EVOLUTION OF THE BANGLADESHI PROVIDENT FUND AND ITS INVESTMENT: TOWARDS AN INDEPENDENT TRUSTEE

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A thesis submitted in 30 January 2012, in fulfillment of the requirements for the Degree of Professional Doctorate in Legal Science (Research) at the University of Canberra.
EVOLUTION OF THE BANGLADESHI PROVIDENT FUND AND ITS INVESTMENT: TOWARDS AN INDEPENDENT TRUSTEE
ABSTRACT

This thesis seeks to address the legal deficiencies in the Bangladeshi Provident Fund identified by the World Bank and the Asian Development Bank in their reports, both published in 1997. This particular fund is currently the only pension fund available in Bangladesh. It is available only to public sector employees and a limited number of people working in the private sector. Under the Trusts Act, 1882, the Provident Fund is administered by the government and certain other employers themselves as trustees, but this has created a conflict of interest between the employers and employees. The World Bank, the Asian Development Bank and the International Organisation of Pension Supervisors have all noted glaring deficiencies firstly in the legislative, regulatory and government administration framework of the Provident Fund under the outdated Trusts Act of 1882, and secondly, in ‘nascent’ institutions such as insurance companies, which have the potential to offer general pension plans. These problems have hindered Bangladesh in establishing and administering a more universally accessible fund founded upon the ‘three pillars’ of the modern pension fund scheme recommended by the World Bank in 1994.

This thesis argues that fundamental improvements in trust law and the regulatory framework are needed in order to improve the foundations of the Provident Fund itself, and to make available to all Bangladeshi workers a universal pension fund system - the ‘three pillars’ pension system. The thesis employs a comparative analysis, drawing on Australia’s experience as an established ‘three-pillar’ pension and superannuation fund system, and India’s recent legislative steps towards a three-pillar system. In addressing the problems identified by the above-mentioned international bodies, it is argued here that the crucial step in improving and extending the existing Provident Fund and in establishing a more universally accessible pension fund to create an independent corporate trustee of the pension fund. The trustee of this fund should be independent of the government and employers’ administration and control. Because of the independence of this trustee, it will be necessary to provide also an independent regulatory framework for the pension fund’s corporate and prudential supervision. These are the essential elements of the ‘three-pillar’ pension system. Resolving these issues should provide the means for creating an independently regulated pension fund that provides a significant new addition to the social welfare net in Bangladesh. It will also provide a valuable foundation for capital formation in both the domestic and international markets.
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Finally, I give my full gratitude to almighty Allah for His blessing to undertake this work for my native country, and to my parents, wife who continually encouraged me to the highest goals.

The laws of Bangladesh and the Commonwealth of Australia referred to in the thesis reflect the relevant law as at 25 January 2012.

