

CHAPTER 16

SECTION-1

LOANS, OVERDRAFTS AND GUARANTEES**1. Restrictions on lending**

Grant of credit facilities in Taka to non-residents, to companies (other than banking companies) controlled directly or indirectly by persons resident outside Bangladesh and to residents against guarantees or collateral lodged outside Bangladesh, the extension of loans and overdrafts in foreign currencies and the giving of guarantees on behalf of residents of Bangladesh in favour of non-residents or on behalf of non-residents in favour of residents are all regulated under sections 3, 4, 5, 18 and 20 of the FER Act., 1947. This Chapter contains the general regulations covering the granting of such loans, overdrafts, credit facilities and guarantees.

2. Loans and overdrafts to non-resident bank branches and correspondents

The ADs may provide short term credit facilities for a period not exceeding 2(two) weeks to their branches and correspondents abroad only by way of overdrafts arising in the latter's non-resident Taka accounts, if any, on account of negotiation of LCs opened by them for import from Bangladesh.

3. Trading & commercial loans and overdrafts

The ADs should not grant Taka loan against overseas guarantees or collateral outside Bangladesh without prior approval of the Bangladesh Bank. Applications should be made on Form L (See Appendix 5/94). The applicant is required to state the purpose for which the credit facilities are required, the period for which the facilities would be needed, the value of his stocks and assets in Bangladesh and reasons why borrowing against an overseas guarantee or collateral outside Bangladesh is necessary. The applicant is also required to state in what manner the proposed loan or overdraft is expected to be paid off.

4(A). Foreign owned/controlled companies

A company is deemed to be controlled directly or indirectly by persons resident outside Bangladesh-

- (a) if it is a branch office of a company incorporated outside Bangladesh;
- (b) in the case of partnership, if
 - (i) 50 (fifty) percent or more of the capital of the partnership is owned by foreign nationals or,
 - (ii) the majority of the partners are foreign nationals; and
- (c) in case of companies incorporated in Bangladesh, if
 - (i) 50(fifty) percent of the shares or more are owned by foreign nationals or,

(ii) 50(fifty) percent or more of the directors in the Board of company are foreign nationals. In the case of equal share holding or equal representation on the Board of Directors, a company is deemed to be foreign controlled if its Chairman is a foreign national.

(B) Working capital loans for foreign owned or controlled firms

By virtue of Section 18(2) of the FER Act, 1947 no person resident in Bangladesh may grant any loan, advance or credit facility to any company (other than banking company) which is controlled whether directly or indirectly, by persons resident outside Bangladesh except with the approval of Bangladesh Bank. For the purpose of Section 18(2) of the FER Act, 1947 the word "Company" includes a firm, branch or office of a company or firm. Pursuant to this provision, Bangladesh Bank has accorded general authorisation to banks for extending to foreign owned/controlled industrial and trading firms/companies operating in Bangladesh Taka working capital loans necessary for their operation in due course of business, according to prevailing credit norms and on the basis of normal banker customer relationship.

Resident persons/companies may purchase Commercial Paper (CP) issued by foreign owned/controlled companies in Bangladesh for financing working capital in terms of general instructions of the guidelines issued by Bangladesh Bank in this regard.

General approval has been accorded for purchase by individuals and institutions resident in Bangladesh of Taka bonds issued with permission of the Bangladesh Securities and Exchange Commission by foreign owned/controlled companies in Bangladesh.

(c) Term lending in Taka to foreign owned/controlled companies

Foreign owned/controlled companies engaged in manufacturing or services output activities for three years or longer in Bangladesh can access Taka term loans from the domestic market for capacity expansion or BMRE regardless of local content in their equity; subject to adherence by banks/financial institutions to all applicable credit norms and prudential parameters including single borrower exposure limit, debt-equity ratio and so forth. This is to mention here that total debt of the firm/company does not exceed the 50:50 debt equity ratio.

The term loan facilities extended will have to be reported post facto to General Manager, FEID, Bangladesh Bank, Head Office, Dhaka in proforma prescribed at Appendix 5/94. Term borrowing proposals not conforming with the stipulations in the above paragraph may as before be forwarded to General Manager, FEID, Bangladesh Bank, Head Office, Dhaka for consideration and specific decision.

