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Investor protection in a disclosure regime: an international and comparative perspective on initial public offerings in the Bangladesh securities market

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**Investor Protection in a Disclosure Regime: An
International and Comparative Perspective on
Initial Public Offerings in the Bangladesh
Securities Market**

**A thesis submitted in fulfilment of the requirements for the
award of the degree**

DOCTOR OF PHILOSOPHY

from

UNIVERSITY OF WOLLONGONG

By

S M Solaiman LLM (Western Sydney) LLM (Dhaka) LLB Hons (Raj)

FACULTY OF LAW

2003

THESIS DECLARATION

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CERTIFICATION

I, S M Solaiman, declare that this thesis, submitted in fulfilment of the requirements for the award of Doctor of Philosophy, in the Faculty of Law, University of Wollongong, is wholly my own work unless otherwise referenced or acknowledged. The document has not been submitted for qualifications at any other academic institution.

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S M Solaiman

Date...19.9.03

To

The memory of my father for being my best teacher who would have enjoyed this thesis the most, and my mother who missed me the most during my pursuit of this study

Abstract

The Disclosure-Based Regulation (DBR), a regulatory regime useful for the developed securities markets, was adopted in 1999 for an embryonic securities market in Bangladesh. The new philosophy came into effect without any significant changes being made in the old legal and regulatory framework of initial public offerings (IPOs).

Based on the structural and infrastructural growth achieved so far, the Bangladesh IPO market is unable to utilise the benefits of the DBR mainly because of the overwhelming dominance of individual small investors, a serious lack of full and fair disclosures, the non-availability and non-affordability of investment advisory services, and a critical lack of enforcement measures.

Laws governing liabilities for disclosures in prospectuses are flawed in multifarious ways with weaknesses such as ambiguities and shortcomings in identifying potentially liable persons, and softness in terms of the scope for defences and the extent of penalties. Such flaws ultimately favour the wrongdoers at the expense of the investors affected by the contravention of the legal requirements of disclosures. In the absence of an effective legal framework, the weaknesses of enforcement mechanisms have increased the vulnerability of investors.

The judicial enforcement measures for prospectus liabilities are so ineffective that no case law for the inclusion of misstatements or the concealment of material facts in prospectuses is found although such conduct has been legally prohibited since the inception of the market nearly 50 years ago. This prohibition was reportedly flouted on numerous occasions. The administrative enforcement of prospectus liabilities is also ineffective.

As the effects of these weaknesses accumulated, the DBR has turned counterproductive. The market is suffering from a profound lack of investor confidence due to the unethical and unscrupulous practices of the market participants. This confidence is the main impetus for the market. Providing legal protection to investors is the most accepted practice of fostering such confidence.

This study attempts to identify and to remedy the drawbacks of the legal and regulatory framework of the IPO market and its enforcement mechanisms from the perspective of investor protection. The legal provisions in Bangladesh which are relevant to the weaknesses mentioned above are examined in the light of their equivalents in some other selected jurisdictions as well as the principles of securities market regulation formulated by the International Organisation of Securities Commissions. Findings in this thesis suggest that although the DBR relies more on ‘cure’ than ‘prevention’, both the liabilities and enforcement regimes governing disclosures in prospectuses are ineffective in protecting investors from the misfeasance of other participants in the market. At the same time, preventive measures to combat such impropriety are virtually useless. In such a situation, the present study comes up with a number of specific suggestions for reinforcing the investor protection regime in the IPO market by strengthening the liabilities and enforcement regimes.

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Finally, I take sole responsibility for opinions expressed and mistakes that may remain in this thesis despite my all out efforts to be accurate in every respect.

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List of Abbreviations

AD	Appellate Court Division of the Supreme Court of Bangladesh
ADB	Asian Development Bank
AGMs	Annual General Meetings
AIMS	Asset & Investment Management Services of Bangladesh
ASIC	Australian Securities and Investment Commission
BAPLC	Bangladesh Association of Publicly Listed Companies
BBC	Bangladesh Bar Council
BSRS	Bangladesh Shilpa Rin Sangstha
BSS	Bangladesh Sangbad Sangstha
CCI	Controller of Capital Issues (Bangladesh)
CDBL	Central Depository of Bangladesh Limited (Bangladesh)
CDS	Central Depository System
CIC	Capital Issues Committee (Malaysia)
CMDP	Capital Market Development Program
CMM	Chief Metropolitan Magistrate Court
CMMC	Chief Metropolitan Magistrate Court
CPD	Centre for Policy Dialogue
CSAARC	Chamber of South Asian Association of Regional Cooperation
CSE	Chittagong Stock Exchange
DBR	Disclosure-Based Regulation
DFIs	Developing Finance Institutions
DSE	Dhaka Stock Exchange
EPSEAL	East Pakistan Stock Exchange Association Limited
FBCCI	Federation of Bangladesh Chamber of Commerce and Industry
FIR	First Information Report
GDP	Gross Domestic Product
HCD	High Court Division of the Supreme Court of Bangladesh
IAS	International Accounting Standards
ICAB	Institute of Chartered Accountants of Bangladesh

