

রেজিস্টার্ড নং ডি এ-১

বাংলাদেশ



গেজেট

অতিরিক্ত সংখ্যা

কর্তৃপক্ষ কর্তৃক প্রকাশিত

বৃহস্পতিবার, জুন ৩, ২০১০

গণপ্রজাতন্ত্রী বাংলাদেশ সরকার

আইন, বিচার ও সংসদ বিষয়ক মন্ত্রণালয়

লেজিসলেটিভ ও সংসদ বিষয়ক বিভাগ

মুদ্রণ ও প্রকাশনা শাখা

প্রজ্ঞাপন

তারিখ, ২ জুন ২০১০ ইং

নং ৫১ (আঃমঃ) (লেঃসঃ)(মুঃপ্রঃ)—আইন-অনুবাদ/২০১০ তারিখ ০২-৬-২০১০ইং প্রদত্ত হইল। সরকার, কার্যবিধিমালা, ১৯৯৬ এর প্রথম তফসিল (বিভিন্ন মন্ত্রণালয় এবং বিভাগের মধ্যে কার্যবন্টন) এর আইটেম ৩০ এর ক্রমিক ৭ ও ১০ এবং মন্ত্রিপরিষদের বিগত ৩-৭-২০০০ইং তারিখের সভায় গৃহীত সিদ্ধান্ত বাস্তবায়নের নিমিত্ত অর্থ মন্ত্রণালয় এর নিম্নরূপ ইংরেজী অনুবাদ সর্বসাধারণের জ্ঞাতার্থে প্রকাশ করিল।

মোঃ আনোয়ার হোসেন

সহকারী সচিব।

(৫১২১)

মূল্য : টাকা ১২.০০

[An authentic text of an authorized translation in English]

Government of the People's Republic of Bangladesh

MINISTRY OF LAW, JUSTICE AND PARLIAMENTARY AFFAIRS

NOTIFICATION

Dated : 12 Falgun 1415/24 February, 2009

No. 12 (P & P).—The following Act of Parliament received the assent of the President on the 24 February, 2009 (12 Falgun, 1415) and is hereby published for general information :—

Money Laundering Prevention Act, 2009

Act No. 8 of 2009

An Act to repeal the Money Laundering Prevention Ordinance, 2008 and make provisions relating thereof.

Whereas it is expedient and necessary to repeal the Money Laundering Prevention Ordinance, 2008 (Ord. No. 12 of 2008) and make provisions relating there of for the purposes herein after appearing;

It is hereby enacted as follows :—

1. Short title and commencement.—(1) This Act may be called the Money Laundering Prevention Act, 2009.

(2) It shall be deemed to have come into force from 02 Baishakh, 1415 corresponding to 15 April, 2008.

2. Definitions.—In this Act, unless there is anything repugnant in the subject or context—

- (a) **“financial institution”** means the financial institutions as defined under section 2(b) of the Financial Institution Act, 1993 (Act No. 27 of 1993);
- (b) **“Court”** means the court of Special Judge;
- (c) **“investigating organization”** means Anti-Corruption Commission established under the Anti-Corruption Commission Act, 2004 (Act No. 5 of 2004) and includes any officer authorized by the commission in this behalf;

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- (d) **“currency”** means coins, currency notes accepted as appropriate currency by any state, and includes travelers cheques, postal notes, money orders, cheques, bank drafts, bearer bonds, letter of credit, bills of exchange and promissory notes;
- (e) **“disposal”** shall include the sale of a property which is decayable, rapidly perishable or unusable after certain period, or destroying any property which is required to be destroyed under any other law, or transfer of a property legally by an open bid;
- (f) **“Bangladesh Bank”** Means Bangladesh Bank established under the Bangladesh Bank Order, 1972 (P.O.No.127 of 1972);
- (g) **“insurance company”** means insurance company as defined under section 2(8) of the Insurance Act, 1938 (Act No.IV of 1938);
- (h) **“foreign currency”** means foreign exchange as defined under section 2(d) of the Foreign Exchange Regulation Act, 1947 (Act No.VII of 1947)
- (i) **“bank”** means a bank company as defined under section 5(o) of the Bank Companies Act, 1991 (Act No. 14 of 1991);
- (j) **“money changer”** means any person or institution authorized by Bangladesh Bank to deal in foreign currency under section 3 of the Foreign Exchange Regulation Act, 1947 (Act No.VII of 1947);
- (k) **“money laundering”** means—
- (i) to transfer, convert, remit, from or to Bangladesh, the money or properties acquired through commission of any predicate offence for the purpose of concealing or disguising the illicit origin of the property or smuggle fund or property earned through legal or illegal means;
 - (ii) to conduct, or attempt to conduct a financial transaction with intent to avoid a reporting requirement under this Act;

