**1.2 What is Money Laundering?**

1.2.1 A definition of what constitutes the offence of money laundering under Bangladesh law is set

out in Section 2 (Tha) of the Prevention of Money Laundering Act 2002 (Act No. 7 of 2002)

which is reads as follows: “Money Laundering means -

(Au) Properties acquired or earned directly or indirectly through illegal means;

(Aa) Illegal transfer, conversion, concealment of location or assistance in the above act of the

properties acquired or earned directly of indirectly through legal or illegal means; “

1.2.3 Properties has been defined in section 2(Da) of the Act as “Properties means movable or

immovable properties of any nature and description.

1.2.4 “The U.S. Customs Service, an arm of the Department of the Treasury, provides a lengthy

definition of money laundering as "the process whereby proceeds, reasonably believed to

have been derived from criminal activity, are transported, transferred, transformed, converted

or intermingled with legitimate funds for the purpose of concealing or disguising the true

nature, source, disposition, movement or ownership of those proceeds. The goal of the

money-laundering process is to make funds derived from, or associated with, illicit activity

appear legitimate."

1.2.5 Another definition of Money Laundering under U.S Law is, “… the involvement in any one

transaction or series of transactions that assists a criminal in keeping, concealing or disposing

of proceeds derived from illegal activities.”

1.2.6 The EU defines it as "the conversion or transfer of property, knowing that such property is

derived from serious crime, for the purpose of concealing or disguising the illicit origin of the

property or of assisting any person who is involved in committing such an offence or offences

to evade the legal consequences of his action, and the concealment or disguise of the true

nature, source, location, disposition, movement, rights with respect to, or ownership of

property, knowing that such property is derived from serious crime."

1.2.7 A concise working definition was adopted by Interpol General Secretariat Assembly in 1995,

which defines money laundering as: "Any act or attempted act to conceal or disguise the

identity of illegally obtained proceeds so that they appear to have originated from legitimate

sources".

1.2.8 The Joint Money Laundering Sterling Group (JMLSG) of the U.K. defines it as "the process

whereby criminals attempt to hide and disguise the true origin and ownership of the proceeds

of their criminal activities, thereby avoiding prosecutions, conviction and confiscation of their

criminal funds".

1.2.9 In lay terms Money Laundering is most often described as the “turning of dirty or black

money into clean or white money”. If undertaken successfully, money laundering allows

criminals to legitimize "dirty" money by mingling it with "clean" money, ultimately providing

a legitimate cover for the source of their income. Generally, the act of conversion and

concealment is considered crucial to the laundering process.

**1.3 Why Money Laundering is done?**

Criminals engage in money laundering for three main reasons:

1.3.1 First, money represents the lifeblood of the organization that engages in criminal conduct for

financial gain because it covers operating expenses, replenishes inventories, purchases the

services of corrupt officials to escape detection and further the interests of the illegal enterprise,

and pays for an extravagant lifestyle. To spend money in these ways, criminals must make the

money they derived illegally appear legitimate.

1.3.2 Second, a trail of money from an offense to criminals can become incriminating evidence.

Criminals must obscure or hide the source of their wealth or alternatively disguise ownership or

control to ensure that illicit proceeds are not used to prosecute them.

1.3.3 Third, the proceeds from crime often become the target of investigation and seizure. To shield ill- gotten gains from suspicion and protect them from seizure, criminals must conceal their

existence or, alternatively, make them look legitimate.

**2.1 Requirements under the Money Laundering Prevention Act 2002**

2.1.1 The legislation specifically relating to money laundering is contained in the Money

Laundering Prevention Act 2002 (Act No. 7 of 2002) the provisions of which supercedes

whatever may contain in any other Act in force in Bangladesh. So far as financial service

providers are concerned, the Act:

§ defines the circumstances, which constitute the offence of money laundering and provides

penalties for the commission of the offence (See Section 2 Tha of the Act),

§ requires banks, financial institutions and other institutions engaged in financial activities to

establish the identity of their customers (See Section 19 Ka of the Act),

§ requires banks, financial institutions and other institutions engaged in financial activities to

retain correct and full information used to identify their customers and transaction records at

least for five years after termination of relationships with the customers (See Section 19 Ka of

the Act), and imposes an obligation on banks, financial institutions and other institutions engaged in financial activities and their employees to make a report to the Bangladesh Bank where:

- they suspect that a money laundering offence has been or is being committed (See Section 19

Ga of the Act) and; - provide customer identification and transaction records to Bangladesh Bank from time to time on demand (See Section 19 Kha of the Act).

**2.2 The Offence of Money Laundering**

The money laundering offences are, in summary:

2.2.1 It is an offence for any person to obtain, retain, transfer, remit, conceal or invest moveable or

immovable property acquired directly or indirectly through illegal means. (See Section 2 Tha).

Concealing or disguising the property includes concealing or disguising its nature, source,

location, disposition, movement, ownership or any rights with respect to it.