In terms of the above authorisation, non-authorised dealer bank branch(es) or non-bank financial institutions may provide such term loan in Taka to foreign owned/controlled firm/company only in association with AD bank branch(es) subject to observance of instructions stipulated above. AD will ensure the compliance of the relevant instructions for entire financing .

(D) The ADs will maintain and carefully preserve separate company-wise records of loans/ overdrafts granted to the foreign or foreign controlled companies.

(E) Head Offices/Principal offices of the ADs are also required to submit a consolidated statement (See Appendix 5/95) as of 31st December each year showing local borrowing facilities allowed to foreign or foreign controlled companies in Bangladesh to the General Manager, FEID, Bangladesh Bank, Head Office, Dhaka.

(F) Taka loans to NRBs working abroad

ADs may extend mortgage loans in Taka to NRBs working abroad for the purpose of housing in Bangladesh subject to observance of the existing guidelines of Prudential Regulations for Consumer Financing (Regulation for Housing finance) issued by Banking Regulation and Policy Department, and the following instructions:

- a) The housing finance facility shall be provided to NRBs at a maximum debt equity ratio of 75:25. The equity portion shall be provided by the borrower-NRBs either through their inward remittances or through debits to their non-resident bank accounts fed by foreign sources.
- b) ADs may obtain securities and savings instruments held by NRBs in Bangladesh as additional collateral beside registered mortgage of the house with registered power of attorney. They may also obtain third party personal guarantee(s).
- c) The repayment against the loans shall be made out of inward remittances. However, rental income from the house concerned, net of applicable taxes, may be used for repayment. In this case, ADs may, at their options, provide necessary custodial services to collect rental income.
- d) ADs shall adhere to all applicable credit norms, prudential parameters, and applicable instructions of other competent authorities.

In case of housing finance facility extended by branches of scheduled banks not authorised to deal in foreign exchange, such lending bank branches should have suitable links with ADs channeling inward remittances for equity and repayment.

5. Loans against commodities intended for export from Bangladesh

- a) ADs may grant credit facilities against goods intended for export from Bangladesh to companies and business houses controlled by persons resident outside Bangladesh without prior approval of the Bangladesh Bank. Business houses controlled by persons resident outside Bangladesh may be given credit facilities, without Bangladesh Bank's approval against pledge of merchandise like jute, hides and skin which are mainly exported from Bangladesh.

(b) Purchase of usance bills

Purchases by the ADs of usance bills covering imports into Bangladesh result in the payment by them in foreign currency or a payment in Taka to a non-resident account, whereas, they do not

receive payment for the bills from the importer pending maturity and thus the transactions result in the extension of credit facilities to the importer in Bangladesh. ADs are free to discount/purchase accepted usance/deferred bills against import from abroad on banker customer relationship and normal banking practices applying due diligence .

6(a). Private loans/overdrafts against guarantees or collaterals lodged outside Bangladesh

Applications for credit facilities in Taka to any person, whether resident in Bangladesh or otherwise, for purposes other than trading or commercial against overseas guarantee or collateral outside Bangladesh should be referred to Bangladesh Bank for prior approval. The application should be made in Form L (Appendix 5/94)

(b) Taka advance against cheque purchase

Prior Bangladesh Bank approval will however not be required for Taka advances by way of purchase of cheques in freely convertible currencies drawn by foreign embassies/international organisations/foreign nationals employed therein on their bank accounts abroad, provided that (i) the Authorised Dealer is fully satisfied about collectibility of cheque proceeds in foreign currency within four weeks of purchase, (ii) the expected collection period is fully factored in while deciding the purchase price in Taka, and (iii) the purchases are with recourse to drawers of the cheques for any difficulty in collection.

(c) Loan for Investment

No credit facility should be given to foreign nationals for dealings in shares and securities, purchase of cars etc. without prior approval of Bangladesh Bank. Applications in 'Form L' may in such cases be forwarded to Bangladesh Bank for consideration.

7. Loans and advances by the ADs in foreign currency

ADs should not grant any loan or overdraft in foreign currencies whether secured or unsecured except with the prior approval of Bangladesh Bank. Applications for this purpose should be made by letter giving full details of the purpose for which such loans or overdrafts in foreign currency are required, particulars of the guarantee or collateral, if any, and the proposed mode of repayment of the loan or overdraft.

