Their prediction and market based research have great impact on the investors’ choice. They are believed to be fair, neutral and independent. The investment company also plays an important role in buying and selling the securities for trading in the securities markets.

6.12: Clearing Members or Clearing Corporation

Clearing members or clearing corporations are the institutions that assist in clearing the settlement of trading. “Clearing house” means the clearing house set up for the purpose of settlement of transactions.²⁷⁰ They are associated with an exchange to handle the confirmation; settlement and delivery of transactions, ensuring of transactions in a prompt

²⁶⁷ Khondaker Golam Moazzem and Md. Tariqur Rahman, “Stabilizing the Capital Market of Bangladesh: Addressing the Structural, Institutional and Operational Issues” (2012), *CPD Working Paper: 95Centre for Policy Dialogue (CPD)* 11-12.

<http://www.cpd.org.bd/pub_attach/WP95.pdf> (24.02.2016).

²⁶⁸ “Investment adviser” includes 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 this profession;

(iii) any broker, jobber or dealer, member or associate whose performance of such services is solely incidental to the conduct of his business as a broker, 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.

[The Securities and Exchange Ordinance, 1969 s 2(e)].

²⁶⁹ “Investment company” means a company engaged principally or wholly in buying and selling securities of other companies and includes a company eighty percent of whose paid up capital is employed at any one time as investment in other companies.

[Ibid s 2(f)].

²⁷⁰ The Dhaka Stock Exchange TREC Holder’s Margin Regulations, 2013 c 2(1)(b).

and efficient manner. They are also referred to as "clearing firms" or "clearing houses"²⁷¹. They can act as depository of the records of trading in stock market. They act in co-operation with exchanges and depository houses. In many cases, to run the transactions properly, the clearing corporations become the buyer to every seller and the seller to every buyer. They basically take the middle position with a client in every transaction for the purpose of settlement of the same. Several entities, like clearing corporation,²⁷² clearing members,²⁷³ custodians,²⁷⁴ clearing banks,²⁷⁵ depositories,²⁷⁶ are involved in the process of clearing. The roles, functions and relevant provisions of law of clearing members or clearing corporations under the stock exchanges have already been discussed in the previous while analyzing and examining the roles and legal provisions of stock exchanges under the Dhaka Stock Exchange (Settlement of Transactions) Regulations, 2013 and the Dhaka Stock Exchange (TREC Holder's Margin) Regulations, 2013.

6.13. Trading Members

They are mainly the brokers, sub-brokers, stock dealers or authorized representatives of the securities. Like the clearing members, the roles, functions and relevant provisions of

²⁷¹ "Clearing house" means the clearing house set up for the purpose of settlement of transactions.

[The Dhaka Stock Exchange (Settlement of Transactions) Regulations, 2013 c 2(1)(e)].

²⁷² The clearing corporation is responsible for post-trade activities of a stock exchange. Clearing and settlement of trades and risk management are the central functions for a clearing corporation.

²⁷³ "Clearing Member" means a person registered with DSE to perform settlement and clearing functions with DSE under these Regulations.

[Ibid c 2(1)(g)].

Clearing members can be of two types: (i) those who are trading as well as clearing members; these members trade as well as take the responsibility to settle their trades, and (ii) those who act only as clearing members; these members do not trade but take on the responsibility to settle the trades of other trading members. They are responsible for settling their obligations as determined by the clearing corporation. They have to make available funds and/or securities in the clearing account or pool account, as the case may be, to meet their obligations on the settlement day.

²⁷⁴ Custodians are clearing members but not trading members. They settle trades on behalf of other trading members. A trading member may assign a particular trade to a custodian for settlement. The custodian is required to confirm whether he is going to settle that trade or not. If it confirms to settle that trade, then clearing corporation assigns that particular obligation to that custodian and the custodian is required to settle it on the settlement day.

²⁷⁵ Clearing banks are a key link between the clearing members and clearing corporation for funds settlement. Every clearing member is required to open a dedicated clearing account with one of the clearing banks. Based on the clearing member's obligation as determined through clearing, the clearing member makes funds available in the clearing account for the pay-in and receives funds in case of a pay-out.

²⁷⁶ Depository helps in the settlement of the dematerialized securities. It holds dematerialized securities of the investors in the beneficiary accounts. Each clearing member is required to maintain a clearing pool account with all the depositories. Separate accounts are required to be opened for the settlement of trades on different stock exchanges. The clearing members are required to provide the securities as per their obligations in the clearing pool account on settlement day. At a pre-determined time, the depository sends the information about the availability of securities in the clearing pool accounts of the clearing member to the clearing corporation.

law of clearing members or clearing corporations under the stock exchanges have already been discussed in the previous while analyzing and examining the roles and legal provisions of stock exchanges under the Dhaka Stock Exchange (Settlement of Transactions) Regulations, 2013 and the Dhaka Stock Exchange (TREC Holder's Margin) Regulations, 2013.

6.14. Valuers

They also play very important roles in stock market. Before issuing shares, the issuer company is under mandatory obligation to have the assets, properties and liabilities of the company valued by designated valuers as prescribed by the BSEC under relevant regulations. Basing on the Report of the valuers, the Auditor of the company prepared audit report of the company. So, the valuer plays an important role. Occasionally, the BSEC publishes the list of valuers and the companies need to value their assets and liabilities from the specified valuers.

6.15. Research Analyst/Market Analyst

For the first time, the Research Analyst for the capital market has been recognized in Bangladesh by the BSEC under the Bangladesh Securities and Exchange Commission (Research Analyst) Rules, 2013 (*hereinafter referred to as "these Rules" in the relevant paragraphs*).²⁷⁷ The Rules do not clarify any its specific object or purpose. Generally, any Act/Ordinance/Rules begin by specifying its purpose or object in its Preamble or in First Clause but this Rules do not contain such provision.

However, it becomes clear from the provision of this Rules that it recognizes certain Research Analysts to be able to do research and disclose research results about investment in securities i.e. stock market, determining their eligibility, qualification, institutional capacity, area of disclosure of information, etc which were not legally determined earlier though it was neither prohibited nor discouraged. The Rules provide encouragement to the intending Research Analyst by giving legal validity and recognition of their initiative and result. This is a positive aspect of the Rules. It does not recognize any independent Research Analyst. It recognizes "Research Analyst"²⁷⁸ who does research and prepare

²⁷⁷ By the Notification No. SEC/CMRRCD/2012/225/149/Admin dated 24.07.2013.

²⁷⁸ According to the Rules, the Research Analyst should be always a person employed by a stock dealer/broker or merchant or asset management company or investment adviser or independent research firm

research analysis and provide the results of analysis in writing projecting the investment in securities (stock/capital market) of a stock dealer/broker or merchant or asset management company or investment adviser or independent research firm for whom the Research Analyst employed for.

Under the Rules, the eligible institutions for publishing research reports are the Merchant bankers, the Stock-dealer/Stock-broker, the Asset Management Companies, the Investment Advisers and the Independent Research Firms. Every eligible institute shall have a separate research team consisting of at least 3 (three) members including a head of Research. The Independent Research Firm shall have at least 3 (three) Research Analyst under the supervision of Managing Director/Chief Executive Officer/Head of Research. Such research firm/analyst shall obtain registration certificate from the BSEC.²⁷⁹

It recognizes those Research Analysts only who are employed by a stock dealer/broker or merchant or asset management company or investment advisor or independent research firm and prepares research on investment in securities for those persons only. It has some major shortcomings which may have terrible results because such kind of research result claims to be authentic and attracts the attention of general people to rely and act upon it. But, dilemma is, whether such kind of research result of investment in securities (of any particular institution/company) could be neutral and not biased when the same is prepared by the employed Research Analyst who is working for those institutions. It is generally expected that such kind of Research Analyst will definitely work for the interest of those institutions.

On the other hand, the Rules do not attribute any kind of liability corresponding with penalty or punishment to the Research Analyst or the associated institutions whom he worked with. It means anyone (including general investors/stakeholders) who wants to rely upon the research prepared and published by aforesaid employed/deployed Research Analyst can rely and act upon it at his/her own risk. The Research Analyst or the associated institution for whom it works bears no responsibility in case of loss suffered by anyone as a result of his/her *bonafide* reliance on the research result. Though imposing

who analyses and evaluates investment in securities and then prepares written reports including investment recommendation through rating system reflecting the analyst's research.

[The Bangladesh Securities and Exchange Commission (Research Analyst) Rules, 2013 r 2(d)].

²⁷⁹ Ibid r 3.

liability with penalty or fine may not always ensure justice but it enhances the sense of responsibility, professional accountability and sincerity.

Any person seeking to become a research analyst must possess relevant academic/professional qualifications such as CFA²⁸⁰/CPA²⁸¹/CA²⁸²/CMA²⁸³/CS²⁸⁴/MBA²⁸⁵/MB²⁸⁶/ Masters in Economics or Accounting or Finance or management or Marketing/Certificate from BICM²⁸⁷ in a relevant field. Such person shall have at least 3 (three) years work experience in the capital market/financial market related organization.²⁸⁸

The Rules do not make it clear whether these qualifications are cumulative or distinctive. If cumulative, then people from other discipline, including Law, are not eligible to be a Research Analyst. And simultaneously, Academic Institutions are also not included for publishing research analysis about stock market. Presumably, anybody can publish exercising freedom of expression under the classic sense of democracy but those research publications shall have no legal recognition under the Rules. Lack of recognition certainly reduces the prestige, acceptability and authenticity of any research and causes a barrier and discouragement in its way of general acceptance. Amendment is highly required on this issue because stock market is not merely a matter of economics/finance, but also a matter of law where all major financial issues are decided and determined by law such as tax, VAT (Value Added Tax), customs, excise, financial matters of companies/banks/financial institutions, etc by several money-making laws such as Budget, Finance Act, Customs Act, VAT Act, Income Tax Act, Companies Act, Banking Companies Act, Bank/Financial Institutions Related Guidelines, etc. Anyway, specification of qualification and eligibility is good because it determines the scope and limitation. It provides a specific guideline what law recognizes. Amendment to cure the existing lacuna/shortcoming can be brought anytime.

²⁸⁰ Chartered Financial Analyst.

²⁸¹ Certified Practicing Accountants.

²⁸² Chartered Accountants.

²⁸³ Certified Management Accountant.

²⁸⁴ Chartered Secretaries.

²⁸⁵ Master of Business Administration.

²⁸⁶ Master of Business.

²⁸⁷ Bangladesh Institute of the Capital Market.

²⁸⁸ The Bangladesh Securities and Exchange Commission (Research Analyst) Rules, 2013 r 4.

The Rule also sets out the standard of research in Clause 7 stating that every Research Firm/Analysts should have the following research standards of (i) diligence and reasonable basis,²⁸⁹ (ii) communication with clients and prospective clients,²⁹⁰ (iii) record retention,²⁹¹ (iv) independence and objectivity,²⁹² (v) material non-public information,²⁹³ (vi) loyalty, prudence, and care,²⁹⁴ (vii) fair dealing,²⁹⁵ and (viii) conflict of interest.²⁹⁶

The contents of a research report should, *inter-alia*, include the investment rationale, methodology, investment risk, investment recommendations, target price and absolute and

²⁸⁹ (1) Exercise diligence, independence and thoroughness in analyzing investible securities and making investment recommendations.

(2) Have a reasonable and adequate basis supported by appropriate research and investigation, for any investment analysis, recommendation or action.

(3) Make reasonable and diligent efforts to avoid any material misrepresentation in any research report or investment recommendation.

[Ibid r 7(A)].

²⁹⁰ (1) Disclose to clients and prospective clients the basic format and general principles of the investment processes used to analyze investments and must promptly disclose any changes that might materially affect those processes.

(2) Use reasonable judgment in identifying which factors are important to their investment analysis, recommendation or action and include those factors in communication with clients and prospective clients.

(3) Distinguish between fact and opinion in the presentation of investment analysis and recommendations.

(4) Disclose the valuation method used to determine the price target and a disclosure concerning risks that may impede achievement of the price target.

[Ibid r 7(B)].

²⁹¹ Develop and maintain appropriate records/facts for at least 7 (seven) years to support their investment analysis, recommendations and other related communication with clients and prospective clients. Provided that if any research firm/analyst publish any report without reasonable and adequate basis supported by research and investigation, aiming to manipulate the market, it/s (he) along with the employer will be jointly and severally liable and punishable under the applicable securities law of the country.

[Ibid r 7(C)].

²⁹² Use reasonable care and judgment to achieve and maintain independence and objectivity in research activities. Research analyst must not offer, solicit or accept any gift, benefit, compensation, or consideration that reasonably could be expected to compromise his/her own or another's independence and objectivity.

(1) Exercise diligence, independence and thoroughness in analyzing investible securities and making investment recommendations.

(2) Have a reasonable and adequate basis supported by appropriate research and investigation, for any investment analysis, recommendation or action.

(3) Make reasonable and diligent efforts to avoid any material misrepresentation in any research report or investment recommendation.

[Ibid r 7(D)].

²⁹³ Research Analyst who processes material nonpublic information that could affect the value of an investment must not act or cause others to act on the information.

[Ibid r 7(E)].

²⁹⁴ Research Analyst must act for the benefit of their clients' interests before their employees' and their own interest.

[Ibid r 7(F)].

²⁹⁵ Deal fairly with all clients when providing investment analysis, making investment recommendations. Research report must be disseminated after trading hour of the stock exchange(s) in such a manner that all clients have a fair opportunity to act on every recommendation.

[Ibid r 7(G)].

²⁹⁶ Best practice is to avoid conflict of interest between all the related parties. When conflicts cannot be reasonably avoided, disclosure must be provided as mentioned in Rule 5.

[Ibid r 7(H)].

relative valuation based on forecasted financials.²⁹⁷ In addition, it shall also contain at least credentials of research firm and short Bio-Data of Head of Research and Research Analysts who are working with firm. During public appearance, such as television-radio interview, and other print and electronic media, the research analysts must disclose if they (or member of their family and dependants) or their firm hold a position in shares of the company being discussed.²⁹⁸

Any research output satisfying all the standards as stated above can be published/disclosed in the manner as laid down by the Rules. The Research Firm/Analyst must make full and fair disclosure of all matters that could reasonably be expected to impair their independence and objectivity or interference with respective duties to their clients and prospective clients. The company and the analyst must ensure that such disclosures are comprehensive, delivered in plain language, and communicated in an effective manner to clients and prospective clients.

Such disclosures may require many things. However, the Rules prescribe some specific disclosure requirements which should be met. For instance, the Research Firm/Analyst must make full and fair disclosure of all matters that could reasonably be expected to impair their independence and objectivity or interfere with respective duties to their clients and prospective clients.²⁹⁹ The Research Firm/Analyst must ensure whether (s)he had any merchant banking/investment banking relationship with the company being researched in last 12 (twelve) months and also any potential relationship in next 12 (twelve) months. If so, the disclosure must include the name of the company being researched and the nature of the relationship and the state of appointment. It should be disclosed whether the analyst and his/her employer are engaged in any kind of relationship which will generate them any fee or financial interest with the company being researched.³⁰⁰

It should also be disclosed whether the analyst, his/her dependents and his/her employer hold any position in that particular stock at the time of publishing the report. If so, the disclosure must include the number of common shares holding including latest date of acquisition. The research staff, analysts and, research supervisor as well as the company employing them must disclose (any other conflict of interest that may be applicable) any

²⁹⁷ Ibid r 9.

²⁹⁸ Ibid r 8.

²⁹⁹ Ibid c 5.

³⁰⁰ Ibid.

other actual, material conflict of interest of which s(he) or it knows or has reason to know at the time of publication of the research report or at the time of public appearance. The research Firm/Analyst must disclose in its research reports if it or its affiliates managed or co-managed a public offering of equity securities for the subject company in the past 12 (twelve) months. Additionally, the firm must disclose if it received compensation for any merchant banking/investment banking services from the subject company in the past 12 (twelve) months.³⁰¹

It imposes certain restrictions upon the Research Analyst/Firm and his/her dependents/employer as well. It is a positive step but the provision lacks legal clarification and fails to ensure the implementing expedite. Amongst these restrictions, the research firm/analyst and his/her dependents/employer cannot trade in the securities of the company whose report they are preparing for 30 (thirty) days before and 5 (five) days after the launching/publishing the report. The research firm shall not publish a research report and shall not make a public appearance regarding a subject company for which it acts as issue manager, co-issue manager or underwriter of an initial public offering for 30 calendar days following the first date on which the security will be offered to the public. It is also provided that the compensation of analysts, including salary, bonus, any other form of payment, shall not be tied to specific merchant banking/investment banking transactions. The research firm/analyst shall be prohibited from offering or threatening to withhold a favorable report or a specific price target to obtain merchant banking/investment banking business or compensation from a company. Moreover, the research firm/analyst shall not participate in generating investment banking business with merchant bankers/investment bankers.³⁰²

In short, the major shortcomings of the Rules are that they do not recognize the Independent Research analyst, do not provide any penal provision for the Research Analyst who may act unfairly, attributes no liability corresponding with fine or penalty upon the Research Analyst and the associated institutions/persons for who the Analyst acted unfairly, provides indemnity/exclusion of liability benefit to the Analyst and its employee institutions, does not recognize academic research, etc. The Rules are not comprehensive and also lack implementing accessories. However, being the first formal

³⁰¹ Ibid.

³⁰² Ibid r 6.

effort in the relevant field for recognizing the Research Analyst, these Rules must deserve praise and appreciation.

6.16. Trustee and Fund Manager for Alternative Investment

To assist the small investors, the BSEC has attempted new policy by formulating Bangladesh Securities and Exchange Commission (Alternative Investment) Rules, 2015. The Rules emphasizes on the establishment of alternative investment fund approved by the BSEC. Alternative Investment Fund (*referred to as 'AIF'*) means any fund established or constituted in Bangladesh in the form of a trust which is a “private equity fund”³⁰³ or a “venture capital fund”³⁰⁴ or an “impact fund”³⁰⁵ or any other type of fund occasionally declared by the BSEC as alternative investment fund. It must be a privately pooled investment vehicle which collects funds from ‘eligible investors’³⁰⁶ in order to invest in accordance with a defined investment policy for the benefit of its investors. It is a closed-end fund with a specific tenure and it collects subscription by way of ‘private placement’³⁰⁷ only and does not offer its units for public subscription. AIF does not fall under the Bangladesh Securities and Exchange Commission (Mutual Fund) Rules, 2001.

The fund manager and trustee established under these Rules play the crucial role in the management, control, supervision and dealing with the AIF. After pronouncement of these Rules, there have already been some interested applicants who applied for permission under these Rules. The BSEC is about to permit for the AIF to the competent applicant.

³⁰³ “Private equity fund” means an alternative investment fund which invests primarily in equity and equity linked instruments of potentially high growth non-listed portfolio companies with minimum 02 (two) years operational history or to conduct buyouts of companies according to the stated objectives of the fund. [Ibid r 2(1)(29)].

³⁰⁴ “Venture capital fund” means an alternative investment fund which invests primarily in non-listed equity and equity linked securities of start-ups with less than 02 (two) years“ operational history or green field companies or emerging early-stage undertakings mainly involved in new products, services, technologies or intellectual property rights based activities or new business models. [Ibid r 2(1)(43)].

³⁰⁵ “Impact fund” means an alternative investment fund which invests in equity and equity linked instruments of such companies, organizations, and funds which are engaged in activities with the intention to generate a measurable and beneficial social or environmental impact in addition to financial returns, as justified with internationally recognized criteria. [Ibid r 2(1)(18)].

³⁰⁶ “Venture capital fund” means an alternative investment fund which invests primarily in non-listed equity and equity linked securities of start-ups with less than 02 (two) years “operational history or green field companies or emerging early-stage undertakings mainly involved in new products, services, technologies or intellectual property rights based activities or new business models. [Ibid r 2(1)(43)].

³⁰⁷ “Private placement” means offer of units to the eligible investors in a way other than public offering. [Ibid r 2(1)(30)].

The detailed procedures regarding eligibilities, disqualifications, necessary formalities, fees, procedural requirements and other things are in details provided under the Rules. Amongst these, the most important provisions are the ones related to the duties and responsibilities of the fund manager and trustee and other officials of AIF, winding up of AIF, investment into fund, enquiry, inspection, life of fund and ways of handling fund are particularly important.

6.17. Other Intermediaries

There may be other intermediaries as recognized under the law. There may be asset management companies, association, guarantor against securities, etc. However, no intermediary can play a role in stock market unless it is recognized by law.

6.18. Concluding Remarks

As examined in the previous chapter and this one, there are multiple kinds of intermediaries in the stock market. Their roles, functions and activities are often complex, overlapping, supplementary, inter-connecting and dependent on each other. Combining the activities of all those by bringing into an umbrella are not an easy task. Stock market is a very sensitive one. Any fact or information, even a fake one can influence the market significantly. Market can often follow reasonable calculations, or can behave abnormally for no reason. As discussed earlier, market crash is a usual phenomenon. Risk, loss or profit is common to all kinds of businesses including capital market business, but scam is the result of corruption, malpractice and abuse of market. It requires syndication of the market players. Market intermediaries jointly play the most vital role in execution and operation of the capital market business. Hence, proper regulation of the market intermediaries and their fair conduct is a precondition for the fairness, soundness and healthy practice in market. There is a large number of market regulators and intermediaries and a large set of laws and regulations. Most of them have already been examined. After the discussions, it is essential to explore the particular provisions related to the investors' protection as a whole in securities market, for which the following Chapters are.

Chapter 7

Corporate Governance in the Stock Market of Bangladesh: Analysis from a Legal Perspective

7.1. Introduction

The corporate governance in the stock market of Bangladesh denotes a general understanding of how the corporate governance is regulated in the listed companies/corporations issuing shares through stock exchanges for public trading. Generally, the way the companies behave, act, run and carry out their affairs, trade, all fall under corporate governance. This also includes the behavior of the stock exchanges and the securities management institutions- how they control, manage, and regulate the trading of shares in the stock market and monitor the corporate affairs of the listed companies. Corporate governance makes the stock market stable and ensures its constant development. It also plays an essential role in maintaining the balance between super-fall and super-rise of share prices in the stock market. However, as discussed earlier, the stock market of Bangladesh remains mostly unregulated and is still unsecured for potential the investors. Amongst others, one of the main reasons can be attributed to the lack of effective corporate governance guidelines in Bangladesh.

The absence of effective corporate guidance guidelines is highly felt in the Bangladesh stock market, which has been neglected by the people, arbitrarily handled by the stakeholders, unattended by the corporations, unregulated by the regulatory authorities, ignored by the Government, and overlooked by the Legislature. Such absence leads to fail in ensuring transparency, accountability, and integrity in the corporate governance of listed companies, and the stock exchanges as well. For this reason, the existing poor corporate governance is often blamed for the collapse of the financial market in Bangladesh.¹ To fix the bugs, the necessity of framing compact and effective corporate governance regulations for the stock market is a must. Similarly the greater awareness for implementing corporate governance regulations amongst the law-makers, regulatory institutions, corporations and the general people also is equally important.

¹ Md. Gulam Saroar Hossain Khan, A. K. M. Zahirul Islam, Harun Ar Rashid and Md. Ashrafur Arafat Sufian, 'Current Status of the Corporate Governance Guidelines in Bangladesh: A Critical Evaluation with Legal Aspect' (2009) 3 *Bangladesh Research Publications Journal* 971.

The importance of having viable corporate governance guidelines has recently become visible in the stock market of Bangladesh when the Bangladesh Securities and Exchange Commission (BSEC) held several factors responsible for non-effectiveness of the stock market. Of them, legal vacuums regarding the governance of listed companies and the stock exchanges are addressed.

To fill up the vacuums, numerous attempts have already been taken and plans have been designed by the regulatory authorities of the stock market. Amongst the attempts, the Corporate Governance Guidelines for Listed Companies of Bangladesh vide Notification Nos. SEC/CMRRCD/2006-158/Admin/02-08 dated 20.02.2006, SEC/CMRRCD/2006-158/134/Admin/44 dated 7.08.2012 and SEC/CMRRCD/2009-193/151/Admin dated 18.08.2013 can be appreciated. The Guidelines appear only for the companies listed with the stock exchanges of Bangladesh - Dhaka Stock Exchange (DSE) and Chittagong Stock Exchange (CSE).² This attire of boundary is made since only listed companies can issue share in stock/share market for raising capital from the public at large. This alone is not enough to fix the bug in this sector. Nevertheless, it can be appreciated as a positive attempt in the beginning of further years. Having said this in background, this article intends to justify the need for having a viable legal framework of corporate governance in the stock market.

7.2: Importance of Corporate Governance Guidelines in the Stock Market

Since corporate governance emphasizes that the owners of the corporation (namely, the shareholders) be highly concerned about their disposal of investments to ensure that the corporation they own brings a reasonable return against their investment; it requires the management and the board of directors to ensure that all business decisions are taken in the best interests of the company with due projection of the risks and rewards. At the same time, proper corporate governance expects that the directors and management of the company will put the interests of the company before their personal interests. It also cares the minority shareholders with special attention. In this way, the contemporary corporate governance creates a direct and effective relationship between the shareholders (ultimate

² There are two stock exchanges of Bangladesh. One is Dhaka Stock Exchange (DSE) and other is Chittagong Stock Exchange (CSE). Section 2(m) of Bangladesh Securities and Exchange Commission (Research Analyst) Rules, 2013 defines stock exchange as “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”.

owners) of the company and the board of directors and managers of the company. One of its purposes is to maintain check and balance between the two converse interest-holders i.e. the shareholders and board of directors/managerial authorities of the company. It also aims to put the existence and interest of the company above all (e.g. above the board of directors, managers, investors and sometime above the shareholders) upholding the original principle of distinctive personality of the corporation.³ The purpose of corporate governance is to create and maintain a flexible, efficient and effective framework for entrepreneurial management that delivers growth in shareholder value over the longer term.⁴

Applying the said principle of distinctive personality of corporation, the board of directors, company secretary and managers are primarily entrusted with the duties to run and control the affairs and functions of the company. They do so, for and on behalf of the company, shareholders and other investors of the company and of course, also for themselves. They can also be compared to trustees.

To this effect, it is felt that the function of corporate governance is not only to oversee/monitor the functioning of corporations but also to ensure, protect and save the rights of the shareholders and other investors in the company by cutting some powers from the board of directors, and alternatively imposing some restrictions and responsibilities upon them and also by giving some protective device to the shareholders.⁵ One of those fundamental obligations is that the directors and managers of the company are under responsibility to ensure effective participation of the shareholders and the investors in the company.⁶

In doing so, corporate governance strives to enable the shareholders to participate in the functions and affairs of the company by several direct and indirect ways. Full and fair disclosure of information on regular or periodical basis about the functions, affairs of the

³ OECD Principles of Corporate Governance, 2004, *Organization for Economic Co-operation and Development (OECD)* 1-69.

<<https://www.oecd.org/corporate/ca/corporategovernanceprinciples/31557724.pdf>> (15.08.2016).

⁴ 'Corporate Governance for Main Market and AIM Companies' (2012) *White Page Ltd and London Stock Exchange Plc* 1-243.

<<http://www.londonstockexchange.com/companies-and-advisors/aim/publications/documents/corpgov.pdf>> (28.04.2017).

⁵ 'The importance of Corporate Governance' *Applied Corporate Governance* (online) 2016.

<<http://www.applied-corporate-governance.com/about-us.html>> (11.08.2016).

⁶ Muhammad Ehsan Khan, 'Why Corporate Governance?' *ITP Performance Development* (online) 2014.

<<http://www.ittoday.info/ITPerformanceImprovement/Articles/2014-09Khan.html>> (17.08.2016).

company and also about the activities of the directors and the managers of the company is a pre-condition of assurance of effective participation of the shareholders in the company. It enables the shareholders to participate in the function and management of the company directly. It strengthens the nexus between the company and its shareholders via the directors and managers of the company. In this way, the shareholders also equip themselves with the necessary knowledge to hold the management accountable. It enhances the monitoring power of the shareholders in the company and also opens the door of accountability of the directors and managers of the company.⁷ It is also necessary to examine the relationship between the management and shareholders of the company.⁸

On the other hand, in corporations where there are majority shareholders, the majority that is able to influence the appointment of directors takes particular care to ensure that their own interests do not come in conflict with the interests of the company. For protection of their rights the majority shareholders can stand against the arbitrary, prejudicial, illegal and adverse decisions and actions of the board of directors. The corporate governance considers these issues carefully.

In addition, the interests of minority and bare-shareholders⁹ are no longer ignored by the corporate governance. Most commendably, contemporary corporate governance highly concerns itself with protecting the rights and interests of minority shareholders and also the bare shareholders of the company. Since they have less scope to influence the Board of Directors or management of the company, hence they need more protections against the majority shareholders, Board of Directors and management of the company. The corporate governance is highly concerned about this issue. Therefore, the scope of corporate

⁷ Louis Bouchez, 'Principles of Corporate Governance: OECD Perspective' (2007) 4(3) *European Company Law* 109-115.

<<https://www.kvdl.nl/wp-content/uploads/2013/01/Louis-Bouchez-Principles-of-corporate-governance1.pdf>> (16.08.2016).

⁸ Such guideline is very crucial to find out whether management of a corporation treats with its shareholders to a good extent by giving them dividend from profit and also by allowing them taking part in the affairs and decision of the corporation. Corporate governance guideline ensuring healthy use of voting rights by the shareholders of the company is one of the key factors in this regard.

⁹ Bare shareholders are those who possess less than qualifying shares of being counted as minority shareholder. Under section 233 read with section 195 of the Companies Act, 1994 the minimum qualifying shares of being considered as minority shareholder is 10% in case of company having a share capital and 15% in case of company no having a share capital. Companies Act provides some sort of protection to them who are possessing at least 10% shares and above. But there is no such protection for those bare shareholders who possess less than 10% i.e. (.0.1% to 9.49%). Corporate governance is also concerned about those shareholders who have no qualifying shares to get the benefit and protection of minority shareholder under law.

governance is widening. Combining all the necessary factors to ensure good governance in the corporate management, the OECD summarizes the principles of corporate governance under few broader heads, such as, supervisory framework, shareholder rights, institutional investors and markets, stakeholders, transparency and disclosure and board of directors.¹⁰

Furthermore, ensuring fair, proper, sound and healthy corporate practice is very fundamental to develop a strong, competitive, productive and profitable stock market which has become one of the vital contributors of the contemporary capital market all over the world.¹¹ Proper corporate governance practices are therefore of significance in the capital markets.¹²

Generally, in private limited companies, directors and all the shareholders are primary shareholders and can frequently control and manage the share of the private limited companies. However, the scenery is not the same in public limited companies. It becomes upsetting when shares of public limited companies are opened in the secondary market wherefrom the secondary shareholders purchase shares in a much higher price than the face value of shares. It causes difference in share pricing. One can possess two percent of company's share only by spending Tk. 20,000 and another can have two percent shares by spending Tk. 50,000 and others can have the same by spending more or less. It makes the share pricing scheme of the company in the stock market more complex. To get rid of this puzzled condition, a viable corporate governance guideline in the stock market is inevitable.

It is generally accepted that companies live and die by their stock price, yet for the most part they do not actively participate in trading their stocks within the market. They receive money from the securities market only when they first sell a security to the public in the primary market, which is commonly referred to as an initial public offering (IPO). In the subsequent trading of these shares in the secondary market, it is the regular investors buying and selling the stock who benefit from any appreciation in stock price. Fluctuating

¹⁰ 'OECD releases revised Principles of Corporate Governance – Unions call for more ambition' (2015) *Trade Union Advisory Committee to the OECD*.

<http://www.tuac.org/en/public/e-docs/00/00/10/F9/document_news.phtml> (16.08.2016).

¹¹ Because, it is observed that good companies having consistent profit making background are given easy access to the stock markets and the proper corporate governance guidelines exceedingly craves to provide a safety floor of investment and fair trading to this effect. The corporate governance guidelines aim to have the intent that having gone to the stock market, the company runs the business for the benefit of its owners, namely the shareholders, and behaves responsibly in the markets.

¹² 'The importance of Corporate Governance' *Applied Corporate Governance* (online) 2016.

<<http://www.applied-corporate-governance.com/about-us.html>> (11.08.2016).

prices are translated into gains or losses for these investors as they shift ownership of stock. Individual traders receive the full capital gain or loss after transaction costs; none remains with the company. To control this, there needs to be a comprehensive and compact corporate governance regulation in the stock market.

By now, the corporate governance has become an important issue in the regulation of the stock market. Amongst others, one basic issue that necessitates the insertion of corporate governance in the stock market of Bangladesh is that there is no limit of hiking price against share in the stock market although there is a limit below which a share value cannot fall. The limit says that a share cannot fall below Tk. 10 (face value). It means that a share cannot be fixed at any price between Tk. 1 to Tk. 9.99. However, a share valuing Tk. 10 can be reached at a price valuing TK 500 and more (paper wealth).¹³ However, this is just face value and not the paper wealth against each share. This enables the share to be sold in much higher price than its face value in the stock market. In this regard, proper corporate governance guideline can provide an effective protection and bring harmony between the face value and paper wealth of share. In this way, it can maintain check and balance between the super-fall and super rise of share price in secondary market. Besides, implementation of effective corporate governance in the issuer company can have a positive impact on the share price of the company.¹⁴ Proper implementation of corporate governance in the stock exchanges can also have positive result in the overall market performance.¹⁵

Sadly, the investors of the secondary market have little influence on share pricing in our country. The original company that issues the stock does not participate in any profits or losses resulting from these transactions because this company has no vested monetary interest. This is what confuses many people. Now, the question is why a company, or more specifically its management, cares about a stock's performance in the secondary market when this company has already received its money in the IPO. This question demands multiple complex answers. One answer is that secondary market ensures wide

¹³ To be noted that paper wealth is the price at which shares are sold / hiked in the market for trading and there is no bar under the law to what extent paper wealth can rise.

¹⁴ Dr Talal A Al-Kassar and Mostafa A Al-Nidawiy, 'The Role of Corporate Governance and its Impact on the Share Price of Industrial Corporations Listed on the Amman Stock' (2014) 2(6) *European Journal of Accounting Auditing and Finance Research* 124-144.

¹⁵ Ibid.

participation of all kind of investors from any corner irrespective of any direct link between the company and the investor. It helps companies to raise equity finance.

On the other hand, this market can be described as fraud and sham market as in fact, in secondary market there is uncontrolled trading and transfer of share which creates no direct link between the company/enterprises and the 3rd graded/multi graded investors in the real sense. In this connection, the puzzling concept of limited liabilities of companies and the complex theory of corporate personality are dichotomous. Theory and practice are not transparent for determining the liability of the actual perpetrator when general index in share market suffers massive fall; and liability goes in the air. A compact corporate governance guideline can help to minimize these complex problems because apart from the listed companies which issue shares for public trading, there are many factors which jointly function in the affairs of the company and share trading in the stock market. Similarly, stock exchanges play a vital role in implementing sustainable corporate governance in the market by directly monitoring the disclosure obligations along with other compliance responsibilities of the listed corporations.¹⁶

Amongst all the market regulators and players, the most important functions are dealt with by the market intermediaries (as discussed earlier) i.e. stock exchanges, securities houses, broker houses, banks/financial institutions, depository and clearing houses, etc. The issuer company issues shares and the investors buy and sell the shares amongst themselves through the market intermediaries.¹⁷ The companies have no participation in the loss and profit against share in the secondary market. All these are matters of the stock exchanges, beneficiary accounts, banks, broker house and of course, the BSEC. In carrying out this process, the stock exchanges and all other market intermediaries/operators play the vital role of implementation. Thus, all these regulators and implementing operators also play an

¹⁶ Hans Christiansen and Alissa Koldertsova, 'The Role of Stock Exchanges in Corporate Governance' (2009) *Organization for Economic Co-operation and Development (OECD)* 1-32. <<http://www.oecd.org/finance/financial-markets/43169104.pdf>> (25.08.2016).

¹⁷ The entire picture in brief is that the public limited companies need to be enlisted with any stock exchange in Bangladesh with the permission of BSEC and thereafter fulfilling all necessary conditions they can issue shares through Initial Public Offer (IPO) in the market for raising capital (equity finance) from the public through stock exchanges. People want to purchase shares in IPO need to open beneficiary account with the securities/broker house through bank account with any bank. People purchased shares in IPO become the primary shareholders in the company and money directly goes in the account of company through stock exchange. In this way the companies raise equity finance from the public openly. Thereafter, people can sell those in other intending purchasers and, once shares sold its become the subject-matter of secondary share market and since this very stage and for all the subsequent stages of trading, the money against the selling and buying of shares is deposited in the beneficiary account of the traders through stock exchanges, depository houses (bank) and securities houses (includes clearing and broker houses).

important role in ensuring corporate governance by maintaining transparency, fairness, perfect disclosure and complying with other obligations.¹⁸

In addition, there are other players who are directly and indirectly involved in the share market trading as there are several branches of trading in stock market. In this occasion, a very fair and balance trading is necessary for preventing the super-fall in stock market and also for preventing the fake traders; but the Bangladeshi stock market fails to ensure fair trading. In this regard, lack of effective and comprehensive corporate governance embracing all these issues in association with all the players of stock market is highly essential, as the co-existence, co-assistance and combined function of those things can assure consistent economic growth in a country. In order to assemble and ensure harmonized/balanced function amongst all those things, effective and comprehensive corporate governance guideline is vital. It is also necessary for sound and successful regulation of the stock market through transparency and for the protection of the rights of different kind of shareholders, investors, other stakeholders and the interest of directors also.

7.3. Laws of Bangladesh providing Corporate Governance in the Stock Market

Corporate governance basically depends on the domestic legislation, policy and conventional corporate practice. Domestic legislation determines the basic corporate practice in a country. Domestic legislation may take reference from foreign practices for developing a good shape of corporate governance practice but it almost always is the internal factors which determine the basic format of corporate governance practice. There are a lot of important attributes in shaping the domestic legislation of corporate governance. It may include domestic corporate laws, corporate ownership structure, the state of the economy, demand-supply-price in corporate trading, number of investors, economic growth, national income, national reserve fund, national savings in central bank, percentage of people depending on commerce and business, gross domestic product, the overall legal system, government policies, culture and history, availability of investors, number of bank, financial institution, stakeholders, corporation and traders, government capability, political scenario, law and order situation in a country, interest of small,

¹⁸ 'A role for market regulators and operators in advancing corporate transparency on sustainability' (2013) *Global Reporting Initiative* (Position Paper Version-1) 1-13.
<<https://www.globalreporting.org/resourcelibrary/Paper-Market-Regulators-and-Operators.pdf>> (23.08.2016).

medium, bigger and foreign investors, etc. Since these are numerous, it may not always be possible to lay down all provisions or guidelines for effective corporate governance in a single piece of legislation. Comprehensive corporate governance guidelines may be the combined effect of relevant laws, policies, conventional practices, court verdicts, etc.¹⁹

In Bangladesh, corporate governance guidelines are rooted in several places and those are guided by several factors; such as, company laws, the BSEC guidelines and notifications, rules framed by stock exchanges, banking laws, pressure from the buyers and sellers, participation of all kind of investors, dominant role of large investors, institutional capacity, overall investment in stock market, domestic cash flow, money fluctuation, inflation and liquidation, international economic condition, investment in business sector, participation of large, profitable and prospective public limited companies in stock market, nature of account (omnibus account and real account), role of Government, political condition, role of shadow stakeholders, etc. The reflection of these conditions is found in several legislations, guidelines and notifications in our country.