- (iii) to do or attempt to do such activities as the illegitimate source of the money or property may be concealed or disguised or knowingly assist to perform or conspire to perform such activities;
- (l) **“reporting organization”** means—
 - (i) banks;
 - (ii) financial institutions;
 - (iii) insurance companies;
 - (iv) money changers;
 - (v) companies or organizations remitting or transferring money;
 - (vi) any other organization running business with the approval of Bangladesh Bank.
 - (vii) such other organizations as may be declared by Bangladesh Bank with the approval of the Government, by notification in the official Gazette, from time to time;
- (m) **“High Court Division”** means the High Court Division of the Supreme Court.
- (n) **“Suspicious or unusual transaction”** means a transaction that—
 - (i) substantially deviates from the usual transaction;
 - (ii) has reason to be suspected that it has involvement with any proceeds of crime;
- (o) **“property”** means—
 - (i) any kind of assets, whether tangible or intangible, movable or immovable; or

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- (ii) cash, documents or instruments in any form, including electronic or digital, which indicates evidential title to, or interest in, such assets;
- (p) **“Special Judge”** means the Special Judge appointed under section 3 of the Criminal Law Amendment Act, 1958 (Act XL of 1958);
- (q) **“predicate offence”** means the offences committing which the money or properties are derived and laundered or attempt to be laundered and shall include the following offences, namely—
- (1) corruption and bribery;
 - (2) counterfeiting currency;
 - (3) counterfeiting documents;
 - (4) extortion;
 - (5) fraud;
 - (6) forgery;
 - (7) illicit arms trafficking;
 - (8) illicit dealing in narcotic drugs and psychotropic substances;
 - (9) illicit dealing in stolen and other goods;
 - (10) Kidnapping, illegal restraint, hostage-taking;
 - (11) murder, grievous bodily injury;
 - (12) woman and child trafficking;
 - (13) smuggling and unauthorized cross-border transfer of domestic and foreign currency;
 - (14) theft, robbery or dacoity;
 - (15) trafficking and illegal migration;
 - (16) dowry; and
 - (17) for the purpose of this Act any other offence declared as predicate offence by Bangladesh Bank, with the approval of the Government, by notification in the official Gazette.

3. **Act to override all other laws.**—Notwithstanding anything contained in any other law for the time being in force, the provisions of this Act shall have effect.

4. **The offence of money laundering and punishment.**— (1) For the purpose of this Act, money laundering shall be deemed to be an offence.

(2) Any person who commits or attempts to commit the offence of money laundering or abets or conspires in the commission of such offence shall be punished with imprisonment for a term which may extend to 7 (seven) years but not less than 6 (six) months and the money or property derived from the commission of such offence shall also be forfeited to the state.

5. **Punishment for violation of freezing or attachment order.**—Any person who contravenes an order of attachment or freezing made under this Act shall be punished with imprisonment for a term which may extend to 1(one) year, or with fine which may extend to 5 (five) thousand taka, or with both.

6. **Punishment for divulging of information.**—(1) No person shall, for the purpose of frustrating the investigation or making adverse influence over the investigation, divulge any information relating to investigation or other related information to any person organization or news media.

(2) Every person, organization or agent authorized under this Act during the period of his service or appointment or on the expiry of term of service or contract of appointment shall, except for the purpose of this Act, abstain from using, publishing or divulging information collected, received, retrieved and known to him.

(3) Any person who contravenes the provisions of sub-section (1) and (2), shall be punished with imprisonment for a term, which may extend to 2(two) years, or to fine which may extend to 10 (ten) thousand taka, or with both.

7. **Punishment for obstruction or non co-operation in investigation, failure to report or provide information.**—(1) Any person who—

- (i) obstructs or refuses to assist the concerned officer engaged in investigation under this Act; or

- (ii) without reasonable ground, refuses to furnish or provide report or information required under this Act, shall be deemed to have committed an offence under this Act.

(2) Any person who contravenes the provisions of sub-section (1), shall be punished with imprisonment for a term which may extent to 1(one) year, or with fine which may extend to 5(five) thousand taka, or with both.

8. Punishment for providing false information.—(1) Nobody shall knowingly provide false information relating to the source of money or the identity of any account holder or the beneficiary or nominee of the account.

(2) Any person who contravenes the provision of sub-section (1), shall be punished with imprisonment for a term which may extend to 1(one) year, or with fine which may extend to 50(fifty) thousand taka, or with both.