Md Shamim Alam

25 January 2012
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<table>
<thead>
<tr>
<th>Abbreviation</th>
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<tbody>
<tr>
<td>ACCC</td>
<td>Australian Competition and Consumer Commission</td>
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<tr>
<td>ADB</td>
<td>Asian Development Bank</td>
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<tr>
<td>ADI</td>
<td>Authorised Deposit Taking Institutions</td>
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<tr>
<td>APRA</td>
<td>Australian Prudential Regulatory Authority</td>
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<tr>
<td>ASIC</td>
<td>Australian Securities and Exchange Commission</td>
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<tr>
<td>ASX</td>
<td>Australian Stock Exchange</td>
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<tr>
<td>BDT</td>
<td>Bangladeshi Taka (Currency)</td>
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<tr>
<td>CIT</td>
<td>Commissioners of Income Tax</td>
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<tr>
<td>CPF</td>
<td>Contributory Provident Fund</td>
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<tr>
<td>Cth</td>
<td>Commonwealth of Australia</td>
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<tr>
<td>DB</td>
<td>Defined Benefit</td>
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<tr>
<td>DC</td>
<td>Defined Contribution</td>
</tr>
<tr>
<td>DOI</td>
<td>Department of Insurance</td>
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<tr>
<td>EDLI</td>
<td>The Employees’ Deposit linked Insurance</td>
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<tr>
<td>EPF</td>
<td>Employees’ Provident Fund</td>
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<tr>
<td>EPFO</td>
<td>Employees’ Provident Fund Organisation</td>
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<tr>
<td>EPS</td>
<td>Employees’ Pension Scheme</td>
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<tr>
<td>FUM</td>
<td>Fund under Management</td>
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<td>GDP</td>
<td>Gross Domestic Product</td>
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<td>Abbreviation</td>
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<tr>
<td>GFM</td>
<td>Global Financial Markets</td>
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<td>GPF</td>
<td>General Provident Fund</td>
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<td>GPS</td>
<td>Government Pension Scheme</td>
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<tr>
<td>HQ</td>
<td>Headquarters</td>
</tr>
<tr>
<td>ICB</td>
<td>Institute of Certified Bookkeepers</td>
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<tr>
<td>IIM</td>
<td>Individual Indian Monetary Trust</td>
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<tr>
<td>IMF</td>
<td>International Monetary Fund</td>
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<tr>
<td>IOPS</td>
<td>International Organisation of Pension Supervisors</td>
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<tr>
<td>IOSCO</td>
<td>Organisation of Securities Commission</td>
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<tr>
<td>IRA</td>
<td>Insurance Regulatory Authority</td>
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<tr>
<td>IRDA</td>
<td>Insurance Regulatory Development Authority</td>
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<tr>
<td>LIC</td>
<td>Life Insurance Corporation of India</td>
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<tr>
<td>MIA</td>
<td>Managed Investment Act</td>
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<tr>
<td>MOC</td>
<td>Ministry of Commerce</td>
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<tr>
<td>NBR</td>
<td>National Board of Revenue</td>
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<tr>
<td>NGO</td>
<td>Non-Government Organisation</td>
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<td>NPRS</td>
<td>National Poverty Reduction Strategy</td>
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<td>NPS</td>
<td>New Pension System</td>
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<tr>
<td>OAPF</td>
<td>Old Age Pension Fund</td>
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<tr>
<td>OECD</td>
<td>Organisation for Economic Cooperation and Development</td>
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<tr>
<td>PAYG</td>
<td>Pay-as-you-go</td>
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<td>Abbreviation</td>
<td>Full Form</td>
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<tr>
<td>PFRDA</td>
<td>Pension Fund Regulatory Development Authority</td>
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<tr>
<td>PIP</td>
<td>People in Profit</td>
</tr>
<tr>
<td>PPF</td>
<td>Public Pension Fund</td>
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<tr>
<td>PPO</td>
<td>Pension Payment Order</td>
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<tr>
<td>SBI</td>
<td>State Bank of India</td>
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<tr>
<td>SEBI</td>
<td>Securities and Exchange Board of India</td>
</tr>
<tr>
<td>SEC</td>
<td>Securities and Exchange Commission</td>
</tr>
<tr>
<td>SIS</td>
<td>Superannuation Industry (Supervision) Act</td>
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<tr>
<td>SMSF</td>
<td>Self Managed Superannuation Fund</td>
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<tr>
<td>SRS</td>
<td>Supplementary Retirement Scheme</td>
</tr>
<tr>
<td>SWF</td>
<td>Sovereign Wealth Fund</td>
</tr>
<tr>
<td>TA</td>
<td>Technical assistance</td>
</tr>
<tr>
<td>TIB</td>
<td>Transparency International Bangladesh</td>
</tr>
<tr>
<td>UK</td>
<td>United Kingdom</td>
</tr>
<tr>
<td>USA</td>
<td>United States of America</td>
</tr>
<tr>
<td>VAT</td>
<td>Value Added Tax</td>
</tr>
<tr>
<td>WB</td>
<td>World Bank</td>
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CHAPTER SUMMARY

This thesis consists of 8 substantive chapters. The research has been organised into three major parts, namely:

Part I - The thesis and a universally accessible Pension Fund for Bangladesh

Chapter 1: The Thesis and the Research

Chapter 2: The Need for a Universally Accessible Pension Fund in Bangladesh

Part II - Failings of the current system and context for change

Chapter 3: Identified Failings in Bangladesh as Reported by the Asian Development Bank

Chapter 4: Context for Implementing WB and ADB Proposals

Chapter 5: Models for the World Bank’s Three-Pillar System: Comparisons with India and Australia

Part III - The way forward to by using the World Bank’s ‘three-pillar’ pension model

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Chapter 8: Recommendations
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