The Companies Act, 1994, the Bangladesh Bank Order, 1972, the Financial Institutions Act, 1993, the Bankruptcy Act, 1997 and the Banking Companies Act, 1991 provide a comparatively comprehensive outline of the formation, constitution, incorporation, documentation of company/bank/financial institutions. It also elucidates their management, regulation, company affairs, governing systems, rights, liabilities, shareholders, directors and other functional matters. The Securities and Exchange Ordinance, 1969, Securities and Exchange Commission Act, 1993 and other rules, regulations, notifications framed by the BSEC govern the behavior, function and affairs of the stock exchanges, the public limited companies listed with any stock exchange of Bangladesh, central depository systems, etc. The Bangladesh Bank also plays an important role in providing several regulatory guidelines to this effect. Altogether, they construe the code of corporate governance in Bangladesh. Along with these, the Corporate Governance Guidelines provided by the BSEC vide Notification Nos. SEC/CMRRCD/2006-158/Admin/02-08 dated 20.02.2006, SEC/CMRRCD/2006-158/134/Admin/44 dated

¹⁹ By now, internationally corporate governance as a distinct legal requirement for the regulation and governance of the relationship, affairs and conduct of the corporations with the management, directors, shareholders, investors, officials and others have got recognition. OECD Corporate Governance Principles, 2004 has already got universal recognition. Almost all countries have adopted the principles set by the OECD as corporate governance requirements as the basic principles along with other principles/requirements according to the domestic legal context of each country.

7.08.2012 and SEC/CMRRCD/2009-193/151/Admin dated 18.08.2013²⁰ are particularly relevant for the corporate governance of the listed companies with stock exchanges in Bangladesh.

How comprehensive and effective these guideline are in ensuring sound corporate practice in Bangladesh is still a question of controversy. However, it is felt that these legislations are not sufficiently adequate to ensure competitive, strong business market for all kind of investors in Bangladesh. For this reason, the stock market, repeatedly faces challenges with great fall down of share price and a large portion of liquid money just go missing from the market in a moment. Fluctuation is the common feature of money market but it must have a certain degree of consistency and protection which is missing in Bangladesh. Just because of it, millions of small investors come back from stock market with no gain and lose all their hopes and capitals, though initially some profit in terms of liquid money by short-term trading in stock market attracted them to invest more. In the year 2004, the Taskforce on Corporate Governance, convened and supported by Bangladesh Enterprise Institute proposed ‘The Code of Corporate Governance for Bangladesh (Principles and Guidelines for Best Practices in the Private Sector, Financial Institutions, State-Owned Enterprises and Non-Governmental Organizations)’ and the same has been institutionally adopted in the year of 2006 by the BSEC and finally in 2012.

Corporate Governance Guidelines by the BSEC

After a long legal inertia, in the mid of 2012, the BSEC published a Notification of Corporate Governance being No. SEC/CMRRCD/2006-158/134/Admin/44 dated 7.08.2012 setting out some conditions as to corporate governance for the listed companies with any stock exchanges of Bangladesh to be followed for issuing shares in stock market on ‘comply’²¹ basis. Though earlier a Notification was issued by the BSEC for corporate governance in the year of 2006 vide Notification No. SEC/CMRRCD/2006-158/Admin/02-08 dated 20.02.2006 that failed to provide a standard code. Subsequently,

²⁰ This Notification was issued by the BSEC providing some principles of corporate governance only for the listed companies.

²¹ This Notification provides that the listed companies are expected to abide by the provisions of this Notification on ‘comply’ basis. This is a sub-ordinate legislation enacted by the BSEC. Therefore, it is not coming from any primary source of law.

the aforesaid Notification 134²² came into effect repealing the said Notification dated 20.02.2006.

Thereafter, giving an immediate effect, the BSEC imposed further conditions to the consent already accorded by it, or to be accorded by it in future, to the issue of capital in Bangladesh, or to the public offer of securities for sale by the Notification No. SEC/CMRRCD/2009-193/151/Admin dated 18.08.2013 for providing Pre-Condition of Right Issue (Compliances of Corporate Governance Guidelines). The condition is that no issuer of a listed security shall issue right share, if the issuer of a listed security fails to comply with the Commission's Notification No. SEC/CMRRCD/2006-158/134/Admin/44 dated 7.08.2013 regarding Corporate Governance Guidelines (*henceforth referred to as "Notification 134"*). None of these Notifications clarify the consequence in case of failure to comply and whether the company will be delisted from the stock exchange.

This Notification provides some specific guidelines for corporate governance and it supersedes its earlier Notification No. SEC/CMRRCD/2006-158/Admin/02-08 dated 20.02.2006. Initially, though this Notification was made to be followed on 'comply' basis, it did not have a mandatory effect upon the issuer of shares since its date of enforcement to 18 August 2013. Now, by virtue of the aforesaid Notification dated 18.08.2013 it becomes binding upon the issuer of shares. The purpose of this Notification is stated as to 'enhance corporate governance in the interest of investors and the capital market' subject to certain further conditions, on 'comply' basis and this is applicable only for listed companies with any stock exchange of Bangladesh.²³

Let's draw a discussion in details examining the effectiveness and fallout of this Notification and also examine whether listed corporations comply or value it. One of the first limitations of this Notification is that it is made on 'comply' basis only for the listed

²² Notification of Corporate Governance being No. SEC/CMRRCD/2006-158/134/Admin/44 dated 7.08.2012 came into effect on 7.08.2012.

²³ The preamble of this Notification provides that "whereas, the Securities and Exchange Commission (herein after referred to as the "Commission") deems it fit that the consent already accorded by the Commission, or deemed to have been accorded by it, or to be accorded by it in future, to the issue of capital by the companies listed with any stock exchange in Bangladesh, shall be subject to certain further conditions, on 'comply' basis, in order to enhance corporate governance in the interest of investors and the capital market".

[Notification of Corporate Governance being No. SEC/CMRRCD/2006-158/134/Admin/44 dated 7.08.2012].

<<http://www.secbd.org/Notification%20on%20CG-07.8.12-Amended.pdf>> (12.08.2015).

companies with any stock exchange in Bangladesh. It creates disharmony in corporate governance of public companies because all public companies are not listed.

However, with the existing domain provided by the said enactment i.e. the Notification 134 adds some important conditions for the determination of the standard of corporate governance of listed companies in the interest of investors and the capital market, which are discussed below: -

a. Board's Size²⁴

The number of the board members of the company shall not be less than 5 (five) and more than 20 (twenty). However, in case of banks and non-banking financial institutions, insurance companies, and statutory bodies for which separate primary regulators like Bangladesh Bank, Insurance Development and Regulatory authority, etc. exist, the Boards of those companies shall be constituted as may be prescribed by such primary regulators in so far as those prescriptions are not inconsistent with the aforesaid condition. (*underlines provided*).

The underlined provisions, if challenged, may be declared *ultra-vires* because being a subordinate legislation it tends to supersede the primary legislations, and this is beyond the jurisdiction of the enacting authority of this Notification though the BSEC apparently has such jurisdiction under section 2CC of the Securities and Exchange Ordinance, 1969. There is a huge legal gap (discussed later) and it requires to be sorted out.

b. Independent Directors

This Notification emphasizes on the need to have 'independent directors'²⁵ in every listed corporation and at least 1/5 of the total number of directors in the company's board shall

²⁴ It means, under this Notification of size of the Board i.e. the number of members in the Board of a listed company has been fixed for.

²⁵ Clause 1.2(ii) of this Notification provides that for the purpose of this clause "independent director" means a director- a) who either does not hold any share in the company or holds less than one percent (1%) shares of the total paid-up shares of the company; b) who is not a sponsor of the company and is not connected with the company's any sponsor or director or shareholder who holds one percent (1%) or more shares of the total paid-up shares of the company on the basis of family relationship. His/her family members also should not hold above mentioned shares in the company: Provided that spouse, son, daughter, father, mother, brother, sister, son-in-law and daughter-in-law shall be considered as family members; c) who does not have any other relationship, whether pecuniary or otherwise, with the company or its subsidiary/associated companies; d) who is not a member, director or officer of any stock exchange; e) who is not a shareholder, director or officer of any member of stock exchange or an intermediary of the capital market; f) who is not a partner or an executive or was not a partner or an executive during the preceding 3 (three) years of the concerned company's statutory audit firm; g) who shall not be an independent director in more than 3 (three) listed companies; h) who has not been convicted by a court of competent jurisdiction as a defaulter in payment of

be the independent directors. Condition No. 1.2 of this Notification states that ‘all companies shall encourage effective representation of independent directors on their Board of Directors so that the Board, as a group, includes core competencies considered relevant in the context of each company’. The independent director(s) shall be appointed by the board of directors and approved by the shareholders in the Annual General Meeting (AGM). The post of independent director(s) cannot remain vacant for more than 90 days. The Board shall lay down a code of conduct of all Board members and annual compliance of the code is to be recorded. The qualifications of the independent directors are provided under this Notification,²⁶ but they are limited and below standard.

However, the vital issue of concern is that the number of independent directors is 1:5 which is quite disproportionate. There comes another question- whether an outsider (as director) can exercise equal rights and raise a strong voice against four others (four joint entrepreneurs). Further, the independent directors will be paid by the concerned company for attending the Board Meeting though there is no provision for paying so, and they have no reporting obligation about the affairs of the company before any independent/autonomous/higher managing authority, such as, relevant Ministry, the BSEC, and the Registrar of Joint Stock of companies and Firms (RJSC) etc.

Again, there is a major issue of concern- whether one person receiving interest (or capital of survival) from a particular corporation can disclose anything prejudicial to the interest of the Governors (directors/managerial authorities) of that corporation which gives him salary. There is another fundamental question- whether anyone can go against his own interest for the interest of others especially for the secondary market investors who are not known and not even connected in any way. This requires a holistic approach to answer. However, business corporations cannot be modeled holistic.

any loan to a bank or a Non-Bank Financial Institution (NBFI); i) who has not been convicted for a criminal offence involving moral turpitude.

[Notification of Corporate Governance being No. SEC/CMRRCD/2006-158/134/Admin/44 dated 7.08.2012].

²⁶ Clause 1.3 provides the qualification of Independent Director (ID) as (i) Independent Director shall be a knowledgeable individual with integrity who is able to ensure compliance with financial, regulatory and corporate laws and can make meaningful contribution to business; (ii) The person should be a Business Leader/Corporate Leader/Bureaucrat/University Teacher with Economics or Business Studies or Law background/Professionals like Chartered Accountants, Cost & Management Accountants, Chartered Secretaries. The independent director must have at least 12 (twelve) years of corporate management/professional experiences; (iii) In special cases the above qualifications may be relaxed subject to prior approval of the Commission.

[Notification of Corporate Governance being No. SEC/CMRRCD/2006-158/134/Admin/44 dated 7.08.2012].

Moreover, the independent directors are under no strict legal obligation to scrutinize the over-all affairs and functions of the companies. They are also under no strict obligation to prepare a neutral report, give neutral opinion, and submit honest report to any superior authority in order to secure the best interest of the investors and for ensuring fair dealing in the capital market. However, the preamble of this Notification brings attention to this very issue. Under these circumstances, it cannot reasonably be expected that the independent directors shall act independently and neutrally. They cannot protect the right of the general investors in the secondary market of listed corporations. These Rules leaves the corporations free of any liability if loss is suffered by the investors/shareholders in the secondary stock market.

c. Obligations upon Directors

Condition No. 1.5 of the Notification 134 imposes some obligations upon the directors to include some additional statements in the Report sent to the shareholders of the company with the earlier statements as provided under Section 184 of the Companies Act, 1994²⁷ and the Companies Rules, 2009. Condition No. 1.5 provides a comparatively detailed and rigorous standard for making the directors' report. Combined effect of Conditions No. 1.5 and Section 184 provides a satisfactory situation as they impose duties upon the directors to prepare and submit report to the shareholder containing the aforesaid statements. It enhances the disclosure obligation upon the directors and secures greater interest of the

²⁷ Section 184 of the Companies Act, 1994 provides that (1) There shall be attached to every balance sheet laid before a company in general meeting a report by its Board of Directors, with respect to-

- (a) the state of the company's affairs;
 - (b) the amount, if any, which the Board proposes to carry to any reserve in such balance sheet;
 - (c) the amount, if any, which the Board recommends should be paid by way of dividend;
 - (d) material changes and commitments, if any, affecting the financial position of the company which have occurred between the end of the financial year of the company to which the balance sheet related and the date of the report.
- (2) The Board's report shall, so far as is material for the appreciation of the state of company's affairs by its members, deal with any changes which have occurred during the financial years :-
- (a) in the nature of the company's business;
 - (b) in the company's subsidiaries or in the nature of the business carried on by them; and
 - (c) generally in the classes of business in which the company has an interest.
- (3) The Board shall also be bound to give the fullest information and explanations in its report aforesaid on every reservation, qualification or adverse remark contained in the auditor's report.
- (4) The Board report and any addendum thereto shall be signed by its Chairman if he is authorized in that behalf by the Board, and where he is not so authorized &, shall be signed by such number of director as are required to sign the balance sheet and the profit and loss account or the income and expenditure account, of the company by virtue of sub-section (1) and (2) of section 189.
- (5) If any person, being a director of a company, fails to take all reasonable steps to comply with the provision of sub-section
- (1) to (3) or being the chairman, signs the Boards report otherwise than in conformity with the provisions of sub-section (4), he shall, in respect of each offence, be liable to fine which may extend to five thousand taka.

shareholders. In this way, the shareholders come to know about more affairs of the companies and can be cautious about their future steps. It is not clear whether this obligation of reporting to the shareholder extends to the secondary shareholders who hold shares in the stock market. It is also not clear whether this reporting obligation is a separate obligation of reporting apart from the obligation of providing Annual Report in the Annual General Meeting (AGM) of the company.

However, it can be submitted with the Annual Report. This Notification does not clarify the kind of reporting obligation owed to the shareholders. It raises questions on whether shareholders can compel the directors to provide them with a clear report containing all these statements. There is a question again whether it again depends upon the mercy of the directors. This reporting obligation is only to the designated shareholders as described under Clause 1.5 (xxi) which amongst others excludes those shareholders having 10% interest in the company.²⁸

Further, in the secondary share market most of the investors as shareholders hold less than 10% shares. According to this Condition, the directors owe no obligation to disclose the aforesaid statements to the shareholders having less than 10% shares in total. This is again a disadvantage of the shareholders/stockholders in the secondary/repeated share market. The guidelines fail to prevent the bad practice and willful negligence of the managerial bodies i.e. directors of the company. Another deficiency is that, it does not provide the consequence of intentionally error, misleading and wrongly/*malafide* contained statement. The extent of liability of directors in case of intentionally misleading statement is not clarified by this Notification. It also fails to impose liability upon the directors if discrepancies are found in the statement showing much more assets of the company than its real assets.

Furthermore, it also lacks the mechanism to resolve the very fundamental issue arising out of the fact that, the directors tend to portray the company as highly profitable in order to

²⁸ Clause 1.5(xxi) provides that the pattern of shareholding shall be reported to disclose the aggregate number of shares (along with name wise details where stated below) held by:-

- a) Parent/Subsidiary/Associated Companies and other related parties (name wise details);
- b) Directors, Chief Executive Officer, Company Secretary, Chief Financial Officer, Head of Internal Audit and their spouses and minor children (name wise details);
- c) Executives;
- d) Shareholders holding ten percent (10%) or more voting interest in the company (name wise details).

[Notification of Corporate Governance being No. SEC/CMRRCD/2006-158/134/Admin/44 dated 7.08.2012].

attract more investment, whereas in reality, it is not. Having no scope of examination, the investors (including the existing shareholders) rely on the report and invest in the company which may lead to loss. And this loss is met with no compensation. Neither the company, nor the directors and managers of the company can be held responsible for this. Because, the law fails to identify that some duties and responsibilities need to be imposed upon the directors and managerial authorities of the company to this effect, breach of which would be a punishable offence.

The law also fails to assure fair disclosure of information and effective participation of shareholder in the management and affairs of the company because fair disclosure ensures effective participation. Additionally, it fails to ensure transparency and accountability. Transparency, accountability, fair disclosure of information and effective participation of shareholders assure fair trade and just business. Sadly, this area remains unaddressed by our law.

From a very off-putting sense, it is often acknowledged that, the concept of public issuing of shares in the stock market through IPO is to make the directors of company privileged and benefit-holders at the cost, capital and risk of the investors. Money from the share market may disappear/go missing for many reasons and the market crashes when huge fall in share price occurs. One very fundamental reason is the imbalance and continuous rise in price for a considerable period of time. Because, continuous and unnatural rising of share price for a long period of time will lead to a great fall in share price since it not only causes speculative share market bubble but also causes huge difference between the face value of share and paper wealth of share. This Notification fails to address this issue and vehemently fails to come up with any effective guideline in this regard.

However, other reasons for the huge difference between the face value²⁹ and paper wealth³⁰ of share can be addressed- a large number of omnibus accounts³¹, dominance of

²⁹ Face value of the shares means the par value or nominal value of share. In our country, at present par value of shares is fixed under the law at Tk. 10 as mentioned in earlier Chapter. It means theoretically, the share price par value cannot be less than the nominal value. Nobody can buy the share less than Tk. 10 and the company cannot sell share less than Tk. 10.

³⁰ Paper wealth of a share means wealth or asset corresponded with a share as measured by monetary value for the share, as reflected in the price of assets and properties of the company 's par share- how much money one share could be sold for.

³¹ An omnibus account is an account between two futures merchants (brokers). It involves the transaction of individual accounts that are combined in this type of account, allowing for easier management by the futures

big-size investors and lack of reserve capital system in stock market, corruption, legal abortiveness, insider trading, actual turnover and income of the company, etc. Example, “A”, a big company dominates the stock market capturing 40% investment of the investors. There are 3.5 lacs investors in secondary market. The face value of each share is of Tk. 10 but in the secondary market, each share is traded between Tk. 380 – Tk. 400. However, in fact, the turnover of “A” Company is very poor and the people do not know about it and the same has not been disclosed in the director’s report or Annual Report of the Company or stated in the Annual Report in a non-noticeable manner.

Additionally, the Company faces huge loss in business, fails to retain its existing consumers and investors or attract new consumers and investors. Consequently, the Company is burdened with a huge loan liability. Thereby, the Company faces huge loss and becomes profitless, asset-less and income-less. In such a situation, share price will definitely fall down. Share price may fall below the face value/original price i.e. less than Tk. 10 and investor will suffer terrible loss. In such case, this Notification is highly deficient in providing any effective guideline of corporate governance in the stock market dealing with the behavior of the listed companies and giving security to the investors.³²

However, the developed countries try to balance this situation through various policies, such as, reducing the gap of share price of companies in the market and their real assets, keeping reserve capital; maintaining consistency in share price, giving more protection to the shareholders, etc. In these cases, this Notification is in complete apathy of providing any effective guideline for corporate governance of listed companies in the stock market of Bangladesh. Several recommendations have already been made from many parties to amend the corporate governance guidelines, but no such positive attempts have been taken yet. It is pertinent to mention that now-a-days, the BSEC seems more proactive and

merchant. This protects the identities of the individual account holders, because the futures merchant transacts for them.

<<http://www.investopedia.com/terms/o/omnibusaccount.asp#ixzz4ff349X3P>> (21.08.2015).

³² The given scenario is just a single instance. There are other instances also. Huge difference between the face value and paper wealth of share may also occur when company goes into liquidation due to huge debt in the market or with the creditors, banks, financial institutions and it has to go for forceful liquidation/winding up either by the court or by law. It may also occur when company voluntarily goes into liquidation. Ultimately, who are possessing the share by purchasing the same each @ Tk. 380 – Tk. 400 will suffer huge loss since they have no knowledge about the real affairs of the company; and as there is no provision for suing the directors/management of the company for suffering loss in secondary share market, and also there is no provision for suing the stock exchanges who fail to assure secure investment; consequently such kind of ill suffering people go uncompensated and the perpetrators goes unpunished. No theory on this sensitive issue has been developed yet in our country.

sincere in implementing the corporate governance guidelines and these obligations have been adopted in several regulations and rules framed by the BSEC or stock exchanges after 2012, which is praiseworthy.

d. Internal Auditor

Along with the external/statutory Auditor as stated under Sections 210-221 of the Companies Act, 1994, the companies are now under an obligation to enunciate the internal audit system by appointing an Audit Committee as a sub-committee of the Board of Directors. This Committee shall assist the Board of Directors in ensuring that the financial statements reflect true and fair view of the state of affairs of the company and ensure a good monitoring system within the business. The Committee shall be responsible to the Board of Directors. The duties of the Audit Committee shall be clearly set forth in writing.³³ This is the strongest provision of this Notification.

Without reiterating the roles of the Auditor, some basic points of deficiencies in this provision needs to be examined. For example, internal Auditors will be paid by the concerned company and the Auditors will act as a sub-committee of the Board of Directors of the company. However, the Audit Committee shall have no reporting obligation about the affairs of the company before any independent/autonomous/higher managing authority, such as, the Ministry, the BSEC, the RJSC, etc. The same questions need to be asked to justify the neutrality, fairness and independence of the Independent Director of the company. As stated earlier, every listed company under these Guidelines is under an obligation to appoint independent directors. The problem is, an independent

³³ Clause 3.3 described the role of Audit Committee as role of audit committee shall include the following:-

- (i) Oversee the financial reporting process.
 - (ii) Monitor choice of accounting policies and principles.
 - (iii) Monitor Internal Control Risk management process.
 - (iv) Oversee hiring and performance of external auditors.
 - (v) Review along with the management, the annual financial statements before submission to the board for approval.
 - (vi) Review along with the management, the quarterly and half yearly financial statements before submission to the board for approval.
 - (vii) Review the adequacy of internal audit function.
 - (viii) Review statement of significant related party transactions submitted by the management.
 - (ix) Review Management Letters/ Letter of Internal Control weakness issued by statutory auditors.
 - (x) When money is raised through Initial Public Offering (IPO)/Repeat Public Offering (RPO)/Rights Issue the company shall disclose to the Audit Committee about the uses/applications of funds by major category (capital expenditure, sales and marketing expenses, working capital, etc), on a quarterly basis, as a part of their quarterly declaration of financial results. Further, on an annual basis, the company shall prepare a statement of funds utilized for the purposes other than those stated in the offer document/prospectus.
- [Notification of Corporate Governance being No. SEC/CMRRCD/2006-158/134/Admin/44 dated 7.08.2012].

director will be remunerated by the company; it cannot reasonably be expected that a person receiving interest (or capital of survivorship) from a particular corporation shall disclose anything prejudicial to the interest of the governors i.e. directors and management of that company.

e. Subsidiaries³⁴

This Notification provides additional conditions relating to corporate governance of subsidiary companies as set out by other legislations earlier. It provides that the provisions relating to the composition of the Board of Directors of the holding company shall be made applicable to the composition of the Board of Directors of the subsidiary company and at least one independent director of the holding company will be the director of the subsidiary company. It further provides that minutes of the subsidiary company shall be placed before the holding company who will state in its minutes that it has reviewed the minutes of subsidiary company and the audit company of holding company will audit the account of the subsidiary company. The major fallouts of this provision are that it fails to-

- (i) impose any responsibility upon the holding/parent company because of the default of the subsidiary company,
- (ii) mark the core point of governing nexus between the holding company and the subsidiary company,
- (iii) prevent the unfair governance and illegal trading carried out by the holding company through subsidiary company,
- (iv) distribute the responsibility in case of liquidation of subsidiary company by the holding company,
- (v) apportion the loss and profit account of holding company and subsidiary company without piercing the traditional doctrine of each company with distinctive personality, and
- (iv) determine the role of holding company and subsidiary company in the stock market under the same fame and name.

³⁴ Notification of Corporate Governance being No. SEC/CMRRCD/2006-158/134/Admin/44 dated 7.08.2012 c 5.

f. CEO and CFO³⁵

This notification mandates the listed companies to have a CEO³⁶ and a CFO³⁷ who shall certify to the Board that they have reviewed the financial statements for the year to the best of their knowledge and belief. Again, referring to the same example as above where “A”, a big company dominates the stock market capturing 40% investment of the investors, let’s think that there are 3.5 lacs investors in secondary market. The face value of each share is TK 100 but in the secondary market each share is traded between Tk. 380 – Tk. 400. But, in fact, the turnover of “A” Company is very poor and the people do not know about it and the same has not been disclosed in the director’s report, financial statement or Annual Report of the Company.

CFO/CEO/Internal/External audit/Company Secretary/Company Management prepare the Audit Report and Financial Statement of a Company and certify those statements. Therefore, the CFO/CEO/Internal/External audit/Company Secretary/Company Management ought to bear responsibility for any kind of misleading, wrong and incorrect information in those important documents in the company but the law fails to impose any kind of responsibility upon them. This is a part of corporate governance but not effective corporate governance because it fails to ensure accountability, answerability and liability upon CFO/CEO/Internal/External audit/Company Secretary/Company Management. In this way, this Notification fails to cover many important aspects which are necessary for ensuring effective corporate governance.

g. Reporting and Compliance of Corporate Governance³⁸

This Notification emphasizes that every listed company ‘shall obtain a certificate from a practicing Professional Accountant/Secretary (Chartered Accountant/Cost and Management Accountant/Chartered Secretary) regarding compliance of condition of Corporate Governance Guidelines of the Commission and shall send the same to the shareholders along with the Annual Report on a yearly basis.’ To this effect, this Notification also provides a format which the directors of the company shall use to state in

³⁵ Ibid c 6.

³⁶ Chief Executive Officer.

³⁷ Chief Financial Officer.

³⁸ Notification of Corporate Governance being No. SEC/CMRRCD/2006-158/134/Admin/44 dated 7.08.2012 c 7.

the director's report whether the companies has complied with the conditions of this Notification.

7.4. Critical Analysis of the Corporate Governance Guidelines by the BSEC

To determine the efficacy and practical compliance of this Notification it is necessary to examine the binding nature of this Notification first. The binding nature of this Notification has already been discussed precisely. However, its binding nature can be analyzed under four fold –

Firstly, in the very beginning of this Notification i.e. in the Preamble its binding nature is imposed as 'comply' basis subject to further conditions. However, nowhere in the Notification the word 'comply' is either defined or explained.

Secondly, in several places for several conditions of this Notification, the complying effect is described with the word 'may/can' and under the law of interpretation, these words always have a lesser binding effect.

Thirdly, the Notification No. SEC/CMRRCD/2009-193/151/Admin dated 18.08.2013 has come into effect only for giving this Notification immediate binding effect (mandatory effect) by using the word 'shall' in all purpose in the tune of 'no issuer of a listed security shall issue right share, if the issuer of a listed security fails to comply with the Commission's Notification No. SEC/CMRRCD/2006-158/134/Admin/44 dated 7.08.2013 regarding Corporate Governance Guidelines' since 18 August, 2013. Positive interpretation would lead to avoid any confusion between the aforesaid 'imposition on comply basis' as stated under first head and also to have a harmonious interpretation concluding that both the binding nature as stated under first and third heads emphasis on the binding nature of this Notification.³⁹

Fourthly, this is a mere Notification and it is not a primary statute and further, some of its provisions are in conflict with the primary laws. It cannot supersede any provision of primary statutes. It cannot even supersede any provision of secondary statutes which are in higher recognition that it (e.g. Order, Rules, and Regulations). Therefore, it will automatically lose its binding effect when challenged.

³⁹ Though harmonious interpretation advances arguments in favor of having binding nature of this Notification, till the same has not been passed as Act or Rules or Regulations, and violation of which has not been met with punishment, it cannot be said as binding strictly in the eye of law.

Though, Section 2CC⁴⁰ of the Securities and Exchange Ordinance, 1969 specifically provides superseding jurisdiction to the BSEC, it still remains controversial because this provision is not clear. The clear sense of this provision denotes that the BSEC can impose any conditions superseding all other primary laws. If so, this is against the basic norm of hierarchy of laws, against democracy and rule of law as well. This provision was challenged earlier as discussed above in Chapter 4.

This provision, in one hand, makes the BSEC more powerful and at the same time makes it more arbitrary, whimsical and unregulated. In no case is it acceptable that in a democratic country with a Constitution for the BSEC's decision to supersede laws including the enactments made by the Parliament. This provision requires a judicial clarification. According to the best knowledge and information till date, this provision is neither challenged nor questioned yet. But it should be, at least to merge the legal loophole and to get a legal solution.

However, the original Ordinance did not contain any such provision. This provision was included in the year 1997 by the Securities and Exchange (Amendment) Act (Act No. VI of 1997) under Section 2CC. It is highly pertinent to mention here that this provision was hastily added after the great share market scam of 1996 in failure of erstwhile share management laws and only for providing a ready-made solution.⁴¹

In Bangladesh, the BSEC is appointed as the ultimate authority and it was expected that the BSEC would work so efficiently and diligently that in future nothing unexpected would occur like 1996 share market scam. In fact, the BSEC is made enable to control, manage, frame regulation, govern and direct the overall functions of stock exchanges, depositors, brokers, broker houses, trading houses, companies, banks, financial institutions, investors and all other personals relating to the activities of stock and other securities market. However, it has failed to solve any problem and the recent horrible

⁴⁰ Section 2CC reads out – ‘Notwithstanding anything contained in the Companies Act, 1994 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’.

⁴¹ Before 1997 the BSEC was not empowered to take independent decision by enacting regulations and notifications giving those superlative effects. This provision has empowered the BSEC to take any decision and to formulate notification giving superior effect much more than anything including primary laws and secondary laws framed by any other authority including Parliament and the other Ministries. In this way BSEC has been entrusted with more power by Section 2CC than it was entrusted earlier.

share market scam of 2011 is a live example of it. Some of the BSEC personnel have become corrupted and are held as contributories to the scam. As a result, some of the members of the BSEC, including the then Chairman, Ziaul Haque were suspended permanently. This leads to highlight the major shortcomings of this Notification.

The biggest failure of this Notification is that it provides corporate governance guidelines of listed companies with any stock exchanges of Bangladesh but no guideline is provided for the corporate governance of the stock exchanges. An effective and compact corporate governance guideline for the listed companies certainly requires corporate governance guidelines for the stock exchanges and the BSEC. But, this Notification fundamentally fails to provide any guideline either for the BSEC or for stock exchanges dealing with trade and business of shares in secondary share market. It fails to depict a cumulative picture of the relationship between listed companies and the stock exchanges in share trading in stock market. It also fails to state the role of the BSEC and other managerial authorities in order to ensure fair corporate practice of listed companies.

As discussed earlier, effective corporate governance guidelines depends on many factors. And for ensuring sound, good, viable, transparent and stable practice in stock market it is more important to cover these issues under a comprehensive code of corporate governance guidelines. It may not be possible to cover all the issues as there are other laws and policies providing corporate governance guidelines but some basic issues need to be covered. Amongst those, corporate governance guidelines for the stock exchanges, the BSEC, listed companies, broker houses, and depository institutions are particularly important to be covered by a code of corporate governance of listed companies especially. Under this Notification, the BSEC owes no duty of monitoring, inspecting, questioning and examining the fair and accountable corporate governance practice of listed companies. It provides no mandatory obligation upon the BSEC itself. Being the ultimate supervisory authority of all listed companies of Bangladesh, BSEC owes no mandatory duty and has no accountability. The BSEC has no responsibility to be accountable to anyone, even before the judiciary, for its failure to ensure effective corporate governance and fair trading of listed companies and stock exchanges in the share and securities markets.⁴²

⁴² For this reason, the Corporate Governance Guidelines framed by the BSEC is called non-comprehensive, in-completed and outdated. Though there is a recent buzz that the BSEC has already taken steps for

Moreover, this Notification does not state anything about the role of judiciary or other law enforcing agencies in enforcing corporate governance guidelines effectively by the listed companies and the stock exchanges. Is it so that law enforcing agencies and judiciary has nothing to do with the enforcement of corporate governance guidelines by the companies and stock exchanges!!! It can be argued that all provisions need not be written down in a specific code of law because the Judiciary can also exercise some kinds of inherent power *suo moto* where law is silent. But it needs to remember that scope of *suo moto* power of Judiciary is very serious and limited. In Bangladesh, enforcement of any law depends on when aggrieved person moves before the court seeking relief. When there is no law, judiciary may not exercise its inherent power. Therefore, the BSEC need to be more responsible in determining its own duty, responsibility and accountability. So, this Notification cannot be commended as it cannot provide effective corporate governance guidelines for the listed companies of Bangladesh (*emphasis added*).

Despite all of the controversies, this Notification is good amongst the worst. Now-a-days, almost all the recent Acts, Rules and Regulations relating to the securities laws are seen to incorporate a provision mandating the issuer and other concerned to observe and comply with the corporate governance guidelines framed by the BSEC.⁴³ This indicates that the law-makers are now more conscious about implementing the corporate governance guidelines. A study amongst 30 listed companies listed with Chittagong Stock Exchange shows that only 14 companies have an independent director, 80% have appointed a CFO, Head of Internal Audit and Company Secretary, 67% did have an Audit Committee as a sub-committee of the Board of Directors, no company gave proper information regarding external/statutory audit and directors of 21% company comply with their obligation of reporting.⁴⁴

The aforesaid report provides a satisfactory condition of corporations regarding the compliance of said rules. It clearly depicts there are still many companies who have failed

formulating a code of comprehensive corporate governance guidelines, no such codification has been formulated yet.

⁴³ For example the Bangladesh Securities and Exchange Commission (Public Issue) Rules, 2015, the Bangladesh Securities and Exchange Commission (Alternative Investment) Rules, 2015, the Bangladesh Securities and Exchange Commission (Qualified Investor Offer by Small Capital Companies) Rules, 2016, recent amendment to the Securities and Exchange Rules, 1987 and some others have incorporated provisions for complying with the provisions of the Corporate Governance Guidelines prescribed by the BSEC.

⁴⁴ Abdullah Golam, Mohammad Nayeem and Sabrina Hossain, *Corporate Governance Compliance: A Study of Listed Companies based on CSE-30 Index* (Dhaka: Institute of Cost and Management Account of Bangladesh (ICMAB), 2008) 13-20.

to fulfill the conditions of this guidelines but are enlisted with the stock market and openly trading in market. It corroborates the earlier observation that absence of the penal provision gives an opportunity to evade/avoid the law. As stated earlier, none of these Notifications (Notification 134 and Notification 151) clarifies the consequences of failure to comply and whether the company shall be This is one of the major shortcomings of this Notification.

As observed, the aforesaid corporate governance guidelines of the BSEC fail-

- (i) to ensure transparency, clarity of the affairs, functions and internal activities of the board of directors of the companies to the general investors and shareholder in secondary stock market;
- (ii) to ensure transparency and accountability of the shadow directors and fails to disclose the ghosts of share market who silently make money under the veil;
- (iii) to provide reasonable security to catch the thieves of stock market and fails to ensure the reasonable consistence between the value of company's real assets and properties and share price in secondary market;
- (iv) to balance between heavy fall and heavy rise of the share price;
- (v) to restore the investor's confidence;⁴⁵
- (vi) most vehemently, to frame a compact and effective corporate governance regulations for the stock market embracing deep issues, core instincts, major contributories, collaborative factors and other supplementary essentials of all the branches relating to corporate governance of the stock market and the listed companies;
- (vii) and also many other things including to make the public more aware and cautious before investment about stock market business, risk and gain in this business and to collect proper and adequate information about the trading companies and other players in the market.

⁴⁵ It fails to restore and enhance the confidence of the investors after 2010-2011 massive scam in stock market. It fails to identify the share market perpetrators and attribute proper responsibility upon them to redress the unreasonable loss suffer. It provides no provision by which the market manipulators can be called upon to answer their malpractice.

Another major limitation of this Notification is that it fails to provide any consequential effect in failure of compliance with this Notification. Imposition of liability, fine, penalty or other kind of charge and legal accountability ensures greater binding effect. However, this Notification contains no liability upon the listed companies if they do not comply with it, which seems to reduce its value and binding effect. It does not even empower the BSEC to take action against the listed companies who fail to comply with the provisions of this Notification. Further, it does not say anything about the authority of the BSEC in delisting any listed company from any stock exchange who would fail to carry out the obligations of this Notification.

These are the central areas of worries about the contemporary corporate governance of stock market in Bangladesh. Strict compliance of this Notification may ensure good corporate governance of listed companies in the stock market but only to some extent, and this Notification requires amendment. Although it does not ensure comprehensive governance yet, it is still a promising start. It signifies that we are developing and progressing. However, it needs to be noted that the Notification 134 is given binding effect by the Notification 151.⁴⁶ Therefore, all the listed corporations are under a strict obligation to comply with the conditions imposed by this Notification, and the BSEC being the ultimate supervisory and regulatory of the capital market bears the primary responsibility of implementing the corporate governance guidelines. However, the BSEC, at its own discretion, may exempt any issuer or market intermediary from complying with the corporate governance guidelines in part or full for a specific period of time.

Despite all of its limitations, it is the responsibility of the BSEC itself to ensure the implementation of this Notification and to press the listed corporations to comply with the

⁴⁶ In order to give effect of the Corporate Governance Guidelines by the aforesaid Notification dated 134, the BSEC published the aforesaid Notification 151 on 18.08.2013 stating that “whereas, the Bangladesh Securities and Exchange Commission deems it fit that the consent already accorded by the Commission, or to be accorded by it in future, or to the issue of capital by the companies listed with any stock exchange in Bangladesh, should be subject to certain further condition in the interest of investors and the capital market; Now, therefore, in exercise of the power conferred by section 2CC of the Securities and Exchange Ordinance, 1969 (XVII of 1969), the Bangladesh Securities and Exchange Commission hereby imposes the following further condition to the consent already accorded by it, or to be accorded by it in future, to the issue of capital in Bangladesh, or to the public offer of securities for same, namely:-

No issuer of a listed security shall issue right shares, if the issuer of a listed security fails to comply with the Commission’s Notification No. SEC/CMRRC/2006-158/134/Admin/44 dated 07 August 2012 regarding Corporate Governance Guidelines.

This shall have the immediate effect.”

conditions provided in this Notification. However, stakeholders, general investors and other persons of interest-concern can play a vital role in assuring the good governance of the listed companies in strict compliance with the existing provisions of law and also with the international standard.

7.5. Reasons Why Further Effective Corporate Governance is Necessary in the Stock Market of Bangladesh

The share market in Bangladesh appears to be under-developed, weak, unregulated, and unsafe for the investors and the existing corporate governance guidelines fail to ensure effective protection to this effect. The areas of concern can be addressed by emphasizing comprehensive corporate governance policies for overcoming the existing problems. As stated above, lack of provisions for maintaining reserve fund by the listed companies and the stock exchanges for the investors poses a great threat to the investors. In addition, major weaknesses may be attributed to different factors, such as, lack of legal and scientific research on share market, lack of laws and policies assuring fair trading in stock exchanges, lack of laws assuring fair and sound corporate behavior of the stock exchanges and other market intermediaries, the BSEC and other major players in the stock market. The weaknesses may also arise due to managerial fallout to prevent the continuous share price rising and sudden loss.

The lack of a monitoring system for identifying the fake beneficiary account and real account, or the absence of preventing mechanism of omnibus account and subsidiary trading, and the lack of legal provisions for holding the BSEC and the stock exchanges responsible in their default and willful negligence and malicious intention are some glaring shortcomings. Further, the lack of regulatory and monitoring body to prevent the fraud and loss-suffered companies from trading in stock market, or regulatory failure to prevent unsecured investors and to prevent internal trading of shares are also in the list of weaknesses..⁴⁷ There are also weaknesses due to the lack of regulatory authority to sue for compensation on behalf of investors in the absence of shareholders class action, lack of

⁴⁷ Other failures may include regulatory failure to distribute majority percentage of shares in secondary market and to prevent the insider investor from retaining majority percentage of shares, failure to remove corruption and ghosts of securities market, lack of experienced and well-trained people in the composition of securities regulators.

legal authority to redress the loss suffered investors, inactive court, lack of authority to regulate auditors and lawyers who play significant roles in preparing defective prospectuses for public consumption.

Apart from all these errors, the emergence of the securities market in Bangladesh appears to be a “natural outcome” of conditions as a result of the economic reform and open-door policy. It is to be admitted that the share market has a very lucrative prospect in Bangladesh for all kinds of investors including foreign investors. To uphold the faith of investors in stock market, to maintain the balance between fall and rise of share price, to ensure transparency of the affairs and functions of the board of directors of the companies to the general investors and shareholder in secondary stock market, it is essential to guarantee a viable corporate governance. Good corporate governance helps to bridge the gap between the interest of those that run a company, and the shareholders, and helps to increase investor confidence and lower the cost of capital for the company.⁴⁸

Good corporate governance also helps to ensure that a company honors its legal commitments, and forms value-creating relations with stakeholders including employees and creditors.⁴⁹ In a broader sense, good corporate governance ensures sustainable development of a company within the framework of law by gaining trust and confidence of the majority shareholders, minority shareholders, investors and other interested concern in the company.