9. Investigation and trial of offences.—(1) The offences committed under this Act shall be deemed to be scheduled offences under the Anti-Corruption Commission Act, 2004 (Act 5 of 2004), and shall be investigated by Anti-Corruption Commission or by an officer authorized by it in this behalf.

(2) The offences under this Act shall be tried by the Special Judge Court established under section 3 of the Criminal Law Amendment Act, 1958 (Act No. XL of 1958).

(3) If any conflict arises regarding investigation, trial and other related matters under this Act, the provisions of Anti- Corruption Commission Act, 2004 and the Criminal Law Amendment Act, 1958 shall prevail.

10. Power of Special Judge.—(1) The Special Judge may impose such punishment as is specified for the offences committed under this Act and, in an appropriate case, the court may pass any order including an order for further investigation, freezing, attachment or seizure of properties.

(2) While making an order for further investigation of any offence relating to a case pending before it, the Special Judge shall direct the investigating officer to submit his report within a time limit not exceeding 6(six) months.

11. Offence to be cognizable, non-compoundable, and non-bailable.—
(1) All offences under this Act, shall be cognizable, non-compoundable and non-bailable.

12. Inevitability of approval of Anti-Corruption Commission.—(1) Notwithstanding anything contained in the Code of Criminal Procedure or any other law for the time being in force, no court shall, except on an approval of the Anti Corruption Commission or any law enforcement agency, or on an application made by the Anti-Corruption Commission in this behalf, take cognizance of any offence punishable under this Act.

(2) After concluding the investigation under this Act, the investigating officer shall take prior approval of the Anti-Corruption Commission before submitting his report before the court and shall submit the copy of approval of the Commission before the court together this report.

13. Provisions for bail.— A person accused under this Act, shall not be released on bail, if—

- (a) the complainant is not given an opportunity of being heard on the application of bail; and
- (b) the court is satisfied that there are reasonable grounds for believing that the accused shall be convicted of the charges brought against him; or
- (c) he is not a woman, child or physically disabled and the Court is not satisfied that Justice may not be hindered on his release on bail.

14. Order for freezing or attachment of property.—(1) The Court may, upon the written application of any investigating organization, pass an order for freezing or attachment of property wherever situated, within or outside Bangladesh, in which interest of the people of the country is involved under this Act.

(2) An application under sub-section (1) by the investigating organization for an order for freezing or attachment of a property shall be made in writing and be accompanied with the following information:—

- (a) full description of the property sought to be frozen or attached;
- (b) the grounds and primary evidence for believing the property involved in money laundering;
- (c) the possibility of success in prosecution;

- (d) the apprehension for the property from being transferred or beyond possession before the conclusion of the proceedings, if an order is not passed according to the application by the Court.

(3) Whenever any order for freezing or attachment under sub-section (1) is passed, the Court shall, for general information, publish the matter with every detail of the property in the official Gazette and at least in a well-circulated national daily newspaper.

(4) In the order for freezing or attachment the property passed under this section, the name of the accused, name of his parents, name of his spouse, his nationality, designation (if any), profession, Tax identification Number (TIN), present and permanent address and any other identification of the accused shall, as far as possible, be mentioned.

(5) Subject to the provisions of sub-section (6), while an order for freezing or attachment of any property passed under this section by the Court is in force, such property shall, unless the Court otherwise directs, not be transferred in any form or manner, transected in any form, or encumbered in any manner.

(6) While an order for freezing an account of any person is in force, all the money he acquired may, unless otherwise specified in the order, be deposited in such account.

15. Release of frozen or attached property.—(1) If the Court passes an order to freeze or attach any property, any person, other than the accused, who has interest in such property may, within 30 (thirty) days from the date of publishing the notice of freezing or attachment of the property in a well-circulated national daily newspaper, submit an application to the Court for an order for release of that property.

(2) Any person making an application under sub-section (1) shall include the following information with the application, namely :—

- (a) that the property has no involvement in the offence of money laundering;
- (b) that the accused has no title, interest or ownership in the frozen or attached property;
- (c) that the applicant has a title, interest and ownership in the frozen or attached property.

(3) Notwithstanding anything contained in sub-section (5) of section 14, if any application under this section for taking over the property is received by the Court, it shall give the, investigating organization and the accused an opportunity for hearing, and after hearing and analyzing the required papers or documents, if the Court is satisfied by the application submitted under sub-section (1), it shall cancel the order of freezing or attachment of the property and pass an order to return the property in favour of the applicant within the time-limit mentioned in the order.

16. Appeal against the order for freezing or attachment of the property.—(1) Any person aggrieved by an order of freezing or attachment of a property, may within 30 (thirty) days from the date of such order, prefer an appeal before the High Court Division.