ICB	Investment Corporation of Bangladesh
ICGN	International Corporate Governance Network
IFAC	International Federation of Accountants
IIs	Institutional Investors
IOSCO	International Organisation of Securities Commissions
IPO	Initial Public Offering
ISA	International Standards on Auditing
ISSA	International Securities Services Association
KLSE	Kuala Lumpur Stock Exchange
LDCs	Least Developed Countries
MBR	Merit-Based Regulation
MCD	Malaysian Central Depository
MOC	Ministry of Commerce
MOF	Ministry of Finance
MOL	Ministry of Law
NFCD	Non-Resident Foreign Currency Deposit
NSDL	National Securities Depository Ltd (India)
NSE	National Stock Exchange (India)
OECD	Organisation for Economic Co-operation and Development
OTC	Over-the-Counter
PO	Presidential Order
QC	Queen's Counsel
RJSC	Registrar of Joint Stock Companies (Bangladesh)
ROC	Registrar of Companies (India)
SC	Securities Commission
SEBI	Securities and Investment Board of India
SEC	Securities and Exchange Commission (Bangladesh)
SJC	Supreme Judicial Council
SOEs	State Owned Enterprises
TI	Transparency International
UK	United Kingdom

UNCTAD	United Nations Conference on Trade and Development
UNDP	United Nations Development Program
URL	Universal Resource Locator
US	United States
US -SEC	US Securities and Exchange Commission
VAT	Value Added Tax
WB	World Bank

List of Law Reports

Abbreviation	Title	Jurisdiction
AC	English Reports, Appeal Cases	UK
ACLC	Australian Company Law Cases	Australia
ACLR	Australian Company Law Reports	Australia
ACSR	Australian Corporations and Securities Reporter	Australia
AIR	All India Reporter	India
All ER	All England Law Reports	UK
ALR	Australian Law Reports	Australia
App Cas	Appeal Cases, English Law Reports,	UK
ATR	Australian Tax Reports	Australia
B & Ad	Barnewall and Adolphus' Reports	UK
BLD	Bangladesh Legal Decisions	Bangladesh
Ch	English Law Reports, Chancery	UK
Ch D	English Law Reports, Chancery	UK
CLR	Commonwealth Law Reports	Australia
CPD	English Law Reports, Common Pleas Division	UK
Cri LJ	Criminal Law Journal	India
DLR	Dhaka Law Reports	Bangladesh
DLR (AD)	Dhaka Law Reports (Appellate Division)	Bangladesh
Eng Rep	English Reports	UK
ER	English Reports	UK
Fed Sec L Rep	Federal Securities Law Reporter	USA
FRD	Federal Rules Decisions	USA
F Supp	Federal Supplement (District Court Reports)	USA
F 2d	Federal Reporter, Second Series	USA
F 3d	West's Federal Reporter, Third Series	USA
NZCLC	New Zealand Company Law Cases	New Zealand
NZLR	New Zealand Law Reports	New Zealand

KB	Law Reports, King's Bench Division	UK
LJ Ch	Law Journal Reports, Chancery	UK
LR Eq	Law Reports, Equity Cases	UK
LR HL	Law Reports, English and Irish Appeals and Peerage Claims, House of Lords	UK
LRI	Law Reports of India	India
LT	Law Times Reports	UK
P 2d	Pacific Reporter, second series	USA
QB	Law Reports, Queen's Bench Division	UK
SR (NSW)	State Reports, New South Wales	Australia
TLR	Times Law Reports	UK
US	Reports of Cases in the Supreme Court	USA
VR	Victorian Reports (Butt)	Australia
WAR	Western Australian Reports	Australia
WLR	Weekly Law Reports	UK