It is also necessary to ensure transparency and accountability of the shadow directors; to disclose the ghosts of share market; to provide reasonable security to catch the thieves of stock market. Additionally, to ensure the reasonable consistence between the value of company’s real assets and properties and share price in secondary market; to balance between super-fall and super-rise of the share price; to bring the investor’s confidence back; to identify the share market perpetrators and attribute proper responsibility upon them to redress the loss suffer unreasonably, the assurance of fair, proper and effective

⁴⁸ Fianna Jesover and Grant Kirkpatrick, ‘The Revised OECD Principles of Corporate Governance and Their Relevance to Non-OECD Countries’ 1-31.

<<https://www.oecd.org/corporate/ca/corporategovernanceprinciples/33977036.pdf>> (30.08.2016).

⁴⁹ Ibid.

corporate governance both regulated by appropriate laws and institutions is very inevitable.

7.6. Concluding Remarks

As observed, the stock market has become an integral part in the national economy of Bangladesh and listed companies are the vital players in the stock market. Cumulative practice of stock exchanges and listed companies requires effective corporate governance guidelines for fair trading in the stock market and security of the investors. In Bangladesh, corporate governance guidelines are embedded in several legislations, such as, the Companies Act, 1994, the Bangladesh Bank Order, 1972, the Financial Institutions Act, 1993, the Bankruptcy Act, 1997, the Banking Companies Act, 1991, the Securities and Exchange Ordinance, 1969, the Securities and Exchange Commission Act, 1993 and other rules, regulations, notifications framed by the BSEC, the Bangladesh Bank, the Ministry and the stock Exchanges. Amongst all, the viability of the Corporate Governance Guidelines provided by the BSEC for the listed companies vides Notification Nos. SEC/CMRRCD/2006-158/Admin/02-08 dated 20.02.2006, SEC/CMRRCD/2006-158/134/Admin/44 dated 7.08.2012 and SEC/CMRRCD/2009-193/151/Admin dated 18.08.2013 have been analyzed above.

It is examined that the said Notification fundamentally fails to assure fair corporate practice of listed companies and it fails to provide any corporate guidelines for the stock exchanges and the BSEC in relation to the trading of securities/stock of listed companies in share market. Justifying the viability of existing legal framework of the corporate governance guidelines of the listed companies with any stock exchange of Bangladesh, it can be concluded that Bangladesh has yet to work out a code containing comprehensive, proper, fair and effective corporate governance guidelines for the listed companies and the stock exchanges. This is one structural change that needs to be made and made soon.

Chapter 8

Public Issue of Shares and Investors' Protection: Determining Efficacy and Fallout of the Existing Legal Framework

8.1: Introduction

Investors in stock market are attracted to the shares and the benefits attached to the shares. It is the investors who are of ultimate importance for the regulators in the stock market. In secondary market, it is a business amongst the investors themselves on both sides. Stocks/securities are the subject-matter of the business and market intermediaries play the most vital role in effecting this business. On this juxtaposition, legal protections are highly required to ensure fairness in this business. Though all the aforesaid legal attempts have been taken with a view to protect the interest of the investors, there are some legal provisions which are directly related to the issue of protecting interest by the investors. Legal protections can take direct or indirect contour.¹ The direct provisions not only define the rights of the investors but also show the pathway of enforcing their legal rights. Though most of the relevant securities laws have already been discussed, this Chapter analyzes the efficacy and fallout of those provisions.

In order to analyze the provisions protecting the interest of investors, it is necessary to know how the investors contribute on raising the equity capital or debt capital by investing into the stocks and debentures of the issuer. In investing into the shares, there are several protections given to the investors. To what extent those protections are comprehensive and effective is the issue examined throughout this thesis. Before analyzing and examining the particular provisions protecting the rights of the investors, let's have a view of the perspectives of two most controversial stock market crash events that occurred in 1996 and 2010-2011.

¹ SM Solaiman observed that "investor protection by securities can be divided into two: indirect and direct protections. The former refers to empowering the investors to protect themselves, whilst the latter concerns protection by regulator through making, administering and enforcing the law. Indirect protection can be provided through educating investors by regulators about fundamentals of securities investment. Whilst direct protection requires making appropriate law and policy, and applying and enforcing the law effectively against any relevant breach of law."

[S M Solaiman, 'Investor protection by securities regulators in the primary share markets in Australia and Bangladesh: a comparison and contrast' (2009) 12(4) *Journal of Financial Crime* 360].

8.2. Perspectives of 1996 Stock Market Crash

The picture of the country's capital market in 1996 was completely different from that of today. Paper shares were sold through stock exchanges by dealers/brokers in and outside of the Dhaka Stock Exchange (DSE). Corporation and the purchasers could sell and purchase shares in front of the DSE. So, it was difficult for the investors to differentiate between fake share and original shares. It was better known as the 'Kerb' market.

The fourth quarter of the year 1996 witnessed feverish activities, mainly in the DSE and the comparatively smaller the CSE. In September, October and the first half of November, new records were made every day on the bourses as share prices soared. Up-to 300,000 first-time buyers joined in the bonanza, driving the shares of a total of 210 listed companies to an all-time-high on 16 November, 1996. At the time, the all-share index of the DSE reached 3,627 points, increasing from around 1,000 in June of the same year. By November 4, market capitalization had reached an unsustainable \$6 billion, equivalent to some 20 per cent of the country's GDP. The government began to cool down the market by selling off state-owned enterprises. It is pertinent to mention that from 1991 to the end of 1995, DGEN price index gained 139.3% and reached 834 points. But in 1996, the market experienced a dramatic change and pushed the price index up by 337%. DGEN Index recorded lofty growth from July and stood at 3648.7 points or by 280.5% on 5.11.1996. The CSE also experienced the same change and the price increased by 258%. CSE index increased from 409 to 1157 points in 1996 within a period of one year.

Finally, the abnormal rise of share prices started to fall and Bangladesh stock market experienced its first crash of the history. The index lost over 233 points on 6 November 1996, which was obvious since sudden unsustainable uprising often lead to sudden fall. After the bubble burst, DGEN index dropped to its lowest point and stood at 957 in April 1997. It stood at around the same point where it was 10 months before and DSE General Price index lost almost 70 percent from its highest point of November 1996. Then index continued to decrease for next 7 years until April 2004. During this long period, the DGEN Index seldom crossed 1000 points of the index.²

² Ahsan H. Mansur, 'Is the Bull Market Sustainable?', *The Daily Star* (online), Vol. 3, Issue 4, April 2010 <<http://www.thedailystar.net/forum/2010/april/bull.htm>> (22.06.2015).

In late December, the Bangladesh Bank announced that Taka 2 billion (\$47 million) would be available to the state-run Investment Corporation of Bangladesh to buy shares and give some support to the market, but the market crashed despite these preventative measures when in January 1997 the market moved further. At the market's peak, shares were traded at an average of over 80 times of the relevant earnings. One popular stock, Confidence Cement, sold for 1,060 times of 1996's earnings, after a 1,400 percent increase in its price. Trading data shows that during this period, market capitalization went up by 265 percent and the average daily turnover increased by over 1000 percent. As all bull runs eventually end in tears, the bubble eventually burst: stock market prices dropped by almost 70 percent in the end of April 1997 from the peak in November 16, 1996. Countless investors lost their lifetime savings in the blink of an eye.

Some Responsible Causes for 1996 Share Market Scam

There are several articles and reports identifying and analyzing the causes responsible for 1996 share market scam. Without re-writing them, some major causes are narrowly reproduced below for better understanding the other parts of this Chapter-

1. Trading of unauthorized traders, brokers and securities dealers within and outside of the DSE and the CSE which was popularly known as the Kerb market;³
2. Failure of the then SEC (now BSEC) and the Government to control the unauthorized trading of shares;
3. Failure of the SEC to prevent the fake traders from trading fake shares in market and to prevent the unlisted companies from trading in share market;
4. Failure of SEC to prevent some major companies in trading shares through their sister concerns companies to increase and decrease the share price within a short period of time;

³ Influence of Kerb market at that time was really scary and terrifying as Afroz rightly pointed out in his Article with the Daily Star that 'the delivery versus payment (DVP) system of trading used to allow buyer-seller to settle their transactions between them without stock exchange participation. Many brokers/dealers used it as a tool to show fake trading to increase demand of share from the general investor's side. According to the Bangladesh Bank analysis that there was an unauthorized Kerb market consisting of over 25,000 investors outside the stock exchange where securities were traded at a very high price. Moreover, SEC could not handle the crisis for its defective infrastructure. Weak regulations and surveillances could not monitor market manipulators and market intermediaries. Even information inefficiency, artificial financial statements certified by chartered accountants, false information and rumor were other important factors that overheated the market and burst the bubble.

[B T Afroz, 'Index crash of 1996: A case of regulatory failure', *The Daily Star* (online), 9 April 2012. <<http://www.thedailystar.net/law/2006/10/01/fmr.htm>> (22.09.2016)].

5. Failure to control the unusual rising of share price;
6. Lack of knowledge of the general investors;
7. Un-projected and unwise investment in shares by the general investors;
8. Failure to prevent sudden and unauthorized foreign investment;
9. Failure to maintain secrecy regarding share trade and share valuation in market from the perpetrators;
10. Lack of regulatory mechanism, goodwill and accountability of management.

8.3. Perspectives of 2010-2011 Stock Market Crash

It has been rightly stated by Bhuiyan that 5th December 2010 is the last glorious day of the year for the investors of Bangladesh stock market. On this day, the DSE General Index (DGEN) gained its all-time highest 8,918.51 point and broke all old records of DSE turnover by Taka 32.50 billion.⁴ But, soon after that massive crash caused in 2010-2011 when the DSE lost 660 points (9.25 per cent) resulting daily in a loss of about 6.7 per cent in just one hour. The CSE also met a similar fate.

19th December 2010 was a historical day of the financial year 2010-11 in Bangladesh stock market. On this day, the DSE witnessed its biggest one day fall in 55 years history until the date by losing 551.76 points or 6.71 percent. The losing index was even higher than 284.78 points or 3.32 percent of 12th December 2010. Prices started to nose dive in an hour after the trading started and about 200 points were wiped off. In the middle of the session, it recovered little but ended the session at 7654 point. Basically, market crashed on three very particular dates. One is on 19 December 2010, after which the market continued to rise up again; but finally market crashed with disgraceful and momentous loss on 10th and 20th January 2011.

Aftermath Reactions and Attempts

Scandalous crash caused rowdy protests and violence among the general investors. They started observing strikes, closing the stock exchanges, blocking roads, firing in the roads etc. Burning crowd demanded the resignation of the Chairman of the BSEC and other

⁴Kausar Bhuiyan, 'Small investors' anger may turn into big issue!', *Bangladesh Inside* (online), 21 December 2010.

<<http://bangladeshinside.com/business-en/small-investors-anger-may-turn-into-big-issue-63>> (25.05.2016).

involved officials of the BSEC, the DSE, the CSE and some other authorities. They urged for the identification and punishment of the culprits at the soonest. To console the raging crowd, the Government immediately suspended 51 officials of the BSEC, the DSE and the CSE including erstwhile Chairman, Ziaul Khandoker. The Government kept stock exchanges closed for a few days. Furthermore, the Government formed a Probe Committee consisting of one Chairman, Khondoker Ibrahim Khaled, Chairman of Bangladesh Krishi Bank and ex-Deputy Governor of Bangladesh Bank along with two members, Dr. Toufique Ahmed Chowdhury and Md. Abdul Bari. They produced a detailed report containing 296 pages, out of which main report contained in 147 pages and annexures in 149 pages.⁵

During the two-month investigation, the Committee spoke to over 500 traders including all members of the Dhaka and the Chittagong Stock Exchanges, and also journalists, professors and researchers. They analyzed the whole scenario and perspective of 2010-2011 share market crash and scam in the report. Initially, the Report addressed 100 people as involved in the scam, but later with consultation with the Government their names were deleted from the Report as stated earlier.

However, Mr. Khaled, in an exclusive interview with a local news agency revealed that around 10-15 politicians and businessmen seized Tk. 150 billion from the country's investors in the last four months, crashing the stock market to a new low. He said, "One lawmaker of the then ruling Awamileague was responsible for the '96 share-market scam, but this year's crisis was created by other politicians and businessmen, including a BNP leader. However, I do not want to name anybody's name."⁶

In answer to a question as to how such a huge amount of money vanished from the stock market as the tiny investors had done well with huge investments since the beginning of the upturn in the stock market index, he said, "I think this huge amount of money simply poured into the pockets of a group of people who reaped a windfall out of a freefall in share prices over the last few days."⁷ He also added that in creating the crisis they looted

⁵ The report is now available at:

<http://www.mof.gov.bd/en/index.php?option=com_content&view=article&id=169&Itemid=1>.

⁶ Gurumia.com, *Bangladesh Share Market Scam: Red-Alert for Government* (26 January 2011).

<<http://gurumia.com/2011/01/26/bangladesh-share-market-scam-red-alert-for-government/>> (26.05.2016).

⁷ Ibid.

such a huge amount of money, which they would never invest in the stock market.⁸ Though the report was published without the names of the perpetrators but some of the reports of print and electronic media identified the direct involvement of perpetrators, which has already been discussed in Chapter 3 and in later part of this thesis.

However, the Report repeatedly urged for further investigation in details with adequate time and for identifying the real culprits. The report also urged to bring the culprits to trial, to frame specific allegation against those into cases. But, no such further investigation has been made yet, and except a few, no major legal proceedings against the market manipulators have been drawn yet.

Few cases have been filed after 2010-2011 share scam, a special Tribunal was established in Dhaka, some provisions of existing laws have been amended, some new laws have been enacted, but all these attempts are yet to restore the confidence of the investors. The BSEC and the newly established Tribunal have already awarded punishment to few manipulators. The aforesaid steps are quite praiseworthy; however, these are not adequate to ensure fair business in stock market, thus to remove manipulation and corrupt practices from the market. A few of the perpetrators are receiving punishment which is very small compared to their offence. Moreover, only a few of the powerless and small-offenders are punished while the main culprits remain untouched.

Reasons of 2010-2011 share market scam

The stock market crash in 2010-2011 was neither accidental nor consequential. It was an obvious and intentional crash was made by some culprits. Reasons of share market crash in 2010-2011 were very new and unique. The BSEC, the Bangladesh Bank, the Investment Corporation of Bangladesh (ICB) and others continued to blame each other. This ultimately proves the lack of coordination among them in policy-making and policy implementation. Furthermore, “the lack of co-ordination between the two authorities was marked in the share market inquiry report in 2011 as major cause for share market disaster in late 2010. There was astronomical rise in the share market in 2009-2010 periods due to over investment by banks. Maximum bank had invested above 10% of their liabilities. Bangladesh Bank asked the banks to cut down their investment from capital market and

⁸ Ibid.

tighten their supervision. The central bank took the decision without discussing with the capital market regulator. As a result, the market fell into debacle.”⁹

The Probe Committee report identified that a strong cartel has used the primary market as a tool to fleece people by inflating share prices.¹⁰ Report disclosed that the 1996 crash was in the secondary market, but this time it was created in the primary market by a nexus of the issuer, issue manager, valuer, chartered accountant and placement holder with the SEC's support.¹¹ Reports further revealed the huge price inflation due to the misuse of premium, book building and placement before issuing IPO caused massive instability in the secondary or open market. Primary market deals with the issuance of new securities. In Secondary market, previously issued securities and financial instruments in the primary market such as stock, bonds, options, and futures are bought and sold or traded. So any anomaly, malpractice and fake trading in the primary market ultimately affects the secondary market. Insider trading and private placement in the primary market causes deficiency of traders in secondary market and increases the value of share in open market. In 2009-10, total 34 companies, 8 of which were non-listed, raised capital totaling Tk 3,776 crore through private placements.¹²

Private placement is a non-public offering in which securities are usually sold to a limited number of chosen private investors. Some of them distributed primary shares equivalent to 50-90 percent of their paid-up capital. The Report said that, the issuer companies or the issue managers or their representatives gave placement shares to many high civil and military officials in a bid to increase their share prices in the market by using the placement illegally. Furthermore, the Report expressed its limitation that “it is not possible to know their complete identity by names and addresses mentioned in the prospectuses. If extensive police or intelligence probe is launched against these people....conspirators behind the scene will be unmasked and forgery in the stock market will be stopped in

⁹ Jebun Nesa Alo, ‘BB and BSEC lock in heated debate’, *Dhaka Tribune* (online) 3 March 2014. <<http://www.dhakatribune.com/stock-market/2014/mar/03/bb-and-bsec-lock-heated-debate>> (3.08.2016).

¹⁰ However, the Report identified the reasons responsible for this crash, a very short summary of which is given above and comparatively, a detail summary is given in the Appendix.

¹¹ Probe Committee, *Share Market Inquiry Report, 2011*, Inquiry Report (2011) 32, 44. <http://www.mof.gov.bd/en/index.php?option=com_content&view=article&id=169&Itemid=1> (3.04.2016).

¹² Rejaul Karim Byron and Sarwar A Chowdhury, ‘Stocks probe report says nexus targeted primary market for manipulation by inflating prices’ *The Daily Star* (online) 13 April 2011. <<http://archive.thedailystar.net/newDesign/news-details.php?nid=181546>> (3.04.2016).

future". It also disclosed a list of 100 people who received shares through placement in a big amount.¹³

The Probe found that business people, stock exchange members and directors, chief executives of some merchant banks, relatives of high officials of the ICB and wives of banks officials were among those who received placement shares worth above Tk 1 crore. The Probe Committee also received allegations that high officials of the SEC and stock exchanges members and directors took placement shares in condition of giving listing approval. Eight non-listed companies raised Tk 1,367 crore from many individual and institutional investors through private placement. But these companies are yet to be listed on the stock exchanges. As a result, the prevailing liquidity crisis in the stock market may be intensified further, as the individuals' and institutional investors' money got pulled into the companies' placement.¹⁴

Not only in the case of companies placement, the Probe Committee also found irregularities in the pre-IPO placement of mutual funds that further helped to create instability in the stock market. According to the Probe Committee's finding, placement holders of six to seven mutual funds pocketed around Tk 350 crore. Lack of guidelines or rules in the BSEC widened the scope of the irregularities in the placement, said the report, which also suggested formulating specific rules on placement. There are some other reasons which are contributory to this crash. Sudden entry of Grammenphone with large amount of shares gave the perpetrators a way to raise the market. The BSEC should have controlled Grameenphone and made its entry more gradual.

Hallmark scandal,¹⁵ state-owned commercial banks' loan scandal,¹⁶ and other bank loan scandals¹⁷ can be identified as some major contributory factors which acted against stock

¹³ The report said that "the placement business outside the capital market has become a new system for share transaction that is totally illegal. Taking this opportunity some weak companies through fabricated financial statements raised hundreds of crores of taka from immature investors". Pubali Bank Securities Limited was identified as one of the institutional investors that bought around Tk 13 crore worth shares of Unique Hotel and Resorts Ltd and Energy Prima Limited through placement. As the stockbroker's investment got stuck on the two companies, the bank brokerage house on March 1 sent a letter to the SEC seeking support from the regulator to get back the investment.

¹⁴ Ibid.

¹⁵ It is famous for its loan scandal. It was alleged that a corporate group namely Hallmark Group obtained a huge amount of money from different banks and financial institutions of the country without any valid documents and adequate securities. It was reported that some little known companies took Tk. 3,547 crore from the state owned different banks. Out of Tk. 3,547 crore, Hallmark Group alone took away Tk. 2,686.14 crore, T and Brothers Tk. 609.69 crore, Paragon Group Tk. 146.60 crore, Nakshi Knit Tk. 66.36 crore, DN

market. The repeated bank loan scandals compelled Bangladesh Bank to be stricter with the finance regulation of schedule banks and financial institutions. Equity Partners Limited (EPL), an investment firm, said in its weekly market analysis that “the fall in the banking shares started just after reports came out that the Bangladesh Bank decided to check all the banks for irregularities. This led to a panic situation with investors dumping the banking sector stocks”.¹⁸ This declaration affected banks, financial institutions, companies and other investors too. It caused a price decline in bank company’s shares.

Sports Tk. 33.25 crore and Khanjahan Ali Tk. 4.96 crore. Of the six borrowers, Hallmark has been found to be the biggest fraudster.

‘Hallmark loan scam under ACC probe’, The Daily Star, (14 August 2012).

<<http://www.thedailystar.net/news-detail-246119>> (3.04.2016).

¹⁶ At that time during 2011-2013, several reports were published in print and electronic media reporting the loan scandals of the state-owned commercial banks including Sonali Bank Limited, Janata Bank Limited, Agrani Bank Limited, Rupali Bank Limited, Bangladesh Krishi Bank, Basic Bank Limited, etc. For an example one report is quoted below-

“One of the most notorious of Bangladesh’s banking scandals involves the country’s largest SOCB, Sonali Bank. Between 2010 and 2012, one branch of Sonali Bank alone illegally gave out \$454 million in loans, including nearly \$344 million to Hallmark Group, a textile business, according to the Dhaka Tribune. Tanvir Mahmud, Hallmark’s managing director, connived with a branch manager to issue fraudulent letters of credit to fictitious companies. Even after the scam was uncovered, Sonali Bank continued to operate with an extremely high nonperforming loan ratio: reportedly more than 37 percent in the fall of 2014. And the bank, along with Bangladesh’s other five SOCBs, are regularly recapitalized by the government — to the tune of about \$640 million for fiscal year 2014 and, it is expected, more than \$700 million for fiscal year 2015. These banks’ irresponsible lending practices — and the state’s irresponsible efforts to systematically bail them out — are partly the result of collusion between business and political elites.

Fahmida Khatun, the research director at the Center for Policy Dialogue, in Dhaka, was a board member of the SOCB Janata Bank in 2008-11, after being appointed by the military caretaker government that ran the country in 2007-8. In an interview in Dhaka in 2014 she told me that since Bangladesh’s return to civilian rule after the 2008 election, loan portfolios have typically been assessed not according to their business potential, but with an eye toward “the influence or the connections of the person” asking for credit.

Here’s an example: Salman F. Rahman, one of Bangladesh’s wealthiest individuals and a co-founder of Beximco, a major business group that specializes in exports of pharmaceuticals and garments. A 2007 cable from the United States ambassador in Dhaka subsequently disclosed by WikiLeaks called Mr. Rahman “allegedly one of Bangladesh’s biggest bank loan defaulters.” He was imprisoned for fraud in 2007-8, under the caretaker government.

In an interview in his Dhaka office early last year, Mr. Rahman told me he owed about \$800 million to state-owned banks. He blamed the previous government, led by the Bangladesh Nationalist Party — a staunch rival of the Awami League, which is in power today — for not servicing his debts. By the time we met, though, Mr. Rahman had become an adviser to Sheikh Hasina, the prime minister of Bangladesh and the president of the Awami League. And the Bangladesh Bank was now “restructuring” his debts, he said.

Mr. Rahman is no exception. Some \$565 million in assets are said to have been looted from the state-owned BASIC Bank between 2009 and 2012, yet the scam’s suspected mastermind, a former chairman of the bank, wasn’t troubled by the anticorruption commission investigating the fraud, reportedly thanks to his political connections. Banking in Bangladesh is beholden to the politicians.

This is largely because state institutions are underfunded and weak. Technocrats, auditors, courts — all those traditional safeguards don’t have enough authority or muscle in Bangladesh to keep the politicians in check.” Joseph Allchin, ‘Bangladesh’s Other Banking Scam’ *The New York Times* (11 April 2016).

<<https://www.nytimes.com/2016/04/12/opinion/bangladeshs-other-banking-scam.html>> (5.04.2016).

¹⁷ Similar kinds of allegations of committing fraud against other banks and financial institutions were also raised and several cases were filed against such kinds of corruption and malpractices.

¹⁸ The Daily Star, *Bulls on a leash* (12 July 2009).

<<http://archive.thedailystar.net/newDesign/news-details.php?nid=96491>> (3.04.2016).

Some wrong and defective decisions taken by Bangladesh Bank at the time were largely responsible for the sudden fall of share price. Aantaki Raisa¹⁹ correctly pointed out that Bangladesh Bank got a complaint that Banks are investing money in the stock market from their reserve. On 1.12.2010, the Bangladesh Bank sent 50 teams in different banks of Dhaka and Chittagong to investigate and found some banks with such irregularities. Raisa discussed the most important directives initiated by Bangladesh Bank in December 2010, which were withdrawal of illegally invested industrial loans, increasing statutory liquidity requirement (SLR) and Cash Reserve Requirement (CRR). On 15th December, Bangladesh Bank increased CRR and SLR by 0.5 percent and increased to 19 and 6 percent.

Another important directive initiated by the Bangladesh Bank was withdrawal of illegally invested industrial loans by 31.12.2010. As a lot of the reserved money was invested in capital market, banks started selling shares and withdrawing their money from the market. By the time investors became panicked. To handle the disastrous and assure the panicked investors, the Bangladesh Bank extended its deadline for submitting and adjusting loans. For the merchant banks the deadline was 15.01.2011 and for the commercial bank 15.02.2011. Institutional investors including financial institutions and bank started selling shares from the beginning of December to show high returns on investment on their balance sheets. As the institutions and banks started selling their shares from the beginning of December, the turnover of the DSE was the highest ever in its history on 5th December.²⁰ This ultimately led to a huge fall in share price because of the ‘bubbles burst’. As a result, the BSEC and the Bangladesh Bank failed to control the share price.

Moreover, the BSEC and the Bangladesh Bank applied a lot of directives to keep the market under control in 2010. But in December, both the Bangladesh Bank and the BSEC changed many of their previous directives and applied new ones without analyzing the entire situation comprehensively. On 6.12.2010, the BSEC introduced a directive stating that the buy orders will be performed after encashment of investor’s cheque. On the following day, another directive called ‘netting facilities’ was applied. This indicates that no investor will be able to purchase securities against the sale proceedings of any other securities during the settlement and clearance period. But both directives of 6th and 7th

¹⁹ Feature Reporter of the Daily Star.

²⁰ Aantaki Raisa, ‘Behind the Scenes the Stock Market Saga’, *The Star Magazine*, 21 January 2011. <<http://archive.thedailystar.net/magazine/2011/01/03/cover.htm>> (5.04.2016).

December were cancelled on 8th December. The reason for cancelling these directives was a significant fall of share prices on 8th December. SEC changed the directive of margin loan ratio by increasing it from 1:0.5 to 1:1 on 13th December and later it was again hiked to 1:1.5 and 1:2 because of free fall of share prices.²¹

Like banks, the pharmaceuticals sector also saw a price decline. A dividend declaration by Square Pharmaceuticals, a large cap stock, did not live up to the investor expectations, which led to a massive slump in prices putting squeezes on the pharmaceuticals sector. Square Pharma announced 40 percent cash and 25 percent stock dividend the previous week. Declaration of high dividend was not a solution rather it might have negative impact on the market in the long run. However, scammers and their collusive practice were mainly responsible for the crash.

8.4. Analyzing Legal Framework for Protecting the Rights of the Investors

Having enumerated the perspectives of the stock market crash in 1996 and 2010-2011 and their aftermath, the contemporary securities law framework for the protection of the rights of investors should be discussed with more attention. As stated earlier, almost all relevant securities laws have been discussed already. So, in this Chapter, the efficacy and fallout of those provisions will be particularly examined. Specific issues are discussed below.

8.4.1. Public Issue of Equity Shares or Debt Securities

The public issues of equity or debt securities are the essence around which the entire securities market and its investors are moving. This area is completely governed by law. The issuers issue securities to raise the capital from the investors who do not have any roles in the management of the issuer company. The investors do not have fundamental inside view of the issuer companies either. Along with investing into securities and gaining profit, the issuers also demand for reasonable protection under law against fraud, falsehood, unfair dealing, manipulation, corruption, malpractice, etc. In our country, no security can be traded in the capital market without the permission of the BSEC. No issuer can issue security without the permission of the BSEC.²² The public issue of shares are mainly governed under the Companies Act, 1994, the Securities and Exchange Ordinance,

²¹ Kauser Bhuiyan, *Small investors' anger may turn into big issue!* (21 December 2010).

<<http://www.e-dirts.com/2010/small-investors%E2%80%99-anger-may-turn-into-big-issue/>> (5.04.2017).

²² As discussed earlier in Chapter 3 and 4 under the securities laws of Bangladesh, no security can be issued in the market without the prior permission of the BSEC and no one can any security within Bangladesh without the prior approval obtained from the BSEC.

1969, the Securities and Exchange Commission Act, 1993, the Securities and Exchange Rules, 1987, the DSE and the CSE Listing Regulations, the Securities and Exchange Commission (Issue of Capital) Rules, 2001, the Securities and Exchange Commission (Public Issue) Rules, 2006, the Securities and Exchange Commission (Public Issue) Rules, 2015, the IPO Approval Guidelines, the Bangladesh Securities and Exchange Commission (Private Placement of Debt Securities) Rules, 2012, the Bangladesh Securities and Exchange Commission (Alternative Investment) Rules, 2012, the Bangladesh Securities and Exchange Commission (Qualified Investor Offer by Small Capital Companies) Rules, 2016 and others.

Public issue of securities is a long, rigorous and burdensome process. In spite of this, the issuers want to raise funds through issuing equity and debt securities because they are less risky. Public issue is a comparatively long term and safe investment for the issuer company because ultimately the purchasers of shares become the shareholders of the company. They become the contributories. Therefore, they become the part of loss and profit of the company. Making the investors shareholders is definitely more safe than borrowing loan by giving multiple collateral securities because failing to pay loan or any of its installments may lead the company to face multiple negative consequences including Artha Rin Suit,²³ cases under the Negotiable Instruments Act 1881,²⁴ criminal proceedings, auction sale of mortgage properties, publication of the name of the company and its directors including sister concerns and their directors in the CIB (Credit Information Bureau) Report of Bangladesh Bank showing them as defaulters, etc. Likewise, for multiple reasons and advantages, the corporations are more inclined to issue shares to raise money instead of taking loans. The law provides a number of protections to the investors against the issuer corporations raising fund through IPO and also in case of subsequent trading in the stock market. In fact, the entire scheme of securities law is designed to ensure healthy share market business by protecting the rights of the investors and ensuring fair dealing with the securities. Most of the legal provisions have already

²³ Artha Rin Suit can be filed by the banks or financial institutions under the Artha Rin Adalat Ain, 2003, a special legislation provided only for the banks or financial institutions to recover loan against any borrower.

²⁴ Now-a-days the banks/financial institutions take post dated cheques as security against loan, and in case of any default by the borrower to pay any installment of loan or the entire loan amount, the bank can file case under section 138 of the Negotiable Instruments Act, 1881 if any of the security cheques returned dishonored for insufficiency of fund or stop payment or any other reasons.

been examined in the earlier chapters. Let's summarize some legal protections which directly provide punishment for breach of law.

8.4.2. Under the Companies Act, 1994

The Companies Act, 1994 provides quite a lot of safeguards to the investors, which are discussed below.

(i) Rectification of Share Registrar and Entitlement to the Company

Every person purchasing shares of a company or become a member thereof shall enjoy the right to get his/her name registered in the share registrar or member index of the company. If (i) the name of any person is without sufficient cause entered in or omitted from the register of members of a company, or (ii) default is made or unnecessary delay takes place in entering on the register the fact of any person having become, or ceased to be, a member, then the aggrieved person or any member of the company or the company itself may apply to the Hon'ble High Court Division under Section 43²⁵ of the Companies Act for rectification of share register. For registering the name in the company share register, the claimant must have a title to the share (whatever be the number or percentage) of the company.

Rectification of share register of the company is highly important because without registering the name of the shareholders in the share register, no person can validly claim that the person is the shareholder of such shares in the company. It is also very important for the exercise of some other rights, like the right to dividend and premium, right shares, preferential interest in shares, taking part in the Annual General Meeting (AGM) and other

²⁵ Section 43 provides as follows-

Section 43: Power of Court to rectify register

(1) If

(a) the name of any person is without sufficient cause entered in or omitted from the register of members of a company; or

(b) default is made or unnecessary delay takes place in entering on the register the fact of any person having become, or ceased to be, a member, the person aggrieved, or any member of the company, or the company, may apply to the Court for rectification of the register.

(2) The Court may either refuse the application, or may order rectification of the register and payment by the company of any damages sustained by any party aggrieved and may also make such order as costs as it may consider proper.

(3) On any application under this section the Court may decide any question related to the title of any person who is a party to the application to have his name entered in or omitted from the register whether the question arises between members or alleged members or between members or alleged members on the one hand and the company on the other hand and generally may decide any question necessary or expedient to be decided for rectification of the register and may also decide any issue involving any question of law.

functions of the company. Most importantly, only the registered shareholders whose names appear in the share register of the company are the recognized shareholders under law. Section 45 of the Companies Act also provides that the register of members shall be prima facie evidence of any matter by this Act directed and authorized to be inserted therein. They can file case before the Court for the protection of interest of minority shareholders under section 233²⁶ qualifying the requirements of section 195²⁷ of the Act.

All shareholders can attend the general meeting whereupon dividends are generally declared by the company (Articles 51 and 96-103 of Schedule 1 Regulations to the Companies Act). This amount may not exceed the amount as approved by the directors. Dividends are to be paid from the income and profit of the company. Such dividend may not be given from the reserve fund of the company. Dividends are divided amongst the

²⁶ Section 233: Power of Court to give direction for protection interest of the minority.-(1) Subject to fulfillment of the conditions of the required minimum as specified in section 195 (a) and (b) any member or debenture holder of a company may either individually or jointly bring to the notice of the court by application that-

(a) the affairs of the company are being conducted or the powers of the directors are being exercised in a manner prejudicial to one or more of its members or debenture holders or in disregard of his or their interest; or

(b) the company is acting or is likely to act in a manner which discriminated or is likely to discriminate the interest of any member or debenture holder;

(c) a resolution of the members, debenture holders or any class of them has been passed or is likely to be passed which discriminates or is likely to discriminate the interest of one or more of the members or likely to debenture holder: and pray for such order, as in his or their opinion, would be necessary for safeguarding his or their interest and also the interest of any other member or debenture holder.

(2) The Court shall, on receipt of an application under sub-section(1) send a copy thereof to the Board and fix a date for hearing the application

(3) If after hearing the parties present on the date so fixed, the Court is of opinion that the interest of the applicant or applicants has been or is being or is likely to be prejudicially affected for reasons specified in the application, it may make such order as prayed for or such other order as it deems fit including a direction-

(a) to cancel or modify any resolution or transaction ; or

(b) to regulate the conduct of the company's affairs in future in such manner as is specified therein.

(c) to amend any provision of the memorandum and articles of the company.

(4) Whereby an order of the Court, any amendment is made in the memorandum or articles of the company, the company shall not, without leave of the Court, make any amendment therein or take any action which is inconsistent with the direction contained in the order.

(5) A company shall, within fourteen days from the making of an order under this section, inform the Registrar in writing of such order and send him a copy thereof, and if the company makes default in complying with this sub-section the company, and also every officer of the company who is in default, shall be liable to a fine not exceeding one thousand taka.

²⁷ Section 195: Investigation of affairs of company by inspectors:- The Government may appoint one or more competent inspectors to investigate the affairs of any company and to report thereon in such manner as the Government may direct-

(a) in the case of a company having a share capital, on the application of members holding not less than one-tenth of the shares issues;

(b) in the case of a company not having a share capital, on the application of not less than one-fifth in number of the person on the company is register of members;

(c) in the case of any other company, on a report by the Registrar under section 193(5).

shareholders according to their number of shares and class of shares. Interim dividend can also be declared by the directors in some cases. Registering name in the share register of the company allows the registered shareholders to claim for dividend. If the company does not declare dividend for quite a long time despite showing annual profit, then the shareholders can ask for dividend and file case against the company.

(ii) Protection against False Statements in Prospectus

The Companies Act, 1994 defines the word prospectus. A company cannot issue a prospectus with the prior approval of the BSEC. In order to issue shares with IPO, the company has to issue prospectus or prospectus like documents. The Companies Act 1994, the Securities and Exchange Rules 1987, the BSEC Public Issue Rules, 2006 and some other regulations provide the matters, statements and reports need to be set out, disclosed and contained in the prospectus in the manner as prescribed under law. No prospectus can be issued without following the mandatory provisions provided under the Company Act (Sections 134 – 151).

Prospectus inviting persons to subscribe for shares in or debentures of a company shall not include a statement purporting to be made by an expert, unless the expert is a person who is not and has not been, engaged or interested in the formation or promotion of the company. Expert's consent in the prospectus must be in writing confirming that the expert has not withdrawn his consent thereof (Section 137). No prospectus can be issued without registering the same with the Registrar (RJSC) in the manner as provided under section 138 of the Companies Act. The company and every person who is knowingly a party to the issuing of any prospectus issued in contravention of the provisions of section 137 and 138, shall be punishable with fine which may extend to five thousand taka (Section 139).²⁸ This provision is wide but the degree of penalty is few and inadequate.

²⁸ For the purposes of these sections (137-139) the expression "expert" includes an engineer, a valuer, an accountant and any other person whose profession gives authority to a statement made by him. It means not only the company and its management, directors, shareholder who know about the matters contained in prospectus will be held liable but also any other person whose profession gives him/her the authority to a statement will also be held liable.

Section 141 prescribes punishment for publishing untrue statement in ‘a document issued in lieu of prospectus’²⁹. A statement will be untrue if it is misleading in the form and content and if there is an omission which is calculated to mislead, it shall render the statement in lieu of the prospectus untrue. It does not apply to a private company. Moreover, any company and any of its director who knowingly and willfully authorized or permits the contravention of the provision of Section 141 (1) and (2), shall be punishable with fine with any sum not extending two thousand taka (section 141(3)). This punishment is insufficient for contravening the provisions/obligations provided under section 141(1) and (2) by the company and its directors.³⁰

In addition, for providing ‘untrue statement’³¹ in a statement in lieu of prospectus to the Registrar, any person who authorized or permitted the delivery of the statement in lieu of prospectus for registration shall be punishable with imprisonment for term which may extend to two years or with fine which may extend to five thousand taka or with both under section 141(5). This punishment can be exempted if the accused person proves that the statement was immaterial or that he had reasonable ground to believe, and did up to the time of the delivery for registration of the statement lieu of prospectus believe, that the statement was true. So, the punishment imposed under this section is not strict, it is conditional. Moreover, this punishment is not at all adequate and does not assure proper punishment for the company and its directors providing untrue statements in the

²⁹ Clause 7 of section 141 explains that a statement in lieu of prospectus, means a statement published in lieu of prospectus and it may be included in the statement in lieu of prospectus itself or contained in any report or memorandum appearing on the face thereof or by reference incorporated therein, or issued therewith.

³⁰ Section 141(1) provides that a company having a share capital which does not issue a prospectus on or with reference to its formation, on which has issued such a prospectus but has not proceeded to allot any of its shares or debentures offered to the public for subscription shall not allot any of its shares or debentures unless within three days after the first allotment of either shares or debentures, there has been delivered to the Registrar for registration a statement in lieu of prospectus, signed by every person who is named therein as director or proposed director of the company or his agent authorized in writing in the form and containing the particulars set out in part I of Schedule IV and, in the cases mentioned in Part II of that Schedule, setting out the reports specified therein, and the said Part I and II shall have effect subject to the provisions contained in Part III of that Schedule.

Section 141(2) provides that every statement in lieu of prospectus delivered under sub-section (1) shall, where the persons making many such report as specified that sub-section have made therein, or have without giving the reasons indicated therein, any such adjustments as are mentioned in Part III of the Schedule IV have endorsed thereon or attached thereto a written statement signed by those person, setting out the adjustment and giving the reasons thereof.