2.2.2 It is an offence for any person to illegally conceal, retain transfer, remit, or invest moveable or

immovable property even when it is earned through perfectly legitimate means. (See Section 2

Tha). It is a defense if the person conce rned can prove that the offence was committed without

his knowledge or it has occurred despite his despite his best efforts to prevent it. (See Section

20 (1) of the Act).

2.2.3 It is also an offence for any individual or entity to provide assistance to a criminal to obtain,

retain, transfer, remit, conceal or invest moveable or immovable property if that person knows

or suspects that those properties are the proceeds of criminal conduct.

2.2.4 It is an offence for banks, financial institutions and other institutions engaged in financial

activities not to retain identification and transaction records of their customers.

2.2.5 It is an offence for banks, financial institutions and other institutions engaged in financial

activities not to report the knowledge or suspicion of money laundering to Bangladesh Bank as

soon as it is reasonably practicable after the information came to light.

2.2.6 It is also an offence for anyone to prejudice an investigation by informing i.e. tipping off the

person who is the subject of a suspicion, or any third party, that a report has been made, or that

the authorities are acting, or are proposing to act, in connection with an investigation into

money laundering. Preliminary enquiries of a customer to verify identity or to ascertain the

source of funds or the precise nature of the transaction being undertaken will not trigger a

tipping off offence before a suspicions report has been submitted in respect of that customer

unless the enquirer knows that an investigation is underway or that the enquiries are likely to

prejudice an investigation. Where it is known or suspected that a suspicions report has already

been disclosed to the authorities and it becomes necessary to make further enquiries, great care

should be taken to ensure that customers do no t become aware that their names have been

brought to the attention of the law enforcement agencies.

2.2.7 It is an offence for any person to violate any freezing order issued by the Court on the basis of application made by Bangladesh Bank.

2.2.8 It is an offence for any person to express unwillingness, without reasonable grounds to assist

any enquiry officer in connection with an investigation into money laundering.

**2.3 Penalties for Money Laundering**

All offences under the Act are non-bailable and the penalties for the commission of the offences all

have prison terms and/or fines as prescribed in the Act as follows:

2.3.1 The offence of money laundering is punishable by terms of a minimum imprisonment for six

months and a maximum of up to seven years plus a fine amounting to double the money

laundered (See Section 13 of the Act).

2.3.2 The punishment for violation of Seizure Orders is a minimum imprisonment for one year or a fine of at least Taka ten thousand, or both. (See Section 14 of the Act).

2.3.3 The punishment for violation of Freezing Orders is a minimum imprisonment for one year or a fine of at least Taka five thousand, or both. (See Section 15 of the Act).

2.3.4 The offence of divulging information by informing i.e. tipping off the person who is the subject of a suspicion, or any third party is punishable by a minimum imprisonment for one year or a fine of at least Taka ten thousand, or both. (See Section 14 of the Act).

2.3.5 The offence of obstructing investigations or failure to assist any enquiry officer in connection

with an investigation into money laundering is punishable by a minimum imprisonment for one

year or a fine of at least Taka ten thousand, or both. (See Section 17 of the Act).

2.3.6 If any bank, financial institution and other institutions engaged in financial activities fail to

retain customer identification and transaction records or fail to furnish required information as

per the Act, Bangladesh Bank will report such failure to the licensing authority of the defaulting

institution so that the concerned authority can take proper action for such negligence and failure

(See Section 19 (3) of the Act)

2.3.7 Bangladesh Bank is empowered to impose fines of not less than Taka ten thousand and not

more than Taka one lac on any bank, financial institution and other institutions engaged in

financial activities for the failure or negligence to retain customer identification and transaction

records or fail to furnish required information to Bangladesh Bank (See Section 19 (4) of the

Act)

2.3.8 If any Company, Partnership Firm, Society, or Association violates any provisions of the Act, it will be deemed that every owner, partner, directors, employees and officers have individually

violated such provisions.

**2.4 Responsibilities of Bangladesh Bank**

The Act gives Bangladesh Bank broad responsibility for prevention of money laundering and wideranging powers to take adequate measures to prevent money laundering, facilitate its detection, monitor its incidence, enforce rules and to act as the prosecuting agency for breaches of the Act. The responsibilities and powers of Bangladesh Bank are, in summary (See Section 4 and 5 of the Act):

2.4.1 To investigate into all money-laundering offences.

2.4.2 Supervise and monitor the activities of banks, financial institutions and other institutions

engaged in financial activities.

2.4.3 Call for reports relating to money laundering from banks, financial institutions and other

institutions engaged in financial activities, analyze such reports and take appropriate actions.

2.4.4 Provide training to employees of banks, financial institutions and other institutions engaged in financial activities on prevention of money laundering.

2.4.5 To authorize any person to enter into any premises for conducting investigations into money

laundering offences.

2.4.6 Persons authorized by Bangladesh Bank to investigate offences can exercise the same powers as the Officer in Charge of Police Station can exercise under the Code of Criminal Procedure.

2.4.7 To do all other acts in attaining the objectives of the Act.

2.4.8 The Courts will not accept any offence under the Act for trial unless a complaint is lodged by

Bangladesh Bank or any person authorized by Bangladesh Bank in this behalf.