8. Guarantees on behalf of residents in favour of non-residents

ADs may furnish guarantees to non-residents on behalf of residents only within the authority set out in the following paragraphs:

i) ADs may issue bid bonds/performance bonds on behalf of suppliers in Bangladesh in favour of international agencies inviting tenders for supply of goods/services. In such cases ADs should ensure genuineness of the tender/supply contract/work order etc. before issuing of bond/guarantee.

ii) Minor Guarantees

ADs may freely give guarantees on behalf of their customers in their ordinary course of business in respect of missing documents, authentication of signature, release of goods on Trust Receipts and defects in documents negotiated under LC or otherwise.

iii) Export Guarantees

ADs may furnish performance bonds or guarantees in favour of overseas buyers on account of Bangladeshi exporters without prior approval of Bangladesh Bank subject to usual banking norms and the following conditions:

- (a) the tender floated by the foreign buyer calls for bank guarantee/performance bond;
- (b) the tenderer is a bonafide importer/user/trader of the commodity/product concerned;
- (c) there is no export ban in Bangladesh on the commodity/product to be supplied;
- (d) the past performance of the exporter is considered satisfactory by the AD.

The remittance, if any, to the beneficiary as a result of invocation of the bond or guarantee can be made subject to report to the Bangladesh Bank.

iv. Umrah Hajj Guarantee

ADs may, on behalf of approved Umrah agents, furnish bank guarantees/performance bonds not exceeding 2,00,000(Two lac) Saudi Riyal in favor of Official Umrah service agents/providers of Kingdom of Saudi Arabia (KSA) without prior approval of Bangladesh Bank subject to usual banking norms and observance of the following conditions:

- (a) Applicant agents shall have up to date licences from the Ministry of Religious Affairs as Umrah agents. They shall also have valid licences from the Ministry of Civil Aviation and Tourism as travel agents and valid Accreditation Certificate from International Air Transport Association.
- (b) ADs shall obtain agreements signed between Bangladeshi bonafide Umrah agents and official Umrah service agents of KSA.
- (c) The past performance of applicant agents is considered to be satisfactory by ADs.

The remittance, if any, to the beneficiary as a result of invocation of the bank guarantee/performance bond can be made subject to report to Bangladesh Bank with detailed reasons of the invocation.

9. Repayment Guarantees against suppliers' credit

- (a) Except in the cases as mentioned in (b) below, ADs have to take prior permission from FEPD, Bangladesh Bank before issuing any guarantee on behalf of industrial concerns under public/private sector favouring foreign suppliers towards repayment of suppliers' credits. However,

providing guarantees like corporate guarantee, personal guarantee, third party guarantee, etc. to the foreign lenders as stipulations of foreign loan agreement will not require Bangladesh Bank permission provided the loan concerned has been approved by the BIDA.

(b) ADs may, on behalf of industrial importers, issue repayment bank guarantees without Bangladesh Bank approval favouring International Islamic Trade Finance Corporation extending short term buyers' credit up to 180(one hundred eighty) days for import of industrial raw materials for own use by importers, on sight basis, subject to adherence to all applicable credit norms and prudential parameters including single borrower exposure limit. In case of invocation of the guarantees, ADs shall report Bangladesh Bank giving full details of the circumstances leading to invocation and copy of bill of entry relevant to the concerned imports.

10. Guarantee on behalf of non-residents in favour of residents in Bangladesh

a) Subject to such conditions as may be imposed by Banking Regulations and Policy Department from time to time, ADs may issue Taka guarantees on behalf of foreign or foreign controlled companies/firms operating in Bangladesh in favour of residents in Bangladesh: (i) against 100 (hundred) percent cash deposit and/or where the guarantee is required to be submitted with tender documents in lieu of earnest money deposit, subject to the condition that validity of the guarantee issued in lieu of earnest money will be limited to the period within which the decision regarding acceptance or rejection of the tender is taken, (ii) against adjustment of the amount from the overdraft limit, if any, allowed to the company/firm concerned.

(b) An AD may without prior approval of Bangladesh Bank, issue guarantee, bid bond or performance bond in foreign currency on behalf of a non-resident firm/company favouring residents in Bangladesh provided a back to back guarantee covering the guaranteed amount from an overseas correspondent or other bank abroad is held by the AD. The AD should satisfy itself about the bonafides of the overseas guarantee before issuing its own guarantee/bid bond/performance bond there against. If beneficiaries in Bangladesh require guarantee in Taka instead of foreign currency, ADs may issue guarantee, bid bond or performance bond in local currency against taka equivalent back to back foreign currency guarantee with suitable coverage for exchange rate fluctuation from counter guarantee issuing banks abroad.