³¹ Clause 6 of section 141 and Clause 1 of section 142 provide that “or the purposes of this section - (a) a statement included in a statement in lieu of prospectus shall be deemed to be untrue, if it is misleading in the form and context in which it is included; and (b) where the omission from a statement in lieu of prospectus of any matter is calculated to mislead, the statement in lieu of prospectus shall be deemed, in respect to such omission, to be a statement in lieu of prospectus containing an untrue statement”.

prospectus or in a document issued in lieu of prospectus. It does not at all assure proper remedy to any aggrieved person (investors) who has suffered loss by investing into any share based on information published in the document as meant under section 141(5).

Section 142 is a wider provision considering all the documents issued containing an offer for sale of shares and debentures to the public to be deemed a prospectus.³² A company shall not, at any time, vary the terms of a contract referred to in the prospectus or statement in lieu of prospectus, except with the approval of, or except under an authority given by, the company in general meeting.³³

Providing any 'untrue statement'³⁴ in the prospectus attracts civil liability under section 145 for the following persons-

- (a) every person who is a director of the company at the time of the issue of prospectus;

³² Section 142: Document containing offer of shares or debentures for sale to be deemed a prospectus- (1) where a company allots or agrees to allot any shares in or debentures of the company with a view to all or any of those shares or debentures being offered for sale to the public, any document by which the offer for sale to the public is made shall, for all purposes be deemed to be a prospectus issued by the company, and all enactment's and rules of law as to the contents of prospectus and as to liability in respect of statements in and omissions from prospectus, or otherwise related to prospectus, shall apply and have effect accordingly, if the shares or debentures had been offered to the public for subscription and as if the persons accepting the offer in respect of any shares or debentures were subscribers for those shares or debentures but without prejudice to the liability, if any, of the persons by whom the offer is made in respect of misstatements contained in the document or otherwise in respect thereof.

(2) For the purposes of this Act, it shall, unless the contrary is proved, be evidence that an allotment or an agreement to allot shares or debentures was made with a view to the shares or debentures being offered for sale to the public if it is shown -

(a) that an offer of the shares or debentures or of any of them for sale to the public was made within one hundred and eighty days, after the allotment or agreement to allot; or

(b) that at the date when the offer was made, the whole consideration to be received by the company in respect of the shares or debentures had not been so received.

(3) In case of the document, mentioned in sub-section (1), section 135 shall have effect as if it required a prospectus to state, in addition to the matters required by that section to be stated, in a prospectus-

(a) the net amount of the consideration received or to be received by the company in respect of the shares or debentures to which the offer relates; and

(b) the place and time at which the contract under which the said shares or debentures have been or are to be allotted may be inspected.

(4) Section 138 shall apply to the person or persons making the offer mentioned in sub-section (1) as though they were person named in a prospectus as directors or proposed directors of a company.

(5) Where the persons making an offer mentioned in sub-section (1) is a company or firm, it shall be sufficient if the document referred in sub-section(1) is signed on behalf of the company or firm by two directors of the company or by not less than one-half of the partners in the firm, as the case may be, and any such director or partner may sign by his agent authorized in writing.

³³ The Companies Act, 1994 s 144.

³⁴ A statement included in a prospectus shall be deemed to be untrue, if the statement is misleading in the form and context in which it is included; and where the omission from a prospectus of any matter is calculated to mislead, the prospectus shall be deemed in respect of such omission to be a prospectus containing untrue statement.

[The Companies Act, 1994 s 142(1)].

- (b) every person who has authorized himself to be named and is named in the prospectus either as a director, or as having agreed to become a director, either immediately or after an interval of some time;
- (c) every person who is a promoter of the company; and
- (d) every person who has authorized the issue of the prospectus.

The aggrieved person can claim for damages against the aforesaid person. However, such person can escape liability if the person can prove that having consented to become a director of the company, he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent. This defense plea also extends to a situation where the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue he forthwith gave reasonable public notice that it was issued without his knowledge or consent. The person can also take the defense that after the issue of the prospectus and before allotment thereof, he, on becoming aware of any untrue statement therein, withdrew his consent to the prospectus and gave reasonable public notice of the withdrawal and of the reason therefore.

This defense also extends to the circumstances regarding every untrue statement not purporting to be made on the authority of an expert or of a public official document or statement, he had reasonable ground to believe, and did up to the time of the allotment of the shares or debentures believe, as the case may be, that the statement was true. It will also apply when the untrue statement was made on correct and fair presentation of the statement, or a correct copy of or a correct and fair extract from, the report and valuation; and he had reasonable ground to believe, and did up to the time of the issue of the prospectus believe, that the person making the statement was competent to make it and that person had given the consent required by section 137.³⁵ The defense can be also be applied to every untrue statement purporting to be made by an official person or contained in what purports to be a copy of or extract from a public official document, it was a

³⁵ Section 137: Expert's consent to issue of prospectus containing statement by him - A prospectus inviting persons to subscribe for shares in or debentures of a company and including a statement purporting to be made by and expert may be issued, if-

(a) he has given his written consent to the issue thereof, with the statement included in the form and context in which it is included, and has not withdrawn such consent before the delivery of a copy of the prospectus for registration; and

(b) another statement that he has given and has not withdrawn his consent as aforesaid appears in the prospectus.

correct and fair representation of that statement. However, these three defenses shall not apply in the case of a person liable by reason of his having given a consent required of him by section 137 as a person who has authorized the issue of the prospectus in respect of an untrue statement purporting to be made by him as an expert.

The expert can also escape liability under this section on the grounds that he withdrew the consent in writing before delivery of a copy of the prospectus for registration; or after delivery of a copy of the prospectus for registration and before allotment thereof, on becoming aware of the untrue statement, he withdrew his consent in writing and gave reasonable public notice of the withdrawal and of the reason therefore; or he was competent to make the statement and that he had reasonable ground to believe, and did up to the time of the allotment of the shares or debentures, believe, that the statement was true. In addition, the director or expert shall be liable to indemnity when he/she can prove that his name is published in the prospectus without his/her consent and knowledge.

It is pertinent to mention that under section 145, the onus of proof lies upon the person who wants to take the defense (grounds) of escaping liability. This is positive. It means if any allegation is raised that untrue statement has been published in the prospectus then every person as meant under section 142 read with section 145 will be deemed responsible unless the person can prove any of the situation as provided as defense under section 145. Another important feature of this Section 145 is that publishing untrue statement in prospectus is in itself an offence under section 142, and punishment of which is limited as prescribed thereof; but under section 145 the loss sufferer investing basing on any untrue statement published in the prospectus can claim any damage of any amount. However, the exemptions given under this section are too wide. They provide ample opportunities to escape liability.

Besides, every person who is involved in providing untrue statement in the prospectus shall be punished with imprisonment for a term not exceeding two year or with fine not exceeding five thousand taka or both.³⁶ This punishment is inadequate and inappropriate.³⁷

³⁶ The Companies Act, 1994 s 146(1).

³⁷ Section 146: Penalty for untrue statement in prospectus - (1) Where a prospectus issued after the commencement of this Act includes any untrue-statement every person who authorized the issue of the prospectus shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to five thousand taka or with both, unless he proves either that the statement was

Section 147 is fundamental agreement including all persons who make fraudulent statement in the prospectus in order to attracting more profit for the company in a concerted practice with the company. Under this section, any person who either knowingly or recklessly make any statement, promise or forecast which is false, deceptive or misleading, or induce another person to enter into, or to offer into shall be punishable with imprisonment for a term which may extend to five years or with fine which may extend to fifteen thousand taka or with both on the following grounds that-

- (a) any agreement for, or with a view to acquiring, disposing of, subscribing for, or underwriting shares or debentures; or
- (b) any agreement, the purpose or pretended purpose of which is to secure a profit to any of the parties from the yield of shares or debentures, or by reference to fluctuation in the value of shares or debenture.

Section 148-151 provides further protection to the interests of the company and the investors. Section 148 provides that no allotment shall be made of share capital of a company offered to the public for subscription unless the amount stated in the prospectus which in the opinion of the directors must be raised by the issue of share capital in order to provide the sums 'for certain expenses'³⁸ mentioned in the section has been subscribed for and at least five percent thereof has been subscribed in cash. All moneys received from applicants for shares shall be deposited and kept in a scheduled bank as defined in the Bangladesh Bank Order, 1972, until returned in accordance with the provisions as

immaterial or that he had reasonable ground to believe, and did, up to the time of the issue of the prospectus, believe the statement was true.

(2) A person shall not be deemed for the purposes of this section to have authorized the issue of a prospectus by reason only of his having given-

- (a) the consent required by section 137 to the inclusion therein of statement purporting to be made by him as an expert; or
- (b) the consent required by sub-section (4) of section 138.

³⁸ Section 148(2) provides that the matters for which provision for the raising of a minimum amount of share capital must be made by the directors are the following namely-

- (a) the purchase price of any property purchased or to be purchased which is to be defrayed in whole or in part out of the proceeds of the issue;
- (b) any preliminary expenses payable by the company and any commission so payable to any person in consideration of his agreeing to subscribe for or of his procuring or agreeing to procure subscriptions for any shares in the company;
- (c) the repayment of any moneys borrowed by the company in respect of the foregoing matters; and
- (d) working capital.

provided under law³⁹; contravention of which leads every promoter,⁴⁰ director or other person knowingly responsible for such contravention liable to a fine not exceeding five thousand taka.

Section 148 further provides that if the conditions aforesaid have not been complied with within a period not exceeding one hundred and eighty days from the first issue of the prospectus, or within forty days from the closing date of subscription-list as specified in the prospectus, whichever is earlier, all moneys received from applicants of shares or debentures shall be forthwith repaid to them without interest, and if any which money is not so repaid within the aforesaid period, the directors of the company, shall be jointly and severally liable to repay that money with interest at the rate of five percent above the bank after expiry of the aforesaid period. It is also provided that no allotment shall be made of any shares in, or debentures of, a company in pursuance of a prospectus issued and no proceedings shall be taken on applications made in pursuance of a prospectus so issued, until the beginning of the eighth day after that on which the prospectus is first so issued or such later time, if any as may be specified in the prospectus. However, where, after a prospectus is first issued, a public notice is given by some person responsible under section 145 for the prospectus which has the effect of excluding, limiting or diminishing his responsibility, no allotment shall be made until the beginning of the eighth day after that on which such public notice is first given.

Section 148 also emphasizes that an application for shares in, or debentures of, a company, which is made in pursuance of a prospectus issued shall not be revocable until after the expiration of the eighth day after the time of the opening of the subscription list, or the giving, before the expiry of the said eighth day by some person responsible under section 145 for the prospectus, of a public notice having the effect under that section of excluding, limiting or diminishing the responsibility of the person giving it. Where an applicant for

³⁹ Section 148(7) provides that If the conditions aforesaid have not been complied with within a period not exceeding one hundred and eighty days the first issue of the prospectus, or within forty days from the closing date of subscription-list as specified in the prospectus, whichever is earlier, all moneys received from applicants of shares or debentures shall be forthwith repaid to them without interest, and if any which money is not so repaid within the aforesaid period, the directors of the company, shall be jointly and severally liable to repay that money with interest at the rate of five percent above the bank after expiry of the aforesaid period.

⁴⁰ The expression "promoter" means a promoter who was a party to the preparation of the prospectus or of the portion thereof containing the untrue statement, but does not include any person by reason of his acting a professional capacity for persons engaged in procuring the formation of the company.
[The Companies Act, 1994 s 145(6)(a)].

shares or debentures is required to accept conditions which have the effect of waiving compliance with any requirement of this section shall be void.

Irregular allotment of such shares is voidable as provided under section 149.⁴¹ If any director of a company knowingly contravenes or permits or authorizes the contravention of any of the provisions of section 141 or section 148 with respect to allotment, he shall be liable to compensate the company and the allottee for any loss, damages or costs which the company or the allottee may have sustained or incurred thereby. Such proceedings to recover any such loss, damages or costs shall not be commenced after the expiration of two years from the date of the allotment.

Section 150 provides restriction on commencement of business holding that every company is required to file a return of allotment of shares to the Registrar within sixty days showing the number and nominal amount of the shares and other details as prescribed under law. This period of sixty days can be extended by the Registrar on the application of the company within such time. If any company commences business or exercises borrowing powers in contravention of this section, every person who is responsible for the contravention shall, without prejudice to any other liability, be liable to a fine not exceeding one thousand taka for every day during which the contravention continues. However, this section shall not apply to a private company, or to a company which does not issue a prospectus inviting the public to subscribe for its shares. It will also not apply to a company limited by guarantee and to a company not having a share capital.

8.4.3. Public Issue of Shares

Public issue of shares is governed under the Companies Act, 1994 along with the Securities and Exchange Ordinance, 1969, the Securities and Exchange Commission Act, 1993, the Securities and Exchange Rules, 1987 and other laws discussed earlier. However, prescribing some specific procedures for the public issue of the shares by the listed companies, the BSEC promulgated the Securities and Exchange Commission (Public Issue) Rules, 2015.

⁴¹ Section 149(1) provides that an allotment made by a company to an applicant in contravention of the provision of section 141 or section 148 shall be voidable at the instance of the applicant within one month after the holding of the statutory meeting of the company and not later or, in any case where the company is not required to hold a statutory meeting or where the allotment is made after the holding of the statutory meeting, within one month after the date of the allotment and not later, and shall be so voidable notwithstanding that the company is in the course of being wound up.

Under the Rules, an application for issuing of shares for the public can be made in two ways, (a) fixed price method,⁴² when offered at par value, or (b) book-building method,⁴³ when offered above par value. The general and particular requirements for each of these processes are stated in details under these Rules. Amongst all, the requirements related to financial statement disclosure are particularly relevant for preventing the financially weak companies from entering into the market. As a part of financial position disclosure obligation, for the fixed price method the issuer company has to show that it has been in commercial operation at least for immediate last 3 (three) years, it has positive net profit after tax and net operating cash flow at least for immediate preceding 2 (two) financial years; if it has been in commercial operation for a period less than 3 (three) years, it has a positive net profit after tax and net operating cash flow at least for the latest financial year; if it has not started its commercial operation or not completed any financial period yet, it has positive projected net profit after tax and net operating cash flow; and at least 35% of the issue has been underwritten on a firm commitment basis by the underwriter(s).⁴⁴ For the book-building method, the company has to show that it has been in commercial operation at least for immediate last 3 (three) years; it has made net profit after tax at least for immediate preceding 2 (two) financial years; it has positive net operating cash flow at least for immediate preceding 2 (two) financial years; it has appointed separate persons as the issue manager and registrar to the issue for managing the issue; the issuer/issue has been rated by a credit rating company registered with the BSEC; and at least 35% of the issue has been underwritten on a firm commitment basis by the underwriter(s).⁴⁵ However, these requirements are not at all comprehensive or exhaustive ensuring the proper disclosure of financial condition of the issuer.

The Rules also provide the distribution mechanism of the securities having the conversion features in the manner that at least 40% of the issue shall be reserved for the existing shareholders, 40% of the issue shall be reserved for Public Offer and maximum 20% of the issue may be made through private placements. This distribution method does not

⁴² “Fixed price method” means the process by which an issuer offers its securities at par value. [The Securities and Exchange Commission (Public Issue) Rules, 2015 r 2(1)(g)].

⁴³ “Book-building method” means the process by which an issuer attempts to determine the price to offer its securities based on demand from the eligible investors.

[The Securities and Exchange Commission (Public Issue) Rules, 2015 r 2(1)(b)].

⁴⁴ Ibid r 3(3).

⁴⁵ Ibid r 3(4).

ensure the adequate distribution for the general investors. The process of issuing IPO has been provided under the Rules. The important provision is related to the determination of the cut-off price at which the shares will be offered in the market. After examination of the prospectus and relevant documents, the BSEC, if satisfied, shall issue consent to commence bidding by the eligible investors for determination of the cut-off price. The securities so issued shall not be converted either partly or fully before a minimum period of 2(two) years of issuance. The BSEC enjoys the absolute authority to give consent on the cut-off price. The ‘determination of cut-off price’⁴⁶ depends on certain criteria provided under the law. Thereafter, it depends on the BSEC to give consent on the cut-off price. The problem is, the BSEC can neither determine the cut-off price analyzing the market response or financial position/prospect of the company nor can it raise dispute regarding the cut off price. The BSEC also fails to determine that whether the cut-off price was determined on the basis of reality or the price was exaggerated by the eligible investors. This process of price discovery is a defective one.

⁴⁶ Determination of the cut-off price:

- (i) Eligible investors shall participate in the electronic bidding process and submit their intended quantity and price: provided that any connected person or related party of the issuer shall not be eligible to participate in the bidding process;
 - (ii) No eligible investor shall quote for more than 10% (ten percent) of the total amount offered to the eligible investors;
 - (iii) Eligible investors’ bidding shall be opened for 72 (seventy two) hours round the clock;
 - (iv) The bidding will be conducted through an uniform and integrated automated system of the exchanges, especially developed for book building process;
 - (v) The value of bid at different prices will be displayed on the screen without identifying the bidders;
 - (vi) The bidders shall deposit at least 20% (twenty percent) of the bid amount in advance in the designated bank account maintained by the exchange conducting the bidding;
 - (vii) The bidders can revise their bids for once, within the bidding period, up to 20% variation of their first bid price;
 - (viii) After completion of the bidding period, the cut-off price will be determined at nearest integer of the lowest bid price at which the total securities offered to eligible investors would be exhausted;
 - (ix) All the eligible investors participating in the bidding shall be offered to subscribe the securities at the cut-off price. It is mandatory for EIs bidding at or above the cut-off price to subscribe up to their intended quantity but optional for EIs bidding below the cut-off price;
 - (x) The eligible investors shall be allotted securities on pro-rata basis within their category-wise quota at the cut-off price. The category-wise quota shall be determined on the basis of distributing the total securities reserved for other eligible investors equally to each of the category of eligible investors participating in the bidding, except mutual funds. Mutual funds shall be allotted securities reserved for them on pro-rata basis;
 - (xi) The securities shall be offered to general public for subscription at an issue price to be fixed at 10% discount (at nearest integer) from the cut-off price;
 - (xii) The issuer and the issue manager shall prepare the draft prospectus including the status of bidding, cut-off price, list of eligible investors with number of securities subscribed for, price and number of securities for offering to the general public and submit with relevant documents, simultaneously to the Commission and the exchanges within 5 (five) working days from the closing day of bidding.
- [Ibid r 4(2)(c)].

It is reported by the CPD that “Introduction of book building system in 2010 has unfortunately turned out to be a mechanism for manipulating the market prices. Instead of ensuring competition among large investors during the ‘price discovery’ stage, the system has been abused by market syndicates through placement shares at an artificially-induced high price. This artificial price was maintained for some time (particularly till the lifting of the lock-in period, i.e. 15 trading days), and following this, investors were found to offload their shares at a higher price (Appendix Figure 1). There are only three instances where book building system was practiced before the market collapse in December 2010, of which two companies were directly listed in the market. After much criticism, SEC has now postponed using this system, and has made necessary revision of the rules (i.e. Book Building Method under Public Issue, 2006). Since the revision of the rules, so far two companies have used the system to raise their funds.”⁴⁷ During the 2010-2011 stock market crash, the process of book building was misused highly due to the pitfalls in earlier regulations. For that reason significant amendments have been brought to the public issuer rules, but still those are defective, inadequate and not all embracing.

Another important provision is that if any issuer or any other person related with the issue violates any of the provisions of these Rules or furnishes false, incorrect, misleading information or suppresses any information, the Bangladesh Securities and Exchange Commission may take appropriate actions under the Securities and Exchange Ordinance, 1969.⁴⁸ In any case of difference or discrepancy in any interpretation or opinion, the decision of the BSEC shall be final.⁴⁹ Though the Public Issue Rules, 2015 are comparatively elaborated, it fails to mandate transparency and fairness in disclosing information and financial position of the issuer, determining share price and process of selecting investors, and ensuring fair and equal distribution of shares for the general public at large.

8.4.4. Private Placement of Shares

Private placement of shares is also a familiar medium of transferring shares. A public limited company can transfer shares through private placement before coming into IPO.

⁴⁷ Khondaker Golam Moazzem and Md. Tariqur Rahman, “Stabilizing the Capital Market of Bangladesh: Addressing the Structural, Institutional and Operational Issues” (2012), *CPD Working Paper: 95Centre for Policy Dialogue (CPD)* 2-3.

<http://www.cpd.org.bd/pub_attach/WP95.pdf> (24.02.2016).

⁴⁸ The Securities and Exchange Commission (Public Issue) Rules, 2015 r 16.

⁴⁹ Ibid r 17.

By private placement, it can enhance its paid up capital with the permission of BSEC. Before 2010-2011, there was no direct legal provision for private placement regulation. Private placement of shares was used as one of the major tools behind stock market crash in primary market during the 2010-2011 share scams. Thereafter, the investors and the regulators felt the necessity of formulating regulations for it. The BSEC framed the Securities and Exchange Commission (Private Placement of Debt Securities) Rules, 2012 by notification dated 20.10.2012, and the same was published in the official gazette on 30.01.2013. These Rules are applicable for issuance of debt securities through private placement. Therefore, these Rules are only confined to issuance of 'debt securities'⁵⁰ through "private placement"⁵¹ which does not include the issuance of shares (equity securities) through private placement. Provisions of the Rules will be discussed in details in the following part of this Chapter.

The Probe Committee Report identified that a strong cartel has used the primary market as a tool to fleece people by inflating share prices.⁵² The report disclosed that the 1996 crash was in the secondary market, but it was created in the primary market from behind the scene by a nexus of the issuer, issue manager, valuer, chartered accountant and placement holder with the SEC's support.⁵³ It further revealed that the huge price inflation due to the misuse of premium, book building and placement before issuing IPO caused massive instability in the secondary or open market. Primary market deals with the issuance of new securities. In Secondary market, previously issued securities and financial instruments in

⁵⁰ Rule 2(c) provides that debt securities, or debt instruments means securities those evidence the indebtedness of the issuer to the eligible investors in the form of bond or debt, or any other instrument of indebtedness, whether secured or not.

[Ibid].

⁵¹ Rule 2(n) states that private placement means offer of securities to any person in a way other than public offering.

[Ibid].

⁵² However, the Report identified the reasons responsible for this crash, a very short summary of which is given above and comparatively, a detail summary is given in the Appendix.

⁵³ The Probe Committee reported that the share market crash this time is different from that of 1996. These two crashes are completely different and the methods of crashes are also different. The crash in 1996 was in the secondary market, but this time crash arose out of the primary market under the veil which is the result of bad syndication of the officials of the SEC, issuer, issue manager, valuer, chartered accountant and placement holders. The steep up in the share price what created by premium, book building and private placement in the primary market that also resulted into steep up in share price in the secondary market too. If the BSEC would be able competently to prevent the corruption and malpractice in the primary market, probably the crash and scam in the secondary market could have been avoided. [In Bangla].

The Probe Committee, *Share Market Inquiry Report, 2011*, Inquiry Report (2011) 32.

<http://www.mof.gov.bd/en/index.php?option=com_content&view=article&id=169&Itemid=1> (2.11.2016).

the primary market such as stock, bonds, options, and futures are bought and sold or traded. So any anomaly, malpractice and fake trading in the primary market ultimately affects the secondary market. Insider trading and private placement in the primary market causes deficiency of traders in secondary market and increases the value of share in open market. In 2009-10, 34 companies, eight of which were non-listed, raised capital totaling Tk 3,776 crore through private placements.⁵⁴

Private placement is a non-public offering in which securities are usually sold to a limited number of chosen private investors. Some of them distribute primary shares equivalent to 50-90 percent of their paid-up capital. The Report said that the issuer companies or the issue managers or their representatives gave placement shares to many high civil and military officials in a bid to increase their share prices in the market by illegal use of private placement. Furthermore, the Report expressed its limitation that "it is not possible to know their complete identity by names and addresses mentioned in the prospectuses. If extensive police or intelligence probe is launched against these people....conspirators behind the scene will be unmasked and forgery in the stock market will be stopped in future". It also disclosed a list of 100 people who received shares through placement in a big amount.

Case Study: GMG Airlines Limited

As already discussed,, multiple illegal and fraudulent trading were conducted in the private market through private placement in 2010-2011. One example of it is the GMG Airlines Limited. The Probe Committee Report discloses that on 15th May 2008 GMG Airlines converted its shares from Tk. 1000 to Tk. 100, and then to Tk. 10. Thereafter, on 11.04.2010, GMG published information memorandum for issuing shares through IPO fixing per share value Tk. 150 by book-building process. It is observed from the information memorandum that from 1998 to 2005 GMG incurred huge loss, but in 2006 and 2007 it made few profits. Thereafter, in 2008, 2009 and 2010 GMG made a huge profit, but there was no indication about how it made such huge profit.⁵⁵ Displaying excessive profit, the GMG Airlines recovered huge amount of money from the selected

⁵⁴ Rejaul Karim Byron and Sarwar A Chowdhury, 'Stocks probe report says nexus targeted primary market for manipulation by inflating prices' *The Daily Star* (online) 13 April 2011. <<http://archive.thedailystar.net/newDesign/news-details.php?nid=181546>>.

⁵⁵ Probe Committee, *Share Market Inquiry Report, 2011*, Inquiry Report (2011) 78. <http://www.mof.gov.bd/en/index.php?option=com_content&view=article&id=169&Itemid=1> (3.04.2016).

investors through private placement before coming into IPO. GMG Airlines was expected to come into stock market and obtained permission from the BSEC.

It was too close to offer IPO, but due to sudden crash in stock market held between 10.12.2010 to 20.01.2011, the BSEC did not allow GMG Airlines to come into stock market. Some of the purchasers of shares filed company cases under section 141, 142 and 241 of the Companies Act, 1994 before the Hon'ble High Court Division. GMG Airlines contested the case.⁵⁶ After hearing the parties and perusing the documents, the Hon'ble Court rejected the application of the petitioners summarily on the grounds that the petitioners, being the shareholders-members of the company purchasing through private placement long before the declaration of IPO by the company, cannot invoke the provisions under sections 142 of the Companies Act and the company did not issue prospectus, and the money deposited against the shares cannot be said as "debt" against the company. However, few other money suits have been filed against the GMG Airlines before the civil court, which are now pending.

8.4.5. Private Placement of Debt Securities

After the heartbreaking stock market turmoil in 2010-2011, several recommendations were made for framing regulations for the private placement of debt securities since there was no such legal arrangement. Hence, the BSEC formulated the Securities and Exchange Commission (Private Placement of Debt Securities) Rules, 2012, which provide provisions for regulation of the issuance of debt securities through private placement.

Under the Rules, any issuer can apply for issuance of debt securities through private placement to the BSEC fulfilling the conditions and in the manner as provided under the Rules.⁵⁷ It indicates that no issuer can issue debt securities through private placement except upon obtaining prior approval from the BSEC complying with the provisions under these Rules. Apart from the procedural formalities, depositing fees, submitting in the prescribed form, producing prescribed documents and complying with other requirements, the following provisions,⁵⁸ are particularly important for protecting the rights of the

⁵⁶ Company Matter No. 112 of 2016 (Romana Rouf Chowdhury and others –vs- GMG Airlines Limited and others).

⁵⁷ The Securities and Exchange Commission (Private Placement of Debt Securities) Rules, 2012 r 1(4).

⁵⁸ These provisions are mainly the conditions to be fulfilled prior to making an application for issuance of debt securities by an issuer may make an application to the Commission for issuance of debt securities as

investors so far ensuring the financial viability of the issuer company meets the following criteria-

- (a) Total debt of the issuer, including the proposed issue, does not exceed 60% (sixty percent) of its total tangible assets.⁵⁹
- (b) It has a good track record of profitability and liquidity or its forecasted financial position indicates a significant profitability, liquidity and ability to pay-back with reasonable basis of making such forecasts.⁶⁰
- (c) Properly rated by a credit rating company about its full and final redemption or conversion of the debt securities.⁶¹
- (d) It has a valid enforceable interest over its assets and the right to create charges thereon.⁶²
- (e) It has obtained necessary permissions or consents from its primary regulator in order to issue of debt securities, if required.⁶³
- (f) It has appointed a 'trustee'^{64, 65}
- (g) The financial statements of the issuer is prepared as per Bangladesh Accounting Standards (BAS) as applicable in Bangladesh, and audited as per Bangladesh Standards of Auditing (BSA).⁶⁶
- (h) The issue has been approved by the Board of Directors or governing body of the issuer and in case the issuer is a listed company, by the shareholders in a general meeting.⁶⁷

provided under Rule 3 of the Securities and Exchange Commission (Private Placement of Debt Securities) Rules, 2012.

⁵⁹ Provided that in case the debt-equity or capital adequacy ratio of an issuer is determined by its primary regulator, the issuer fulfills that requirement:

Provided further that the Commission may consider variation of the above-mentioned ratio, if it thinks fit taking into account the industry scenario of the issuer.

[The Securities and Exchange Commission (Private Placement of Debt Securities) Rules, 2012 r 3(1)].

⁶⁰ Ibid r 3(2).

⁶¹ Ibid r 3(3).

⁶² Ibid r 3(4).

⁶³ Ibid r 3(5).

⁶⁴ Section 2(S) provides that the trustee means a company as defined in the Companies Act, 1994 (Act No. 18 of 1994) or a corporation or a statutory body or any other institution, a bank as defined in the Bank Companies Act, 1991 (Act No. 14 of 1991) or a financial institution as defined in the Financial Institutions Act, 1993 (Act No. 27 of 1993) registered under rule 9 of these rules to act as trustee to the issue of debt securities.

⁶⁵ The Securities and Exchange Commission (Private Placement of Debt Securities) Rules, 2012 r 3(6).

⁶⁶ Ibid r 3(7).

⁶⁷ Ibid r 3(8).

(i) In case the issuer is a listed company, the information concerning the issue is disseminated as price sensitive information immediately upon Board decision as well as upon approval at the general meeting and by the BSEC.⁶⁸

(j) Trustee to the issue, if applicable, has examined all the documents including the legal and title documents and has provided a 'due diligence certificate'.^{69, 70}

The trustee of a debt security shall be registered by the Commission under these Rules and no person shall act as a trustee to an issue without such registration.⁷¹ The provision for providing due diligence certificate by the trustee is highly important. The declarations made by the trustee in respect to all the issues provided for issuing debt securities are unequivocal and irrevocable, but no penal provision is provided under these Rules for the trustees if any of the information or documents subsequently turns untrue, false, fraudulent or misconceived. In fact, no penal provision is provided for the issuer or for the credit

⁶⁸ Ibid r 3(9).

⁶⁹ The format of Due Diligence Certificate is provided under Schedule D of the Rules in the following manner-

Due Diligence Certificate of the Trustee

Chairman

Securities and Exchange Commission

Sub: Issuance of (number & type of the debt securities) of Tk..... (face value) each of(Name of the Issuer)

We, the under-noted trustee to the above-mentioned forthcoming issue, state as follows:

1. We, while act as trustee to the above mentioned issue on behalf of the eligible investors, have examined the draft Information Memorandum, legal and other documents and materials as relevant to our decision; and
2. On the basis of such examination and the discussions with the issuer, it's directors and officers, and other agencies; independent verification of the statements concerning objects of the issue and the contents of the documents and other materials furnished by the issuer; -

WE CONFIRM THAT:

- (a) all information and documents as are relevant to the issue have been received and examined by us and the draft IM, draft Deed of Trust and draft Subscription Agreement forwarded to the Commission has been approved by us;
- (b) we have also examined all documents of the assets to be charged with the Trust and are satisfied that the assets bear the value, title and charge status as disclosed in the IM;
- (c) while examining the above documents, we find that all the requirements of the Securities and Exchange Commission (Private Placement of Debt Securities) Rules, 2012 have been complied with;
- (d) we shall act as trustee to the issue as mentioned above as per provisions of the Deed of Trust to be executed with the issuer and shall assume the duties and responsibilities as described in the Deed of Trust and in the IM;
- (e) we shall also abide by the Securities and Exchange Commission (Private Placement of Debt Securities) Rules, 2012 and conditions imposed by the Commission as regards of the issue; and
- (f) the above declarations are unequivocal and irrevocable.

For Trustee

Sd/-

Chief Executive Officer

(Name of the Trustee)

⁷⁰ The Securities and Exchange Commission (Private Placement of Debt Securities) Rules, 2012 r 3(10).

⁷¹ Ibid r 9.

rating authority or for the auditor for providing false, untrue or fraudulent information, document or document.

After examining the application, the BSEC, if satisfied thereof, shall accord consent in writing to the issue of debt securities within 7 (seven) working days of receipt of the application.⁷² If the BSEC finds that the application does not fulfill all the conditions as required under law, it will direct the applicant within 15 (fifteen) days in writing to fulfill the conditions.⁷³ The BSEC can call for further information and documents as it deems fit.⁷⁴ The rejected applicant can apply for a review of the decision by the BSEC by making review application within 30 (thirty) days of refusal.⁷⁵

To protect the interests of the investors, the trustee is authorized with several important duties and responsibilities under the Rules. The trustee has to be a person with no track record of default, negligence or non-compliance with any of the securities laws for discharging its duties, if it is in any way connected with the securities market. Trustee will hold the office for the protection of the rights of the eligible investors. Neither the trustee nor any of its affiliates or directors is allowed to have any relationship with the issuer. The trustee shall not act as an arranger of the issue and shall not pursue any eligible investor to invest or not to invest. Most importantly, the trustee has to perform the following duties and responsibilities in addition to those described in the deed of trust concerned.⁷⁶

The trustee shall act on behalf and for the exclusive interest of the eligible investors, ensure compliance of the issuer as per the requirements of these rules, monitor timely payment of all dues of the issuer to the eligible investors in terms of the Information Memorandum (IM)⁷⁷ or other terms and conditions of the issue of debt securities and shall ensure creation of charges and rights by the issuer over collateral securities and obtaining other securities or guarantees.⁷⁸ The trustee shall call the eligible investors' meeting and

⁷² Ibid r 5(1).

⁷³ Ibid r 5(2).

⁷⁴ Ibid r 5(3).

⁷⁵ Ibid r 6.

⁷⁶ Ibid 9(3).

⁷⁷ The Information Memorandum (IM) means any document including an electronic document described or issued as an offer document or prospectus and includes any notice, circular, advertisement or other documents inviting offers from the eligible investors for the subscription or purchase of any debt securities issued under these Rules.

[The Securities and Exchange Commission (Private Placement of Debt Securities) Rules, 2012 r 2(g)].

⁷⁸ Ibid r 9(5).

shall enforce the decisions within such time of any default or any act of the issuer which may affect the interest of the eligible investors as specified in the deed of trust and in the IM. In doing so, the trustee shall enforce its rights over the collateral securities and other securities or guarantees of the issuer observing due legal process and thereafter the trustee shall dispose-off the same to pay the proceeds in proportionately to the eligible investors after deduction of costs related thereto in case of final delay in making payment and also ensure interest at rate 2% against delayed period.⁷⁹

The trustee shall also submit an annual compliance report to the BSEC regarding the activities of the issuer, including repayment of dues to the eligible investors, take adequate steps for redressal of grievances of the eligible investors within one month of the date of receipt of the complaints and he shall keep the Commission informed about the number, nature and other particulars of the complaints received and the manner in which such complaints have been redressed and if required, may, inspect or call for books of accounts, records, register of the issuers and the trust property to the extent necessary for discharging its obligation. To protect the interest of the investors, the trustee can sue or to be sued on behalf of the eligible investors.⁸⁰

The trust deed or appointment of the trustee cannot be varied or modified without prior approval of the BSEC.⁸¹ The BSEC has the power to remove or replace the trustee on the basis of the appeal of two third of the securities holders or in the event of negligence of its duties or in the public interest.⁸² Before doing so, the BSEC will give the trustee a reasonable opportunity to be heard.⁸³ With the prior approval of the BSEC, the trustee can resign by delivering charge to a new trustee.⁸⁴ A trustee shall cease to exist as trustee of an issue upon full and final settlement of the securities.⁸⁵ The trustee for an issue shall be entitled to an annual trustee fee of maximum 0.25% of the outstanding amount of the debt securities.⁸⁶

⁷⁹ Ibid r 9(5).

⁸⁰ Ibid.

⁸¹ Ibid r 9(6).

⁸² Ibid 9(7).

⁸³ Ibid.

⁸⁴ Ibid r 9(8).

⁸⁵ Ibid r 9(9).

⁸⁶ Ibid r 9(10).

One of the most important features of the Rules is that it provides provision for settling dispute through arbitration. This is a completely new addition to the securities law. Any dispute between or amongst the issuer, trustee, debt security holders' association, debt security holders' advocate or any other person bound by the deed of trust shall be arbitrated according to the Arbitration Act, 2001.⁸⁷

For the protection of the interest of the investors, the BSEC is authorized to exercise ample power under these Rules. It can supervise and examine the activities of the issuer and the trustee. It shall have the power, after notice and an opportunity to be heard, to issue an order requiring any trustee under the deed of trust to comply with the provisions of these rules or an deed of trust to which it is a party. The BSEC may act upon its own motion or upon the request of one or more debt security holders or any party to the deed of trust.

If any issuer or trustee violates any of the provisions of these rules or furnishes false, incorrect, misleading information or suppresses any information or neglects to discharge its duties, the BSEC may take appropriate action under the Securities and Exchange Ordinance, 1969 or any other securities laws. The refusal or failure of any to comply with an order of the BSEC shall also be a violation of these Rules.⁸⁸

The most important provision is that violation of any provision of the Rules attracts penal provision. Any person who violates the provisions of these Rules shall be subject to civil and criminal penalties in accordance with law.⁸⁹ Appeals from civil penalties assessed by the decision of the BSEC shall be to the Commission and then to the superior court.⁹⁰

8.4.6. Public Issue of Right Shares

Public issue of 'rights shares'⁹¹ are governed under the Securities and Exchange Commission (Rights Issue) Rules, 2006. Some protections are given to the issuers by imposing conditions and restrictions upon the issuers while issuing rights shares. The price for availing rights issue will be determined by the issuer in consultation with the issuer

⁸⁷ Ibid r 14.

⁸⁸ Ibid r 15.

⁸⁹ Ibid r 16.

⁹⁰ Ibid.

⁹¹ Right share means new shares offered to the existing shareholders of a public listed company in proportion to their existing holding out of total shares of the company.

[The Securities and Exchange Commission (Rights Issue) Rules, 2006 r 2(g)].

manager who will provide the due diligence certificate.⁹² The underwriter, credit rating companies and the auditor also provides a declaration in the rights issue document. No provisions of punishment are available in case their declaration are proven to be untrue and not a reflection of the original status of the issuer. However, the issuer shall not price its rights share above par value, if it has not been in commercial operation for immediate past three years having a track record of profitability.⁹³ The number of rights share proposed shall not exceed five for each existing share held in the company.⁹⁴ Moreover, an issuer for issuing right shares must fulfill the following conditions⁹⁵-

- (a) such rights issue and price thereof have been approved by the shareholders in a general meeting;
- (b) the proceed of previous public offering, or rights issue, has been utilized fully;
- (c) annual general meeting has been held regularly;
- (d) the rights issue has been fully underwritten on a firm commitment basis by the underwriter;
- (e) the financial statements of the company is prepared as per IAS⁹⁶, as applicable in Bangladesh, and audited as per ISA⁹⁷ as applicable in Bangladesh;
- (f) the issuer or any of its directors is not a bank-defaulter;
- (g) the issuer has been credit rated by a credit rating company, if the offer is at a premium; and
- (h) profitability record in the immediate preceding year⁹⁸.

⁹² Declaration (due diligence certificate) about responsibility of the underwriter(s) in respect of the rights share offer document

This rights share offer document has been reviewed by us and we confirm after due examination that the issue price is justified under the provisions of the Securities and Exchange Commission (Rights Issue) Rules, 2006, and also that we shall subscribe for the for the under-subscribed rights shares within fifteen days of calling thereof by the issuer. The issuer shall call upon us for such subscription within ten days of closure of the subscription lists for the rights issue.

Place

Dated For

(Name of the Underwriter)

(Signature)

Managing Director

[The Securities and Exchange Commission (Rights Issue) Rules, 2006].

⁹³ The Securities and Exchange Commission (Rights Issue) Rules, 2006 r 4(2).

⁹⁴ The Securities and Exchange Commission (Rights Issue) Rules, 2006 r 4(3).