(2) If any appeal is preferred under sub-section (1), the Appellate Court giving the parties a reasonable time for hearing may pass such order as it thinks proper after hearing.

(3) If any person aggrieved by an order of freezing or attachment of a property under section 14 makes an appeal, and if the Appellate Court passes no order otherwise, the order for freezing, or attachment shall have effect until the disposal of appeal.

17. Forfeiture of property.—(1) If any person is convicted of the offence of money laundering under this Act, the Court may pass an order to forfeit the property involved in the offence wherever situated, within or outside Bangladesh in which the people of the country have interest.

(2) If any person convicted of the offence of money laundering has absconded or died, the Court may also pass an order to forfeit the property involved in the offence.

Explanation.—A person shall be deemed to have absconded when reasonable attempts have been made to arrest the person pursuant to a warrant for a period of 6 (six) months commencing on the day the warrant was issued and if he fails to surrender within the said period.

(3) If a person in good faith or paying the proper value had purchased the property before the order of forfeiture passed by the Court or before filing any case or proceeding under this section and is able to convince the Court that he had no knowledge of the property being laundered and had purchased it in good

faith, in that case the Court instead of giving forfeiture order, may direct the convicted person to deposit the sold value of the said property in the Government treasury within a time-limit determined by the Court.

(4) If an order of forfeiture is passed, the Court shall give notice of the order through registered post to the last known address of the person under whose control the property remains and such notice shall be published in the official Gazette and at least two well circulated national daily newspapers mentioning every details of the property.

(5) If the court passes an order for forfeiture of any property the ownership of the property shall be vested in the state and the person under whose control the property remains on the date of the forfeiture shall handover the possessions of the property in favour of the state as soon as possible.

18. Release of forfeited property.—(1) If the Court passes an order of forfeiture of a property under section 17, any person, other than the convict, who has title, interest or right in the property may apply to the Court to get back the property within 30 (thirty) days of the date of publishing the notice of forfeiture of the property.

(2) After receiving an application under sub-section (1), the Court shall give a reasonable time to the convict and to the applicant for hearing and after hearing the Court may pass necessary order considering the following matters, namely :

- (a) whether the applicant or the forfeited property was involved in the commission of the offence;
- (b) whether the applicant has the legal right in acquiring the forfeited property;
- (c) the time of the commission of the offence and the time of acquiring the property claimed;
- (d) any additional information that the Court may consider relevant.

19. Appeal against the order to forfeit the property.—(1) Any person aggrieved by an order for forfeiture of property, may within 30 (thirty) days from the date of such order prefer an appeal to the High Court Division.

(2) If an appeal is preferred under sub-section (1), the Appellate Court shall give both the parties a reasonable time for hearing, and after hearing the Court may give such order as it thinks fit.

20. Disposal of Forfeited Property.—(1) Whenever a property is forfeited under this Act, the Government may sell the property, other than that which is required by a law to be destroyed, by public auction or dispose of the same in any other commercially feasible means.

(2) The money receivable by sell or otherwise under sub-section (1) shall be deposited to the Government treasury.

21. Appointment of manager or caretaker for the property frozen, attached or forfeited.—If any property is frozen, attached or forfeited under this Act, the Court may, upon an application made by an investigating organization or any person authorized by it in this behalf, appoint a person or entity to take control of and manage or otherwise deal with, all or any part of such property under such terms and conditions as the Court may think fit.

22. Appeal.—Notwithstanding anything contained in any other laws for the time being in force, any person aggrieved by an order, judgment, decree or sentence passed by the Court, may within 30 (thirty) days from the date of such judgment or order of sentence, may prefer an appeal to the High Court Division.

23. Powers and responsibilities of Bangladesh Bank in preventing and combating money laundering.—(1) To combat and prevent money laundering and to resist any such activities, Bangladesh Bank shall have the following powers and responsibilities:

- (a) to analyse the suspicious transaction reports and cash transaction report and maintain a database of all suspicious transaction reports and cash transaction reports and related information;
- (b) to call for and received from reporting organizations any information related to the transactions where there is reasonable grounds to suspect that the transaction is involved with money laundering;

- (c) to issue an order to any bank or financial institution to suspend a transaction or freeze an account for a period of 30 (thirty) days where Bangladesh Bank has reasonable grounds to suspect that any money derived from the commission of any crime is deposited to such account :

Provided that the order so passed may be extended for another 30(thirty) days for the purpose of eliciting correct information in respect of the transaction of such account;

- (d) to issue, from time to time, necessary directions to reporting organizations for taking counter measures to combat money laundering activities ;
- (e) to monitor the activities of the reporting organizations to ensure proper reporting and the compliance of its directions or instructions and if necessary inspect the reporting organization physically;
- (f) for the purpose of the proper implementation of this Act, to provide training to the staff and officers of the reporting organization any other organization or institution as Bangladesh Bank considers necessary arrange meeting, seminar;
- (g) to carry out any other related functions for the purpose of this Act.

