

SECTION - II

OPERATIONS IN SECURITIES

7. Definition of security

Section 2 of the FER Act, 1947 defines "security" either in physical or demat form,-

(i) shares, stocks, bonds, debenture stock and Government securities, as defined in the Securities Act, 1920;

(ii) deposit receipts in respect of deposits of securities, units of mutual fund or collective investment scheme, as defined in Securities and Exchange Commission (Mutual Fund) Rules, 2001; and

(iii) other instruments defined as security in the Securities and Exchange Ordinance, 1969 (Ordinance No. XVII of 1969); but does not include bill of exchange or promissory notes other than Government promissory notes. A "foreign security" is defined as a security issued elsewhere than in Bangladesh and any security the principal of or interest on which is payable in any foreign currency or elsewhere than in Bangladesh.

8. Import and export of securities

There is no restriction under the FER Act, 1947 on the import of securities into Bangladesh. No securities can however be exported or taken out of Bangladesh without general or special permission of Bangladesh Bank. Residents in Bangladesh who are holders of foreign securities and who wish to send the securities to banks, brokers or agents abroad for the purpose of sale, transfer etc. should apply to the Bangladesh Bank through an AD for necessary export permit. Permission for transfer of such securities will be granted provided the AD gives an undertaking that the securities will be received back in Bangladesh within a specified period, or in the case of sale, the foreign currency proceeds of the sale will be repatriated to Bangladesh. Bangladesh Bank is also prepared to consider applications for the exchange of foreign shares and/or securities held by residents of Bangladesh with Bangladesh shares and/or securities held by residents abroad. Applications for this purpose should be made through an AD or Stock and Share Broker. Such applications would be considered favourably provided the Bangladeshi shares/securities desired to be imported from abroad are approximately of the same market value as foreign shares and/or securities that are desired to be exported.

9. Transfer of securities to non-residents

In terms of clause (b) of sub-section (1) of Section 13 of the FER Act, 1947 transfer of any security or creation or transfer of any interest in a security to or in favour of a person resident outside Bangladesh is prohibited except with the general or special permission of the

Bangladesh Bank. It should be noted that this prohibition applies to transfer of (i) all Bangladesh securities (i.e. securities expressed to be payable in Bangladesh currency or registered in Bangladesh) whether held by person resident in or outside Bangladesh, and (ii) all foreign securities held by persons resident in Bangladesh. However, in the case of securities registered in Bangladesh, Bangladesh Bank has accorded general permission for issuance and transfer of shares/securities in favour of non-residents against foreign investments in freely convertible foreign exchange or in the form of capital machinery (please see Para 2 of this chapter for details). The prohibition imposed against transfer or creation of any interest in a security to or in favour of a non-resident in terms of clause (b) of sub-section 13 of the FER Act, 1947 precludes the pledging or hypothecating of securities to or in favour of non-residents e.g. as collateral or security for credit facilities abroad (please see Chapter 16, Section- I) or utilising them for forming trusts or settlements, of which a non-resident is the beneficiary.

10. Other provisions

(i) Clauses (c) and (d) of sub-section(l) of Section 13 of the FER Act, 1947 prohibit, respectively, transfers of securities from registers in Bangladesh to registers outside Bangladesh and the issuing, whether in Bangladesh or elsewhere of securities which are registered or to be registered in Bangladesh, to persons resident outside Bangladesh except with the general or special permission of the Bangladesh Bank.

(ii) For the purpose of Section 13 of the Act, "a person resident outside Bangladesh" or a "non-resident" includes a foreign national for the time being resident in Bangladesh.

11. Holding/retention of foreign securities

Persons resident in Bangladesh who are or become owners of foreign securities are permitted to hold or retain such securities provided they have acquired them in a manner not involving a breach or violation of the foreign exchange regulations. Holders of foreign securities who wish to sell, transfer or otherwise dispose of or deal in securities must, however, ensure that the proposed transactions do not contravene the provisions of the FER Act, 1947 and the orders issued by the Government of Bangladesh and/or the Bangladesh Bank thereunder and must obtain prior permission of the Bangladesh Bank wherever necessary.

12. Submission of return by holders of foreign securities

Under the existing foreign exchange regulations all persons resident in Bangladesh who are or become the owners of any security in respect of which the principal, interest or dividend is/are payable in the currency of any foreign country or in respect of which the owner has the option to acquire the payment of principal, interest or dividend in such currencies, are required to submit a

return to the Bangladesh Bank within one month of their acquiring the securities giving certain particulars in respect of the said securities. The specimen of the return in which these particulars are required to be furnished in duplicate is given in Appendix 5/41. Citizens of Bangladesh having dual nationality/persons usually residing outside Bangladesh/foreign nationals for the time being residing in Bangladesh are not required to submit the said return.