⁹⁵ Ibid r (3).

⁹⁶ International Accounting Standards.

⁹⁷ International Standards of Auditing.

⁹⁸ New condition (h) has been added by the Notification No. SEC/CMRRCD/2003-109/118/Admin/33 dated, November 02, 2011, Published in the Bangladesh Gazette on November 24, 2011. This is an important addition for preventing the financially weak issuer companies from issuing right shares. It has been added

The rights share offer documents must be prepared and published in the manner as provided under the Rules with the approval of the BSEC. Such document shall contain all the necessary information as directed under the Rules, and the BSEC may also direct to disclose more information if necessary. Amongst other information, such document must highlight the rights offer, rate of premium, justification of premium, risk factors, management plans for reduction of such risks, opening and closing date of subscription, date and place of issue, earning per share, amount of the fund utilization and indentifying various proposed projects with heads and amount of expenditure of each projects, issuer's financial condition, cash flow, profit and loss account, quantity of shares, issuer's management system, its directors, sister concerned, statement of lock-in shares and some other information.⁹⁹

No listed company can issue rights share without the prior written approval from the BSEC who enjoys the absolute discretion in granting approval or rejection to the application.¹⁰⁰ The BSEC shall exercise its powers reasonably in accordance with law and reject or accept any proposal whimsically or arbitrarily. In case of rejection, the BSEC has to explain the reasons thereof or it can call for additional information. However, the BSEC cannot be compelled to give permission. There is no provision stating what remedy lies to the applicant whose application was rejected by the BSEC. In clear absence thereof, it can be interpreted that the aggrieved person can file for review or can seek other legal recourses including filing writ petition or a civil suit as the context demands.

The issuer shall maintain clear record of the receivers who are taking rights shares. Not every existing shareholder is bound to take up on this offer. The interested subscriber has to subscribe to the rights shares by complying with certain formalities as provided in the rights issue offer document. The issuer of a listed security making offer for rights issue shall announce two separate dates for the purpose of record dates, one for shareholders decision regarding the proposed rights issue and the other for the determination of

after experiencing the massive crash in 2010-2011 when several issuer companies recovered huge amount of money from the market by issuing right shares even though those issuer companies were not financially viable. However, the condition for showing 'immediate preceding year' without mentioning specially 'how many years' causes confusion and there is a chance of abusing this provision too.

⁹⁹ The Securities and Exchange Commission (Rights Issue) Rules, 2006 r 8.

¹⁰⁰ Ibid r 10.

'entitlement of rights'¹⁰¹ issue after the BSEC accords approval.¹⁰² Once approval is obtained, no rights offer can be withdrawn or cancelled or postponed or varied by the issuer without prior written consent from the BSEC.¹⁰³ The issuer has to disseminate this information about the approval to the shareholders,¹⁰⁴ stock exchanges, publicly through website¹⁰⁵ and other concerned in the manner as stated under the Rules.

However, the rights share of the directors and other shareholders holding 5% or more shares shall be subject to a lock-in for a period of three years from the date of closure of the rights share subscription. In the event of renunciation of rights share by aforesaid persons, the renounced shares shall also be subject to a lock-in for the same period.¹⁰⁶ The issuer shall ensure compliance of the Rules.

Any violation or failure to comply with the provisions of these Rules attracts relevant penal provisions as provided under Securities and Exchange Ordinance, 1969.¹⁰⁷ Therefore, violation of any provision of these Rules entitles the aggrieved person to initiate legal proceedings under the aforesaid Ordinance. However, the general investors have literally no influence on the declaration of dividend, right shares or bonus shares on anything interest on shares by the issuer companies.

¹⁰¹ For the purpose of determination of entitlement of rights issue under these Rules, the issuer shall, within three working days from the date the Commission accords approval to the issuer under these Rules, announce the record date.

The Securities and Exchange Commission (Rights Issue) Rules, 2006 r 9(1)(b).

The record date will start not earlier than fourteen working days and not later than twenty one working days from the date of approval by the Commission.

The Securities and Exchange Commission (Rights Issue) Rules, 2006 r 9(1)(d).

¹⁰² The Securities and Exchange Commission (Rights Issue) Rules, 2006 r 9(1)(a).

¹⁰³ Ibid r 9(2).

¹⁰⁴ The issuer also has to deliver offer document approved by the Commission to the shareholders entitled to have rights shares, stock exchange(s) and the Commission within 10 (ten) working days from the record date.

The Securities and Exchange Commission (Rights Issue) Rules, 2006 r 9(1)(e).

¹⁰⁵ The issuer shall post the rights offer document in the issuer's website and also put on the websites of the Commission, stock exchanges, and the issue manager within 3 (three) working days from the date of according consent and shall remain posted till the closure of the subscription period as mentioned in sub-rule (1) of rule 12.

The Securities and Exchange Commission (Rights Issue) Rules, 2006 r 9(1)(f). This provision was newly inserted by the Notification No. SEC/CMRRCD/2003-109/118/Admin/33 dated, November 02, 2011, published in the Bangladesh Gazette on November 24, 2011 after 2010-2011 stock market crash.

Rule 12: Subscription–(1) Subscription shall be received through the banker to the issue during the subscription period of not less than fifteen days and not more than thirty days.

(2) Subscription opening date shall commence after fifteen days from the record date as mentioned in rule 9 (d).

¹⁰⁶ Ibid r 14.

¹⁰⁷ Ibid r 15.

8.4.7. Alternative Investment

For the purpose of creating an alternative to the traditional investment (in bond or stock), the BSEC framed the Bangladesh Securities and Exchange Commission (Alternative Investment) Rules, 2015, which came into effect on 22.06.2015. Basically, anything alternative to the traditional form of investments gets grouped as alternative investments though it varies from country to country.

a. About Alternative Investment Fund

It is provided under the aforesaid Rules, “alternative investment fund” or “fund” means any fund established or constituted in Bangladesh in the form of a trust which,-

- i. is a “private equity fund” or a “venture capital fund” or an “impact fund” or any other type of fund as declared by the Commission as alternative investment fund from time to time;
- ii. is a privately pooled investment vehicle which collects funds from eligible investors for investing in accordance with a defined investment policy for the benefit of its investors;
- iii. is a closed end fund with specific tenure;
- iv. collect subscription by way of private placement only and does not offer its units for public subscription; and
- v. is not covered under the Securities and Exchange Commission (Mutual Fund) Rules, 2001 or any other Rules of the Commission to regulate fund formation and management activities.¹⁰⁸

In order to encourage the investors and incorporate them in the mainstream economy, the alternative investments are now being promoted. After the uproarious stock market crash in 2010-2011 and its aftermath slow performance, many investors have lost their faith in the stock market. Subsequent policy development is still struggling to attract the investors. Idle money is being invested into bond, government security and bank, which is causing a gradual decrease in the interest rate against capital investment. Alternative investments have come into effect by offering many alternatives / options for investment to the

¹⁰⁸ The Bangladesh Securities and Exchange Commission (Alternative Investment) Rules, 2015 r 2(2).

investors. It is an inclusion process. More options will bring more investors, for which the alternative investment is getting attention ahead.

b. Constitutions of Alternative Investment Fund

To conduct the business of alternative investment, the fund manager has to be registered and approved by the BSEC upon complying with all the conditions and requirements and following all necessary procedures and depositing necessary fees under the Rules.¹⁰⁹ The fund manager needs to have eligibility qualifications for applying for registration, such as, it has to maintain adequate financial, technical, infrastructural and organizational facilities and human resources, enough paid up capital at least Tk. 50 (fifty) million and employ appropriate systems, procedures, technologies, processes and personnel to discharge alternative investment fund management services in a proper and efficient manner on an ongoing basis.¹¹⁰

The fund manager company or any of its directors cannot be a loan defaulter and cannot have any track record of default, negligence or non-compliance with any of the securities laws for discharging its duties, if it is in any way connected with the securities market.¹¹¹ Neither the fund management company nor any of its affiliates or directors is related to a Trustee to any alternative investment fund or mutual fund. The manager has to maintain satisfactory internal controls and written compliance and risk management procedures addressing all applicable regulatory requirements.¹¹² The Rules have added emphasis on having clean and clear management of fund manager.

An alternative investment fund shall be constituted in the form of a trust under the Trust Act, 1882 and registered under the Registration Act, 1908.¹¹³ Before registration of the trust, the draft trust deed shall be approved by the BSEC. A fund shall be formed to make a particular type of investment and operate entirely in its respective investment arena only.¹¹⁴ A fund may be operated as a general fund or an Islamic fund.¹¹⁵ An alternative investment fund shall have the criteria as prescribed under the Rules.¹¹⁶ The sole object of

¹⁰⁹ Ibid r 3.

¹¹⁰ Ibid r 3(3).

¹¹¹ Ibid.

¹¹² Ibid.

¹¹³ Ibid r 8(1).

¹¹⁴ Ibid r 8(2).

¹¹⁵ Ibid r 8(3).

¹¹⁶ Ibid r 8(4).

the fund is to carry out activities in furtherance of the interest of the unit holders in accordance with the strategy stated in the constitutive documents. The fund is prohibited from making an invitation to the public to subscribe to its units by the trust deed.

c. Restrictions on Using the Fund and Use of Fund

The Rules also impose several restrictions on the use of the fund by the fund manager. The fund shall abide by the provisions of these Rules and other applicable laws and it shall not carry on any activity other than its permitted activities. It is under an obligation to inform the BSEC in writing if any information or particulars previously submitted to the BSEC are found to be false or misleading in any way, or if there is any material change in the information already submitted. The fund which has been granted registration for a particular category of investment cannot change its category subsequent to registration.¹¹⁷

The fund manager may raise capital for a fund from eligible investors through issuance of units in accordance with the conditions as provided under the Rules. The fund manager shall make such investments which are in conformity with the investment and fund management guidelines and also in accordance with the provisions as provided under the Rules. The investible fund shall not be invested with a connected person of the fund manager or the Trustee. This fund in non-listed portfolio companies shall be made only in equity and equity linked instruments but shall not be invested in pure debt securities, nor shall it provide any loan. No alternative investment fund shall borrow funds directly or indirectly and engage in leverage activities. Investment by an Islamic fund shall be made only in the securities/companies classified as Shariah compliant as per the screening methodology and declared as Shariah compliant by the Shariah Council.¹¹⁸

d. Prohibitions on Using the Fund and Life of Fund

There are also some other prohibitions imposed on the use the fund. The units of a fund shall not be listed on any Exchange. A non-listed portfolio company in which any alternative investment fund invests shall not apply for listing with any exchange within 2(two) years from the date of last investment made in it by an alternative investment fund. A fund shall be established for a specific period from five (5) to fifteen (15) years which

¹¹⁷ Ibid r 10.

¹¹⁸ Ibid rr 17 and 18.

shall be disclosed in the constituent documents.¹¹⁹ A fund shall be established for a specific period from 05(five) to 15 (fifteen) years which shall be disclosed in the constitutive documents¹²⁰ and the life can be extended up-to two (2) years further.¹²¹

e. Duties and Trustee and Fund Manager to Protect the Interest of the Investors

The Trustee and the fund manager shall bear important duties and responsibilities under these Rules. Through the Rules, separate roles, duties and responsibilities have been defined for the Trustee and the Manager. However, their main duty is to protect the interest of the investors in accordance with law. They shall have to carry out such duties and responsibilities as described in the trust deed, incorporation documents, the Rules and as directed by the BSEC time to time. They shall have to act on behalf and for the exclusive interest of the investors, to ensure compliance of all the requirements of these Rules and to preserve the trust deed in its office for observation of the investors. They will take adequate steps to redress grievances of the investors within one month from the date of receipt of any complaint and shall keep the BSEC informed about the number, nature and other particulars of the complaints received and the manner in which such complaints have been redressed.¹²²

They will exercise due diligence and vigilance in carrying out their functions and duties under the constitutive documents, these Rules and all other applicable laws. They shall ensure that the title to all assets of the fund is lawfully vested in the trust and hold the assets of the fund in its custody on behalf of the unit holders in accordance with the provisions of the constitutive documents, these Rules and all other applicable laws. They shall not delegate any duties legally or beneficially own units of the fund. They shall not misuse the fund. They shall protect the interest of the investors and keep the BSEC informed about any doubtful event related to fund management.¹²³

¹¹⁹ Ibid r 19.

¹²⁰ Ibid 20(1).

¹²¹ If allowed by the constitutive documents, the life of the fund may be extended for a period of up to 02 (two) years beyond its disclosed life subject to approval of at least 2/3rd (two-third) majority of the unit holders by value of their investment in the fund, in a general meeting to be held at least 6 (six) months before maturity of the fund and thereafter approval of the Commission.

[Ibid r 20(2)].

¹²² Ibid r 15(1).

¹²³ Ibid.

The trust deed or appointment of the Trustee cannot be varied or modified without the prior approval of the BSEC.¹²⁴ The Trustee shall enter into an investment management agreement with the fund manager.¹²⁵ The Trustee shall be entitled to an annual Trustee fee of maximum 0.25% of the realized fund.¹²⁶ The Trustee shall always endeavor to protect the rights and interests of the investors and to perform functions and activities in accordance with the trust deed and laws. The Trustee functions under the direct supervision of the BSEC and shall keep the BSEC informed about all material issues related to the fund in the manner as prescribed under the Rules.

In short, they must act in accordance with the constitutive documents and all applicable laws including notifications, circulars, guidelines and directives issued under those in the interest of unit holders, without gaining any undue advantage for itself or any of its connected persons.

f. Power of the BSEC

No alternative investment fund can operate without the prior permission and registration from the BSEC under the Rules. The BSEC enjoys ample powers of granting permission or refusing, rejecting and canceling the registration of any fund under the Rules. The BSEC can cancel registration of a fund after informing the Trustee and providing the fund manager and the Trustee an opportunity of being heard, if it determines that such action is necessary in the interest of the unit holders or if the unit holders, through a special resolution, request the BSEC on reasonable grounds to cancel the registration of the fund or the Trustee satisfies the Commission, on reasonable grounds that continuation of the fund may be detrimental to the interest of its unit holders.¹²⁷

The BSEC may, on its own motion or upon receipt of any information or complaint, appoint one or more persons as enquiry or inspection authority to undertake enquiry on any matter or inspection of the books of account, records and documents related to an alternative investment fund, the fund manager, the Trustee or any other person for any of the reasons as stated in the Rules.¹²⁸ The BSEC can call for any information, documents

¹²⁴ Ibid r 15(2).

¹²⁵ Ibid r 15(3).

¹²⁶ Ibid r 15(4).

¹²⁷ Ibid rr 1, 3, 910, 12, 13, 14 and 16.

¹²⁸ Ibid r 21.

and can conduct inspection and inquiry into the affairs of the Fund¹²⁹ and call also call for reports¹³⁰. However, a Fund can be dissolved or wound up in the manner as stated in the Rules¹³¹ upon informing the BSEC¹³².

The BSEC can also impose penalty upon the related authorities to the management of the fund. If any alternative investment fund, fund manager or Trustee violates any of the provisions of the Rules, the Act or the Ordinance, or furnishes false, incorrect or misleading information or suppresses any information, the BSEC may take appropriate actions under the Bangladesh Securities and Exchange Commission Act, 1993 or the Securities and Exchange Ordinance, 1969.¹³³

8.4.8. Protection for the Qualified Investor Offer by Small Capital Companies

On 4.08.2016, the BSEC promulgated a new provision of law named the Bangladesh Securities and Exchange Commission (Qualified Offer by Small Capital Companies) Rules, 2016 for the small capital companies, with a view to ensuring more participation of the small capital companies in the capital market. By these Rules, a separate platform i.e. 'small capital platform'¹³⁴ for the 'small capital companies'¹³⁵ is introduced. These Rules

¹²⁹ Rules 23 empower the BSEC to call for any information or document related to the fund.

Rule 23: Power to call for information and documents-

(1) The Commission may at any time call for any information and documents from an alternative investment fund or fund manager or sponsor or Trustee or unit holders with respect to any matter related to the fund or for the assessment of risk or prevention of fraud.

(2) Where information and documents are called for under sub-rule (1) it shall be furnished within the time specified by the Commission.

[Ibid r 23].

¹³⁰ The BSEC may at any time call upon the alternative investment fund, the fund manager or the Trustee to file such reports, as the Commission may think fit, with respect to the activities of the alternative investment fund and the concerned person shall submit such reports as called upon.

[Ibid r 24].

¹³¹ An alternative investment fund formed as a trust shall be wound up:

(a) when the tenure of the fund as mentioned in the constitutive documents comes to an end; or
(b) in the opinion of the Trustee, winding up of the fund is necessary in the interests of the unit holders; or
(c) if 66% (sixty six percent) of the unit holders by value of their investment in the fund pass a resolution at a meeting that the fund be wound up; or
(d) if the Commission so directs in the interests of the investors; or
(e) by order of a competent court.

[Ibid r 26(1)].

¹³² Ibid r 26(2).

¹³³ Ibid r 22.

¹³⁴ "Small capital platform" means separate platform in an exchange for trading of securities issued by small capital companies.

[The Bangladesh Securities and Exchange Commission (Qualified Offer by Small Capital Companies) Rules, 2016 r 2(1)(i)].

¹³⁵ "Small capital company" means a public company limited by shares with growth potentials having paid-up capital from Tk. 50 (fifty) million to below Tk.300 (three hundred) million.

enable the small capital companies to make ‘qualified investor offer (QIO)’¹³⁶ to the ‘qualified investors’¹³⁷.

Application for consent under these Rules may be made by two methods i.e. (a) fixed price method, when offered at par value, or (b) book-building method,¹³⁸ when offered above par value.¹³⁹ The important provision is related to the qualification to be fulfilled by an issuer for making qualified investor offer. The qualifications require that the issuer has minimum existing paid-up capital of Tk. 50 (fifty) million and intends to raise its paid-up capital by an amount of at least Tk. 50 (fifty) million through QIO and after the QIO, its paid-up capital stands below Tk. 300 (three hundred) million.¹⁴⁰ In order to ensure the financial viability of the issuer, there must be recommendations from the issuer manager with an explanation that the issuer has growth potentials and the ‘issue manager’¹⁴¹ is in no way connected with the issuer, and does not hold any of its securities with the issuer.¹⁴² The issuer also has to ensure that it has not made any material change including raising of paid-up capital after the date of audited financial statements as included in the prospectus and it has prepared its financial statements in accordance with the requirements of the Securities and Exchange Rules, 1987.¹⁴³ It must have to ensure that its financial

[Ibid r 2(1)(h)].

¹³⁶ “Qualified investor offer” or “QIO” means offer of securities, by an issuer to the qualified investors, to be listed with any exchange in the small capital platform thereof.

[Ibid r 2(1)(g)].

¹³⁷ “Qualified investor or QI” means the investors qualified and competent to understand the risk and return potentials to invest and commit capital to any small capital company which shall include the following persons who have business operation/investment in Bangladesh: (i) Merchant Bankers and Portfolio Managers; (ii) Asset Management Companies; (iii) Mutual Funds and other Collective Investment Schemes (CIS); (iv) Stock Dealers; (v) Market Makers; (vi) Banks; (vii) Financial Institutions; (viii) Insurance Companies; (ix) Alternative Investment Fund Managers; (x) Alternative Investment Funds; (xi) Approved Pension Funds and Recognized Provident Funds; (xii) Issuer of other listed securities (other than holding, subsidiary or, associate company of the issuer); (xiii) Resident or non-resident Bangladeshi “high net worth individual” or “HNI”; (xiv) Foreign Investors who have portfolio investments in capital market of Bangladesh through any Security Custodian registered with the Commission; and (xv) Any other Institution as approved by the Commission.

[Ibid r 2(1)(f)].

¹³⁸ “Book-building methods” means the process by which an issuer attempts to determine the price to offer its securities based on demand from the qualified investors.

[Ibid r 2(1)(a)].

¹³⁹ Ibid r 3(1)(a), (b) and (c).

¹⁴⁰ Ibid r 3(2).

¹⁴¹ Issue manager: (1) The issuer shall appoint one or more issue manager(s), registered with the Bangladesh Securities and Exchange Commission, for the purpose of making the qualified investors offer.

(2) The issue manager(s) shall be entitled to fees and be responsible for the issue including preparation and disclosures made in the prospectus and use of the issue proceeds by the issuer.

[Ibid r 8].

¹⁴² Ibid r 3(2)(d) and (e).

¹⁴³ Ibid r 3(2)(f) and (g).

report audited by the latest financial statements audited by an auditor from among the panel of auditors as approved by the BSEC from time to time.¹⁴⁴

Furthermore, the issuer has to ensure its compliance with the legal provisions in making the prospectus and other documents and it has complied with the provisions of Corporate Governance Guidelines as published by the BSEC from time to time.¹⁴⁵ In case of an initial QIO, the issuer has to satisfy that at least fifty percent of the issue has been underwritten on a firm commitment basis by the ‘underwriter(s)’¹⁴⁶ so that ample protection may be given to the shareholders who can buy the shares from the primary market.¹⁴⁷ To prove the clean and clear liability image, the issuer also has to satisfy that the issuer or any of its directors is not a bank defaulter,¹⁴⁸ it has appointed one or more ‘market maker(s)’¹⁴⁹ for its securities to be listed at least for a period of three years after listing,¹⁵⁰ it has been regular in holding annual general meeting (AGM),¹⁵¹ and it has a positive net profit after tax at least for immediate preceding two financial years, if it offers its securities above par value¹⁵².

To ensure security to the investors, the lock-in provision is made comparatively rigorous under these Rules. Ordinary shares of the issuer shall be subject to lock-in, from the date of issuance of prospectus or commercial operation, whichever comes later. All shares allotted to the qualified investors, within two years of according consent, will be locked-in

¹⁴⁴ Ibid r 3(2)(h) and (i).

¹⁴⁵ Ibid r 3(2)(j),(k) and (l).

¹⁴⁶ Underwriter: (1) The issuer making qualified investor offer shall appoint underwriter(s), registered with the Bangladesh Securities and Exchange Commission, on a firm commitment basis.

(2) The issuer, in the event of under subscription, shall send notice to the underwriter(s) within ten days of closure of subscription calling upon them to subscribe the securities and pay for this in cash in full within fifteen days of the date of said notice and the said amount shall be deposited into the designated bank account within the said period.

(3) The underwriting agreement shall contain a condition to the effect as mentioned in sub-rule (2) above.

(4) The issuer shall, within seven days of the expiry of the period mentioned in sub-rule (2), send to the Commission the proof of subscription and deposit of the money by the underwriter(s).

[Ibid r 9].

¹⁴⁷ Ibid r 3(2)(m).

¹⁴⁸ Ibid r 3(2)(n).

¹⁴⁹ Market Maker: (1) The issuer making qualified investor offer shall enter into agreement(s), for market making of its securities to be listed, with one or more market maker(s) registered with the Bangladesh Securities and Exchange Commission.

(2) The market maker(s) shall conduct the market making activities as per requirements of the relevant Rules.

[Ibid r 10].

¹⁵⁰ Ibid r 3(2)(o).

¹⁵¹ Ibid r 3(2)(p).

¹⁵² Ibid r 3(2)(q).

for one year and all shares held by alternative investment funds, at the time of according consent, will be locked-in for one year and all other shares will be locked-in for three years.¹⁵³

Some other very important provisions are provided in the Annexures A to F of these Rules. Under these Rules, not only the issuer but also the issuer manager, underwriter, Managing Director/Chief Executive Officer/Director and auditor have to provide due diligence certificate with admitting civil or criminal liability arising out thereof. In the Annexures, details provisions are provided for the contents to be in the prospectus, due diligence certificates, documents to be submitted and other procedural formalities for making QIO under these Rules.¹⁵⁴

No such offer by any issuer can be made without the approval of the BSEC.¹⁵⁵ It is absolutely under the discretion of the BSEC to approve or reject any application of the issuer for making QIO.¹⁵⁶ In doing so, the BSEC will meticulously examine all the information and documents submitted by the issuer. Such an application along with necessary documents will also be available to the stock exchanges and in the website of the issuer. The BSEC may ask for additional conditions /requirements to be fulfilled by the issuer for according consent thereof.¹⁵⁷ The decision of the BSEC shall be final and binding upon the all concerned in respect any matter under the Rules or in case of any confusion or difference of opinion arising out of these Rules.¹⁵⁸ The provisions related to pre-requirements for making QIO, subscription method and the procedures to be observed thereof are comparatively comprehensive and including multiple new requirements which assures more accuracy regarding the financial viability and managerial condition of the issuer.

However, the BSEC may exempt any person or class of persons or any securities or class of securities or any transaction or class of transactions from the operation of any of the

¹⁵³ Ibid r 7.

¹⁵⁴ Ibid Annexures A – F.

¹⁵⁵ Ibid r 4.

¹⁵⁶ Ibid r 13.

¹⁵⁷ Ibid.

¹⁵⁸ Decision of the Commission shall be final on certain matter- Notwithstanding anything contained in these Rules, in the event of any confusion or difference of opinion on any matter whatsoever, the decision of the Commission shall be final and binding on all concerned.

[Ibid r 17].

requirements of these Rules.¹⁵⁹ In fact, the BSEC enjoys the absolute power and authority to regulate the issuers under these Rules. The BSEC can punish anyone for contravening the provisions of these Rules in the manner as the BSEC can do under the Securities and Exchange Ordinance.¹⁶⁰ Therefore, for any kind of misuse or malpractice done by the issuer under these Rules the BSEC should also be held responsible, but there is no such provision to hold the issuer or to hold the BSEC responsible.

8.4.9. Other Protections under Securities Laws

There are numerous laws for the protection of the investors and the Regulation of the securities market as discussed earlier; each law provides the consequences of their violation. While discussing each law, the protections provided to the investors have also been discussed. However, amongst others, the protections given under the Securities and Exchange Ordinance, 1969 are particularly relevant.

a. Protections under the Securities and Exchange Ordinance, 1969

The Ordinance provides high protection to the investors by allowing only the listed companies having prior permission of the BSEC to issue shares in the market. No issuer can issue share in the stock market without being permitted by the BSEC in accordance with law.¹⁶¹ In case of issuing prospectus or approving the IPO¹⁶², the BSEC enjoys huge powers in granting permission, calling for information, inspecting the issuer, imposing conditions, exempting conditions, condoning contraventions, and monitoring the activities of the issuer. It is also the superior regulatory market authority of all the market intermediaries as discussed. The BSEC owes the duty to regulate market properly and to ensure protection to the investors but the BSEC owes no such liability towards the investors directly if it fails to perform and carry out its duties and responsibilities properly in accordance with law. The general investors have very little to do in influencing the performances of the BSEC, thus to have any control over its governance, management and affairs, and thereby call for transparency. Nevertheless, the BSEC can impose

¹⁵⁹ Ibid r 15.

¹⁶⁰ Contravention- If any issuer or any other person related with the issue is suspected to violate any of the provisions of these Rules or furnishes false, incorrect, misleading information or suppresses any information, the Commission may conduct inspection or enquiry and take appropriate actions under the Securities and Exchange Ordinance, 1969.

[Ibid r 14].

¹⁶¹ An elaborated discussion of the power, functions, roles and activities of the BSEC in respect of capital market has been made in Chapter 4 of this thesis.

¹⁶² Initial Public Offer.

restrictions,¹⁶³ prohibitions,¹⁶⁴ penalty,¹⁶⁵ conditions,¹⁶⁶ directions,¹⁶⁷ orders¹⁶⁸ and file cases¹⁶⁹ also.

Short-selling by the director or officer of any issuer is prohibited under the law. Fraudulent transfer or fraudulent selling of shares in stock market is also prohibited in the market. Section 17 of the Ordinance puts several restrictions upon any person from doing fraudulent activities in the market. This restriction is imposed on everyone in the tune of “no person shall”, which includes any authority, individual, institution, body or any person who is or is not involved in the stock market. This section is particularly relevant for the purpose of preventing fraud and malpractice from the market and securing fairness and transparency thereof. It provides that 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 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 make any suggestion or statement as a fact of that which he does not believe to be true.¹⁷⁰ No person shall omit or

¹⁶³ The Securities and Exchange Ordinance, 1969 s 8.

¹⁶⁴ Ibid ss 17 and 18.

¹⁶⁵ Ibid s 19B and 22.

¹⁶⁶ Ibid s 2CCC.

¹⁶⁷ I2i0Ad s .

¹⁶⁸ Ibid s 20.

¹⁶⁹ Ibid s 22A.

¹⁷⁰ Section 17 provides as follows-

“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) being a director or an officer of the issuer of a listed equity security or a beneficial owner of not less than ten percent of such security who is in possession of material facts omit to disclose any such facts while buying or selling such security.”

[Ibid s 17].

conceal anything or induce any person by deceiving him to do or omit to do anything for the purpose of committing offence under this Ordinance.¹⁷¹ The person shall not commit 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 the capital market.¹⁷² No person shall do anything which is prohibited under the security law because doing anything contrary to the securities laws constitute an offence under the relevant law.

The scope of the aforesaid section seems to be very wide, but it stills fall short because of other restrictions put by the Ordinance, such as, restrictions provided under section 25¹⁷³ which prevents any court from taking cognizance of any offence under this Ordinance except on a report in writing of the facts constituting the offence by an officer authorized in this behalf by the BSEC. It means that no individual or person can file any case under the Ordinance unless the BSEC files so. Therefore, under the Ordinance, only BSEC can file case, and the only remedy left to any individual is that any aggrieved person can raise appeal to the BSEC. Special Tribunal has been established under this Ordinance for the trial of the share market related cases only, which is certainly a good step for protecting the rights of the investors though in limited manner as discussed above. However, this Ordinance also prohibits any person from submitting any false statement, 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.

Furthermore, no person shall, except with the permission of the BSEC 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. The existing and former Chairman, Member and employee of the BSEC shall also be under the same obligation. The BSEC 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. Violation

¹⁷¹ Ibid.

¹⁷² Ibid.

¹⁷³ Section 25 provides that “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 authorized in this behalf by the Commission; and no court inferior to that of a Court of Session shall try any such offence”. This provision has also been discussed earlier in this thesis. [Ibid s 25].

of the provision of secrecy shall be an offence under the Ordinance and the contravening person 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. One of most shortcoming of this Ordinance and the Securities and Exchange Commission Act, 1993 is that nowhere it is mentioned that how this amount of fine will be used, and can the unjust loss sufferers (due to failure of appropriate performance and regulation of the BSEC or otherwise) be compensated from this amount of fine.

With a view to providing protection to the investors, the BSEC has been given ample power under the Ordinance. It can call for any information or document from any person. It can prohibit or enquire about any doubtful transaction. It can pass any prohibitory order if it is of the 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, or that any person has neglected, or is likely to do an act the omission or failure to do which constitutes such contravention. In such case, the BSEC 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, omission or failure to do which constitutes such contravention.¹⁷⁴

Generally, every security should be acquired by the security holder i.e. investor, through valid transfer. Anything obtained through fraud or misrepresentation is not valid in light of section 17 of the Securities and Exchange Ordinance, 1969. Nevertheless, a protection or exemption is given under the Ordinance to the security holders who hold the security in good faith. This area of exemption in the name of good faith also extends to the securities acquired in good faith by any person.¹⁷⁵ 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 defenses available to prior parties among themselves.¹⁷⁶

¹⁷⁴ Ibid s 20.

¹⁷⁵ Ibid s 31.

¹⁷⁶ 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 BSEC, 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

There is no doubt that the BSEC enjoys more than enough power to control, supervise, regulate and direct the affairs and business of the stock market under this Ordinance and all other securities laws. However, to what extent BSEC is in itself capable of ensuring adequate protections to the investors and guaranteeing fair business in the stock market is questionable. The BSEC is not free from the allegation of corruption and acting for the interest of the vested quarter. It is alleged to be more accessible and friendlier for the financially dominating investors rather than small and medium class investors. Involvement of the higher officers in 1996 stock market crash and 2010-2011 share scam was proved evident. Unfortunately, the general investors still fail to access the BSEC.

b. Protections under the other Securities Laws and Regulations

As examined in the preceding Chapters, all relevant laws in the securities market have come into being for the proper regulation of the same, thus to ensure good governance, fairness and adequate protections to the investors and all the stakeholders. Although, the laws were promulgated with the intent to ensure fair trade, many striking loopholes in the legal structure and lack of implementation have given rise to multifarious technical issues and scopes for abuse of power.

The stock market is a place where almost everything is governed under law from top to bottom except the trading between the issuers and the investors, although the BSEC can monitor and intervene in any transaction or deal between the traders. The basic law is the Securities and Exchange Ordinance, 1969.¹⁷⁷ The Securities and Exchange Commission Act, 1993, the Securities and Exchange Rules, 1987, the Securities and Exchange Commission (Issue of Capital) Rules, 2001, the Public Issue Rules, 2015, the Securities and Exchange Commission (Over-the-Counter) Rules, 2001, the Securities and Exchange Commission (Rights Issue) Rules, 2006, the Securities and Exchange Commission (Asset Based Security Issue) Rules, 2004, the Exchanges Demutualization Act, 2013 and other guidelines/directives/regulations/rules also provide details about the procedures, formalities and provisions for issuing shares in the market.¹⁷⁸ Though most of the laws are procedural, they play an important role in the governance and regulation of securities

govern the rights and liabilities with respects 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 (IX of 1872), the Negotiable Instruments Act, 1881 (XXVI of 1881), the Transfer of Property Act, 1882 (IV of 1882), or the Companies Act, 1994, or any other law for the time being in force.

¹⁷⁷ It is both a substantive and procedural enactment. It is the first law in Bangladesh provided for the capital market regulation.

¹⁷⁸ All these laws have been examined and analyzed elaborately earlier in this thesis.

market because fair procedures ensure better protection. Therefore, the procedural laws should not be ignored thinking they have no role to play in ensuring protection to the investors. In fact, procedural laws ensure greater transparency, sustainable standard and common platform for all.

Likewise, the Securities and Exchange Commission (Private Placement of Debt Securities) Rules, 2012 provides the detailed procedure for the regulation of the private placement of the debt securities only, the Bangladesh Securities and Exchange Commission (Alternative Investment) Rules, 2015 has been especially made to encourage the general investors to invest in alternative investments apart from traditional investment in stock market or real estate business. Recently, the BSEC has provided another enactment to encourage and strengthen the participation of small investors in the capital market, named the BSEC (Qualified Investor Offer by Small Capital Companies) Rules, 2016. Moreover, the BSEC is opening up new avenues for the small and medium size investors to ensure their participation and investment in the capital market and is introducing multiple education programmes and training for the dissemination of market related knowledge widely.¹⁷⁹

To ensure the availability of fund, the Margin Rules, 1999 provides margin for the investors and the market intermediaries and the Depository Regulations, 2000 and the Depository (User) Regulations, 2003 are for the regulation of the roles of depositories in order to ensure security in depositing with the depository by the investors; all of which are relevant in ensuring equal regulation in the market for all kinds of investors.

On the other hand, several securities market have been created, prohibited and restricted by different laws including the Securities and Exchange Commission (Prohibition on Insider Trading) Rules, 1995, the Securities and Exchange Commission (Merchant Banker and Portfolio Manager) Rules, 1996, the Securities and Exchange Commission (Stock-Dealer, Stock-Broker and Authorized Representative) Rules, 2000, the Securities and Exchange Commission (Market Making) Rules, 2000, the Securities and Exchange Commission (Mutual Fund) Rules, 2001, the Securities and Exchange Commission

¹⁷⁹ As a part of that plan the BICM has been established and the Bangladesh Securities and Exchange Commission (Promotion of Investment Education and Training) Rules, 2016 have been framed. Under the Rules, the BSEC is going to establish a Bangladesh Academy Securities Market (BASM). In addition to, the BSEC has already introduced varieties education and training programmes for all kinds of investors, special programmes for the women investors, free programmes for the small investors, awareness activities, seminars, symposiums, conferences, certificate programmes, publication of books, outlets and other materials.

(Acquisition, Taking-Over and Controlling of Substantial Shares) Rules, 2002, the Securities and Exchange Commission (Security Custodial Services) Rules, 2003, the Securities and Exchange Commission (Asset Based Security Issue) Rules, 2004 etc.¹⁸⁰

To bring the valuers, auditors, research analysts, credit rating companies under the umbrella of law and also ensure corporate governance amongst the issuer corporations, several regulations have been framed, including the Credit Rating Companies Rules, 1996, the BSEC (Research Analysis) Rules, 2013, the Corporate Governance Guidelines, 2012. To understand the securities laws giving protection to the investors, all these legal provisions need to be compared comprehensively.

8.4.10. Others Protection under Different Laws

Apart from the protections provided under the securities laws, there are some other civil and criminal laws under which any aggrieved person can take protection if any remedy is possible. None of the securities laws puts any restriction or prohibition upon any aggrieved person to invoke civil and criminal law jurisdiction as ensured under the Code of Civil Procedure, 1908,¹⁸¹ the Specific Relief Act, 1877,¹⁸² the Penal Code, 1860,¹⁸³ the Code of Criminal Procedure, 1898,¹⁸⁴ the Negotiable Instruments Act, 1881¹⁸⁵ and otherwise. Recently, few of the share purchasers through private placement from GMG Airlines in 2010 filed suits for compensation before the civil court, which are pending. Nevertheless, there is no way to deny that the scope of taking legal recourses under our existing civil and criminal laws in securities market related issues/cases is very limited.

However, recently the Money Laundering Prevention Act, 2012 has included the stock market related offence¹⁸⁶ under the predicate offence for committing money laundering and has imposed reporting obligations upon some market intermediaries, such as, stock dealer, stock broker, portfolio manager, merchant banker, securities custodian and asset manager.

¹⁸⁰ All these are secondary laws. As discussed earlier, most of the securities laws have come from the secondary sources, and the main sources are the BSEC and the stock exchanges.

¹⁸¹ A procedural law for filling civil suit.

¹⁸² A substantive law for filling civil suit.

¹⁸³ A substantive law for filling criminal case.

¹⁸⁴ A procedural law for filing criminal case.

¹⁸⁵ A special legislation for filling cases using negotiable instruments.

¹⁸⁶ The Money Laundering Prevention Act, 2012 s 2(5)(CC)(25).

It provides that “insider trading and market manipulation using price sensitive information related to the capital market in share transactions before it is published for general information to take advantage of the market and attempting to manipulate the market for personal or institutional gain”.

8.5. Concluding Remarks

Though there are several protections provided to the investors by different laws and regulations in stock market, they often fall short. As discussed earlier, the share market scammers of 1996 were left unpunished even after the proper identification as evident from the records. Responsible causes, legal abortiveness and institutional failures have also been discussed in details above. It is also observed that fluctuations in share prices is a natural outcome of stock market business like any other market and may be projected. But, market crash may not be natural and it cannot be projected. Mere fluctuation in share price may not lead to market crash. Massive fall down in share price from the highest growth of share price may cause the share market to crash. Besides, loss of paper wealth of share and speculation of bubbles in stock market may cause crash. However, sometimes share market crash may not be deceitful, purposeful and *malafide*. Sometimes it might be a general outcome. But, share market scam is always ill-motivate, deceitful, scandalous and outrageous.

Scam pollutes healthy stock business practice. It widens the scope for the perpetrators of unjust enrichment. Scam enriches few of the so-called investors/stakeholders to unjustly from the money of others who were justly entitled to the benefits out of their investment. It is an offence of theft. The existing securities laws, especially the Securities and Exchange Ordinance, 1969, Securities and Exchange Commission Act, 1993, Companies Act, 1994, Corporate Governance Guidelines and other securities laws and remaining criminal and civil laws failed to prevent the scam and stop concerted malpractice from the market. Sometimes, legal provisions are used as technical device to dictate the market by abusing the process of law. Our existing criminal and civil laws are silent in the area of punishing the scammers and compensating for the loss. Nevertheless, the legal provisions are being updating day by day. Several attempts have already been taken and numerous reformations have already been made. Money Laundering Prevention Act, 2012 has gone one step ahead in identifying that the offence of share scam amounts to money laundering. Considering the atrocity and devastating consequence of this offence in 1996 and also in 2010-2011, the Legislature has included it in the said Act.