(2) If the investigating organization makes a request for information related to money laundering or suspicious transaction , Bangladesh Bank shall provide with the information, if not obliged otherwise by the existing laws or any other cause.

24. Establishment of financial Intelligence Unit (FIU).—(1) For the purpose of this Act, there shall be a financial Intelligence Unit (FIU) in Bangladesh.

(2) On the basis of any contract or arrangement with any foreign country in accordance with this Act, if the Financial Intelligence Unit of such country may seek information regarding money laundering or suspicious transaction report the Financial Intelligence Unit shall provide required information and may also seek any kind of information about any suspicious transaction from any other state.

25. Responsibility of reporting organization for preventing money laundering.—(1) For the purpose of preventing and identifying money laundering, the reporting organization shall—

- (a) keep, during the operation of accounts, the correct and full information of identification of its clients;
- (b) in case of closed account of any clients, keep previous records of transactions of such account for at least 5(five) years from the date of closure;
- (c) provide, from time to time, the records kept under clause (a) and (b) to Bangladesh Bank from time to time on demand;
- (d) proactively and immediately inform Bangladesh Bank, facts on suspicious, unusual or doubtful transactions likely to be related to money laundering.

(2) If any reporting organization violates the directions mentioned in subsection (1), Bangladesh Bank may—

- (a) impose a fine which may extend to 5(five) lac taka but not less than 10 (ten) thousand taka upon the default reporting organizations; and
- (b) cancel the licence of the company or cancel the permission of business of the company in addition to the fine mentioned in clause (a) and, as the case may be, inform the matter to the permitting or licensing authority of such licence or permit, so that the concerned authority may, in accordance with the relevant laws or rules or regulations make there under, take necessary action.

(3) Bangladesh Bank may collect the money imposed as fine under subsection (2), in such manner as may be prescribed by it and shall deposit the money realized to the government treasury.

26. Contract with foreign state.—(1) For the purpose of the Act, the Government or, in appropriate cases, Bangladesh Bank may sign Memorandum of Understanding (MOU), Bilateral or multilateral contract, convention or agreement with any foreign state or organization by means of acceptance of international legislation.

(2) Whenever any contract is concluded with a foreign state under this section, the Government or in appropriate cases, Bangladesh Bank, may—

- (a) request the foreign state or organization to provide relevant information; and
- (b) provide information to that foreign state or organization if the information required is not vulnerable to national security.

(3) To carry out the purpose of this Act, if it is require to forfeit or release any property in Bangladesh in execution of an order of a Court of any foreign country under any agreement, the Court may, upon an application made by Bangladesh Bank, pass such order as it thinks fit; likewise Bangladesh Bank may make a request to any other state party to any such agreement or memorandum of understanding to execute the order of forfeiture or release of any property made by any Court of Bangladesh.

27. Offence committed by company.—(1) If any offence under this Act is committed by a company, every proprietor, director manager, Secretary, or other officer or representative of the company who is directly involved with the offence shall be deemed to have committed the offence, unless he proves that the offence has been committed without his knowledge or that he exercised all due diligence to prevent the commission of the offence.

Explanation.—In this section—

- (a) “**company**” includes any statutory body, commercial enterprise, partnership concern, association, or organization formed with one or more than one person; and
- (b) “**director**” means any partner or member of the Board of directors, by whatever name it is called.

(2) Registration of any company engaged in money laundering, directly or indirectly, shall be liable to be cancelled.

28. Protection of action taken in good faith.—No suit or prosecution or other legal proceedings shall lie against the Government or any government officer and staff or any reporting organization for anything which is in good faith done under this Act or rules made thereunder for which any person is or likely to be affected.

29. Power to make rules.—(1) The Government may, for the purpose of this Act, by notification in the official Gazette, make rules.

30. **Publication of Authentic English Text of this Act.**—The Government shall, after the commencement of this Act, publish and Authentic English Text of this Act:

Provided that in the event of conflict between the Bangla and the English text, the Bangla text shall prevail.

31. **Repeal and savings.**—(1) The Money Laundering Prevention Ordinance, 2008 (Ord. No. 12 of 2008) is hereby repealed.

(2) Notwithstanding such repeal any case and proceeding pending before any Court under the said Ordinance shall be disposed of in such way as if it had been filed and accepted under this Act.