(c) In all other cases not specified above prior approval of the Bangladesh Bank is required for issuing guarantees on behalf of non-residents in favour of the residents in Bangladesh. Applications for these cases should be made by letter in duplicate giving full particulars of the guarantee/bond, the period, purpose and the method by which the AD will be reimbursed in the event of the guarantee/bond being invoked.

11. Guarantee favouring local project authorities on behalf of residents.

ADs may issue, on behalf of residents, bid bonds/performance bonds/guarantees in foreign currency in favour of local project authorities against goods/services procurement tenders

financed by international/foreign donor agencies/Bangladesh Government, on the condition that in case the guarantee is invoked the claim thereagainst would be paid only in Taka equivalent and not in any other currency .

12. Guarantee favouring a non-resident on behalf of another non- resident

Non-resident international agencies may demand bank guarantees from non-resident contractors against supply of materials/down payment for the ongoing projects in Bangladesh financed by them. Such guarantee on behalf of a non-resident contractor in favour of the non-resident beneficiary may be issued by an AD against 100 (hundred) percent counter guarantee from a reputed international bank abroad, or against 100 (hundred) percent cash collateral in foreign exchange received from abroad through banking channel.

13. Guarantee and pledging of collateral in favour of overseas bank branches and correspondents

ADs may not, without prior approval of Bangladesh Bank, furnish guarantees to or hold collaterals on behalf of overseas bank branches or correspondents in respect of credit facilities or guarantees to be extended by them or for any other purpose. All applications to Bangladesh Bank should be made by letters giving details of the purpose for which guarantee is to be furnished or collateral deposited. Prior approval is not however, necessary in cases where the ADs are satisfied that the amount of the fixed deposit or other collateral held by them represents funds remitted to Bangladesh through normal banking channel from the country of residence of the borrower. However, ADs may, without prior approval of Bangladesh Bank hold collaterals on behalf of overseas bank branches or correspondents in respect of external borrowing by industrial enterprises as approved by BIDA/BB.

14. Renewals of loans, overdrafts and guarantees

In cases where the extension of loans or overdrafts or guarantees require prior approval of the Bangladesh Bank, the renewal of such loans, overdrafts or guarantees shall also require prior approval of the Bangladesh Bank.

15. LCs to finance imports or exports not barred

Nothing in this chapter shall affect the establishment of LCs in accordance with the provisions of Chapter 7 and the advice, confirmation and negotiation of credits established by non-resident banks to finance exports from Bangladesh.

16. Obtaining foreign loan by Non-bank Financial Institutions (NBFIs)

NBFIs operating in Bangladesh licenced under the Financial Institutions Act, 1993 may obtain loan from abroad subject to prior approval of the Bangladesh Bank under the following conditions :

(i) For obtaining such loan, effective rate of interest will have to be consistent with foreign loans availed of by residents with prior approval of Bangladesh Bank;

(ii) Repayment period (including grace period) will not be less than five years;

(iii) Loan thus obtained (in FC) from abroad shall be used as security to obtain Taka loan from any bank in Bangladesh. Taka loans so obtained shall be used for lending to 'manufacturing industries and infrastructure sector (other than real-estate) only.

While applying to Bangladesh Bank for such approval, NBFIs shall submit the following papers/information with application:

a. Reason for obtaining foreign loan, debt-equity ratio (existing and after obtaining proposed foreign loan), source and currency of repayment, particulars of security against foreign loan, particulars of taka loan obtained so far (if any) along with amount, tenure and particulars of security lodged thereof;

b. Specimen copy of draft loan agreement;

c. Specific information regarding effective interest rate factoring in all fees & expenses, tenure, rate of down payment etc.;

Besides, prior permission from Bangladesh Bank will have to be obtained by NBFIs for obtaining Taka loan from entities controlled by non-residents like DEG, FMO etc. While applying to Bangladesh Bank for such loan, it is to be ensured that effective interest rate for proposed loan is competitive with similar loans availed of by other resident entities during the recent past. Since, interest rates in such cases are determined by adding premium with Treasury Bill Rate, tenure of Treasury Bill and rate of premium are to be mentioned separately with such application.