However, as observed earlier, the existing legal provisions are not sufficiently adequate to penalize the scammers. After both scams, numerous steps were taken, offenders were

identified, causes were addressed, recommendations were made but none of the steps could comprehensively satisfy the expectation of general investors, secure a safe market, remove risk from the market, and curb the malpractice and collusive practice. Most regrettably, all of these steps failed to penalize the offenders and compensate the victims.

Therefore, the investors' protection laws in Bangladesh have been proven to be inadequate and weak. The company laws and the securities laws are mostly segregated and the provisions providing the protection to the investors scattered and dismantled. Several recommendations have already been made earlier where the shortcomings have been observed. Laws of 'unjust enrichment' and 'restitution' may be some better alternatives in absence of existing provision of law. In fact, if there were to be a provision obliging and empowering the BSEC to distribute the amount of fine recovered by imposing on the perpetrators amongst the loss sufferers, it could be a great alternative for compensating the unjust loss sufferer. It would be a balanced alternative. Mere steps taken and existence of strict legal provisions are not enough. It requires comprehensive development, endurance of healthy share market practice, jurisprudential advancement, accumulated good will of the superior authorities, sincere steps, honest performance of duties, accountability, fair disclosure of information, true endeavor to punish the perpetrators who got enriched unjustly and unfairly, and most importantly, a sincere effort to compensate the victims who suffered loss unjustly and unfairly. Moreover, scammers should be punished rigorously and sufferer should be compensated at the cost of the offenders.

Before 2010-2011, Bangladeshi stock markets had ranked in the top chart of international share business and had credited to have been one of the stable stock markets in the world. It contributed 40% to 50% in total GDP in our country. Lots of foreign investors had started to invest and showed great interest in the market. After the 1996 crash, several efforts were dedicated to restore the market as a stable, safe and business-worthy field; but the 2010-2011 crash caused all these to go in vain. Now, Bangladesh must undertake the challenging task of proving that it can ensure sound, healthy, consistent business practice in the stock market. The Government needs to be more committed to punishing the perpetrators and scam offenders in order to reestablish the confidence of the investors.

Chapter 9

Role of the Judiciary

9.1. Introduction

The judiciary plays a very important role in ensuring an effective legal regulation in the capital market, but the judiciary does not often, *suo moto*, interfere in the affairs in the capital market. Nevertheless, the judiciary plays a central role in redressing the aggrieved person by punishing the wrong doer and awarding compensation to the loss sufferer. It is expected that the judiciary shall play fairly. The judiciary has also got its own limitations too. If the prosecution fails to prove the case beyond reasonable doubt or establish the suit in accordance with law, the court will have nothing to do except releasing the accused from the allegation. The judiciary is guided by law. So, the role of the judiciary in the stock market cases should also be judged from the perspective of legal provisions as well as facts disclosing allegations against the accused. Securities offences are defined under the Securities and Exchange Ordinance, 1969, the Companies Act, 1994 and other rules/regulations are mostly categorized as criminal offences punishable through criminal court.

There was no special Tribunal for the trial of the securities offences before 2014. After massive 2010-2011 stock market crash, a Special Tribunal was established by an amendment of law on 10.12.2012.¹ The Special Tribunal came into force in 2014. In this Chapter, the role of the judiciary will be discussed in details through some cases studies into two parts, (i) before the establishment of said Special Tribunal and (ii) after the establishment of the Special Tribunal.

9.2: Before establishment of Special Tribunal

Before 1996 stock market crash, the involvement of the judiciary in the capital market issues was negligible. In order to tackle the eventful 1996 stock market crash, the role of the judiciary came into significance. The judiciary is an important organ in any country of the world for ensuring good governance, serving justice to the people and also maintaining law and order in the society. The importance of the judiciary in securing the proper check

¹ New section 25B has been inserted to the Securities and Exchange Ordinance, 1969 by section 11 of the Securities and Exchange (Amendment) Act, 2012, published in the official gazette on December 10, 2012.

and balance and ensuring good governance in the country is undeniable. It is universally recognized. Hence, the judicial response to addressing and solving the disputes in the securities market of Bangladesh must be examined in order to portray a complete picture of the securities market. Let's analyze the judicial response to the 1996 stock market crash first.

After the crash in 1996, on 26 December 1996 the BSEC (formerly SEC) formed an enquiry committee to probe into the irregularities of stock market activities during July 1996 to November 1996. On 27 March 1997, the Committee headed by then Vice-Chancellor of Jahangirnagar University, submitted the Report identifying a number of companies and some of the country's biggest brokers were apparently involved in market rigging.

Based on the report, on 2 April 1997, fifteen (15) share scam cases were filed in the Chief Metropolitan Magistrate Court, Dhaka who issued arrest warrants against thirty two (32) people in seven (7) brokerage firms and eight (8) listed companies.² Although long twenty (20) years have already passed, most of the cases are yet to reach the finality. Most of the accused persons have been already got acquittal, and no exemplary punishment has been awarded to the accused persons.

In order to comprehend the aftermath of the said cases against the perpetrators, AFM Mainul Ahsan prepared a Report in details where he rightly observed that "since then the Government officials at the SEC have been unable to say anything about the status of the cases. Many say that the Government is reluctant to pursue the case. In 2002, SEC formed two separate committees comprising of officers of the regulatory body to carry out detailed investigation about the 'unfinished task' of the previous committee. SEC member K Iftikhar Ahmed was made convener of the two committees. However as anticipated, these two committees also failed to complete the 'unfinished task'.³ He further asserted

² Amongst others, the major companies namely, Shine Pukur Holding's sister concerns and associates namely Beximco Investment Company Ltd., New Dhaka Industries, Satkhira Fisheries, Bakhkhali Fisheries, Mritika Ltd, Beximco Pharmaceuticals Limited, Doha Securities and their directors Salman F Rahman, ASF Rahman, AB Siddique Rahman, and others were addressed as the main perpetrators behind scam. The High Court Division, however, granted anticipatory bails to the accused persons on 6 April 1997. Thereafter, the cases walked long, some of those have already been quashed by the High Court Division, and some are still pending before the High Court Division and Appellate Division of the Supreme Court of Bangladesh.

³ AFM Mainul Ahsan, 'Share scam 1996: justice delayed and denied', *The BD News24* (online), 24 October 2010.

that “however, financial market authorities should finish their ‘unfinished task’ by all means within the shortest possible time. The irrational exuberance and its demise in 1996 occurred at the cost of thousands of investors who came to participate in the market for the first time having little or no knowledge of the market fundamentals. No one was held responsible for the scam and justice was denied to the victims. It’s been 14 years since the market was raped, still there is no sign that the victims would get justice even in near future. Delayed justice raises questions about SEC’s objective of saving interest of market investors.”⁴

Nevertheless, a few cases have already been met with a final result, which will be also discussed in this Chapter. Almost all have faced the same result, for clear understanding few case references are examined below stage by stage.

9.2.1. Case Study: Securities & Exchange Commission –vs- Shine Pukur Holdings Limited

a. First Stage

Complaint Petition No. 1076 of 1997 was filed by the SEC (now BSEC) represented by its then authorized officer Mr. M.A. Rashid Khan Executive Director SEC against Shine Pukur Holdings Limited⁵ and its Directors⁶ under section 25 of the Securities and Exchange Ordinance, 1969 showing date of occurrence from July 1996 to December 1996 and place of occurrence at Dhaka Stock Exchange of Motijheel Commercial Area, Police Station - Motijheel, Dhaka. The petition states that “the accused company and the other accused being its directors were involved in fraudulent activities in the year 1996 outing the month of July to December. Within the mischief of Section 17 of the Securities and Exchange Ordinance, 1969 this offence was detected by an enquiry committee formed by the SEC to inquire into the matter under section 21 of the said Ordinance. According to the enquiry report dated 27.03.97, it appears that the accused company along with the accused committed offence described in Section 17 of the said Ordinance and as such accused

<<http://opinion.bdnews24.com/2010/10/24/953/>> (16.03.2015).

⁴ Ibid.

⁵ Office at 17 Dhanmondi R/A, Road No.02, Dhaka-1205, It is a public limited company and sister concern of BEXIMCO Group.

⁶ Mr. A.S.F. Rahman was a Director/Chairman, Mr. Salman F. Rahman was a Director/ Vice Chairman and A.B. Siddique Rahman was the Managing Director, of Shine Pukur Holdings Limited at that time.

company and the accused being directors of the company are liable for punishment under section 24 of the said Ordinance.”⁷

Against the aforesaid company Shine Pukur, the Enquiry Committee Report found that “Shine Pukur Holding Limited appears to be one of the Companies having large volume in trading. The company has a paid up Capital of Tk. 252 crore shares of Tk. 100.00 each. It can be seen from Annexure “D’ Sl.17 that book value per share is Tk. 103, market price per share was Tk. 73.00 on 30.06.96, Tk. 94.00 on 31.7.96, Tk. 162 on 31.8.96, Tk. 130 on 30.9.96, Tk. 283 on 31.10.96, Tk. 592 on 14.11.96 and Tk.754 on 30.11.96, the highest market price per share; however, was Tk. 754.19 on 28.11.96. There has been no trading of this Issue in DSE for about two months.”⁸

The Report further revealed that “as per DSE record a total number of 5166760 shares were sold during the period from July-November, 1986. It may be mentioned here that most of the Foreign DVP sales of this share could not be directly traced in DSE record. M/S. Doha Securities was the major buyer/seller buying 7,60,800 shares and selling 23,07,170 shares. From the analysis of details of purchases and sales it revealed that main parties either as buyer or seller were Shine Pukur Holding’s sister concerns and associates namely Beximco Investment Company Ltd., New Dhaka Industries, Satkhira Fisheries, Bakhkhali Fisheries, Mritika Ltd. Among the new individuals the buyer/seller, some are likely to be Beximco Group employees benami shareholders. In the absence of detail records of buyers and sellers comprehensive analysis as has been done in case Doha Securities could not be made in case of other major parties.”⁹

In course of enquiry, the Committee interviewed a large number of people and it found several anomalies and malpractices, which were unprecedented.¹⁰ Nevertheless, after all

⁷ Complaint Petition No. 1076 of 1997.

⁸ Ibid.

⁹ Ibid.

¹⁰ It is stated in the petition that “the Committee interviewed a good number of people directly or indirectly related to share market operations. Almost all expressed their opinion that at the peak time some major shareholders and some associates having large share and some sales Department Employee of the group and a few broker operated directly and indirectly in a big way in the sale of Shine Pukur share and some other shares of the group namely, Beximco Pharma, Beximco Ltd., Beximco Fisheries, Padma Textile etc. From an analysis it appears that management of the company was pursuing a policy of including public interest in Shine Pukur share through making news in the press which came in the form of announcement of the company later on. It was done with a view to raising the price of the share at very high level. This will be evident from the fact that its shares price was below apr i.e. Tk. 73 on 30.6.96, tk. 94 on 31.7.96 but rose to Tk. 754 on 28.11.96. From further study it reveals that in 1995 i.e. during first year of operation of the newly named company no dividend could be declared. Operational achievements vis-a vis prospectus forecasts

the hard work of the Enquiry Committee, they filed the complaint case stating at the end that “it thus appears that the management of the Company has a tendency to deviate more from the rules/regulations/procedures than to follow it strictly. These come within mischief under section 17 of the Securities and Exchange Ordinance, 1969”¹¹.

The words “it thus appears that the management of the Company has a tendency to deviate” are severely defective because ‘tendency to deviate’ does not construe any offence unless there are definite allegations and proofs of violations of the relevant legal provisions by the accused persons. Simply ‘tendency to deviate’ the law without mentioning any specific provision of act, rules, regulations or directives do not constitute any offence under any law.

Moreover, ‘tendency to deviate’ is not an offence under section 17 of the Securities and Exchange Ordinance, 1969, and there is no definition of ‘tendency to deviate’ provided in the said Ordinance. In fact, the Enquiry Committee did not provide any definition or explanation of what they actually meant by the words ‘tendency to deviate’. Such kind of superficial allegations quash the entire proceeding of most of the stock market scam cases which were filed after 1996 scams in the manner as discussed below.

b. Second Stage

The said complaint petition was filed in the Court of the learned Chief Metropolitan Magistrate, Dhaka (*shortly known as ‘the CMM’*) who took cognizance of the case being Complaint Petition Case No. 1976 of 1997 and after complying with the formalities sent it

were poor more particularly in achieving the important object of investment in Hotel business. Investment in real estate also could not take place as projected. In a meeting with the committee Mr. Salman F. Rahman stated that there were unsubscribed shares which were taken by sponsors and associates at a later date. On analysis of share Money Deposit A/C against the paid share of Tk.250 crore in respect of right we found a deposit of only T. 145.24 crore in prospectus there was no payment and on full subscription. Share Money Deposit Account (Control) should show receipt of Tk.250 crores. American Express however showed FDR of Tk. 10.2750 crore in the name of Shine Pukur Holdings. Even if we consider this against share money deposit the total amount comes to Tk.163.34 crore. It is however not clear whether this deposit is in addition to the deposit in control or a deposit on withdrawal from control A/C. The position could not be reconciled satisfactory. On analysis of name of the company and change of objective, it is observed that the renamed company increased its paid up Capital from 2 crore to 252 crore by issuing 125 right share to the existing share holders against each share with right to renounce for public sale. Although there was No set limit for issuing right share of 125 for one share it seems to be unusual, abnormal and unprecedented in Bangladesh. The legal provision is that for alteration of object clause of Memorandum of Association of Company consent of the High Court has to be obtained on application until confirmation is obtained the changes in object remains ineffective and ultra vires. The company however, obtained court confirmation at a later date (30.3.1995).”

[Ibid].

¹¹ Ibid.

to the Sessions Court, Dhaka for trial. This court registered the case as the Session Case No. 1050/98 vides Order No. 1 dated 25.11.1998. After creation of Metropolitan Sessions Court in Dhaka, the case was transferred to Metropolitan Sessions Judge of Dhaka for holding trial vide Order no. 2. Thereafter, Metropolitan Sessions Judge transferred the case to the Additional Metropolitan Sessions Court (2nd Court), Dhaka where the case was registered as Metro Sessions Case No. 561 of 1999. Subsequently, the case was fixed for the framing of charges. The petitioners filed an application on 30.11.1998 and also an additional application on 05.01.1999 under section 265C of the Code of Criminal Procedure, 1998 for discharge. The trial court rejected the said applications under 265C of the Code of Criminal Procedure, 1998 vide Order No. 37 dated 27.05.2001.

c. Third Stage

Against the said rejection order, the accused-petitioners filed Criminal Revision No. 397 which was summarily rejected by a Division Bench of the High Court Division, against which the accused petitioners preferred Criminal Appeal No. 46 of 2001¹² to the Appellate Division. After second thought, the petitioners applied for withdrawal of the said criminal appeal which was allowed, and the Appellate Division dismissed the appeal as withdrawn vide Order dated 25.07.2010. Thereafter, the trial court framed charge against the petitioners under section 24 of the Securities and Exchange Ordinance, 1969 vide Order No. 46 dated 10.08.2010.

The second thought was that in similar matters other accused-petitioners filed Criminal Appeals of the Appellate Division against said rejection orders alike passed by the High Court Division, where the Appellate Division observed that “the learned Counsel have next argued that the report does not disclose any offence under section 17 of the Ordinance but is capable of being interpreted as innocent activities of the petitioners rather than committing any offence. We have gone through the extracts from the enquiry report which have been made part of the complaint/report and we are satisfied that there is prima facie allegation of contravention of section 17 of the Ordinance. When the SEC made a complaint of fraudulent acts against certain companies and their directors on the basis of

¹² Filed with the leave granted by the Appellate Division under Article 103 of the Constitution of the People’s Republic of Bangladesh arising out of a Criminal Petition for Leave to Appeal filed against the Order passed by the High Court Division in Criminal Revision No. 397.

an enquiry undertaken by an expert Committee, a Court would be well-advised not to try to be more expert at the complaint stage because otherwise it will be an example of nipping the prosecution in the bud.”¹³The accused persons took steps one after another for frustrating the purposes of the cases and the entire proceedings.

Against which, the accused-petitioners filed Review Petition arguing that “this Division went to the merit of the case and once the highest court of the country made such observations it may be impossible on the part of any subordinate court to decide otherwise and that when passing any order under section 265C of the Code of Criminal Procedure. The accused petitioners have a right to make submissions as regards framing of the charge and that if the trial court consider that there is no sufficient ground for proceeding against the accused persons it shall discharge the accused and record the reasons for so doing but in view of this observation made by this Division it will be difficult for any court of this country to act otherwise and the aforesaid observations may adversely affect the right of the petitioners as provided under section 265C of the Court of Criminal Procedure”.¹⁴

Rejecting the said arguments and the Review Application, the Appellate Division further observed that “we have gone through the judgment of this Division and also heard the learned Advocate of both the sides. The observation it appears has been made by Division while disposing of an interlocutory matter as regards quashment of the proceeding as referred to the High Court Division by the learned Section Judge, Dhaka. We are of the view that this is a *prima facie* observation and this will have no binding affect on any court during trial. The trial court may dispose of the case in accordance with law irrespective of any observation made by this Division while disposing of the Leave Petitions and in the circumstances of the case we are not inclined to interfere with the matter. With this observation these Review Petitions are accordingly disposed of”.¹⁵

The aforesaid attempt of filing review application and getting an alternative opinion from the apex court of the country was a very tricky and sharp attempt, because, in the earlier criminal appeals, the Appellate Division held that the Court found *prima facie* allegations of contravention of section 17 of the said Ordinance. Therefore, this finding might

¹³ From the observation portion of Judgment and order passed by the Appellate Division in the Criminal Petition for leave to Appeal Nos. 52, 53, and 54 of 1998.

¹⁴ The review petition was filed by the accused petitioner.

¹⁵ Observation by the Hon’ble Appellate Division in the review petition filed by the accused petitioner.

influence all further proceedings in all the similar cases because when the Appellate Division finds *prima facie* allegations of committing the offence under section 17, then the trial court shall not dare to try the case neutrally on examination of all the facts, circumstances, material evidences and records in accordance with law. It creates a rare possibility for the accused persons to get released from the offence because such finding, unless subsequently altered by the Appellate Division in review applications, would create a binding force upon the trial court to hold the accused persons *prima facie* guilty of the offence committed under section 17. Hence, and mostly for alteration of the earlier observation of the Appellate Division, the accused persons filed review petitions whereof the Appellate Division was pleased to dispose of the petitions saying that the *prima facie* observation of the Appellate Division will have no effect on the further proceedings of the cases.¹⁶

d. Fourth Stage

However, after framing the charge, Shine Pukur Holdings filed the Criminal Miscellaneous Case No. 25315 of 2010 before the High Court Division for quashing the proceedings of the aforesaid case under section 561-A of the Code of Criminal Procedure, 1898. In the application, the accused petitioner stated that “the complaint petition has been filed for alleged offence in the year 1996 during the month of July to December, 1996, whereas right share was offered in December, 1994. The Committee after deliberation earmarked July 1996 to November 1996 as reference period for the purpose of investigation into the irregularities of the stock market activities in Bangladesh. So, admittedly the Report is confined only to the period from July 1996 to November 1996. So, the Report cannot be of evidence for any period before July, 1996 or after November, 1996. The right shares were offered in December, 1994. Hence the issuance of right shares cannot and should not be a subject of Enquiry Report. The issuance of right shares took place almost one and a half year before the petitioners to foresee such development in the share market one and half years before. In framing charge the provisions of section 221 and 222 of the Code of Criminal Procedure have not been complied with. No material

¹⁶ It was needed because being the apex court only the Appellate Division can alter and interpret its decision. The primary finding of the Appellate Division regarding being satisfied of getting *prima facie* allegations of committing offence under section 17 of the said Ordinance would end everything before even adjudication of the cases.

facts have been stated in the complaint petition and change which can even remotely be connected to the definition of fraudulent activities as enumerated in section 17.”¹⁷

It was further stated that “the complaint petition was filed on the basis of the said inquiry report which alleged that the petitioner company has tendency to deviate more from rules/regulations /procedure than to allow it strictly. There is no reference of any cognizable offence and no specific allegation against the petitioners other than ‘tendency’¹⁸ which is no offence under section 17 of the said Ordinance.”¹⁹

It was also argued that “the complainant has completely failed to make any allegation or revealed any materials which fulfill the ingredients of offence as described under Section 17 of the said Ordinance. Neither in the complaint petition nor in the Report there is any definite allegation that any of the petitioners have ever committed any offence which comes within section 17 of the said Ordinance. Admittedly, the Committee has failed to detect any manipulation and found many relevant papers missing. Whereas it states that “allegation of rampant manipulation was strongly voiced by media and believed by the investors...it is not easy to detect manipulative and fraudulent activities....a portion of the note sheets and related correspondence in SEC with the company are reportedly to be missing from the SEC file”.²⁰

Merely basing on this incomplete Report, discrepant papers and without further enquiry/investigation SEC cannot file the complaint case. This clearly evidences that the instant proceeding has been filed without any material basis, incomplete evidence or discrepant documents; hence the proceeding is liable to be quashed.”²¹

In fact, nowhere in the complaint does the petition mention the petitioners for the purpose of inducing, effecting, preventing or in any manner influencing or turning to their

¹⁷ Quoted from the application/petitioner filed by the accused petitioner under section 561-A of the Code of Criminal Procedure, 1898 being the Criminal Miscellaneous Case No. 25315 of 2010 before the Hon’ble High Court Division.

¹⁸ To substantiate this fact it is stated that “before filing of the complaint petitioner or thereafter there was no further enquiry or investigation as to whether the petitioner in fact has violated such rules/regulations/procedure. Neither the complaint petition nor the Report makes out case which constitutes an offence under section 17 of the Ordinance.”

[Ibid].

¹⁹ Ibid.

²⁰ Ibid.

²¹ Ibid.

advantage, the sale or purchase of any security, directly or indirectly did any act which constitutes fraudulent act under Section 17 of the said Ordinance. It does not say anything about when and how the petitioners committed any such offence. In the Report, there are no allegations against some of the accused persons, which were really unfortunate.

Filing the case against someone without even mentioning the names and relevance of all the accused persons with the alleged offence on the basis of such vague, baseless and general allegations is prejudicial to justice, equity and rule of law. There are some important grounds²² taken by the accused in their aforesaid application under section 561-A of the Code of Criminal Procedure, 1898.

²² Such as, (i) Changing of market price of the shares changed on various dates and no trading in DSE for about two months does not constitute an offence under Section 17 of the said Ordinance. As per Report about 20% of the total shares were sold/ purchased during July to December, 1996. Total shares of the Company is 2,52,00,000, whereas the alleged shares transacted during the relevant period was 51,66,760. The case was filed on the basis of media publicity and hypothesis of the opposite parties; as such the instant proceeding is liable to be quashed.

(ii) That “most of the Foreign DVP sales of the share” is a matter for the DSE to explain and in any case DVP sales have no connection with any offence under Section 17 of the Ordinance 1996. The petitioners are neither share-dealers nor stock brokers. Moreover, the Committee did not at all consider DSE report which against the petitioner that “most buyers or sellers were Shinepukur Holding’ sister concerns and associated...” is no offence in the eye of any existing law. And nowhere either in Section 17 of the said Ordinance or under Companies Act, 1994 there is any bar no share trading (buying and selling) by sister concerns, companies or among associates of a listed company. Furthermore, Section 17 of the said Ordinance does not prevent, major shareholders, associates or employees of a listed company from operating in selling-buying the shares of that listed company, so long, they have not committed any fraud or deceit. There is neither any implication of fraud in inquiry report nor even mention the name of any person who is alleged to have been defrauded. Moreover, no allegation of fraudulent activities has ever risen against the petitioners by any of their creditor or shareholder or investor. Any such fraud, deceit or mentioned must be acted upon “any person in particular”. No. such person has been mentioned in the Report or in complaint petition; hence the proceeding without any specific allegation is liable to be quashed for ends of justice under section 17(b) and (c) of the Ordinance. There is no such evidence on record. Moreover, the complaint petition had neither specified any details such as date, content and mode of announcement nor the name of the newspaper wherein such announcement was made. There is no reason why these 3 (three) Directors of the Company have been implicated in the case. There is no proof that they had any knowledge about the alleged offence and as such the proceeding is nothing but an abuse of the process of the Court, hence liable to be quashed for ends of justice.

(iii) The petitioner company offered right share to its shareholders on December 26, 1994 and the closing date was January 15, 1995. As the relevant time the petitioner company did not require any approval of SEC for issuance of right shares nor even today is any such approval required. Moreover, the Company is not bound to declare dividend in its first year of incorporation. There is no mandatory law in this regard. However, SEC issued a guideline as to issuance of right shares on 11th February, 1995 which has been admitted by the Enquiry Committee at page 45 of the Enquiry Report. Issuance of right share was/is the sole discretion of the Board of Directors of the petitioner company and it was for the shareholders to avail of the right share or not. The company did not compel any person to purchase such share. The right issue was never objected to by the Commission. So, non-objection against the right issue by the Commission tantamount to their approval to the right issue. Committee has in fact so stated in clear term at page 50 of the Report.

(iv) Basing on the said Report similar proceeding was taken against Doha Securities for doing maximum trade of this company during the alleged period which was quashed by a division Bench of High Court Division in Criminal Miscellaneous Case No. 3284 of 2002 vide judgment and order dated 11.11.2007.

9.2.2. Case Study: Securities & Exchange Commission –vs- Beximco Pharmaceuticals Limited

Like the above referred cases, the BSEC filed another case being Complaint Petition No. 1080 of 1997²³ against Beximco Pharmaceuticals Limited stating, inter-alia, that “this is a Company of Beximco group with 2.95 crore shares of Tk. 10 each. Book value per share as per DSE statement is Tk. 29.00, Market price was Tk. 27 on 30.6.96, Tk. 91 on 31.7.96 Tk. 88 on 31.8.96 Tk. 167 on 30.9.96 and Tk. 468, on 16.11.96. The highest price was Tk. 551. It may be mentioned that originally face value of the shares was Tk. 1000. Company offered right share 1:1 in 1994 with a premium of Tk. 1100. It appears that the premium was over calculated. As per analysis reasonably acceptable premium appears to be around Tk. 800 crore.”²⁴

The petition further disclosed that “because of the over-charging of premium the new holders capital fund involvement per share was higher than that of existing shareholders to the extent of the difference between the premium realized and realizable. The company subsequently split the share and fixed the face value of share at Tk. 10. Taking into account the premium portion of the share market price of this share as on 30.06.96, 31.07.96 was below investment value. It appears from the trading records of DSE that 1.24 crore share of this company have been sold.”²⁵

Regarding the involvement of broker house in the concerted practice, it is alleged that “more than 60% of these sales have been made by only few brokers namely Imtayaz Hossain, Premium Securities, SES & Hamayat Uddin. It has further been observed that HMMS + Associated sold 11,01,000 shares through foreign DVP which could not be traced directly in DSE record. Similarly, Security Consultant Limited sold 1,71,450 shares which also could not be traced directly in DSE record. As per foreign DVP statement submitted by a Bank Indosuez and Standard Chartered Bank, Imtayaz Hossain sold 30,15,510 whereas as per DSE record total shares should by him was 29,26,785 only. Again as per bank statement M/S. SES sold 13,98,800 but as per DSE record it was

²³ Complaint Petition No. 1080 of 1997.

²⁴ Ibid.

²⁵ Ibid.

908,200... Therefore, it follows that a significant portion of these shares have found its way to so called kerb Market.”²⁶

After framing charge in the aforesaid case, Beximco Pharmaceuticals Limited filed Criminal Miscellaneous Case No, 25267 of 2010 before the High Court Division almost in the similar manner as stated above.

e. Fifth Stage

*(For both the above cases)*²⁷

Both these cases were challenged under Sections 561-A of the Code of Criminal Procedure, 1898 before the High Court Division in Criminal Miscellaneous Case Nos. 25315 of 2010 and 25267 of 2010, respectively. Both the cases were heard analogously by the High Court Division. After hearing the parties and perusing the documents, the Court was pleased to quash the proceedings vide judgment and order dated 16.03.2015 observing that “we have perused the report on which the prosecution relied upon. On perusal it appears that the Committee itself expressed the difficulties that it faced in carrying out its tasks. It can be seen from the Report that the Committee faced “constraints” in carrying out its tasks since it recorded, amongst others: “Besides the time limit constraints, the Committee could not find data ready at hand and many of the concerned persons were not found that co-operative in divulging trade activities....We could not go deep into the details for non availability of relevant data upward to the origin and downward to the ultimate buyer, i.e. shareholder. It was told that all relevant data were available with SEC but on query it was found that even monthly returns on transactions and accounts of members/dealers were not available with SEC. It was also learnt that most of the members of the DSE have not been maintaining prescribed books of accounts properly. On closer examination of transaction data of DSE provided by the SEC, it appeared that it did not reflect the total transactions of some members. Due to non-availability of complete data based on books of accounts of individual members we had to depend on DSE data provided to s by SEC which we consider inadequate and incomplete.....The Committee, on test basis, examined trading on some issues to ascertain whether there has been any trading in shares in violation of the relevant provisions....While selecting the shares we

²⁶ Ibid.

²⁷ Because, both the aforesaid cases were analogously heard and disposed of by a single judgment by the High Court Division.

have taken into consideration mainly the trading volume and sharp rise/fall in the price of a particular shares.”²⁸ Holding these constraints which were admittedly made in the report as backdrops, the Court found that the prosecution failed to make a prima facie case against the accused persons.

The Court also questioned the non-mentioning of the persons who were examined during the course of enquiry by the Enquiry Committee because non-mentioning of the persons (witnesses) who were examined basically makes them hearsay, which is inadmissible evidence, and under the Evidence Act, 1872 and the principle of criminal jurisprudence, no criminal litigation can be construed based on hearsay evidence.²⁹

The Court also disputed the finding of the Committee regarding the period of committing the offence observing that “so it appears that the Committee’s Report is incomplete since it admittedly could not investigate every aspect of the transactions between July and November 1996 according to its terms of reference due to time constrains and the unavailability of the required information and relevant data; that further investigations were required which do not appear to have been done; that the Committee was unable to reconcile the relevant transactions that took place on the DSE through DVP and other sales; that the shares of the Companies chosen for enquiry by the Committee was simply on the basis of trading volume and high rises in the price of the shares; that the share prices increased in the majority of the shares in the DSE and CSE markets and the Committee chose 65 out of 192 scrips that were available on the markets as being significant; that the political situation in the country at the relevant time was such that many people started investing into stock markets and virtually people from all walks of Bangladesh, entrepreneurs, businessman, banks and financial institutions, housewives, agriculturists, teachers, students and retired started investing in the share markets; that “illegal Kerb Markets” formed outside the DSE and the CSE and was very active which

²⁸ Observations of the Hon’ble High Court Division in the judgment of Criminal Miscellaneous Case No. 25315 of 2010 and 25267 of 2010.

²⁹ The Court observed that “so it appears that, this raises the real question as to whether there were fraudulent activities by these companies or their directors or whether there was price manipulation or fraud or other prohibited conduct by the accused. We also note that while the report states that a number of people were interviewed and that their various assertions are stated in the Report. It must be remembered that the complaint petitions make criminal complaints and these statements of unnamed and unknown persons are clear hearsay and would not be admissible at all in evidence in these prosecutions. Against the background of these admitted gaps in the Report and the “systemic deficiencies” in the system and the stock markets, it is plain that further investigation was required to find out whether there were breached of section 17 of the Ordinance.”

[Ibid].

led to the “sky rocketing” of share prices; that the Commission did not take any steps to prevent the Kerb Markets; that too many people were chasing too few shares which increased the prices beyond imagination; that there were systemic deficiencies which have allowed and situation to occur and which needs to be addressed to deal with the proper regulation of the markets in future. In our judgment, there are all relevant factors to consider in these petitions; that many of these 25,000 or so investors were not at all informed of the processes of the stock markets, the market fundamentals which determine share prices and were ignorant of the ways of assessing the risks of investing in the stock markets.”³⁰

The most important finding of the Court is with regard to the application of section 24 read with section 17 of the Securities and Exchange Ordinance, 1969 which falls short in covering the occurrence of 1996 scams as “offence” under the said Ordinance. On this point, the Court observed that “section 24 sub-section (1) of the Ordinance deals with the penalty to be imposed in case of a contravention of section 17. Sub-section (2) contains provisions relating to directors, managers or other officers of a corporate body which is found guilty of an offence under section 17. The above sub-section is relevant since it deems that “*every director, manager or other officer responsible for the conduct of [the] affairs*” of a company shall be guilty of the offence under Section 17 “*unless he proves that the offence was committed without his knowledge or that he exercised all diligence to prevent its commission*”.

In each of the petitions before us, the issuer company and their relevant directors is an accused. Upon analysis of this section, three matters seem to be relevant: firstly, this sub-section applies to directors of the company “*responsible for the conduct of its affairs*” named as accused in the complaint where the company has been found guilty of the offence. It follows that a further ingredient is required to be proved in the case against the directors named in the complaint petitions, that they were “*responsible for the conduct of its affairs*”. We note that none of the complaint petitions or the Relevant Portions or the Report as a whole contain any averment that the directors made party to the complaint petitions are or, have been responsible for the conduct of the accused companies.³¹

³⁰ Ibid.

³¹ The Court has substantiated this argument holding that “in this context, it is relevant to note that the allegations in the petitions are made against public limited companies listed in the stock markets and not

According to the laws of evidence, particularly Section 105 of the Evidence Act 1872, this defence must be proved by the director on a balance of probabilities to avoid a conviction under the deeming provision of Section 24(2). The case of *Mohammad Aslam -vs- The Crown 1953 DLR (FC) 131* lend support in this context. However, the director will have to discharge this burden only after a conviction of the company. As we have observed above, the prosecution must not only plead and establish all the ingredients of the offence under Section 17 but also the further ingredient relating to the director as above explained. We can usefully refer to the decisions in the case of *Harmes -vs- Hinkson AIR 1943 PC 156* and the case of *Shakir Hossain v State 1956 PLD (SC) 417* about the obligations on the prosecution to prove the case on the ingredients of the offence against the accused companies under Section 17 of the Ordinance and the additional ingredient under Section 24(2) of the Ordinance against any relevant accused director of the accused companies. It should be noted that this is not a situation where the burden of proof is reversed by law but a situation where the law expressly provides a defence upon the concerned director.”³²

Regarding Section 25, the Court observed that “so it is apparent that cognizance has to be based on a report in writing of facts constituting the offence.....” under section 17 and the same has not only been specific but also well defined as stated above. It is significant that the facts which are necessary for establishing the ingredients of the offence are not stated in the Report and do not appear to have been considered by the Committee. It is also significant that the Commission does not even assert which provision of Section 17 of the Ordinance applies to the accused in these cases.”³³ It means in the Report there was lack of specification and identification of the offence under Section 17 of the Ordinance.

With the aforesaid observations, the Hon’ble High Court Division made the Rules absolute in those criminal miscellaneous cases by setting aside the proceedings of the aforesaid complaint cases. The judgment has already been delivered. Against these judgments, two appeals being Civil Petition for Leave to Appeal Nos. 82 and 83 of 2017 have been made

public companies. Secondly, on a plain reading of the sub-section it appears that the liability of the directors can only engage where the company itself has been convicted of the offence. Finally, it appears that if there is a conviction of the accused company of an offence under Section 17, and it is established that the accused director is a relevant director under Section 24 (2), the director is given a defence which he can establish by proving “that the offence was committed without his knowledge or that he exercised all diligence to prevent its commission.”

[Ibid].

³² Ibid.

³³ Ibid.

before the Hon'ble Appellate Division by the BSEC. After hearing the leave petitions and perusing the documents, the Appellate Division was pleased to grant leave in both the cases, which are now pending before the Appellate Division. It will take time to get these case finally disposed of by the Appellate Division.

9.2.3. Case Study: Securities & Exchange Commission–vs- Doha Securities Limited

Another example should be given to clarify the legal position of the aforesaid share scam cases. In the C.R. Case No. 1075 of 1997, filed by the BSEC against Doha Securities for doing maximum trade as broker of Shine Pukur Holdings Limited and its sister concerns during the alleged period was already quashed by a Division Bench of High Court Division in Criminal Miscellaneous Case No. 3284 of 2002 vide judgment and order dated 11.11.2007. Against this judgment and order of quashing, the BSEC filed leave petition, in which the Appellate Division granted leave. Accordingly, the same is now pending before the Appellate Division. It will take time to get the final result.

The High Court Division, while quashing the said proceeding rightly observed that “from reading of the complaint petition it appears that the accused firm and the other accused acted as dealer/broker in the Dhaka Stock Exchange and that they were involved in the fraudulent activities during the month of July to December, 1996 within the mischief of Section 17 of the Securities and Exchange Ordinance, 1996 and this offence was detected by an inquiry committee consisting some teachers of an university formed by the Securities and Exchange Commission. It has been stated in the inquiry report dated 17.3.1997 that they are one of the Major traders in DSE, concentrating mainly in the share of Shine Pukur Holdings. They were both buyer and seller. The “General impression” is that they played a role in the Market operation relating to Shine Pukur Shares Both within and outside DSE. This firm acted on unsigned orders given by Satkhira Fisheries for sale of share of Shine Pukur Holding Ltd. The dealings of the firm indicate possible manipulation within the meaning of Section 17 of the Securities and Exchange Ordinance, 1969. The report is also part of the petition of complaint. Since it is coming out from the petition of complaint that the petitioner acted on unsigned order and this unsigned order as has been stated is not an offence as per the Rule 4 of the Securities Exchange Rule 1987 which allowed the broker to act on unsigned orders. Therefore their action does not constitute any offence under any section of the Securities and Exchange Ordinance,

1969.”³⁴ The Court found that the allegations made in the complaint petition do not constitute any offence under the Securities Exchange Rule 1987 and the Securities and Exchange Ordinance, 1969.³⁵ The Court substantiated this finding with some more arguments.³⁶

The Court also observed that “further the witnesses as has been adduced by the informant party that at the relevant time that they were not under employment of the Exchange Commission and as such there would be no manipulation nor there will be any inducement or any misleading of appearance of fraud will be of no help as they were not in service. Furthermore none of the members of the inquiry committee were indicated as witnesses. Further inquiry report does not inflict anything that they have manipulated by any means or there is any person inducing or creating any false misleading appearance. There is no

³⁴ The observations of the High Court Division in the judgment passed in Criminal Miscellaneous Case No. 3284 of 2002.

³⁵ The petitioner annexed the notification as Annexure- C and submits that the authorities having realized the impracticality of the amendment dated 13.11.1997 therefore they again allowed the dealers brother to act on unsigned orders as passed on 27.8.1998 under Securities Exchange Rules 1987. The allegation as to unsigned order therefore does not constitute any offence under the said section. Then the allegation as to the general impression that they were given impression as both buyer and seller and the general impression is that they played a role in market operations relating to Shinpukur Shares both within and outside DSE and thus it does not indicated violation of section 17 of the securities and Exchange Ordinance, 1969. (Ibid).

³⁶ On this issue the Court further observed that “on this context the learned advocate for the petitioner submits both the he is a broker and it is his function to approach both the parties i.e. buyer and seller. In this case he represented on behalf of the seller in respect of the same holding of share. But those are undisputed as there is no embargo with regard to transfer of share by said parties against buyer and seller. The word “general impression” should not be taken into consideration that they have manipulated the parties concerned as there is no specific allegation against the parties concerned. In this particular case no one came forward and raised objection that there was any specific manipulation and that there is general impression that they played a role which is a misleading appearance raising of price for the purpose of inducing its purchase by others or depressing its price for the purpose of purchase by others or depressing its price for the purpose of inducing its sale by other manipulation particularly and as section 17 (ii) and (v) of the Securities and Exchange Ordinance, 1969 has no manner of application. They did not create a false and misleading appearance, therefore the question of framing deceit manipulation does not at all arise and under such circumstances they cannot be punished under Section 24 of the said Ordinance. Section 24 itself says if there is any contravened under section 17 of the Ordinance then it is punishable with an imprisonment but from reading of the petition of complaint it does not specifically appears that they have contravened Section 17 of the said Ordinance. Though the learned advocates for the opposite party No. 2 have cited a decision reported in 50 D.L.R. (AD) 189, it has no manner of application in this case. It arose from a different context of taking cognizance on a technical ground and not of any substance. Further Review Petition Nos. 3 to 5 of 1998 states that prima facie observation will have no binding affect in any court during trial. Further the learned advocate refers 55 D.L.R. (AD) 47 that if there is any prima facie case then the accused has to show that he is not guilty or the prosecution acted in contravention of the provisions of the Ordinance. But the complainant could not make out any prima facie case though the learned advocate for the petitioner made us to go through the inquiry report which is the part of the petition of complaint. In the report it has been specifically stated that in the absence of detail records of buyer and sellers and comprehensive analysis as has been done in case of Doha Securities a case could not be made. Such specific findings that they did not find out any irregularities though there is comprehensive analysis under such circumstances we do not think that the proceedings should be continued.”

[Ibid].

allegation that there is anomaly with regard to their shares and further in this particular case the report does not reflect that there is manipulation with the DSE. The total trading amounts to Taka 124 crores out of which DVP transaction in Taka 37.72 Crore. So record does not show that there is any manipulation or there is any unsettled traders that they have played a role in market operations relating to Shine Pukur Shares both within and outside DSE even they did not go outside the transaction as per submission made by the learned advocate for the petitioner. He is a supplier Broker and there is no embargo to deal within the DSE or outside DSE. No one has put forward any specific allegation or any statement that they have done any transaction outside DSE.”³⁷

The Court also questioned and criticized the role of the BSEC and found negligence in the entire matter. The Court pointed that “it further appears that the Court framed charge on 20.6.2001 and the petitioner waited for a long year before the Trial Court but no positive step has yet been taken rather the matter was dragged years together which show that the prosecuting agency has nothing to rise against the petitioner. Further on perusal of the Charge framing order it appears that the Court brought some new facts which is not available in the inquiry report or any other material before the Court of law.”³⁸

The Court also observed that “it further appears the case in hand is a complaint case and after initiation no Judicial inquiry or any investigation was held but the charge has been framed on material which were not present either in the petition of complaint or in the inquiry report and as such there is no doubt to hold that the charge has been framed without factual basis and such action clearly shows that the instant proceeding is nothing but an abuse of the process of the Court of law. Under such circumstances we find substance in this Rule. Accordingly the Rule is made absolute. The proceedings vide C.R. case No. 1075 of 1997 under Section 17 & 24 of the Securities Exchange Ordinance, 1969 now metropolitan Sessions Case No. 560 of 1999 pending in the Court of Additional Metropolitan Sessions Judge (2nd Court) Dhaka is quashed.”³⁹

³⁷ Ibid.

³⁸ Ibid.

³⁹ Ibid.

9.2.4. Case Study: What happened initially after filing the aforesaid petitions being Complaint Case Nos. 1075, 1076 and 1080 of 1997 (Shinepukur Holding Ltd. –vs- Securities and Exchange Commission and others)⁴⁰

These three petitions by the respective accused persons have arisen out of a common judgment and order dated 9 December 1997 passed by a Division Bench of the High Court Division rejecting Criminal Reference Nos. 1-3 of 1997 made by the Sessions Judge, Dhaka by his judgment and order dated 1-6-97 under section 438 of the Code of Criminal Procedure recommending quashing of the proceedings of CR Case Nos. 1075, 1076 and 1080 of 1997 pending in the Court of the Chief metropolitan Magistrate, (CMM) Dhaka.

Facts of the case, briefly, are that, the SEC constituted under the Security and Exchange Commission Act, 1993 filed reports under section 25 of the Securities and Exchange Ordinance, 1969 through its Executive Director MA Rashid Khan before the learned Chief Metropolitan Magistrate of Dhaka alleging offences under section 17 read with section 24 of the said Ordinance against the present accused on 2.4.1997 whereupon the learned Chief Metropolitan Magistrate by orders passed on the same date took cognizance of offence under section 24 of the Ordinance and directed issuance of warrant of arrest against the accused persons in the direct terms that the cognizance of the case was taken and warrant of arrest were issued against the accused. No prior summons was issued before issuing the warrant of arrest against the accused persons. Moreover, the learned Court also failed to examine whether the case was filed by the appropriate officer and in the manner in accordance with the relevant provisions of law.

The aforesaid CR⁴¹ cases were accordingly registered. In the reports made to the Chief Metropolitan Magistrate, it was alleged, inter alia, that the accused companies and their directors were involved in fraudulent activities during the month of July to December of 1996 within the meaning of section 17 of the Ordinance and were detected by an Enquiry Committee formed by the BSEC under section 21 of the Ordinance to enquire into the matter. In the reports filed, relevant portions of the findings of the Enquiry Committee were quoted with respect to the accused persons as were relevant in each case.

⁴⁰ Reported in 50 DLR (AD) (1998) p 189.

⁴¹ The case which is filed before the Magistrate Court directly whereupon the Magistrate took cognizance under section 200 of the Code of Criminal Procedure, 1898 is registered as the CR Case or Complaint Petition Case.

It appears that the accused persons moved to the High Court Division on the next day after the day of taking of cognizance by the Chief Metropolitan Magistrate (CMM) and obtained an anticipatory bail. Then they filed Criminal Revision Cases Nos. 163-165 of 1997 before the Sessions Judge, Dhaka under section 435 and 439A of the Code of Criminal Procedure for setting aside the order dated 2.4.1997 of the CMM taking cognizance as aforesaid.

The learned Sessions Judge, by his judgment and order dated 1.6.1997 held that the CR cases were liable to be quashed and since he had no jurisdiction to quash, he made a reference directly to the High Court Division under section 438 of the Code of Criminal Procedure with his recommendation to quash the said proceedings. The learned Sessions Judge made the recommendation upon taking the view that MA Rashid Khan, Executive Director was not legally authorized to make the reports under section 25 of the Ordinance that the provisions of law were not complied with, that there was a lack of prudence by the Chief Metropolitan Magistrate in taking cognizance, that the issuance of warrant of arrest against the accused persons instead of summons without showing reasonable grounds was contrary to the law for which the accused persons have faced harassment and financial loss and the same has caused failure of justice and further that those irregularities are not curable under section 537 of the Code of Criminal Procedure, 1898 (CrPC).⁴²

The High Court Division, by a judgment and order, rejected all the references observing that the objection raised by the accused persons as to lack of authority of the officer was premature in that they did not surrender before the CMM before whom the objection should have been raised first. The Appellate Division upheld the judgment of the High Court Division and held that the Sessions Judge would have been well-advised to reject the revision petitions upon the view that the objection as to alleged lack of authority should be raised before the Court taking cognizance. In the facts of the present case, the Appellate Division was satisfied that there was sufficient compliance of the requirement of the law as regards authorization of the officer who filed the report on behalf of the BSEC.

However, the learned Sessions Judge held earlier that there was no application of mind by the CMM in taking cognizance; this finding was rightly reversed by the High Court

⁴² Judgment passed by the Appellate Division in Shinepukur Holding Ltd. –vs- Securities and Exchange Commission and others, reported in 50 DLR (AD) (1998) p189.

Division. The learned Counsel for the accused persons argued that the order of the CMM does not show that he was *prima facie* satisfied about the truth of the allegations. Answering that point, the High Court Division correctly held that “we find that there was application of mind by the CMM and his satisfaction in taking cognizance of the offence in question against the accused persons.”⁴³ The Court rejected the argument of the learned advocates for the accused holding that the action of the CMM was justified.⁴⁴

On this point, the Appellate Division held that “it is true that in criminal matters the accused should get all protection under the law but it is also important that the law should not be stretched too far so that big companies against whom serious allegation of foul play concerning national economy is being made before the Court by a statutory authority can themselves overtake the law by resourceful enterprise in raising ingenious contentions in order to frustrate the prosecution on the threshold. The Court must strike a balance. We are of the view that the learned Sessions Judge failed to maintain that balance which has been restored by the High Court Division.”⁴⁵

Most importantly, the Appellate Division observed that “at the same time we must say that there are some observations in the High Court Division judgment which cannot be supported and were better not to have been made. For example, its observation as to ‘report’ as mentioned in section 25 of the Ordinance appears to suffer from a confusion. The report mentioned in section 190(1)(b) of the CrPC or section 27 of the Special Powers Act is not the same as it has been mentioned in section 25 of the Ordinance. The simple reason is that the ‘report’ as in the CrPC or Special Powers Act as aforesaid is not any other report but made by a Police Officer. The Police Officer upon investigation of a case submits report under section 173 CrPC. It is not the same thing as in section 25 of the Ordinance. There is no provision in the Ordinance that a report can only be made under

⁴³ Observations of the High Court Division in Criminal Revision Cases Nos. 163-165 of 1997.

⁴⁴ The Court observed that “since there is no requirement of law to record reasons for taking cognizance we find no illegality in those orders on that count. Learned Advocates for the accused 1st Party could not show any decision that reasons are to be recorded for taking cognizance but persisted to say that there should be something in the order to show application of the mind of the Magistrate to the facts of the complaint to satisfy him to take cognizance of the offence. From the perusal of the extracts of the report (Complaint) by the CMM and hearing given to the learned Advocate of the complainant and the learned Attorney-General it appears to us that the CMM applied his mind to the allegation made against the accused persons and on being satisfied that offence under section 24 of the Ordinance has been disclosed in the report/complaint took cognizance of the said offence, so, we find that there was application of mind by the CMM and his satisfaction in taking cognizance of the offence in question against the accused persons.”

[Ibid].

⁴⁵ Judgment passed by the Appellate Division in Shinepukur Holding Ltd. –vs- Securities and Exchange Commission and others, reported in 50 DLR (AD) (1998) p189.

section 25 following an enquiry or investigation. Here the Ordinary meaning is required to be given to the word ‘report’ unlike a report filed by a Police Officer upon investigation.”⁴⁶

The Appellate Division further held that “the High Court Division is plainly wrong in holding that “it is clear when there is provision for taking cognizance on the basis of a report, such report must be prepared and submitted by a person authorized to hold enquiry or investigation.”⁴⁷ The Appellate Division reversed the finding of the High Court Division and held the finding of the High Court Division regarding defects in treating the report as complaint petition.⁴⁸

9.2.5. Case Study: Mahbub Ahmed and Others –vs- Securities & Exchange Commission (Criminal Revision Nos. 221, 222 and 223 of 1999)

By filing 3 (three) separate applications under Section 561A of the Code of Criminal Procedure, three accused persons (Mahbub Ahmed and others) of Sessions Case No. 607 of 1997, subsequently re-numbered as Sessions Case No. 558 of 1999, arising out of Complaint Petition Case No. 1081 of 1997 obtained the Rules calling upon the opposite party to show cause as to why the proceeding of the said sessions case should not be quashed.

The BSEC filed a petition of complaint in the Court of the CMM of Dhaka which was registered as complaint petition case No. 1081 of 1997 against the present petitioners and another namely Securities Consultants Ltd. stating, *inter alia*, that the accused firm and other accused persons act as dealers/brokers in Dhaka Stock Exchange and in such

⁴⁶ Ibid.

⁴⁷ Ibid.

⁴⁸ The Appellate Division held that “the High Court Division is plainly wrong in holding that “it is clear when there is provision for taking cognizance on the basis of a report, such report must be prepared and submitted by a person authorized to hold enquiry or investigation”. The High Court Division also completely went wrong in holding that “had he (Executive Director) himself enquired into any allegation of contravention of the provision of section 17 of the said Ordinance and prepared and submitted a report giving facts constituting the offence then the question of authorizing him by the SEC would have arisen. He having not enquired and submitted any report in the matter and he having merely presented the extracts of the report of a duly authorized committee stating the facts constituting the offence, in our view there was no requirement of the provisions of section 25 of the said Ordinance to authorize by the SEC and, as such, there was no violation of the provisions of that section in taking cognizance.” Except that there was confusion in the mindset of the learned Judges as to the word “report” occurring in the usual criminal laws and as in section 25 of the Ordinance which resulted in some unwarranted observations, we think the views taken by the High Court Division on other points were perfectly correct.”
[Ibid].

capacity of the dealer/broker were involved in fraudulent activities in the year 1996 during the month of July to December within the mischief of Section 17 of the Securities and Exchange Ordinance, 1969. This offence was detected by an Enquiry Committee formed by the Securities and Exchange Commission to enquire into the matter under Section 21 of the Securities and Exchange Ordinance, 1969. According to the enquiry report dated 27.03.1997, the accused persons being dealer/broker committed offence described in section 17 of the Securities and Exchange Ordinance, 1969 and as such is liable to be punished under Section 24 of the Securities and Exchange Ordinance, 1969.

The finding of the Enquiry Committee regarding the accused persons was that “Securities Consultants Ltd: In foreign DVP bank statement there has been huge sales in this A/C. Total transactions in volume and value are 7,09,530 nos. and Tk.27.14 cores respectively. Unsettled amount is Tk.2.50 cores. There is no such name in SEC & DSE list. No trading has also taken place in DSE in this name. Major trading are in the shares of Beximco Pharma (1,71,450) Shine Pukur (1,00,000) Dynamic Textile (1,20,000), Mita Textile (89,900), Orion In fusion (73,680), Beximco Fisheries (50,000), Apex Footwear (37,500), Pdma Textile (25,000). The Committee found no trading of these transactions in DSE. However, the Committee could gather that it is a syndicate comprising three members. Two are brokers of DSE namely Mr. M.G. Azam Chowdhury and Mr. Shahidullah. The third member is Professor Mahbub Ahmed, Department of Accounting Dhaka University. There is however no official confirmation to this. The observation made in respect of HMMS Associates is also applicable to this firm. We feel that there may be some other groups in DSE in disguise but working closely together (as without the separate identify) as buyer/seller influencing the market price as and when they choose to do so. The dealings of the firm indicate manipulation within the meaning of Section 17 of the Securities and Exchange Ordinance, 1969.”⁴⁹

The learned Metropolitan Magistrate, by an order dated 02.04.1996, took cognizance of the case against the accused persons under Section 24 of the Securities and Exchange Commission Ordinance, 1969. Upon coming to know about the said fact of taking of cognizance, the petitioners voluntarily surrendered before the High Court Division and obtained anticipatory bail and are still on bail. The case being ready for trial, the case

⁴⁹ Complaint Petition Case No. 1081 of 1997.

record was sent to the learned Metropolitan Sessions Judge, Dhaka and the case was registered as Sessions Case No. 607 of 1997. Subsequently, the case was transferred in the Court of Metropolitan Additional Sessions Judge, 3rd Court, Dhaka and renumbered as Sessions Case No. 558 of 1999.

On 16.03.1999, the date was fixed for framing charge. The accused persons on that day filed an application under Section 265C of the Code of Criminal Procedure, 1898 for discharging them from the charges brought against them on the ground *inter alia*, that the allegations made in the petition of complaint are vague, uncertain and have no materials and ingredients required for an offence under Section 17 of the Securities and Exchange Ordinance, 1969.⁵⁰

The learned Additional Sessions Judge, after hearing the respective parties, perusing the petition of complaint and other relevant documents by the order dated 16.03.1999 framed charges against the present accused persons under Sections 17(e) (II) (IV) of the Securities and Exchange Ordinance, 1969. Thereafter, the accused persons filed applications under section 561A for quashing the aforesaid procedure and obtained the Rules.

After perusing all the documents and hearing the parties, the High Court Division held that in the petition of complaint, on the basis of an Enquiry Committee, allegations have been made categorically against the accused persons to the effect that the accused firm and other accused as dealer/broker in DSE, being a syndicate were involved in fraudulent activities in July to December 1996 within the mischief of Section 17 of the Securities and Exchange Ordinance, 1969, which were detected by the Enquiry Committee and that

⁵⁰ In the discharge it was stated that that “the allegations made in the petition of complaint are vague, uncertain and have no materials and ingredients required for an offence under Section 17 of the Securities and Exchange Ordinance, 1969; the accused persons have been alleged as the member/ dealer/ broker of Dhaka Stock-Exchange and in such capacity they involved in fraudulent activities in the year 1996 which is totally false concocted, malafide and motivated. The accused person’s firm Securities Consulted Ltd. is a Private Ltd. Company registered under the Companies Act and a juristic persons but it is not a syndicate as alleged in the petition of complaint. The complaint is imaginary and baseless, because Securities Consulted Ltd.(SCL), the accused No. 1, or Professor Mahbub Ahmed, the accused No. 4, were not the members of Dhaka Stock-Exchange or never acted as broker/ dealer in Dhaka Stock-Exchange or Chittagong Stock-Exchange and as such has no access of the place of occurrence as only members have access to Dhaka Stock Exchange or Chittagong Stock Exchange. No allegations have also been made specifically against accused No. 2 Mr. M.G. Azam Chowdhury and accused No. 3 Mr. Shahidullah. In the said applications it was also stated that there was no sufficient ground to frame charge against the accused persons.”

Quoted from the discharge application filed under Section 265C of the Code of Criminal Procedure, 1898 filed on 16.03.1999 by the accused persons in Sessions Case No. 558 of 1999.

according to the enquiry report dated 27.03.1997 in the foreign D/P bank statement, there has been huge sales in the account of Securities Consultants Ltd. and total transactions in volume and value of 7,09,530 shares and Tk. 27.14 cores of which unsettled amount was Tk. 2.50 cores, were done by the accused but those were not in SEC or DSE records, and no such trading took place in DSE and that the accused persons as buyer/seller influenced the market price as and when they choose to do so.⁵¹

The Hon'ble Court further held that "if we consider the disclosed allegations, made in the petition of complaint against the petitioners and section 17 of the Securities Exchange Ordinance, 1969 we have no hesitation to hold that those allegations are very much within the mischief of Section 17 of the Securities and Exchange Ordinance 1969. The accused by their act had affected a series of transactions in various Securities creating the appearance of active trading and as the buyer/ seller influenced the market price when they choose to do so for their advantage. Thus, at this stage there is no scope to hold that the allegations made in the petition of complaint, which based on an enquiry report, are preposterous and the allegations at their face value and entirety do not constitute any offence and the continuation of the proceedings amounts to an abuse of the process of the Court. The allegations made in the petition of complaint are sufficient grounds to proceed with the trial against the accused petitioners."⁵² The Court materialized this observation with some other important findings.⁵³

In result, the Court quashed this proceeding too holding that "in view of the said clear findings of the learned Additional Sessions Judge in disposing an application under Section 561A of the Code of Criminal Procedure it is very difficult to hold that in the petition of complaint no offence has been disclosed within the mischief of Section 17 of the Securities and Exchange Ordinance, 1969 or the allegations are so preposterous or the

⁵¹ Judgment passed by the High Court Division in Criminal Revision Nos. 221, 222 and 223 of 1999.

⁵²Ibid.

⁵³ "Moreover, the Appellate Division in the case of Shinepukur Holding Ltd. Vs. Securities and Exchange Commission and others, reported in 50 DLR (AD), page-189 disapproved to nipping the prosecution in bud when the Securities Exchange Commission makes a complaint of fraudulent acts against certain Companies and their directors on the basis of an enquiry undertaken by an expert committee and also advised the Court not to be more expert at initial stage. The learned Advocate of the petitioner tried to impress us that there is no sufficient ground for proceeding against the accused persons. The word 'sufficient ground for proceeding' do not mean sufficient grounds for conviction. Prima-facie material is sufficient for forming an opinion to proceed against the accused. The learned Additional Sessions Judge in framing charge against the accused petitioners under Section 17(e)(II)(IV) of the Securities and Exchange Ordinance, 1969 categorically and consistently held to the effect."

[Ibid].

impugned proceeding amounts to an abuse of the process of the Court. It also manifests from the order framing charge against the accused petitioners, annexure-C, that the learned Additional Sessions Judge had considered the materials on record and the submissions advanced on behalf of the learned Advocates of the respective parties. As such there is no scope to say that the learned Additional Sessions Judge did not apply its judicial mind in framing charge against the accused petitioners and violated the mandatory provision of section 265C of the Code of Criminal Procedure and the charge has been framed mechanically. Thus, the order framing charge against the accused petitioners has not suffered from any illegality or infirmity which can be interfered or quashed.”⁵⁴

In view of the above observations, the Hon’ble Court discharged the Rules and also directed the trial court to conclude the trial as expeditiously as possible preferably within 6 (six) months from the date of the receipt of the judgment on 23.11.2011.

9.2.6. Case Study: Securities & Exchange Commission –vs- Abu Tyeb and others (Criminal Appeal Nos. 12, 21 & 22 of 2000)⁵⁵

The facts, in short, are that the BSEC and others, filed Complaint Petition Case Nos. 1079, 1078, 1074, 1086, 1088 of 1997 against the accused respondents in the aforementioned appeals under Section 25 of the Securities and Exchange Ordinance, 1969 alleging that the accused respondents committed offence under Section 17 of the Securities and Exchange Ordinance and prayed for punishment under Section 24 of the said Ordinance.⁵⁶

The learned Magistrate took cognizance of the offence alleged against the accused and transferred the case for trial. The Additional Metropolitan Sessions Judge, 3rd Court, Dhaka, framed charge against the accused on 22.4.1999 after hearing the parties. Against the judgment and Order dated 22.4.1999 of the 3rd Court, the accused respondents filed

⁵⁴ Ibid.

⁵⁵ Criminal Appeal Nos. 12, 21 and 22 of 2000 with Criminal Appeal Nos. 13, 14, 15 and 20 of 2000 with Criminal Appeal Nos. 16, 17, 18 and 19 of 2000. All these cases were heard analogously.

⁵⁶ The allegation against the accused was that they were involved in fraudulent activities in the year 1996 during the month of July to December within the mischief of Section 17 of the Ordinance. The offence was detected by an enquiry committee formed by the Securities and Exchange Commission to enquire into the matter under Section 21 of the Ordinance. The committee found in its enquiry report dated 27.3.1997 that the accused have committed offence alleged against them and are liable for punishment under Section 24 of the said Ordinance. The SEC then filed the above mentioned complaint petition cases against the accused persons.

the aforementioned Criminal Revisions and Criminal Miscellaneous cases before the High Court Division and the High Court Division by a single judgment dated 23.6.1999 disposed all of them, discharging some and making others absolute with a direction upon the Additional Metropolitan Session Judge to take steps under Section 265B of the Code of Criminal Procedure Code for the prosecution to open the case by stating evidence and thereafter, fix another date for hearing under Section 265C of the Criminal Procedure Code. Against the judgment of the Hon'ble Appellate Division, the SEC filed the aforesaid Criminal Appeals, which were allowed by setting aside the judgment of the High Court Division.

9.2.7. Case Study: Securities & Exchange Commission –vs- Ruma N. Alam (Criminal Appeal No. 11 of 2000, reported in 57 DLR 2005 AD 161)

The SEC filed the complaint case in the Court of Chief Metropolitan Magistrate, Dhaka, under section 25 of Securities and Exchange Ordinance, 1969 alleging that the accused therein including Ruma N. Alam and others have committed offence under section 17 of the Securities and Exchange Ordinance stating, inter alia, that the accused was involved in fraudulent activities during the month of July to December, 1996 within the mischief of section 17 of the said Ordinance.⁵⁷

The Chief Metropolitan Magistrate took cognizance of the offence and sent the case to the Court of Sessions Judge of Dhaka for trial. The learned Additional Sessions Judge, First Court, Dhaka transferred the case upon setting up of Metropolitan Sessions Division on 7.1.1999 to the Court of Metropolitan Sessions Judge, Dhaka, who in turn, transferred the same to the Court of Additional Sessions Judge, Dhaka for disposal and upon hearing the parties framed charge against the accused-respondent on 15.3.1999. Against the said order, the accused filed Criminal Revision No. 199 of under section 439 of the Code of Criminal Procedure and the High Court Division by order dated 26.3.1999 made the Rule absolute,

⁵⁷ It is alleged in the complaint petition that the accused company and other accused are engaged as dealer/broker of the Dhaka Stock Exchange and in such capacity was involved in fraudulent activities in the year 1996 and the offence was detected by an Enquiry Committee formed by Security and Exchange Commission to enquire into the matter under section 21 of the Security and Exchange Ordinance 1969. According to the enquiry report dated 27.3.1997 it appears that the accused being dealer/broker committed the said offence under section 17 of the said Ordinance and as such was liable to be punished under section 24 thereof.

against which the SEC filed the aforesaid Criminal Appeal before the Appellate Division, which was allowed.

9.2.8: Present Status of those Cases and some Critical Observations

Total fifteen (15) cases were filed, amongst those some of the cases were already quashed (proceedings set aside) by the High Court Division meaning that the accused persons in those cases have already been released from the accusation. It is truly a matter of great sorrow that some of the perpetrators have already been released from the share market scam of 1996. The record shows that the other perpetrators will be released too because of their equal footing. However, the entire proceeding and the complaint petition of the aforesaid case suffer from certain irregularities and illegalities which cannot be overlooked. Moreover, the unusual delay caused in holding trial of those cases also creates an impediment in ensuring justice.⁵⁸ As is often said, “Justice delayed is Justice denied”.

It is a matter of wonder why such loopholes, irregularities and illegalities take place in the complaint petition and proceedings. It is examined that the BSEC, the complainant and the Committee fail to connect the occurrence and the reasons behind the occurrence. They have vehemently failed to show the connection of malpractice done and fraud by the culprits in causing the said occurrence. They have failed to mention any specific offence or violation or contravention of any specific provision of law by the perpetrators. They have also failed to identify and prove the direct link of contributory factors and contributory persons behind share scam. They have fail to connect the direct causal link between the naughty causes and the role of ghosts immediately making the victims suffered unjustly and have fundamentally failed to identify the concerted practice amongst the different players of share market. In addition, they failed to establish a relationship between the concerted practice jointly carried out by the perpetrators and the reasons responsible for such a massive share market crash. In short, the Committee, Prosecution and the BSEC have failed to prove the direct nexus of the culprits with the share scam. They have vehemently failed to prove the case beyond reasonable doubt as evident from the record as stated above. Sadly, the Court relied on the basic criminal law jurisprudence

⁵⁸ AFM Mainul Ahsan, ‘Share Scam 1996: Justice Delayed and Denied’, *The BDNews24* (online), 24 October 2010.
<<http://opinion.bdnews24.com/2010/10/24/953/>> (16.03.2015).

that the prosecution failed to prove the case beyond reasonable doubt, and in doing so the Court probably ignored the fact that in the offence relating to securities under the securities laws, the burden of proof is upon the accused to prove that no offence was committed by him/her.⁵⁹

The aforesaid loopholes, irregularities and illegalities might be left intentionally, or mistakenly. However, one reason may be that the inquiry report and complaint petition were drafted and prepared by the non-lawyers who might fail to catch the exact points, legal technicalities and procedural legal requirements. Therefore, some inherent loopholes may automatically remain in the inquiry report and also in the complaint petition. Moreover, the report and complaint were made without sufficient consideration. Taking the privilege of those legal technicalities, inherent irregularities and mistaken illegalities (either intentional or unintentional) the accused persons escape accusations. Consequently, the ultimate perpetrators who are economically and socially powerful remain unpunished.

Moreover, some of the cases are still pending and no one knows when they will finally be adjudicated. The initiatives taken by the BSEC and the Government in this regard are very poor. In addition, some of the cases are already quashed by the High Court Division against which three appeals were filed by the BSEC or the Government to the Appellate Division. After hearing the parties and perusing the documents, the Appellate Division granted leave on 3 (three) cases. It may take long time to get those leave appeals heard. Now, it is to see how much time it takes and what the Appellate Division finally decides.

However, this leads to assume that all the persons involved in the entire proceeding are secured and the immediate actions taken after the scam was only to console the erstwhile public. Time has elapsed, people have calmed down and as a result, the perpetrators are released from the proceeding under the legal veil as justice delayed is justice denied. As discussed above that the perpetrators have left no stone unturned for frustrating the legal proceedings filed against them.⁶⁰ Hence, the perpetrators found the audacity to plan

⁵⁹ Under Section 25B of the Securities and Exchange Ordinance, 1969, the burden lies upon the accused to prove that he/she did not commit any offence alleged against him/her. Section 25B read out that “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.”

⁶⁰ 1st stage: Challenging the power of Executive Director M. A. Rashid Khan to file the case

another share market scam in 2011. The scammers think they can purchase law and justice in return of money and power. Perhaps, they think court is at their door. If exemplary punishment would have been awarded to the 1996 scammers, perhaps, the Bangladesh would not have to face the scandalous share market scam of 2011. It is also observed in the Probe Committee, 2011.⁶¹

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- (i) The Chief Metropolitan Magistrate took cognizance on 2.04.1997.
 - (ii) Challenging of which the accused petitioners filed Criminal Revision Case Nos. 163-165 of 1997 before the learned Sessions Judge, Dhaka for setting aside the cognizance taking Order dated 2.04.1997.
 - (iii) The Sessions Judge sent the case being Reference Case Nos. 1-3 of 1997 to the High Court Division (on ground that he got no jurisdiction to quash the cases, that is why he should referred the case to the High Court Division).
 - (iv) The High Court Division rejected the aforesaid reference cases by Order dated 9.12.1997.
 - (v) Against which the accused petitioners filed Criminal Petition for Leave to Appeal Nos. 52-54 of 1998, which was dismissed by the Appellate Division by judgment and Order dated 13.05.1998 (reported in 50 DLR (AD) (1998) 189).
 - (vi) In the said Criminal Petition for Leave to Appeal, the Appellate Division made observation that prima facie case was found against the accused petitioners.
 - (vii) For expunging the said observations, the accused petitioners filed Criminal Review Petition Nos. 3-5 of 1998, by which the aforesaid observations were expunged vides judgment and Order dated 19.11.2001.

2nd stage: regarding discharge application:

- (i) Thereafter, the cases were sent back to trial court.
- (ii) The accused petitioners filed discharge application which were rejected vides Order dated 27.05.2001 but charges were not framed on the same date.
- (iii) Against discharge application the accused petitioners filed Criminal Revision Nos. 396-397 of 2011, which were rejected summarily by Order dated 4.06.2001.
- (iv) Against which the accused petitioners filed Criminal Petition for Leave to Appeal Nos. 121-122 of 2011 whereupon leave was granted on 19.11.2001, and those Criminal Petition for Leave to Appeal were renumbered as Civil Appeal Nos. 46-47 of 2001.
- (v) Subsequently, those Civil Appeal Nos. 46-47 of 2001 were withdrawn/non-prosecuted on 25.07.2010 by the accused appellants-petitioners.
- (vi) After said withdrawal, the charge was framed on 10.08.2010.

3rd stage: Challenging framing of charge:

- (i) Challenging the said Order of framing charge, the accused petitioners filed Criminal Miscellaneous Case Nos. 25267 of 2010 and 25315 of 2010 for quashing the entire proceedings before the High Court Division.
- (ii) The High Court Division set aside the proceedings by judgment dated 16.03.2015.
- (iii) Against the said judgment the Bangladesh Securities and Exchange Commission filed the instant Criminal Petition for Leave to Appeal Nos. 82 and 83 of 2017, in which leave was granted on 20.08.2017 by the Appellate Division.

⁶¹ It is observed in the 2010-211 stock market Report prepared by the Probe Committee that whether the report submitted by the 1996 scam Enquiry Committee was implemented or not, that is questionable. If that report were implemented properly, there might be different scenario now. In the 1996 Enquiry Committee Report Imtiaz Hossain, Khorshed Alam, Salma F Rahman, Enayetur Rahim, Rokibur Rahman, Shakil Rijvi and others were in the suspect list. In the present stock market cashes 2010-2011, there found some evidences of involvement of Salman F Rahman and Rokibur Rahman. It is doubted that both of them influenced the BSEC to a notable extent. They also highly persuaded for re-appointing the present Chairman and Member Mansur Alam in the SEC. Salma F Rahman also lobbied the Bangladesh Bank regarding BD Thai Aluminum case. With GMG Airlines and Unique Hotel he had direct involvement (Chapter 7, Case 7.3). They had influence over the regulation in SEC, which ruined the impression of the SEC as a fair capital market regulator. [In Bangla]

Probe Committee, *Share Market Inquiry Report, 2011*, Inquiry Report (2011) 142, 143.

<http://www.mof.gov.bd/en/index.php?option=com_content&view=article&id=169&Itemid=1> (26.08.2016).

9.2.9. Could the 1996 Share Market Scammers/Scam Offenders be Punished through Court of Law?

The 1996 share market scammers/scam doers can definitely be punished through court of law. Some of the suggested ways are given below-

1. The illegalities and immaturities in drafting the scam reports by the enquiry committee and the filing of the complaint petitions by the authorized officer of the BSEC could have been prepared and drafted well and in consultation of expert lawyers and analysts. Allegations made in the complaint petition should be specific with full proof evidences. It should have been done in compliance with both the substantive requirements and procedural formalities of law.

2. The Government, the BSEC and the prosecution lawyers could have been more serious in the early disposal of the aforesaid cases. They could have been more, prompt, active and propitious in removing the illegalities, defects and irregularities from the cases.

3. Legal points as identified by the Court in dismissing the aforesaid cases are justifiable but if the Court had wanted, it could have avoid the technical loopholes or *suo moto* could direct the BSEC and the prosecution lawyers to file fresh report or produce more material evidences, or submit supplementary report. The BSEC could also have done so at its own initiative and could seek judicial direction for complete inquiry. On the other hand, if the Court had wanted, it could direct an independent Committee or Magistrate to produce complete Report in accordance with law and could punish the real offenders considering the massive loss suffered by the people at large.⁶²

4. If criminal punishment was not available or could not be given for several identified or unidentified reasons, the Government, the BSEC and the Court could take alternative steps. It could develop a new legal theory and could borrow ideas from other

⁶² The purpose here is not to question the verdicts or decisions of the Court. Only purpose is to provide a theoretical analysis of the role of the Court which is made *bonafide* having no contemptuous contention or intention at all. It is felt that the Court could be more reluctant in finding out the inherent loopholes and legal defects of the probe committee report or the complaint petition. The High Court Division and the Appellate Division have ample power, but they cannot go beyond law. They have their own limitations. They have to act in accordance with law. They are independent and there is no one who can curtail their power. In share market scam cases our higher courts could be more active, pro bono and leading. They could set some magnificent examples in punishing the 1996 share market scammers so that no one could dare in committing such kind of offence in future.

developed jurisdictions. Money was taken from the share market, and the entities that had taken the money was identified but, how and when exactly it was taken had not been identified, the aggrieved were also identified. There might be some technical reasons for which the occurrence could not be strictly identified; nevertheless these would not have been a great problem. Money was taken. Many investors suffered unjustly. On the other hand, the perpetrators gained from unjust enrichment. This unjust method of gaining money was enough to constitute an offence.

A legal theory could be developed in this regard because necessity shows the right path of developing new legal recourse for solving a problem. The 1996 share market scam was a gigantic mishap. If erstwhile laws were not sufficient to tackle it, that would obviously not mean that an offence is not an offence and an improper act is proper, and the perpetrators behind the improper act should be left unpunished. Money was taken unjustly, some persons became gainers unjustly and some persons became losers unjustly, and the gainer persons became unjustly gainer due to the unjust loss of unjust losers which is enough to take just action against the just gainers. This is called the theory of 'unjust enrichment'⁶³ and 'restitution of property'⁶⁴. The theory is largely developed under the head of constructive trust in the United Kingdom. Under this legal recourse, money that was taken unjustly by the unjust gainers would be taken back and distributed to the unjust losers in pro-rata basis or any other appropriate way. Our Court could implement this alternative action. The Court could adopt this legal theory. It is very well known in the legal practice of almost all developed legal jurisprudence i.e. in UK, USA, Canada, India, Hong Kong, Australia. For example: In Chase Manhattan Bank NA –vs- Israel-British Bank (London)

⁶³ In law, unjust enrichment is where one person is unjustly or by chance enriched at the expense of another, and an obligation to make restitution arises, regardless of liability for wrongdoing (Basic rule in international law: Trans-Lex.org). From: Wikipedia-the free encyclopedia, *Unjust enrichment* (2 January 2014). <http://en.wikipedia.org/wiki/Unjust_enrichment> (15.10.2016).

⁶⁴ The law of restitution is the law of gains-based recovery and mainly developed for the theory of unjust enrichment. Moreover, it gains acceptability in other legal wing through all over the world. Though this theory has been emerged newly, however, it is so quickly and widely accepted by almost all developed countries that it becomes now part of modern international law. The Wikipedia defines that it is to be contrasted with the law of compensation, which is the law of loss-based recovery. Obligations to make restitution and obligations to pay compensation are each a type of *legal response* to events in the real world. When a court orders restitution it orders the defendant to give up his/her gains to the claimant. When a court orders compensation it orders the defendant to pay the claimant for his or her loss. This type of damages restores the benefit conferred to the non-breaching party. Simply, the plaintiff will get the value of whatever was conferred to the defendant when there was a contract. There are two general limits to recovery, which is that a complete breach of contract is needed, and the damages will be capped at the contract price if the restitution damages exceed it. Wikipedia-the free encyclopedia, *Restitution* (2 January 2014). <<http://en.wikipedia.org/wiki/Restitution>> (15.10.2016).

Ltd⁶⁵ one bank paid another bank a large sum of money by mistake (note that the recipient Bank did not do anything wrong - it just received money not owed to it). Goulding J held that the money was held on (constructive) trust for the first bank. In *Attorney General for Hong Kong -vs- Reid*⁶⁶ a senior prosecutor took bribes not to prosecute certain offenders. With the bribe money, he purchased property in New Zealand. His employer, the Attorney General, sought a declaration that the property was held on constructive trust for it, on the basis of breach of fiduciary duty. The Privy Council awarded a constructive trust.

5. The Government, the BSEC and the Bangladesh Bank could have issued a direction preventing the scammers/offenders and/or the bare accused persons from trading further in the stock market. The Government could have issued notifications against the scammers who created an unhealthy practice in the market. The Government and the BSEC could ban the accused persons from trading in the market for a certain period of time or could suspend trading into those securities which were identified in the enquiry committee report as doubtful. If the Government wanted, it could prevent the scammers from trading for abusing the market and making the market unstable, restless and violent. Likewise, the Government, the BSEC and the Bangladesh Bank could have taken many more alternatives to punish, to prevent the scammers and to secure healthy, safe, stable stock market practice for the general investors.

6. Share market culprits usually belong to financially ruling class of the society. They may be both financially and politically powerful. But it does not mean that they cannot be punished because they can control the prosecution, the judiciary and other law enforcing agencies. All are equal under the law and all are equal in the eye of law. This is not only a mother principle of universal law but also one of the basic philosophy and constitutional ruling in our country. In several places in our Constitution including in the provision of Preamble, Fundamental Principles of State Policy, Fundamental Rights this principle of equality before law has been enshrined stressfully. The share market culprits cannot escape liability simply because they are economically and politically affluent.

⁶⁵ [1980] 2 WLR 202.

<http://en.wikipedia.org/wiki/Chase_Manhattan_Bank_NA_v_Israel-British_Bank_%28London%29_Ltd> (15.10.2015).

⁶⁶ [1994] 1 AC 324.

<http://en.wikipedia.org/wiki/Attorney-General_for_Hong_Kong_v_Reid> (15.10.2015).

There are numerous instances all over the world of sentencing the share market culprits with adequate and exemplary punishment irrespective of the economic and political class of the perpetrators. In a round table meeting organized by bdnews24, the participating scholars gave some notable example of punishing the share market perpetrators stating *inter-alia* that “on December 10, 2008 Bernard Madoff’s massive Ponzi scheme was unravelled. The following day, FBI arrested Madoff and charged him with one count of securities fraud. On June 29, 2009, Madoff, the man who confessed to organizing the largest fraud in the US history, was sentenced to 150 years in prison, the maximum allowed. Samuel D Waksal, founder and former CEO of the biopharmaceutical company ImClone Systems, which developed the drug Erbitux, was arrested on June 12, 2002 on insider trading charges. On October 15, he pleaded guilty to charges of securities fraud, bank fraud, obstruction of justice, and perjury. On June 10, 2003, Waksal was sentenced to seven years in prison.”⁶⁷

More regretfully, not a single instance has been set-up in Bangladesh even though numerous share market culprits were repeatedly identified after 1996 share market scam and 2011. In reply to the question of why the culprits of 1996 stock market scam were not punished while the cases in the court are still pending, the Finance Minister AMA Muhith said it is still possible. The reply should be unacceptable because 20 (twenty) years have already passed and the proceedings are still pending. Why the government is conducting the probe when it does not prosecute the offenders is a question that agitates many.⁶⁸

9.3. After Establishment of the Special Tribunal

After the stock market crash in 2010-2011, a Special Tribunal was established by inserting Section 25B in the Securities and Exchange Commission Ordinance, 1969. It was inserted by section 11 of the Securities and Exchange (Amendment) Act, 2012, published in the official gazette on 10.12.2012. This section empowers the Government to establish one or more Special Tribunal by publishing it in the official gazette.

⁶⁷ AFM Mainul Ahsan, ‘Share scam 1996: justice delayed and denied’, *The BD News24* (online), 24 October 2010.

<<http://opinion.bdnews24.com/2010/10/24/953/>> (16.03.2015).

⁶⁸ Ibid.

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, on a Court of Sessions exercising original jurisdiction.⁶⁹ The Court of Sessions may, of its own, or upon an application made by the BSEC, transfer at any stage of the trial, any case from his Court to another Special Tribunal. The Special Tribunal shall try the case from such stage wherefrom the case was so transferred.⁷⁰

Before setting up formal Tribunal in middle of 2014, few cases after 2010-2011 stock market crash were filed before the Magistrate Court in earlier format. After establishment of the Special Tribunal, all those cases were transferred to the Tribunal and few cases were also lodged. The Tribunal tries stock market related cases only. Any offence as provided under the securities laws to be tried under the Securities and Exchange Commission Ordinance, 1969 can be tried and adjudicated by this Tribunal. It is now seated in Motijheel Commercial Area of Dhaka. More than fifty (50) cases have already been filed before this Tribunal, which are under adjudication.

It is for the first time that the aforesaid special Tribunal passed its first judgment and order on 3.08.2015 sentencing 2 (two) years imprisonment to one ex-officio of Premium Bank Broker House namely, Mahbub Sarowar for circulating rumor during share scam in 2010-2011 in a case filed against him by BSEC under section 17 and 24 of Securities and Exchange Ordinance, 1969 read with Sections 10 and 18 of Securities and Exchange Commission Act, 1993.⁷¹ The Tribunal has also pronounced verdicts in few other scam cases, and trials of other cases are still going on.

However, regarding 2010-2011, a total of 22 cases, including the cases related to the 1996 stock market scam, were listed with the Tribunal. After the inception, the Tribunal delivered verdicts in six (6) cases. Of the remaining 16 (sixteen) cases, 14 (fourteen) were

⁶⁹ The Securities and Exchange Commission Ordinance, 1969 s 25B(2).

⁷⁰ Ibid s 25B(3).

⁷¹ It is reported in daily Prothom Alo on 4.08.2015 at page no. 13 that it is known from the BSEC source that on 9.03.2010 a case was lodged by the BSEC with Gulshan Police Station against Mahbub Sarowar for spreading rumor in the market through Facebook and other social sites. Earlier, he was arrested on 3rd March from the Premier Bank Broker House Banani Iqbal Center. Mr. Mahabub was appointed as an analyst there. Then he was taken to the Gulshan Police Station where the BSEC lodged the case bringing specific allegations against him. He later enlarged on bail from the Court. However, after holding trial, recently the Tribunal found him guilty and imposed him punishment under law. By this case, the fact of spreading rumor has got the official recognition as an “offence”. It will be a good lesson for others like minded. [In Bangla].

stayed earlier by the High Court Division, and two (2) were stayed recently. On 20.04.2016, the Tribunal on capital market awarded two (2) years jail term to the Chairman of Securities and Exchange Promotion Management, a brokerage firm, and one of its clients. They were fugitives before starting the prosecution in the Tribunal. The Tribunal also imposed penalty on them for their involvement in the manipulation of share price. It also said the accused will also have to pay a penalty of Tk. 1.5 million each. They will have to remain in the jail for 6 (six) months more in case of failure to pay the penalty. Meanwhile, the High Court Division has stayed the proceedings of the Premium Securities case, filed against some top businesses. As a result, there is presently no case for prosecution in the Tribunal arising out of any event of 2010-2011 stock market crash, according to Tribunal source. Earlier, on 3.11.2015, the High Court Division also stayed the proceedings of Chittagong Cement Clinkers & Grinding Company (CCCGC) case, one of the cases filed after the 1996 stock market scam, following another writ petition filed challenging Section 25(A). The accused were former CCCGC chairman and managing director Abu Tayab, former Dhaka Stock Exchange (DSE) president Rakibur Rahman and former DSE director Shahidul Haque Bulbul.⁷²

What the High Court Division will decide in those cases is yet to be seen. The fates of these cases are depending on the verdict of the High Court Division, and then the Appellate Division which may take time. One may hope that our apex Court will set examples of punishing the perpetrators and compensating the unjust loss sufferers from the unjust gain obtained by the perpetrators during 2010-2011 stock market scam this time.

Moreover, very recently, the Special Tribunal acquitted two businessmen who were accused in a case tied to the much-hyped 1996 share market scam vides its judgment and order dated 23.04.2017. The two acquitted were A Rouf Chowdhury, the then Chairman of Premium Securities, and Syed H Chowdhury, a director of the stockbroker. It is reported that the BSEC will file an appeal against it.⁷³ It is also reported that the Tribunal acquitted

⁷² AHM Moazzem Hossain, 'Special tribunal gives jail to brokerage firm chief, client' *The Financial Express* (online) 21 April 2016.
<<http://www.thefinancialexpress-bd.com/2016/04/21/27054/Special-tribunal-gives-jail-to-brokerage-firm-chief,-client/print>> (27.04.2017).

⁷³ 'Two businessmen acquitted of 1996 stock scam charges' *The Daily Star (Star Business Report)* (online) 24 April 2017.

the accused persons because the prosecution failed to prove the case beyond reasonable doubt.⁷⁴

9.4. Limitations

Lack of awareness of the investors is one of the main barriers in implementing the securities laws. The investors do not have adequate knowledge about the rights and protections provided to them under the law. They are not keen on enforcing their legal rights through appropriate authority. Most of the investors take securities market as an alternative investment. They do not perceive with the stock market as business in its true sense like other businesses.

Legal provisions regarding the investors' right are also weak and insufficient. They cannot ensure effective implementation of justice and fairness. Defective legal provisions result in defective adjudication because the court is guided by law. Effective legal provision is the driving force of proper accomplishment of justice and fairness. Hence, strong and effective laws are essential to ensure proper regulation in the market. Adding emphasis on the speedy trial with special attention, the Special Tribunal has been established. It exercises procedures like the criminal court does under the Code of Criminal Procedure, 1898.

The Special Tribunal cannot call for any issuer, market player, managerial institution or intermediaries for explaining any action or activity in the stock market on its own motion. No person can file a case before the Tribunal. No Court or the Special Tribunal can take

<<http://www.thedailystar.net/business/two-businessmen-acquitted-1996-stock-scam-charges-1395388>> (25.05.2017).

⁷⁴ It is reported that "however, proceedings of two other accused in the case -- Moshir Rahman, managing director of Premium Securities, and Onu Zaigirdar, a director of the stockbroker -- have been stayed by the High Court. The BSEC had filed the case against Premium Securities and its directors in 1997 on charges of selling different companies' shares by violating securities rules in 1996.

The regulator had also filed another 14 cases against 34 individuals, eight listed companies and five brokerage firms on charges of manipulating share prices through fraudulent means in the same year. Of the cases, 12 were stayed by the higher courts, and proceedings of only three cases had been continuing in the special tribunal, which gave the first verdict in one of the cases in August 2015.

In the maiden judgment, the tribunal sentenced two directors of Chic Tex to four years in prison for their involvement in price manipulation, and also fined them Tk 30 lakh each. In case of failure to pay, they were supposed to serve another six months in jail.

In the case of Premium Securities, the BSEC had alleged that the accused traded shares of Beximco Pharmaceuticals, Bata Shoes, Prime Textile and Mita Textile through fraudulent means between July and December 1996, according to the charge sheet, based on a government probe report on the scam."

Ibid.

cognizance of any offence from any person directly. This restriction is provided under the Securities and Exchange Commission Ordinance, 1969. Under section 25 of the Ordinance, it is provided that no court shall take cognizance of any offence punishable under the Ordinance except on a report in writing of the facts constituting the offence by an officer authorized in this behalf by the Commission.⁷⁵

Any aggrieved person or any investor can raise objection or submit complain in writing before the BSEC. It is the BSEC who has to finally file the case or allow the aggrieved person to file a case. This provision is made to uphold the superior regulatory and supervisory authority of the BSEC in the securities market. But, this provision certainly deprives the aggrieved person from taking legal actions through the court of law directly. It makes the right of the aggrieved person to sue conditional on the satisfaction of the BSEC, which is defective.⁷⁶

There is no provision of taking class action by or on the part of loss sufferer in a scam. After the 2010-2011 stock market crash, the loss sufferers had no scope under the existing law to take joint legal action for the recovery of compensation from the perpetrators or punishing them. Neither any Government body including the BSEC nor any private body as a whole or for any class of people or for any group filed any case against any perpetrator for recovering compensation for the aggrieved investors. No step was taken by the Government or the BSEC to get back the money from the unjust gainers and distributes the same to the unjust loss sufferers.

9.6. Concluding Remarks

The legal attempts after 1996 stock market have already been proved inadequate, and none of the perpetrators was penalized with adequate punishment. It appears from the case studies that because of legal abortiveness, pitfalls in the prosecution case and shortcomings of legal provisions, the actual perpetrators are released. However, initiation and continuation of those cases and proceedings have definitely caused apprehension amongst the perpetrators that no one is above the law. Though they probably have not

⁷⁵ Section 25 of the Securities and Exchange Ordinance, 1969 reads out that “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 authorized in this behalf by the Commission; and no court inferior to that of a Court of Session shall try any such offence.”

⁷⁶ The limitation of filing cases before the Tribunal has been discussed elaborately in Chapter 4 of this this thesis.

been awarded with adequate punishments that should have been warranted, they were in fact, held accountable before the court, which is marginally promising. Since 1997 till 2010, the stock market in our country was comparatively stable and consistently developing. However, the failure to sanction adequate and strict punishment to the actual offenders is a real letdown.

After 2010-2011, several attempts were taken to mitigate the situation. For instance, a Special Tribunal been established for the trials of cases of securities laws. In a few cases, the Tribunal has already sentences punishment, and those cases have already been stayed by the high Court Division. The perpetrators are being subjected to accountability, and the general investors are regaining their faith on legal protection. However, most of the general investors are not aware about the legal protections offered under the existing legal provisions, and no effective and comprehensive step has been taken yet to make the investors aware about the rights, entitlements and protections given to them under the securities laws of Bangladesh.

Nonetheless, through the successes and the failures, the judiciary is performing one of the major regulatory authorities in the stock market. Imposing punishment or awarding penalty should not be the only role of the judiciary, and it should not be the only criteria to judge the achievement of the judiciary. The judiciary will be successful when the investors develop faith on the judiciary as a just and fair authority. The judiciary will also be successful when the market manipulators apprehend the possibility of strict legal redress. Likewise, the judiciary has to achieve this success through its consistently neutral, fair, genuine and solemn performances.

Chapter 10

Summary and Conclusion

10.1. Conclusion

The significance of the stock market in development of the national economy cannot be ignored. It is one of the best alternatives to keep idle money into the banks, financial institution or government bond. Stock market has become one of the popular markets in our country in the recent past. Before the 2010 – 2011 stock market crash, it had become one of the constantly developing stock markets in South Asia. Earlier in 1996, Bangladeshi stock market experienced a similar kind of havoc. Both the crashes were proved to be intentional scams led by some highly influential, powerful and financially solvent persons who are in the dominating position of the market. The market was manipulated, polluted and abused by the perpetrators who are often identified and unidentified. Even the identified ones mostly have gone unpunished, and the unidentified are often forgotten with time.

In the face of the crash, the legal safeguards for the punishment of the market manipulators and redressing the loss of the sufferers felt short every time. The implementations of the legal mechanisms are also inadequate. The reasons behind this deadlock have been the elixir in this thesis which goes on examining the efficacy and fallout of the existing legal regime and governing institutions for the stock market.

In doing so, this thesis examines the major roles of each of the governing institutions including the Government of Bangladesh through its relevant Ministries, the Bangladesh Securities and Exchange Commission (BSEC), the Investment Corporation of Bangladesh (ICB), the Micro-credit Regulatory Authority (MRA), the Insurance Development and Regulatory Authority (IDRA), the Central Depository Bangladesh Limited (CDBL) and others.

The functions and affairs of the market intermediaries, such as, stock exchanges, stock brokers, stock dealers, jobber, authorized dealer, securities houses, depository houses, merchant banks, portfolio managers, share transfer agents, bankers to an issue, financial institutions, insurance companies, trustees, registrars to an issues, underwriters, credit rating companies, investment advisors, market analyst, depository participants, asset management companies, clearing and trading members and others have also been closely

examined and analyzed. In addition, the roles of the investors, the traders and the market manipulators (the ghosts) have also been critically examined and analyzed above.

The vital and critical securities market related laws, rules, regulations, directives and other legal provisions have also been examined and analyzed throughout the thesis. A comprehensive attempt has been made in examining the roles of the regulatory institutions along with the related laws and regulations for determining efficacy and fallout in overall legal structure of this field. The role of judiciary has also been examined along with several case laws. On minute examination of all the laws and activities of governing laws and institutions, it is observed that many protective efforts have been taken under law. In fact, all the securities laws have *prima facie* come into force for the protection of the rights and interests of the investors, and for the establishment of fair practice in the market. Henceforth, there are protections under law. However, some striking pitfalls and inefficiencies have also been observed, which cannot be ignored or denied.

Amongst all, false statement, corruption and market manipulation, weak legal regime, complex and sub-standard governance and management system and investor's indolence are identified as the main causes behind the fragile condition of our stock market. To overcome the shortcomings, several recommendations have also been proposed all through the thesis. Those recommendations are in no way comprehensive. They are for merely putting forth some alternatives under the existing legal context. Those were made *bonafide* only to drive the lawmakers rethink about the avenues of reformations in the current legal structure of securities and share market.

10.2. Summary of Major Problems in our Stock Market

As observed earlier throughout this research, there are bundles of problems and challenges in our stock market. Several pitfalls in the legal provisions have also been identified. Regulatory malfunctions have also discussed. Basically, while analyzing and examining the roles and activities of each managerial institution along with the related laws, their usefulness and shortcomings have been addressed throughout this research; all those are summarized below in some broader heads.

(i) False Statement, Corruption and Market Manipulation

Hiding true statement and thereby disclosing false statement is one of the main problems in our stock market. Market is being manipulated and corrupted by the perpetrators, be it

the issuers or the market regulators jointly or severally hiding true information. Issuers do not disclose their actual financial condition while the governing authorities do not conduct proper inquiries as to the actual financial condition of the issuers. Auditors, valuers, credit rating companies and other related agencies and authorities are also found involved in the process of hiding true information. In the stock market, disclosure of information is highly necessary. Securities laws impose this obligation in several stages of business in stock market, but most illegalities, manipulations, disobediences and violations are made with this obligation.

In the first step of issuing securities through IPO, bond, debenture, equity shares through private placement or issuing stock dividend, rights shares, bonus shares or declaring dividend, the issuer company needs to publish information about many important issues of the company, such as, information relating to finance, management, company's prospect, upcoming project, business, affairs, loss, profit, assets, liabilities, shareholding position, directors, objects, total debt, liability, purpose of issuing shares and many other things. The issuer companies are under the legal obligations to disclose or contain true and correct information in the prospectus, audit report, financial statement and other important business documents, but it has already been discussed earlier that companies provide false statements regarding many important matters especially about financial condition, insider trading, and in house transaction.

It is also observed that the issuer companies provide false statements by overvaluation of assets and profits, undervaluation of expenses and liabilities, hiding poor condition of the company and showing the companies profitable while in fact the companies are suffering huge loss and they have very little chance to get over their poor condition in near future. In doing so, they highly disregard the fact that the investors are legally entitled to know the true and correct information, and they are also under an obligation to disclose authentic and correct information as of their right. Factually, they do not do so, and in this way they want to manipulate the market by providing false statements only for gaining money by unfair means.

In this process, all the persons, associations, authorities, officers and employers involved and abetting in this process of hiding true information and thereby disclosing false statements are committing corruption to manipulate the market and grab money illegally.

Financially dominant class and powerful stakeholders evading the provisions of law exercise their powers and influence in hiding real financial condition of any stock and its issuer. The general investors have no participation in the process of disclosing information by the issuer company while issuing IPO or other financial statement of the issuer. General investors only participate in the process of road-show limitedly while determining price through IPO and subsequently in the Annual General Meeting (AGM) once in a year and take some interests or benefits, if any, awarded by the management of the company against their shares. Though the shareholders being the owners of the issuer company should be dominant class in the company, in reality, the fact is completely opposite. The shareholders always stand subsequent to the Board of Directors or management of the companies. The main purpose of the issuer is always to show itself as a profitable concern for attracting the investors. Therefore, the whole issue of hiding true information of the company and disclosing false/untrue information is related to finance and management of the issuer company.

In this connection, not only the management of the company but the entire sets of officials comprising of valuers, auditors, report makers, credit rating agencies, publishers and others are involved; but the relevant laws as discussed earlier for preventing and punishing them are miserably inadequate for ensuring mandatory disclosure of true and correct information. Though, as observed, the Board of Directors, issue managers, underwriters, valuers, auditors, report makers, credit rating agencies and some other officials are needed to provide undertaking or due diligence certificate on different occasions in the manner as prescribed under law, but those undertakings are in no way enough to bring them to question or charge them under law. All these provisions were examined before, and thereby found inadequate to ensure proper accountability, transparency and sincerity on their part. Those legal provisions are weak, incomprehensive, with limited scope and not strict. They do not attract any stringent penal provision. Those look like as mere showing-off procedural formalities washing the eyes of the people for avoiding actual liability, which is upsetting and disappointing. Their professional lack of commitment towards ensuring good governance, transparency, honest disclosure, fair and just practice in stock market also contribute in market manipulation.

The regulatory authorities including the Government, the BSEC and the Judiciary also fail to ensure this proper commitment, accountability, transparency and honest disclosure

obligation from the part of the Board of Directors, issuer managers, underwriters, valuers, auditors, report makers, credit rating agencies and some other officials who are in the process of preparing and disclosing financial statement and other important information about the issuer company. Legal provisions are also weak in this area.

Moreover, lack of commitment on the part of government to establish the stock market as a secured business sector is also found as one of the drawbacks. Specially, the apportionment of unfair gains from the stock market amongst the ghosts, high officials of the BSEC, the stock exchanges and the government organs are also found as one of the most notorious, shameful and negative features of Bangladeshi stock market. In addition, dishonesty, fraud, bribery, lack of professional answerability and transparency, no clear or strict obligation of due diligence, institutional liability, personal and institutional professionalism, etc. are also observed as shortcomings in our existing legal regime of stock market.

(ii) Weak Legal Regime and Management System

Regulatory failure is the upsetting obstruction as observed throughout this research upon analyzing the securities laws and the critical roles of the regulatory institutions. Policy makers and regulatory authorities are not sufficiently committed and efficient in giving the stock market a sound business shape. Lack of co-ordination among the regulatory authorities including the BSEC, the Bangladesh Bank, the ICB, the Stock Exchanges and other Government authorities are highly observed as major drawbacks in our legal regime.

Amongst all the regulatory failures, the failures of the BSEC are noteworthy, because it is the BSEC who is entrusted under law and by the Government with ample powers and jurisdiction to regulate the stock market. Unfortunately, in both the tragic stock market crashes in 1996 and 2010 – 2011, several high ranking officials of the BSEC, the ICB, the Stock Exchanges and the other market intermediaries were found involved with corruption and misappropriation. Lack of a scope to file a suit against the BSEC or call the BSEC into question for failure to perform its duties are also found as serious shortcomings in our existing legal provisions. General investors have no floor for calling the BSEC into public accountability. It is often claimed that the BSEC is dutiful only to the solvent stakeholders who indirectly control the functions and affairs of the BSEC. The market surveillance, monitoring capacity, investigating into the real financial condition of the issuer and its on-

going financial status by the BSEC are also not satisfactory. The BSEC fails to ensure regular and periodical monitoring condition of the issuer company. It also fails to ensure accountability, transparency and honest disclosure on the part of the Board of Directors, issue managers, underwriters, valuers, auditors, report makers, credit rating agencies and some other officials who are involved in the process of making and disclosing of financial statement and other important information about the issuer.

There is no fair, independent and neutral platform where the financial status of the issuer companies are discussed and analyzed openly on a daily, weekly, monthly or even yearly basis. There is no place where stock market independent researcher and general investors can exchange their views and conduct detailed analysis of the financial status of the companies. Moreover, no such independent stock market research group exists in our country. There is no independent and fair authority to oversee whether the information or statement published by the issuer company about its financial viability are true. In the strictest sense, there is no mandatory liability upon the issuer company to provide true statements for public information as observed earlier. Very interestingly, maximum issuer companies do not have a proper information desk where the investors may collect information about the company from. Neither the BSEC nor the Stock Exchanges have an official format where the investors may collect information about the financial viability of the company from. There is neither any legal provision imposing duty upon the issuer or auditor/valuer/credit rating companies/portfolio manager/trustee/custodian/other market intermediaries who are in the process of trading in securities of the issuers to disclose information/document about any material things of the issuer company or the intermediary on demand of the investors, nor the investors can ask for it as of their right.

Though the BSEC is entrusted with ample powers and jurisdictions under the provisions of law; its roles are often intertwined with those of the Bangladesh Bank, the ICB and the other regulatory authorities, because it is not the BSEC who gives effect to the real trade in the market but the intermediaries and the investors, who play active role in the field of securities market. Being the superior regulatory authority associated by multiple subordinates and other regulatory authorities along with various laws, rules and regulations, the BSEC clearly is imposed with very difficult functions in the securities market. Additionally, the ghosts, corrupted officers, rumors, unconscious investors, poor logistics, sub-standard technology, volatile economy and influence of the rich investors

over the market have multiplied the complexities and challenges for the BSEC. In spite of all the failures and shortcomings, the BSEC is advancing, becoming more investors friendly and promising to make the market more stable, transparent, reliable and well regulated.

On the other hand, laws are clumsy, backdated and defective. There is no law mandating the issuer companies to provide/supply the true or correct information about the commercial status, financial viability or economic prospect to the investors on demand. As a result, the investors get very little scope to learn about the internal affairs and financial condition of the issuer companies. Some provisions of the existing laws are good but most of the provisions are not well thought out, thorough and all encompassing. In this case, a vacuum of researchers and qualified law-makers is highly felt. Lack of judicial intervention; especially apparent silence of our higher judiciary is miserably felt after massive share market crash in 2010-2011.

Lack of legal measures for the punishment of the ghosts/perpetrators of stock market even after proper identification is one of the main reasons behind the dysfunction of the market. Sadly, the stock market in Bangladesh is still dominated by the ghosts who make the stock market one of the most corrupted sectors in Bangladesh. After the great turmoil of 1996 and 2010-2011, formal probe committees were constituted and formal reports were submitted identifying the perpetrators. Both the perpetrators and the regulatory authorities knew who the ghosts of stock market are; but they failed to bring the perpetrators to trial and sufferers to justice. Some trials are still going on but none of the perpetrators have been punished with any exemplary sentence.

More surprisingly, these cases were filed with technical defects and anomalies. Consequently, they were dismissed without the substantial matters even brought to light. The end result may frustrate us, reference of which we have witnessed already in the previous chapter that some of the 1996 share scam cases have already been quashed by the Hon'ble High Court Division and the perpetrators have got acquittal.

There is no scope or reference in Bangladesh of reparation of the unjust loss sufferers from the unjust gain of the unjust gainers. Neither the government, nor the judiciary is committed to find/search for alternative ways-out for reparation of the unjust loss sufferers from the unjust gain of ghosts. Though, in the strict sense, the existing legal provisions

may not cover every possible causes, it is not impossible to catch the perpetrators. In 2010-2011 share market crash, money from numerous general investors went into some ghosts' accounts which could be traced. Since their way of gaining money was not proper, the money can be taken away from them and returned to the unfair loss sufferers. Unfortunately, neither the issuer companies nor the stock exchanges and its intermediaries have any liability to maintain a reserve fund for compensating the undue and unjust loss sufferers who suffer loss due to malpractice, malfunction, fraud, negligence and dishonest business practice of the issuer companies and the stock exchanges. The Government is also not very sincere about the share market issues, which is disappointing.

(iii) Investor's Indolence

The investors possess very little knowledge about what the stock market business really is and do not use their own diligence while investing their money. General investors still consider the stock market as a money making market for short-term trading like orthodox investment in giving loan in return of immediate interest/profit. Very few investors care to examine the company's profile and recent financial status before investing in that company's security. Investors mainly rely on the experiences and opinions of. They mostly trade on the basis of rumor or information coming from unconfirmed and unauthentic sources.

Most fundamentally, it is the investor's indolence and impulsiveness which act against them in the stock market. They often purchase shares based on impulses or rumors without conducting any researches or market based analysis. They apply their own emotions which are the main problem always act against them in the market. Most of the investors do not do any market inspection or compare the information roaming around the market about any stock. This lack of awareness is misused by the manipulators while circulating false rumors to cause stock market crashes. They do not show any interest in taking part in the management or board of the issuer company by considering themselves as the owners by purchasing shares and also taking residual benefit or capital gain in the long run from the company. They only mean for earning money against shares/stocks in the short run. They should consider the capital market as a business place rather a place of passing pastime or playing game for making money through short term trading. They are not united having no central floor for raising voice. They do not have any strong association amongst themselves.

In short, the corruption and unfair business practice, poor regulatory framework, defective legal provisions, lack of legal redress for the investors, lack of judicial intervention and poor knowledge of the investors are the major causes behind the poor structure of the stock market in our country. In addition, lack of healthy and fair business practice in stock market, short-term trading, lack of honest commitment from the government and governing institutions, lack of transparent practice and disclosure obligations of all institutions and their lack of personal and institutional answerability have further compounded the shortcomings of the stock market.

Repeated release of perpetrators even after the identification has made the law ineffective and weak. Lack of professional code of conduct and the dearth of independent, value-free, expert and honest researchers and share market analysts are also identified as causes behind the vulnerability in the market. Non-availability of information about affairs, business and financial viability of issuer companies and non-availability of open are similarly responsible for the investors' illiteracy about the market.

10.3. Recommendations

Several recommendations have been proposed in the earlier chapters of this thesis when the specific roles of the regulatory authorities and the legal provisions were examined, and their efficacies and limitations were determined. However, summarizing those few are suggested below.

As observed, it is essential to change the notion and approach of the investors, managerial authorities, officers of stock exchanges, issuers, trading companies and all persons involved in the stock business. Ethical part is very weak here. Most importantly, confidence needs to be built among the investors that stock/security is a complete product and stock market business is a sound business like any other business that naturally comes with a risk of loss or gain. They need to think of the stocks/stock market as a business field because many investors think of stocks and the securities market as nothing more than a means of earning some handy money in a short period of time with little investment from their idle savings. The short-term trading might help and prevent investors from becoming too emotional over a given position, but it does not necessarily allow them to make the best possible investment decisions and to be consistent traders or stock businessmen. The investors have to think of as the shareholders, thus owners of the company. They have to

be united. United, they can create pressure upon the Board of Directors of the Company for the fair and true disclosure of information. They should be more focused on raising capital gain rather running after dividend. They should be active on influencing the performance of the issuer company in the long run.

In fact, the investors do not think of themselves as the owners of the company. They do not participate in the companies affairs. They only attend the Annual General Meeting (AGM) once in a year to have some fun and get prizes and collect information about the dividend. Recently, the BSEC directed the issuers not to give any prize or gift to the shareholders attending AGM because it is their duty to attend the AGM. After that, the participation in AGM(s) has fallen low. It is sad because AGM is the only meeting where all the shareholders can participate and raise voice, but in our country the general investors hardly participate with the intention to raise voice for fair and true disclose of information from the management of the company. Hence, the general investors should be united in securing their rights and position in the issuer company. Participation should be enhanced. Method of holding AGM should be changed. Necessary steps should be taken for ensuring more participation, voting rights, prior disclosure of the AGM agendas and continuing and upcoming projects and business plan, etc of the company.

Above all, high professional commitment on the part of the managerial authorities is required. The Government is required to pay more attention to the issues of securities market. Involvement of the Ministry in monitoring the regular affairs of the BSEC and other market intermediaries, and prioritizing the securities market in national budget and Finance Act are also crucial. The governing institutions, including the BSEC, the Bangladesh Bank, the Stock Exchanges and the other market intermediaries should act coherently in the overall improvement and development of the market. The authorities should be highly dedicated to preventing fraud and abuse of the market. Market surveillance should be made more stringent. Companies having no consistent economic background, good management record or well prospect of running in future should not be allowed to trade in the market.

The market regulators should take necessary measures to make all relevant information relating to real worth of the companies experiencing excess volatility in stock **prices available to the investors. Doubtful transactions should be prevented and stopped immediately. Suspicious traders and issuers should not be allowed to enter the stock**

market. Nothing is more important than a serious, true, genuine and sincere professional commitment on the part of the managerial authorities and officers for making securities/stock market business as a secured business which can also be done in fair, profitable, transparent, healthy and just way. While observing any unsystematic loss or unpredictable volatility or excessive price movement in the market, the BSEC and the stock exchanges should intervene immediately, take effective steps and disseminate information amongst the investors without any delay. They should be more active preventing the disclosure of price sensitive, trade related and buyers and sellers information and other vital information about the issuer companies and stocks. The CDBL, the Stock Exchanges, the BSEC and the other intermediaries should be more regular and punctual in updating information of the issuers, about their financial conditions/statements, management and stocks, etc as provided under law.

It is also very important to ensure the adequate supply of stocks to meet the demands of securities in market. It is necessary to prevent artificial demands in the market. The active participation of the government in the capital market is highly necessary in order to achieve these goals. The Government can prevent the excess demands created artificially and superficially.

In both ways, the stock market in Bangladesh is a top-to-bottom regulated market by the superior regulators to the investors and also dominated by the financially powerful stakeholders to the small/medium investors. All the decisions are taken by the higher authorities who control the regulation of stock market, and the investors have very little role to play except investing money. Though it is managed from top-to-bottom, the Government i.e. the Legislative and the concerned Ministry do play a tiny role in the stock market. It is mainly the BSEC, the Bangladesh Bank and the Stock Exchanges who play the key roles. It would be better if the Government would have more control over the BSEC, the Bangladesh Bank and the Stock Exchanges for ensuring more transparency, fairness and accountability in stock market. If the Independent Director, the Credit Rating Companies, the Issue Manager, the Portfolio Manager, the Auditor and the other independent authority would not be paid by the trading companies, they would be more independent in terms of financial support and monitoring over the functions, affairs and finance of the companies, which would **guarantee better protection of the investors, as well as fair and healthy practice in stock market.**

The market surveillance system of the BSEC needs improvement. The BSEC should be more active in inspecting and investigating into the real financial conditions of companies and while examining the veracity of the given information by the issuer while approving prospectus, IPO, rights shares or accepting periodical or yearly financial statements of the issuer company. It should extend its monitoring authority to the examination of any news relating to financial condition of any issuer whether the same was published on true basis or manipulate the market by misleading the investors.

Strong, distinctive and common courses of conduct for the issuer companies, regulatory institutions, stock exchanges, all officers, employers, intermediaries, associated institutions and investors are also necessary. The purpose of this is to ensure healthy, fair and authentic business in the stock market of Bangladesh. In addition, the scope of filing suit and holding the BSEC, the Stock Exchanges, the market intermediaries and also the issuer companies answerable for failure to perform their duties with due diligence, honesty, utmost care, transparency and sincerity should be left open and it should be extended to the general investors. Association of general investors could be a good solution for strengthening the participation and control of general investors in the market. Adequate training, educational programmes, seminars, symposiums, etc should be made available across the country for the investors and persons who are involved in the market intermediary. Dissemination of stock market related knowledge amongst the public at large, especially amongst the investors is a must.

Judicial intervention is necessary. The Judiciary should not take the share scam cases lightly and should consider the gravity of offence. It should not set aside the cases only for procedural mistakes or tiny grounds and should award notable punishment so that it may serve as an example.

There should be legal provisions entitling the primary and secondary shareholders i.e. the investors to bring direct action against the management if they violate laws, administrative regulations or the company's articles of association, thereby harming the interests of shareholders. There should be legal provisions ensuring that the person committing an act of insider trading shall be liable for damages in accordance with the law. It can be termed as derivative action which entitles shareholders individually or collectively holding at least 1 (one) per cent of the company's shares to bring a lawsuit against the management for maladministration. Theoretically, the company itself is the only proper plaintiff in

litigation, with a separate legal personality. Derivative action is therefore an important shareholder protection mechanism in the sense that when the wrongdoers were in control of the company, the individual shareholders could still commence legal action on behalf of the company.

Mandatory disclosure of basic financial information about the issuer company on demand of the investors needs to be ensured for transparent and fair dealing in stock market. It is also necessary to prevent fake or financially weak companies from trading in stock market. It will also create a pressure upon the issuer company to be alert about their real financial condition. This disclosure of information should be obligatory for personnel at all levels of listed companies. Listed companies, directors, supervisors and senior managers should be responsible for ensuring the authenticity, accuracy, completeness and timeliness of the information disclosed.

Liability of the issuer companies should be extended to the shareholders from secondary market and their participation in the management of the company should also be extended. It can be increased through assurance of voting in many sectors of company's affairs and decision making process.

Though the issuer cannot purchase its own shares under company law as it amounts to reduction of capital; such law should be amended through addition of some exception to the existing provision. In exceptional circumstances, there should be some reserved rights entitling the small investors to compel the company or the majority shareholders to purchase their shares at a reasonable price in extraordinary cases. A provision can be inserted for compelling the immediate past sellers (at higher price) to re-purchase the shares from the next buyers (who faced crash in price). It can help the small investors suffering huge loss during stock market crash or scam. On the other hand, it can compel the perpetrators (unjust gainers) to share their gain/money with the small investors by purchasing their shares in higher price than the market price. These rights can be extended to allow the small investors to create a derivative pressure upon the company or directors of the company to declare dividend, rights share, bonus share or other facilities on shares during stock market crash or scam.

The BSEC and the stock exchanges should update track record, profit record and other important information about the companies. Along with other legal provisions the stock exchanges can introduce some stringent procedures for the listing of the securities. Stock

exchanges can update the financial information of the listed companies regularly and exchanges should not allow the companies having no good and consistent profit track record for last few years to be enlisted.

Independent valuers, credit rating companies, auditor, research analysts and checking authorities should be established to check the truthfulness, accuracy and completeness of the issuer's documents related to offering and to assist the issuer to establish a stringent information disclosure system. Independent directors should be independent in the real sense. Corporate governance guidelines need to be amended and the disparities and defects discussed earlier should be removed.

Good, healthy and sound corporate governance is one the preconditions for ensuring a good stock market environment. Ensuring that good companies having consistent profit making background are given easy access to the markets is a step forward. It is also necessary to examine the relationship between the management and shareholders of the company. It is crucial to find out whether the management of a corporation treats with its investors/shareholders to a good extent by giving them dividend from profit and also by allowing them to participate in the affairs and decision of the corporation. Ensuring healthy use of voting rights by the shareholders of the company is one of the key factors in this regard. Having gone to market, the company must be run for the benefit of its owners, namely the shareholders, and must behave responsibly in the markets. To enable shareholders/investors to monitor matters, full and fair information as to the state of the corporation and its future must be given at regular intervals to shareholders/investors. Shareholders/investors should also equip themselves with the necessary knowledge to hold the management to account. In corporations where there are majority shareholders, the majority that is able to influence the appointment of directors should be particularly careful to ensure that their own interests do not conflict with the interests of the company.

Fair disclosure of information should be mandated not only for the issuer but also the valuer, auditor, issue manager, credit rating companies, trustees, depositories, custodians, underwriters and all other persons involved in the securities market. It is crucial to ensure strict compliance of laws, and due implementation of penalties in breach of law. The legal provisions related to accountability, fair disclosure of information, transparency and institutional answerability of all the regulatory institutions along with intermediaries and

the issuers should be enforced properly. The inadequacy or drawbacks felt in these legal provisions should be addressed with proper attention.

Entire legal regime of the stock market should be reviewed and amended in accordance with the present perspective of Bangladesh. Our securities and share management laws and policies in principle follow American securities laws. An important concern in this regard is that legal transplantation in transition economies is primarily involved the contents of legal rules and principles of corporate law, but the role of Courts and the implementing procedures often get missed / lacked in the mainstream development. It is easy to copy the laws-on book from others, but not the laws-in-action. In the Bangladeshi context, legal rules are important but its effectiveness is largely based on the institutional preconditions. Rule by law is not enough. Bangladesh still needs to work hard on really establishing the rule of law, which is the foundation of a strong stock market.

Most importantly, enhancing the commitment of the government and its governing institutions to ensure healthy, fair and good practice is inevitable for the improvement of the existing conditions of our stock market. Most importantly, the commitment should come from the Government and regulatory institutions first because only the good intention, honest determination, strict decision, fair and skilled policy of the government can ensure sound, healthy, fair and good, business practice in stock market. The Government should strive to establish that the stock market of Bangladesh is not merely a money market for short-term traders, nor is it a market for and of the ghosts. It shall strive to develop the market as a reliable, good, healthy and fair business place for all kinds of investors. Loss and gain, slow and fast movements of prices are the common features of stock market; but no more scam will occur and no more ghosts shall be allowed to abuse the market and gain at the cost of fair and heartiest investment of general investors.

The awareness of the general investors is highly necessary for bringing about development in the stock market. Investors should be more careful before investing. They must first do their homework before investing into any security. They should apply due diligence, and after that, investors should feel comfortable enough to dedicate a sizable portion of assets to that stock. They should also feel comfortable to give their overall investment portfolio to a handful of good companies with excellent growth prospects. Investors must think long term and should keep eyes on the financial condition of the companies. Investors need to

be more careful and do some basic works about the prospect and financial viability of the trading companies.

Even after investing into good stock, the investors should be careful and should not be over hopeful. Investors should avoid the doomsayers. In all this confusion, it is suggested by the experts that investors should focus their efforts on isolating and investing in shares that are not currently being accurately valued by the market. The logic here is that as the stock market begins to realize the company's intrinsic value (through higher prices and greater demand), the investor will stand to make a lot of money. Successful investors must look at the companies they own and study their true earnings potential. If the fundamentals are solid and the company is enhancing shareholder value by generating consistent bottom-line growth, the share price, in the long term, should reflect that.

The stock exchanges should be able to develop alternative benchmarks which must reflect the continuous financial status of the companies. Alternative benchmarks should be construed with some important elements which can correctly reflect the financial and managerial status of the companies with regard to some important issues, such as, present financial status, past financial status, growth of improvement, rate of loss, consistency in loss or growth, fluctuation in the management, market prospect, corporate social responsibility, commitment towards the clients, society, buyers, rate of dividend or other bonus declared by the companies in recent years, last few years, rate of improvement of company, etc. Corporations and the investors should not only be concerned with raising money and share price in the market because if the companies do well in business, stock price will automatically follow the positive growth. Therefore, stock exchanges should only entertain financially viable companies, otherwise trust and confidence cannot be built. This is one of the simplest and easiest ways to ensure good governance in the stock market- by ensuring participation of good companies in the market for the secured investment.

In conclusion, it is admitted that the structural reforms presented above are by no means exhaustive. For a country as large with a huge population, and for a stock market with prospect for future investment, it is hardly possible to devise a set of exhaustive remedies. The researchers can only work incrementally according to the dynamics of change and flow of investment. To that effect, this thesis takes comfort to be a part of it by at least thinking and definitely contributing something basic to this arena.

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